This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

TFA
D
1916
v. 6

UNITED STATES COMPILED STATUTES

ANNOTATED

1916

EMBRACING THE STATUTES OF THE UNITED STATES OF A GENERAL AND PERMANENT NATURE IN FORCE AT THE CLOSE OF THE FIRST SESSION OF THE 64TH CONGRESS

AND

DECISIONS CONSTRUING AND APPLYING SAME TO APRIL 1, 1916

INCORPORATING UNDER THE HEADINGS OF THE REVISED STATUTES THE SUBSEQUENT LAWS, TOGETHER WITH EXPLANATORY AND HISTORICAL NOTES

TEXT OF THE STATUTES COMPILED BY

JOHN A. MALLORY

ASSISTED BY EDITORIAL STAFF

ANNOTATIONS BY MEMBERS OF THE PUBLISHERS' EDITORIAL STAFF

IN 12 VOLUMES

VOLUME 6

ST. PAUL

WEST PUBLISHING CO.

1917

COPYRIGHT, 1917
BY
WEST PUBLISHING COMPANY

(6 U.S.COMP.'16)

235326

TABLE OF TITLES AND CHAPTERS

CONTAINED IN THIS VOLUME

TITLE XXXIII

DUTIES UPON IMPORTS

Chap.		Sec.
A.	Tariff schedules	5291
B.	The tariff commission	5326a

TITLE XXXIV

COLLECTION OF DUTIES UPON IMPORTS

1.	Collection-districts, ports, and officers	5327
2.	Qualifications, pay, and duties of officers	5347
3.	Revenue cutters and boats	5397
4.	Entry of merchandise	5462
5.	Unlading	5555
6.	Appraisal	5589
7.	The bond and warehouse system	5638
7A.	Immediate transportation in bond to inland ports	5695
8.	Payment	5710
9.	Drawback	5720
10.	Enforcement of duty-laws and punishment for violations	5760
11.	Provisions applying to commerce with contiguous countries	5807

TITLE XXXV

INTERNAL REVENUE

1.	Officers of internal revenue	5842
2.	Of assessments and collections	5895
3.	Special taxes	5955
4.	Distilled spirits and wines	5981
5.	Fermented liquors	6138
6.	Tobacco and snuff	6162
7.	Cigars	6197
7A.	Oleomargarine, adulterated butter, and process or renovated butter	6215
7B.	Filled cheese	6242
7C.	Mixed flour	6258
7D.	White phosphorus matches	6271
7E.	Opium for smoking	6287a
7F.	Opium, coca leaves, and compounds, manufacturers, etc., thereof	6287g
8.	Banks and bankers	6288
8A.	Special excise tax on corporations	6300
8B.	Excise tax on dealings in cotton futures	6309a
9.	Stamp-taxes on specific objects	6310
9A.	Incomes	6319
9B.	Munition manufacturer's tax	6336¼a
10.	Legacies and successions	——
10A.	Estate tax	6336½a
11.	Provisions common to several objects of taxation	6337
11A.	Increase of internal revenue	6371a

TITLE XXXVI

DEBTS DUE BY OR TO THE UNITED STATES 6372

TITLE XXXVII

COINAGE 6416

UNITED STATES COMPILED STATUTES ANNOTATED

1916

VOLUME 6

Z

TITLE XXXIII

DUTIES UPON IMPORTS

(R. S. §§ 2491–2516. Superseded and repealed.)

This Title, as enacted in the Revised Statutes, included sections 2491–2516 thereof, of which sections 2503, 2504, contained the schedules of articles subject to duty and the rates of duty thereon, then in force, with a proviso annexed to section 2503, for special rates of duty on certain specified classes of goods; section 2504 contained the free list, of articles exempt from duty; and the other sections contained various particular provisions relating to imports and duties thereon. Said rates of duty on certain articles were altered and additional articles were included in the free list, by Act Feb. 8, 1875, c. 36, §§ 1–10, 18 Stat. 307; and further alterations were made, and said proviso to R. S. § 2503, was repealed, by Act March 3, 1875, c. 127, §§ 3–6, 18 Stat. 340. R. S. § 2501, was also repealed by Act May 4, 1882, c. 120, 22 Stat. 58, and Act Dec. 23, 1882, c. 6, 22 Stat. 398; and R. S. § 2506, was repealed, on the termination of articles 18–25, 30, of the treaty with Great Britain of May 8, 1871, pursuant to the Joint Resolution of March 3, 1883, No. 22, 22 Stat. 641.

A substitute for this entire Title was enacted by section 6 of Act March 3, 1883, c. 121, 22 Stat. 488, 489, entitled "An act to reduce internal-revenue taxation, and for other purposes." Said substitute was in the form of new sections of the Revised Statutes, numbered 2491–2513, arranged in different order, but covering the subjects of most of the original sections then in force. New tariff schedules and free list, substitutes for the original R. S. §§ 2503, 2504, were contained in the new sections 2502, 2503. Further sections of said act, Act March 3, 1883, c. 121, §§ 7–13, 22 Stat. 523, made other amendments and provisions relating to rates of duties and collection thereof.

All such previous provisions relating to the subject of this Title were superseded by the provisions prescribing the articles subject to duty, and the rates of duty thereon, of the McKinley Tariff Act of Oct. 1, 1890, c. 1244, §§ 1–25, 26 Stat. 567. These, in like manner, were superseded by the Wilson Tariff Act of Aug. 27, 1894, c. 349, 28 Stat. 509, which was superseded by the Dingley Tariff Act of July 24, 1897, c. 11, which, again, was superseded by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, 36 Stat. 11, and that was superseded by the Underwood Tariff Act of Oct. 3, 1913, c. 16, §§ 1, 4, 38 Stat. 114.

This Title, as enacted in the Revised Statutes, was not divided into chapters. For convenience of arrangement it is here divided into two chapters: Chapter A, "Tariff Schedules," containing the provisions of sections 1 and 4 of said Underwood Tariff Act of 1913, as amended, with the provisions of other acts remaining in force relating thereto; and Chapter B, "The Tariff Commission," containing the provisions of Act Sept. 8, 1916, c. 463, creating and relating to the Tariff Commission.

Chap.		Sec.
A.	Tariff Schedules	5291
B.	The Tariff Commission	5326a

CHAPTER A

Tariff Schedules

Sec.

5291. Articles dutiable, and rates of duty; schedules and free list.

5291a. Dyestuffs; free list; dutiable list.

5291b. Articles dutiable, and rates of duty; schedules and free list.

5291c. Articles dutiable; rates, schedules, and free list; repeal.

5292. Negotiation by President of trade agreements with foreign nations authorized.

Sec.

5293. Reciprocity treaty with Cuba of Dec. 11, 1902, and Act Dec. 17, 1903, c. 1, for execution thereof, not affected by this act, except as to proviso of treaty abrogated.

5294. Duties on articles coming from Philippine Islands; certain articles free of duty; certain articles from United States free of duty in Philippine Islands; tax-

Sec.

es equal to internal-revenue taxes on articles coming into United States from Philippine Islands, and into Philippine Islands from United States; internal revenues collected in Philippine Islands to accrue to government thereof; repeal of provision authorizing export duties.

5295. Exemption of articles going into Porto Rico from United States from internal-revenue taxes.

5296. Countervailing duty on articles on which bounty on exportation was paid.

5297. Articles to be marked to indicate country of origin; packages, to indicate country of origin and quantity of contents.

5298. Fraudulent violation of provisions relating to marking, etc., articles or packages, or defacing, etc., marks, etc.; punishment.

5299. Importation of obscene books, etc., or other articles, or of lottery tickets, etc., prohibited; seizure and forfeiture.

5300. Aiding, etc., by officer, etc., in violation of provisions prohibiting importation, etc., of obscene publications, etc., or other articles, a misdemeanor; punishment.

5301. Proceedings for seizure, etc., of articles mentioned in two preceding subsections, for violation thereof.

5302. Importation of neat cattle and hides thereof prohibited; suspension of prohibition, in part, authorized.

5303. Violation of provisions of preceding subsection, punishable.

5304. Importation of goods manufactured by convict labor prohibited.

5305. Discriminating duty on goods imported in foreign vessels.

5306. Importation only in vessels of United States or of country of origin of goods.

5307. Restriction of preceding subsection to vessels, or goods, etc., imported in vessels, of foreign nations maintaining similar regulation.

5308. Admission, without payment of duty, under bond for exportation, of certain articles for purposes or uses specified, not for sale.

5309. Importation in bond of materials for construction of naval vessels or certain other vessels, and of materials for building their machinery, and articles for their outfit and equipment; use thereof free of duty.

5310. Withdrawal from bond, free of duty, of articles for repair of naval vessels or certain other vessels.

Sec.

5311. Discount on duties on goods, etc., imported in vessels registered under laws of United States.

5312. Admission free of duty of merchandise from vessels sunk and abandoned.

5313. Duty on articles reimported after exportation free of internal revenue tax.

5314. Duties imposed by act applicable to goods, etc., previously imported but not entered, or entered without payment of duty and under bond.

5315. President to ascertain amount of imports and exports of articles enumerated in section I of act, and cause estimate to be made of amount of domestic production and consumption thereof, and advise Congress when imports amount to less than five per centum of domestic consumption.

5316. Repeal of Act Aug. 5, 1909, c. 6, §§ 1–42, and of all inconsistent acts and parts of acts; limitations on operation of act and on effect of repeals of other acts thereby.

5317. Effect of invalidity of part of act on remainder thereof.

5318. Time of taking effect of act.

5319. Suspension of importation of products from countries making unjust discriminations.

5320. Grain brought from Canada by farmers to be ground not subject to duty.

5321. Return free of duty of articles or live-stock exported for exhibition.

5322. Return free of duty of animals taken abroad for exhibition.

5323. Laws affecting imports of articles, etc., and entry of persons into United States from foreign countries to apply to articles, etc., and persons coming from Canal Zone, Isthmus of Panama.

5324. Reduction of duties on products of Cuba authorized; limitation of reduction of duties on sugar; construction of act as to origin of acts changing customs duties.

5325. No additional fees or charges on products of Cuba; equal treatment of imports by both countries.

5326. Duties on specified imports from Canada, when reciprocal rates are imposed by Canada on specified imports from United States, and exemption from duty of specified articles imported from Canada, when specified articles from United States are admitted into Canada free of duty.

§ 5291. (Act Oct. 3, 1913, c. 16, § 1, as amended, Act April 27, 1916, c. 93, and Act Sept. 8, 1916, c. 463, §§ 500–502, 600.) Articles dutiable, and rates of duty; schedules and free list.

On and after the day following the passage of this Act, except as otherwise specially provided for in this Act, there shall be levied, collected, and paid upon all articles when imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands and the islands of Guam and Tutuila) the rates of duty which are by the schedules and paragraphs of the dutiable list of this section prescribed, namely:

Notes of Decisions

1. Constitutionality of act.
2. Postal convention.
3. Foreign country.
4. —— Canada.
5. —— Luzon.
6. —— Isle of Pines.
7. —— Canal Zone.
8. —— Tutuila.
9. —— Porto Rico.
10. Articles.
11. Imported.
12. Prize goods.
13. Merchandise defined.
14. Accrual of duties on prohibited goods.
15. Rules for construction of tariff laws—In general.
16. —— Commercial or technical sense.
17. —— Long-continued practice.
18. —— General and specific enumeration.
19. —— Ambiguity.
20. —— Repugnant provisions.
21. —— Intent.
22. —— Construction in favor of importer.
23. —— Use of article.
24. —— Protection basis as determining classification.
25. —— Manufactured article.
26. —— Crude article.
27. —— "Fit only for such use."
28. —— "Colored."
29. —— "Composed of."
30. —— "Derived from."
31. —— "Not otherwise provided for."
32. —— "Such."
33. —— Change of article.
34. —— Title prefixed to schedules.
35. —— Separation of article into parts.
36. —— Presumptions.
37. —— Evidence.
38. —— Questions for jury.

1. **Constitutionality of act.**—The tariff act of 1890 was held constitutional. In re Sternbach (C. C. 1891) 45 Fed. 175, judgment affirmed Field v. Clark (1892) 12 Sup. Ct. 495, 143 U. S. 649, 36 L. Ed. 294.

2. **Postal convention.**—The postal convention with Canada and section 15 of the act of March 3, 1879 (section 7307, post), were not intended to affect existing tariff laws. (1881) 17 Op. Atty. Gen. 159.

3. **Foreign country.**—A long-continued uniform departmental practice of both state and treasury departments, now reviewed, shows the word "country" to have been interpreted to mean the locality and not the political domain itself. U. S. v. Marquardt & Co. (1915) 6 Ct. Cust. App. 168.

The right to exact duty upon merchandise imported from Porto Rico prior to April 11, 1899, the date of the ratification of the treaty between the United States and Spain, was within the meaning of the tariff law. A. S. Lascelles & Co. v. U. S. (1914) 49 Ct. Cl. 382.

A port in a foreign country with which the United States is at war, although in the exclusive possession and government of the military authorities of the United States, acting under the orders of the president, is a foreign port, within the meaning of the revenue laws. Fleming v. Page (1850) 50 U. S. (9 How.) 603, 13 L. Ed. 276.

The Mexican port of Tampico was a foreign port when held by the army of the United States, in 1847, and goods imported thence were liable to duty, under chapter 74 of Act 1846. Id.

By the conquest and military occupation of a portion of the United States by a public enemy, such portion is to be deemed a foreign country so far as respects the revenue laws. U. S. v. Rice (1819) 4 Wheat. 246, 253, 4 L. Ed. 562.

4. —— **Canada.**—The revenue acts of 1799 and 1863 applied to commercial intercourse between Canada and the United States as well as to other foreign countries. U. S. v. Seventy-Eight Cases of Books (D. C. 1869) Fed. Cas. No. 16,258.

5. —— **Luzon.**—Articles brought into the United States from the island of Luzon, in the Philippine Islands, subsequent to the proclamation of the ratification of the treaty of peace between the United States and Spain, are not imported from a foreign country within the meaning of the tariff act of 1897. The Diamond Rings (1901) 22 Sup. Ct. 59, 183 U. S. 176, 46 L. Ed. 138.

6. —— **Isle of Pines.**—The Isle of Pines must be regarded as at least de facto under the jurisdiction of the Republic of Cuba, and hence, as a "foreign country" within the meaning of Dingley Tariff Act 1897. Pearcy v. Stranahan (1907) 27 Sup. Ct. 545, 205 U. S. 257, 51 L. Ed. 793.

7. —— **Canal Zone.**—The first clause of the tariff act of 1909 held not to apply to the Canal Zone. (1909) 27 Op. Atty. Gen. 594.

8. —— **Tutuila.**—In view of the convention concluded by the United States,

Great Britain, and Germany on December 2, 1899 (31 Stat. 1878), the island of Tutuila is not a foreign country within the meaning of our tariff laws. (1902) 23 Op. Atty. Gen. 629.

9. —— Porto Rico.—See, also, § 3748 et seq., ante.

Porto Rico, after its cession to the United States by the treaty with Spain, April 11, 1899, though it had not been formally embraced by Congress within the customs union of the states, was no longer "foreign country," within the Dingley tariff act of 1897. De Lima v. Bidwell (1901) 21 Sup. Ct. 743, 746, 182 U. S. 1, 45 L. Ed. 1041.

The treaty with Spain by which Porto Rico was ceded to the United States became effective for tariff purposes at the beginning of April 11, 1899, on which day the ratifications were exchanged and the president's proclamation was issued, and merchandise arriving from Porto Rico at a port of entry of the United States at any time during that day was not subject to duty. Howell v. Bidwell (C. C. 1903) 124 Fed. 688.

The treaty with Spain by which Porto Rico was ceded to the United States, although signed December 10, 1898, and ratified by Spain which was the last to ratify) on March 19, 1899, did not become effective for the purposes of the tariff laws until the exchange of ratifications, April 11, 1899, and all importations of merchandise arriving from Porto Rico at a port of entry of the United States prior to that date were subject to duty. The doctrine of relation has no application to the taking effect of a treaty so far as relates to its effect on individual rights. Armstrong v. Bidwell (C. C. 1903) 124 Fed. 690.

10. Articles.—What constitutes merchandise, see § 5462, post.

Ships or vessels are not dutiable, eo nomine, under the tariff laws, and are not dutiable "articles," in the meaning thereof. Therefore a large pleasure yacht purchased abroad and brought to this country by an American citizen cannot be subjected to duty. The Conqueror (1897) 17 Sup. Ct. 510, 511, 166 U. S. 110, 41 L. Ed. 937, reversing decree (D. C. 1892) 49 Fed. 99.

A crank shaft and steamer's shafts brought to this country from a foreign country to repair a vessel of that country lying disabled in our ports are articles imported into the country within the meaning of section 2503 of the Revised Statutes and section 2502 of the Revised Statutes as amended by the tariff act of 1883 (22 Stat. 491, 499). (1891) 20 Op. Atty. Gen. 194, affirmed (1891) 20 Op. Atty. Gen. 257.

A steel shaft cannot be landed and kept on the dock of the Cunard Steamship Company in the United States, for possible use on the steamships Etruria and Umbria in case of emergency, without payment of duty thereon. (1902) 24 Op. Atty. Gen. 533.

The Secretary of the Treasury has the power to permit the transfer and delivery to the steamship Kaiser Wilhelm II of a piece of machinery known as a "screw boss," brought into the harbor of New York by a sister ship for the purpose of replacing a defective piece in the former, without exacting the payment of duty. (1899) 22 Op. Atty. Gen. 360.

Articles purchased for the ship's equipment to replace articles lost or deteriorated by use are not subject to duty. U. S. v. One Hempen Cable and One Hempen Hawser (D. C. 1831) Fed Cas. No. 15,931a.

An anchor and chain cable purchased abroad to be bona fide a part of the equipment of a vessel must not have been purchased under a necessity occasioned by any fault of her masters or owners in not properly equipping her originally for the voyage. Weld v. Maxwell (C. C. 1858) Fed. Cas. No. 17,374.

11. Imported.—The word "importation," as used in the customs laws, is the bringing of goods into the ports of the United States for the purpose of introducing them into the commerce of the country. (1910) 28 Op. Atty. Gen. 173. It must be an article brought or carried into this country from abroad. The Conqueror (D. C. 1892) 49 Fed. 99. The word is never used with reference to shipments from domestic territory. (1912) 29 Op. Atty. Gen. 422.

An article is not imported until it actually arrives at a port of entry of the United States. American Sugar Refining Co. v. Bidwell (C. C. 1903) 124 Fed. 677, 683; Arnold v. U. S. (1815) 9 Cranch, 104, 119, 3 L. Ed. 671. And it has been held that there is no importation unless the goods are landed. Kohne v. Insurance Co. of North America (C. C. 1804) Fed. Cas. No. 7,922. But a voluntary arrival at port of destination, though without breaking bulk, held to constitute an importation. The Boston (C. C. 1812) Fed. Cas. No. 1,670.

The importation of merchandise is not complete while the goods remain in the custody of the officers of the customs. American Cigar Co. v. U. S. (1906) 146 Fed. 484, 77 C. C. A. 40, reversing judgment Falk v. Same (C. C. 1904) 145 Fed. 574, judgment reversed U. S. v. G. Falk & Bro. (1907) 27 Sup. Ct. 191, 204 U. S. 143, 51 L. Ed. 411.

As soon as imported merchandise subject to duty has been entered into the country, duties become due on same, whether the entry is surreptitious or honest. U. S. v. Ehrgott (C. C. 1910) 182 Fed. 267.

Goods brought by superior force into the country are not deemed to be so imported, in the sense of the law, as necessarily to attach the right to du-

ties. If, however, such goods are afterwards sold in the country, or incorporated into the general mass of its property, they become liable to the payment of duties. The Concord (1815) 9 Cranch, 387, 388, 3 L. Ed. 768.

An involuntary coming into port by stress of weather held not an "importation" of cargo contrary to the embargo laws. The Mary (C. C. 1812) Fed. Cas. No. 9,183.

12. Prize goods.—See notes under § 5760, post.

13. Merchandise defined.—See § 5462, post, and notes.

14. Accrual of duties on prohibited goods.—No duties can accrue on an importation of prohibited goods. They are forfeited by the act of importation. McLane v. U. S. (1832) 31 U. S. (6 Pet.) 404, 8 L. Ed. 443.

The Treasury Department is not required by the statutes to levy and collect duty or its equivalent on goods the importation of which is specifically and absolutely prohibited. (1903) 24 Op. Atty. Gen. 556.

15. Rules for construction of tariff laws—In general.—In the presence of clear and explicit enactment, canons of construction have no application. Godellot & Co. v. U. S. (1912) 2 Ct. Cust. App. 408.

All statutes are to be construed so as to sustain rather than to ignore or defeat their purpose; to give them a field of operation, if the language will permit, rather than to treat them as meaningless. M. H. Pulaski Co. v. U. S. (1915) 6 Ct. Cust. App. 291.

It will be presumed that the Congress will not do a vain thing; that it intends its acts and every part of them to be held valid and as capable of being given effect. Id.

An importer is entitled to the benefit of the rule that revenue laws imposing taxes and like burdens should receive a reasonably strict construction. U. S. v. Matagrin (1911) 1 Ct. Cust. App. 309.

Any provision of a law must be read in the light of all the other provisions of that law, and in a tariff law the language used must be interpreted in view of the conditions of commerce existing when the statute was enacted. U. S. v. Marsching (1911) 1 Ct. Cust. App. 216.

The exception of a particular thing from the operation of the general words of a statute shows that in the opinion of the lawmaker the thing excepted would be within the general words had not the exception been made. But a proviso is not to be so construed as to make it plainly repugnant to the body of the section it limits. M. H. Pulaski Co. v. U. S. (1915) 6 Ct. Cust. App. 291.

The principle is recognized that, when it clearly appears from the language and context of a proviso it is intended to apply to other subjects than those stated in the paragraph of which it is a part or that it is intended to apply generally to other parts of an act, the proviso must, so far as possible, be given full effect; but this principle will not be applied ex industria to bring an article within the operation of the proviso. U. S. v. Harper (1911) 2 Ct. Cust. App. 101.

The general doctrine regarding the assessment of duties is that they can be levied upon such articles only as are made dutiable by Congress and are actually imported into the United States. Stone v. Shallus (1906) 143 Fed. 486, 74 C. C. A. 506, affirming judgment (C. C. 1905) 137 Fed. 674.

The provisions in a tariff act are designed for the future as well as for the present, and cover all importations which the definitions fit. Klots v. U. S. (1905) 139 Fed. 606, 71 C. C. A. 590, affirming judgment (C. C. 1904) U. S. v. Klotz (C. C. 1904) 133 Fed. 808.

In custom laws, as in all others, the intent of the lawmakers is the law. (1887) 18 Op. Atty. Gen. 533.

The court in construing tariff laws will seek to conform to the intent of Congress, though such construction may involve a change or modification of the exact language of the statute. In re Chase (C. C. 1892) 48 Fed. 630, 631, reversed U. S. v. Hopewell (1892) 51 Fed. 798, 2 C. C. A. 510.

Statutes levying duties are not to be extended by implication beyond the clear import of the language used. Adams v. Bancroft (C. C. 1838) Fed. Cas. No. 44; U. S. v. Wigglesworth (C. C. 1842) Fed. Cas. No. 16,690.

An article is provided for in a revenue law when it is aptly described as well as when it is named. Faxon v. Russell (C. C. 1876) Fed. Cas. No. 4,707.

Where two terms of description are differentiated in a statute and in another paragraph one of these terms is employed, its use here must be taken to be confined to the single subject matter expressed, exclusive of the other. Goat & Sheepskin Import Co. v. U. S. (1914) 5 Ct. Cust. App. 178.

An article coming within two or more of the descriptions contained in a schedule must be assigned to the earlier one. Bogle v. Magone (1894) 14 Sup. Ct. 718, 152 U. S. 623, 38 L. Ed. 574.

The fact that articles in separate parts are invoiced as entireties is not controlling, and will not prevent a separate classification, when such classification is otherwise proper. In re Crowley (1893) 55 Fed. 283, 5 C. C. A. 109, affirming (C. C. 1892) 50 Fed. 465.

Where a clause of the tariff act clearly covers an article in question, statements contained in the report of a senate committee on the act cannot be

considered to show an inferential intent to place it under another clause. In re Downing (1893) 56 Fed. 470, 5 C. C. A. 575.

The fact that inconsistency in duties may result is not adequate ground for holding that Congress meant the opposite from what it said. Horrax v. U. S. (1909) 167 Fed. 526, 93 C. C. A. 22.

Where a general tariff provision prescribes an additional duty capable of application to all of several articles enumerated in another provision, it should be applied to all, even though it may operate unequally. U. S. v. George Nash & Co. (1907) 158 Fed. 401, 85 C. C. A. 511, reversing judgment George Nash & Co. v. U. S. (C. C. 1907) 152 Fed. 573.

A declaration that certain duties and rates of duty should be imposed upon certain imports in lieu of the duties heretofore imposed, held tantamount to a repeal of the prior rates of duty. Gossler v. Goodrich (C. C. 1867) Fed. Cas. No. 5,631.

A law imposing a duty on articles used for a particular purpose should not be construed to cover articles not so used at the date of the act, unless expressly so provided. Martin v. Curtis (C. C. 1842) Fed. Cas. No. 9,160.

Where an enumeration has been continued from one tariff act to another, it must be assumed that the legislative body had in contemplation some article of commerce intended to be covered by that enumeration. Kwong Yuen Shing v. U. S. (C. C. 1909) 175 Fed. 317.

One of the surest methods of interpreting a provision in a tariff law is by its past history. (1897) 21 Op. Atty. Gen. 541.

The fact that at the date of the passage of the act (R. S. § 2504, Schedule A) goods of the kind in question had not been manufactured will not withdraw them from the class to which they belong as described in the statute, where the language used fairly and clearly includes them. Newman v. Arthur (1883) 3 Sup. Ct. 88, 109 U. S. 132, 27 L. Ed. 883.

16. —— Commercial or technical sense.—The commercial designation of an article when clearly established, and shown to have been definite, uniform, and general, will control, in the construction of a tariff statute. Elliott v. Swartwout (1836) 10 Pet. 137, 151, 9 L. Ed. 373; Curtis v. Martin (1845) 3 How. 106, 108, 11 L. Ed. 516; Arthur v. Morrison (1877) 96 U. S. 108, 110, 24 L. Ed. 764; Same v. Lahey (1877) 96 U. S. 112, 113, 118, 24 L. Ed. 766; Robertson v. Salomon (1889) 9 Sup. Ct. 559, 560, 130 U. S. 412, 32 L. Ed. 995; Hedden v. Richard (1893) 13 Sup. Ct. 891, 149 U. S. 346, 37 L. Ed. 763 (reversing judgment Richard v. Hedden [C. C. 1890] 42 Fed. 672); Maddock v. Magone (1894) 14 Sup. Ct. 588, 589, 152 U. S. 368, 38 L. Ed. 482 (affirming judgment [C. C. 1890] 41 Fed. 882); Lutz v. Same (1894) 14 Sup. Ct. 777, 778, 153 U. S. 105, 38 L. Ed. 651; Sonn v. Same (1895) 159 U. S. 417, 16 Sup. Ct. 67, 40 L. Ed. 203; U. S. v. Buffalo Natural Gas Fuel Co. (1899) 19 Sup. Ct. 200, 172 U. S. 339, 43 L. Ed. 469; Same v. Wotton (1892) 53 Fed. 344, 346, 3 C. C. A. 553; Same v. Roessler & Hasslacher Chemical Co. (1897) 79 Fed. 313, 24 C. C. A. 604 (affirming judgment Roessler & Hasslacher Chemical Co. v. U. S. [C. C. 1896] 71 Fed. 957); Same v. Wo On & Co. (1909) 167 Fed. 314, 92 C. C. A. 626; Same v. Buffalo Natural Gas Fuel Co. (1897) 78 Fed. 110, 24 C. C. A. 4 (affirming judgment In re Buffalo Natural Gas Fuel Co. [C. C. 1896] 73 Fed. 191, judgment affirmed U. S. v. Buffalo Natural Gas Fuel Co. [1899] 19 Sup. Ct. 200, 172 U. S. 339, 43 L. Ed. 469). Same v. Breed (C. C. 1832) Fed. Cas. No. 14,638; May v. Simmons (C. C. 1880) 4 Fed. 499; Kennedy v. Hartranft (C. C. 1881) 9 Fed. 18; Dodge v. Hedden (C. C. 1889) 42 Fed. 446; May v. Simmons (C. C. 1880) 4 Fed. 499; Ross v. Fuller (C. C. 1883) 17 Fed. 224; McCoy v. Hedden (C. C. 1889) 38 Fed. 89; Fox v. Cadwalader (C. C. 1889) 42 Fed. 209; "Zante Currants" (C. C. 1896) 73 Fed. 183; In re Wieland (C. C. 1899) 98 Fed. 99; In re John Hope & Sons Engraving & Manufacturing Co. (C. C. 1900) 100 Fed. 286; Nordlinger v. U. S. (C. C. 1902) 115 Fed. 828 (judgment reversed U. S. v. Nordlinger [1903] 121 Fed. 690, 58 C. C. A. 438, writ of certiorari denied Nordlinger v. U. S. [1903] 24 Sup. Ct. 848, 191 U. S. 575, 48 L. Ed. 308); U. S. v. Burlington Venetian Blind Co. (1912) 3 Ct. Cust. App. 378; Goat & Sheepskin Import Co. v. U. S. (1914) 5 Ct. Cust. App. 178; (1887) 18 Op. Atty. Gen. 533.

The commercial signification will always be understood to have the same meaning in commerce as it has in the community at large unless the contrary is shown. Schmeider v. Barney (1885) 5 Sup. Ct. 624, 113 U. S. 645, 28 L. Ed. 1130. And terms which had no commercial meaning at the time they were used in a tariff statute must be construed in accordance with their plain, natural meaning. Tiffany v. U. S. (C. C. 1900) 103 Fed. 619. The commercial meaning is to be determined at the time the act was passed. U. S. v. One Hundred and Twelve Casks Sugar (1834) 33 U. S. (8 Pet.) 277, 8 L. Ed. 944; Curtis v. Martin (1845) 44 U. S. (3 How.) 106, 11 L. Ed. 516; Arthur v. Morrison (1877) 96 U. S. 108, 24 L. Ed. 764; Same v. Lahey (1877) 96 U. S. 112, 24 L. Ed. 766; Same v. Davies (1877) 96 U. S. 135, 24 L. Ed. 810; Sonn v. Magone (1895) 16 Sup. Ct. 67, 69, 159 U. S. 417, 40 L. Ed. 203; Lawrence Johnson & Co. v. U. S. (1908) 166 Fed. 728, 92 C. C. A. 418 (affirming judgment [C. C.

1907] 159 Fed. 189, and writ of certiorari denied [1909] 29 Sup. Ct. 694, 214 U. S. 511, 53 L. Ed. 1062); Bacon v. Bancroft (C. C. 1840) Fed. Cas. No. 714; Hadden v. Hoyt (C. C. 1840) Fed. Cas. No. 5,891; Hall v. Same (C. C. 1840) Fed. Cas. No. 5,934; Lee v. Lincoln (C. C. 1841) Fed. Cas. No. 8,195; Roosevelt v. Maxwell (C. C. 1856) Fed. Cas. No. 12,034; Jaffray v. Murphy (C. C. 1874) Fed. Cas. No. 7,172; Hutton v. Schell (C. C. 1879) Fed. Cas. No. 6,962; May v. Simmons (C. C. 1880) 4 Fed. 499; Ross v. Fuller (C. C. 1883) 17 Fed. 224; McCoy v. Hedden (C. C. 1889) 38 Fed. 89; Fox v. Cadwalder (C. C. 1889) 42 Fed. 209; "Zante Currants" (C. C. 1896) 73 Fed. 183; U. S. v. Sarchet (D. C. 1832) Fed. Cas. No. 16,224; Beatty's Ex'r v. U. S. (1856) Dev. Ct. Cl. § 244.

But a term having a commercial signification is not controlling in the classification of the article where a different intent is inferable from the context. Roosevelt v. Maxwell (C. C. 1856) Fed. Cas. No. 12,034; In re Salomon (C. C. 1891) 48 Fed. 287; Hahn v. U. S. (C. C. 1903) 131 Fed. 1000, judgment affirmed U. S. v. Hahn (1904) 135 Fed. 349, 68 C. C. A. 130.

The commercial designation is of first importance, and, if that fails to give the article its proper classification, resort must be had to the common designation. Robertson v. Salomon (1888) 130 U. S. 412, 9 Sup. Ct. 559, 32 L. Ed. 995.

In tariff laws, words of classification are, in general, to be construed either in their common or their commercial meaning, as opposed to their scientific or technical sense. U. S. v. Buffalo Natural Gas Fuel Co. (1897) 78 Fed. 110, 24 C. C. A. 4, affirming judgment In re Buffalo Natural Gas Fuel Co. (C. C. 1896) 73 Fed. 191, judgment affirmed U. S. v. Buffalo Natural Gas Fuel Co. (1899) 19 Sup. Ct. 200, 172 U. S. 339, 43 L. Ed. 469.

The commercial signification of a name is that which those engaged in foreign and domestic sale, purchase, and exchange generally adopt to describe the article. (1887) 18 Op. Atty. Gen. 533.

To fix and limit a phrase to a simple commercial meaning, it is necessary to show not alone that this phrase is improperly employed in describing a given commodity, but at the same time to show it is employed definitely and uniformly in the United States to describe another and different commodity. Acker v. U. S. (1911) 1 Ct. Cust. App. 328.

In the construction of tariff acts there is no rule whereby words used therein are to be interpreted according to the technical understanding of manufacturers. In re Herrman (C. C. 1892) 52 Fed. 941, judgment affirmed (C. C. 1893) 56 Fed. 477, 5 C. C. A. 582.

A word used in a tariff act may be susceptible of a trade meaning as designating a special group of articles, although each article in the group is always bought and sold by its specific name, and no articles are bought and sold by the group designation. In re Herrman (C. C. 1892) 52 Fed. 941, judgment affirmed (C. C. 1893) 56 Fed. 477, 5 C. C. A. 582.

Where Congress provides that the rate of duty on any commodity shall be regulated by an ascertainment of the percentage of a particular grade of that commodity, present in some aggregation of its different grades, which aggregation is not defined, such aggregation is the one recognized in the commercial world as the standard. In re Blumlein (1893) 55 Fed. 383, 386, 5 C. C. A. 142.

Usage sufficient to establish a commercial designation which will control the meaning of words in a tariff act cannot be made out by the evidence of one dealer, whose testimony is practically limited to his own usage, especially when he admits that the articles are sometimes bought and sold under other names. Berbecker v. Robertson (1894) 152 U. S. 373, 14 Sup. Ct. 590, 38 L. Ed. 484.

In order to determine the commercial meaning of a term in tariff acts, it is not the meaning used in transactions between the retail dealer on the one side and the individual purchaser at retail on the other that is to be considered; but the meaning used between parties who are, on both sides of the transaction, engaged in that particular occupation as the business of their lives. Morrison v. Miller (C. C. 1888) 37 Fed. 82.

Where terms employed in the tariff laws have a special restricted meaning, according to the general usage of the trade to which the articles appertain, it is to be presumed that congress used them in such restricted sense; but the fact that they have such restricted meaning must be clearly established, otherwise they are to be interpreted according to their common popular signification. Hedden v. Richard (1893) 13 Sup. Ct. 891, 149 U. S. 346, 37 L. Ed. 763 (reversing judgment Richard v. Hedden [C. C. 1890] 42 Fed. 672); Kennedy v. Hartranft (C. C. 1881) 9 Fed. 18.

The commercial designation of an article among traders and importers when clearly established fixes its character for the purpose of tariff laws, but the commercial meaning cannot be ascertained by a resort solely to the understanding of importers, but resort must be had to the manufacturer, jobber, retail merchant, and trader of every description as well as the importer. Erhardt v. Ballin (1893) 55 Fed. 968, 969, 5 C. C. A. 363.

Where an article has been so advanced by separate processes as to be adapted for a special purpose different from the original purpose, and to be sold to a different class of persons, and

to be known under special commercial designations, it is no longer included under the original commercial designation. McLeod v. U. S. (C. C. 1896) 75 Fed. 927.

In an action to recover duties paid on importations, on the ground that they were improperly classified as aniline dyes, it is proper to instruct that if the articles in question, according to the understanding of commercial men, dealers in and importers of them, would, when imported, be included in the class of articles known as "aniline dyes," by whatever name they had come to be known, they are subject to duty as aniline dyes, though such articles were unknown when the statute imposing duties on aniline dyes was enacted. Pickhardt v. Merritt (1889) 132 U. S. 252, 10 Sup. Ct. 80, 33 L. Ed. 353.

A law imposing a duty on articles used for a particular purpose should not be construed to cover articles not so used at the date of the act, unless expressly so provided. Rossman v. Hedden (1892) 145 U. S. 561, 12 Sup. Ct. 925, 36 L. Ed. 817, affirming (C. C. 1888) 37 Fed. 99; Martin v. Curtis (C. C. 1842) Fed. Cas. No. 9,160, affirmed in (1845) 44 U. S. (3 How.) 106, 11 L. Ed. 516.

In an action for the recovery of duties alleged to have been illegally exacted by the collector of customs, and paid under protest, the fact that, at the date of the passage of the act (R. S. § 2504, Schedule A), goods of the kind in question had not been manufactured, will not withdraw them from the class to which they belong, as described in the statute, where the language used fairly and clearly includes them. Newman v. Arthur (1883) 109 U. S. 132, 3 Sup. Ct. 88, 27 L. Ed. 883.

An article not commercially known in this country at the time of the passage of a tariff law, but subsequently imported, and which in fact comes within the proper definition of a similar article then known and provided for in the act, and which is so designated commercially, is entitled to be classified as such. Wm. J. Matheson & Co. v. U. S. (1898) 90 Fed. 276.

Where commodities are not kept in stock nor dealt in as articles of general merchandise, but are made only to the order of those requiring them, conditions are not such as to allow the establishment of a trade designation. Thomas v. F. B. Vandegrift & Co. (1908) 162 Fed. 645, 89 C. C. A. 437, affirming judgment (C. C. 1907) 153 Fed. 591.

In order to give a general term used in a tariff law a special or trade meaning, to include only a particular class of articles, it must be shown that prior to the passage of the law such term was, in commerce and trade at all ports and trade centers of the country, a well-known, uniform, and universally accepted designation of such particular class. Carson v. Nixon (1898) 90 Fed. 409, 33 C. C. A. 135.

Usage sufficient to establish a commercial designation which will control the meaning of words in a tariff act cannot be made out by the evidence of one dealer, whose testimony is practically limited to his own usage, especially when he admits that the articles are sometimes bought and sold under other names. Berbecker v. Robertson (1894) 14 Sup. Ct. 590, 591, 152 U. S. 373, 38 L. Ed. 484.

Where the evidence as to the commercial designation of an article is conflicting, the ordinary name given it in common speech, when proper under the definition given by the dictionaries will govern in making classification. Bour v. U. S. (C. C. 1898) 91 Fed. 533.

17. —— Long-continued practice.—Wherever in the history of customs laws it is found that a certain expression has received, in effect, a statutory construction, or a long and uniform use by Congress or by the departments, that construction is controlling, unless some other is necessary. This rule is of the highest authority, and masters all others. U. S. v. Townsend (1902) 113 Fed. 442, 51 C. C. A. 276; Brennan v. U. S. (1905) 136 Fed. 743, 69 C. C. A. 395 (reversing judgment [C. C. 1904] 129 Fed. 837); U. S. v. W. N. Proctor & Co. (1906) 145 Fed. 126, 76 C. C. A. 96 (affirming judgment W. N. Proctor & Co. v. U. S. [C. C. 1905] 139 Fed. 586); Burditt & Williams Co. v. U. S. (1907) 153 Fed. 67, 82 C. C. A. 201; Kuttroff, Pickhardt & Co. v. U. S. (1907) 154 Fed. 1004, 83 C. C. A. 679 (affirming judgment U. S. v. Kuttroff, Pickhardt & Co. [C. C. 1906] 147 Fed. 758); Benkard v. Schell (C. C.) Fed. Cas. No. 1,307; U. S. v. The Recorder (C. C. 1847) Fed. Cas. No. 16,129; Same v. Wotten (C. C. 1892) 50 Fed. 693 (judgment affirmed [1892] 53 Fed. 344, 3 C. C. A. 553); Same v. Kaub (D. C. 1877) Fed. Cas. No. 15,-507; Goat & Sheepskin Import Co. v. U. S. (1914) 5 Ct. Cust. App. 178. While such rule is based on sound reason, practice cannot establish an arbitrary or wholly conclusive classification. Pierce v. U. S. (1911) 1 Ct. Cust. App. 171. And should not control in what is not a doubtful case. U. S. v. P. E. Anderson & Co. (1909) 175 Fed. 961, 99 C. C. A. 451. Nor do years of illegal practice in classifying goods and assessing the duties thereon bar the United States from changing to the legal method. Gulbenkian v. U. S. (C. C. 1909) 175 Fed. 860, judgment affirmed (1911) 186 Fed. 133, 108 C. C. A. 245.

18. —— General and specific enumeration.—The relative specificity of competing provisions of the tariff law is not always controlling of decision. Downing & Co. v. U. S. (1915) 6 Ct. Cust. App. 447.

Imports in the tariff acts may be "nonenumerated," "generally enumerated," or "specially enumerated;" each phrase marks a different degree of precision in the description of the imports. (1889) 19 Op. Atty. Gen. 272.

Articles described as a species are "specially enumerated, and such enumeration when made determines the classification. Id.

Under some circumstances language describing a class may be more specific than that containing a designation eo nomine, and an article literally included within such a designation in one paragraph of the customs laws may, on account of its relations to a peculiar class, be referred to some other paragraph. Brennan v. U. S. (1905) 136 Fed. 743, 69 C. C. A. 395, reversing judgment (C. C. 1904) 129 Fed. 837.

When the name is general and the tariff specific, it embraces the whole class, and questions of price, value, or accidental chemical components are immaterial. (1887) 18 Op. Atty. Gen. 523.

General terms in a customs act, although sufficiently broad to comprehend a certain article, are not applicable if it is specifically designated therein. Movius v. Arthur (1877) 95 U. S. 144, 24 L. Ed. 420; Arthur v. Lahey (1877) 96 U. S. 112, 113, 118, 24 L. Ed. 766; Same v. Stephani (1877) 96 U. S. 125, 24 L. Ed. 771; Same v. Rheims (1877) 96 U. S. 143, 144, 24 L. Ed. 813; U. S. v. Davis (1893) 54 Fed. 147, 4 C. C. A. 251; Same v. Field (1896) 71 Fed. 513, 514, 18 C. C. A. 225; Bailey v. Schell (C. C. 1863) Fed. Cas. No. 745; Dodge v. Arthur (C. C. 1876) Fed. Cas. No. 3,950; Hutton v. Schell (C. C. 1879) Fed. Cas. No. 6,962; Tong Duck Chung v. Kelly (C. C. 1879) Fed. Cas. No. 14,093; Stodder v. Spalding (C. C. 1885) 24 Fed. 89; "Zante Currants" (C. C. 1896) 73 Fed. 183; U. S. v. Boden (C. C. 1904) 133 Fed. 839. CONTRA, see Jaffray v. Murphy (C. C. 1874) Fed. Cas. No. 7,172.

When described as a genus, or in general terms, they are merely enumerated, and, in the absence of a specific enumeration, such general enumeration determines the classification. One such general enumeration may also be more specific than another. (1889) 19 Op. Atty. Gen. 272.

While it is true a more specific designation controls as against a general designation, that a designation eo nomine controls as against a description by class, where there has been an administrative construction and this has been adopted into law, this construction must control. Goussios & Co. v. U. S. (1911) 2 Ct. Cust. App. 317. See, also, Brennan v. Same (1905) 136 Fed. 743, 69 C. C. A. 395.

19. —— **Ambiguity.**—In cases of serious ambiguity in the language of a law imposing duties, or vague or doubtful interpretation, the construction of the law should be in favor of the importer. Hartranft v. Wiegmann (1887) 7 Sup. Ct. 1240, 121 U. S. 609, 30 L. Ed. 1012; American Net & Twine Co. v. Worthington (1891) 12 Sup. Ct. 55, 141 U. S. 468, 35 L. Ed. 821; Matheson & Co. v. U. S. (1896) 71 Fed. 394, 18 C. C. A. 143; U. S. v. Wigglesworth (C. C. 1842) Fed. Cas. No. 16,690; Powers v. Barney (C. C. 1863) Fed. Cas. No. 11,361; McCoy v. Hedden (C. C. 1889) 38 Fed. 89; U. S. v. Ullman (D. C. 1871) Fed. Cas. No. 16,593. And the interpretation of doubtful and ambiguous words is to be explained in subservience to the common policy of the country. U. S. v. Whidden (D. C. 1861) Fed. Cas. No. 16,670.

In determining the intention with which language has been employed in a paragraph of a tariff act some ambiguity therein must be apparent to warrant a resort to the "side lights" obtainable from tariff hearings. Consolidated Kansas City Smelting & Refining Co. v. U. S. (1911) 1 Ct. Cust. App. 472.

20. —— **Repugnant provisions.**—Where two provisions in a customs law are repugnant, the last one will prevail. Powers v. Barney (C. C. 1863) Fed. Cas. No. 11,361.

21. —— **Intent.**—Intent is not an element in determining the proper classification of imported articles, and merchants are at liberty so to manufacture and so to import their goods as to subject them to the least possible duties under the tariff laws. Johnson v. U. S. (C. C. 1901) 123 Fed. 997; Stone & Downer Co. v. Same (C. C. 1906) 147 Fed. 603.

22. —— **Construction in favor of importer.**—In cases of doubt in the construction of tariff laws, the courts resolve the doubt in favor of the importer. U. S. v. Davis (1893) 54 Fed. 147, 4 C. C. A. 251; Matheson & Co. v. U. S. (1896) 71 Fed. 394, 18 C. C. A. 143 (following Hartranft v. Wiegmann [1887] 7 Sup. Ct. 1240, 121 U. S. 609, 30 L. Ed. 1012, and American Net & Twine Co. v. Worthington [1891] 12 Sup. Ct. 55, 141 U. S. 468, 35 L. Ed. 821); U. S. v. Hatters' Fur Exchange (1911) 1 Ct. Cust. App. 198; Same v. Wolff & Co. (1914) 5 Ct. Cust. App. 418; Wright & Graham Co. v. U. S. (1916) 6 Ct. Cust. App. 528; (1897) 21 Op. Atty. Gen. 541. But revenue laws are not penal in the sense that requires them to be construed with great strictness in favor of the importer. U. S. v. Twenty-Five Cases of Cloths (D. C. 1840) Fed. Cas. No. 16,563; In re Twenty-Eight Cases of Wine (D. C. 1867) Fed. Cas. No. 14,281.

Revenue statutes, including those fixing duties on imports, are neither remedial laws nor laws founded upon any permanent public policy, and should be construed most strongly against the

government; for burdens should not be imposed on the taxpayer beyond what such statutes expressly and clearly import. Rice v. United States (1893) 53 Fed. 910, 4 C. C. A. 104.

In case of doubt as to whether a higher or a lower duty is imposed by a statute, the doubt should be resolved in favor of the importer, "since the intention of Congress to impose the higher duty should be expressed in clear and unambiguous language." (1907) 26 Op. Atty. Gen. 119. See, also, American Net & Twine Co. v. Worthington (1891) 12 Sup. Ct. 55, 141 U. S. 468, 35 L. Ed. 821.

Where, by amendment in the senate, an article, which was placed on the free list in the bill passed by the house, was also placed in the dutiable list, and remained in both places as the act was finally passed, held, that the case was one of patent ambiguity arising on the face of the act, which ambiguity must be resolved in favor of the importer, and the goods admitted free. U. S. v. Merck (C. C. 1899) 91 Fed. 639.

Where the classification of an import is open to a construction which would as well place it on the free list, the course most favorable to the importer must be adopted. O. G. Hempstead & Son v. Thomas (1903) 122 Fed. 538, 59 C. C. A. 342.

23. —— **Use of article.**—The use of an article does not necessarily control its classification for tariff purposes. U. S. v. Nichols (C. C. 1891) 46 Fed. 359. CONTRA, Hagedon v. Seeberger (C. C. 1889) 38 Fed. 401.

The chief or predominant use to which an article is applied determines its classification, although it may be commonly, generally, and practically, and not merely exceptionally, used for other purposes. The chief or predominant use meant is that which, in ordinary language, is so called. Meyer v. Cadwalader (1898) 89 Fed. 963, 32 C. C. A. 456. The name of an imported article is not the sole guide by which to classify it for duty. Its uses, especially when it is new, and a substitute for other articles, should be considered. Koch v. Seeberger (C. C. 1887) 30 Fed. 424. A law imposing a duty on articles used for a particular purpose should not be construed to cover articles not so used at the date of the act, unless expressly so provided. Rossman v. Hedden (1892) 12 Sup. Ct. 925, 928, 145 U. S. 561, 36 L. Ed. 817. It is the duty of the jury to give more attention to the course of trade in the original distribution of the goods among those who import them than to the guesses of individuals as to the various uses to which the articles may be put by individual consumers. Meyer v. Cadwalader (C. C. 1891) 49 Fed. 26. The test of the "suitableness" of an article for a certain purpose is not whether it is commonly used therefor, but whether it possesses actual, practical, commercial fitness for that purpose. White v. U. S. (C. C. 1895) 69 Fed. 93. The test of predominant use is only resorted to where necessary to properly classify an article falling within two or more classifications, either of which, standing alone, would adequately describe it, and where the article is enumerated by reference to its use. Smith v. U. S. (1899) 93 Fed. 194, 35 C. C. A. 265.

24. —— **Protection basis as determining classification.**—In construing the tariff act of 1890, the court will, in a proper case, as an aid to interpretation, consider the fact that the general idea of the statute is that of protection to American manufactures, and this idea suggests that an article which has been subjected to an additional process of manufacture is subject to a higher, rather than an equal or lower, rate of duty. Arnold v. U. S. (1893) 147 U. S. 494, 13 Sup. Ct. 406, 37 L. Ed. 253.

The general purpose of the so-called "McKinley Tariff Law" of Oct. 1, 1890, to protect and foster American industries, is not to override a plain provision contained therein, which, in a particular instance, fails to carry out such purpose, or operates in contravention of it. In re Schallenberger (C. C. 1895) 72 Fed. 491.

The schedules of the tariff acts of 1890 and 1897 are based on the principle of protection to American industry, and in the construction of their provisions no inference can be drawn against a particular construction, because it will result in imposing double or treble duties on an article by adding duties for each stage it is advanced in manufacture. Burditt & Williams Co. v. U. S. (1907) 153 Fed. 67, 82 C. C. A. 201, reversing judgment (C. C. 1906) 147 Fed. 892.

Since the tariff is enacted on protective lines, it is proper to take into consideration, in construing the law, the fact that certain grades of an imported commodity are the only ones that come into competition with domestic products. Heide v. U. S. (C. C. 1909) 175 Fed. 316.

In construing tariff acts based on the fundamental idea of protection to domestic manufactures, and in which the duties are uniformly increased to correspond with the advanced state of manufacture of the article, where a material used in making manufactured articles has been subjected to further treatment than that of a class specifically enumerated, it should be classified with a higher, rather than a lower, class. U. S. v. Eschwege (1899) 98 Fed. 600, 39 C. C. A. 169.

A construction of the tariff law which produces unjust and unconscionable duties should be avoided, if possible. It is to be assumed that Congress did not intend to make duties prohibitive. Its purpose in enacting the tariff act of

1897 was to protect and not to prohibit, to raise, and not cut off revenue, to promote and not to destroy, legitimate competition, and such construction should be adopted as will give effect to that purpose. Shallus v. U. S. (1908) 162 Fed. 653, 89 C. C. A. 445, reversing decree (C. C. 1907) 155 Fed. 213.

In construing the tariff act of October 1, 1890, the court will, in a proper case, as an aid to interpretation, consider the fact that the general idea of the statute is that of protection to American manufactures, and this idea suggests that an article which has been subjected to an additional process of manufacture is subject to a higher, rather than an equal or lower, rate of duty. Arnold v. U. S. (1893) 13 Sup. Ct. 406, 408, 147 U. S. 494, 37 L. Ed. 253, affirming judgment In re Arnold (C. C. 1891) 46 Fed. 510.

25. —— **Manufactured article.**—Ordinarily a manufactured article takes a different form, or at least subserves a purpose different from that of the original materials out of which it is made and usually takes a different name. That does not mean, however, that its usefulness as a material has necessarily ended and that as a manufacture it cannot serve the purpose of material for some other manufacture. U. S. v. Richter (1911) 2 Ct. Cust. App. 167.

Where an article has been advanced through one or more processes into a completed article, known and recognized in trade by a specific and distinctive name, other than the name of the material, and is put into a completed shape designed and adapted for a particular use, it is deemed to be a manufacture within tariff acts. Erhardt v. Hahn (1893) 55 Fed. 273, 275, 5 C. C. A. 99.

The mere fact of the application of labor to an article, either by hand or by mechanism, does not make it necessarily a "manufactured article," within the meaning of the tariff laws, unless the labor has been carried to such an extent that the article suffers a species of transformation, and is changed into a new and different article, having a distinctive name, character, or use. Baumgarten v. Magone (1890) 50 Fed. 69 (following U. S. v. Semmer [C. C. 1890] 41 Fed. 324); In re Herter Bros. (1892) 50 Fed. 72 (judgment reversed [1892] 53 Fed. 913, 4 C. C. A. 107).

26. —— **Crude article.**—An article may be crude for the purposes of classification under the tariff laws, by reason of the use to which it is applied, where it is crude in the sense that it is unrefined. Roessler & Hasslacher Chemical Co. v. U. S. (C. C. 1899) 94 Fed. 822.

27. —— **"Fit only for such use."**—The term "fit only" implies that the article to which it applies has no practical commercial fitness for uses other than those designated. Stone & Downer Co. v. U. S. (1913) 4 Ct. Cust. App. 47.

The phrase "fit only for such use" means fit in a commercial sense; but whether an article must be held fit for a certain use, if when blended with other articles it becomes so fit, is a question now reserved. Stone & Downer Co. v. U. S. (1911) 1 Ct. Cust. App. 513.

28. —— **"Colored."**—The word "colored" is a participial adjective used generally with the meaning of "having a color." The color's origin does not enter into the essential meaning of the word. Davison v. U. S. (1911) 2 Ct. Cust. App. 78.

29. —— **"Composed of."**—A tariff provision for a manufactured article "composed of" a certain material applies, in the absence of other controlling rules of construction, to the appropriate article if composed in chief value of the given material. Hensel, Bruckmann & Lorbacher v. U. S. (1915) 6 Ct. Cust. App. 162.

30. —— **"Derived from."**—The term "derived from," used in a tariff act to describe a product, has its ordinary meaning of "produced from," and relates to the physical substance from which such product is obtained, and not to its chemical relationship. Farbenfabriken of Elberfeld & Co. v. U. S. (1900) 102 Fed. 603, 42 C. C. A. 525, affirming judgment (C. C. 1900) 99 Fed. 553, 554, 719.

31. —— **"Not otherwise provided for."**—In enacting tariff laws it has evidently been the intention of Congress that the enumeration of dutiable articles should be as nearly exhaustive as possible; and imported articles should therefore not be classified under clauses for articles "not otherwise provided for," if by fair construction they can be embraced within a specific enumeration of dutiable articles. O. G. Hempstead & Son v. U. S. (1907) 158 Fed. 584, 86 C. C. A. 42.

The expression "not otherwise provided for," or "not specially provided for," in a tariff provision, does not deprive the general rule as to classification by specific designation of its ordinary application, so that a provision which specifically designates goods, but which is so qualified, shall not prevail over words of a general description in another provision containing no such qualification. U. S. v. Schwarz (C. C. 1905) 140 Fed. 302, decree affirmed Thomas v. Same (1906) 140 Fed. 989, 71 C. C. A. 401.

32. —— **"Such."**—The word "such" ordinarily refers to the next immediate antecedent, but not necessarily; never when the purpose of the section in which it is used would thereby be impaired. (1897) 21 Op. Atty. Gen. 551.

33. —— **Change of article.**—A change which renders an article substantially

different as an article of commerce, and adapts it to all the uses of another article, on which a higher rate of duty is levied, destroys its legal identity, and is a material change, under the revenue law. Wilkinson v. Greely (C. C. 1853) Fed. Cas. No. 17,672.

34. —— **Titles prefixed to schedules.**—The titles of the various schedules in tariff acts are not intended to be perfectly accurate, but furnish general information only of the articles enumerated in the paragraphs therein. Hollender v. Magone (1893) 13 Sup. Ct. 932, 933, 149 U. S. 586, 37 L. Ed. 860, reversing judgment (C. C. 1889) 38 Fed. 912; U. S. v. Brown & Eadie (1905) 136 Fed. 550, 69 C. C. A. 260; (1894) 21 Op. Atty. Gen. 66.

35. —— **Separation of article into parts.**—In applying a tariff law, a single article may be constructively separated into parts subject to different classifications. Judgment (C. C. 1906) 142 Fed. 303, reversed. Hillhouse v. U. S. (1907) 152 Fed. 163, 81 C. C. A. 415, writ of certiorari denied U. S. v. Hillhouse (1908) 28 Sup. Ct. 568, 208 U. S. 615, 52 L. Ed. 646.

Act Jan. 29, 1795, § 2, providing that where any article is made subject to duty, the parts thereof when imported separately shall be subject to duty at the same rate was limited to duties imposed by laws then existing, and does not apply to subsequent tariff acts. U. S. v. Schoverling (1892) 13 Sup. Ct. 24, 26, 146 U. S. 76, 36 L. Ed. 893.

36. —— **Presumptions.**—Language will be presumed to be used in commerce as in ordinary life and to establish that a term is used in commerce with a signification differing from that of the same term when ordinarily employed, its use in commerce must be shown to be general, uniform, and definite. U. S. v. Salomon (1911) 1 Ct. Cust. App. 246.

The presumption that, if a special meaning is attached to certain words in a prior tariff act, it would be presumed that Congress intended that they should have the same signification when used in a subsequent act in relation to the same subject matter, is not conclusive. Maddock v. Magone (1894) 14 Sup. Ct. 588, 589, 152 U. S. 368, 38 L. Ed. 482.

It is to be presumed that every provision of a customs act classifying merchandise has relation to some existing course of business. Loggie v. U. S. (1905) 137 Fed. 813, 70 C. C. A. 433.

All doubts arising under paragraph 297 of the tariff act of 1894 (28 Stat. 66) are presumptively to be resolved in favor of the lower rate of duty, save where the act mentions or describes the same article in two different places, when the higher rate governs. (1894) 21 Op. Atty. Gen. 66.

37. —— **Evidence.**—In tariff statutes words describing merchandise are to be taken as used in their commercial sense, but the common and the commercial meanings are presumed to be the same. If a difference in meaning is attempted to be shown, the party seeking to show a difference has the burden of proof. U. S. v. Walter (1913) 4 Ct. Cust. App. 95.

Where a clear preponderance of evidence cannot be adduced as to the meaning of an expression in a tariff act departmental construction tacitly approved by congressional recognition should turn the scale and be accepted as sufficient evidence of the legislative intent. (1887) 18 Op. Atty. Gen. 533.

The ordinary rules of evidence are to be applied with reference to interest, character, and weight of testimony, to be received from those engaged in or familiar with commerce, trade, and traffic in the article. Id.

Evidence as to the trade meaning of a term used in the tariff act is inadmissible unless such meaning differs from the ordinary dictionary meaning of the term, or its meaning in common speech. U. S. v. Nordlinger (1903) 121 Fed. 690, 58 C. C. A. 438, writ of certiorari denied Nordlinger v. U. S. (1903) 24 Sup. Ct. 848, 191 U. S. 575, 48 L. Ed. 308.

The burden of showing that an import is dutiable is on the government. O. G. Hempstead & Son v. Thomas (1903) 122 Fed. 538, 59 C. C. A. 342.

The evidence in this case fails to show that, by definite, universal, and general commercial designation, the interior decorations of an apartment are divided into different classes, of which upholstery is one. U. S. v. Snow's U. S. Sample Express Co. (1916) 6 Ct. Cust. App. 477.

The testimony of a single witness that "we"—evidently meaning the firm which he represented—"consider it among the fruit sirups" is not sufficient to show commercial designation. U. S. v. Wakem & McLaughlin (1915) 6 Ct. Cust. App. 385.

38. —— **Questions for jury.**—Whether an imported article is or is not known in commerce by the word or terms used in the act imposing the duty is a question of fact. Tyng v. Grinnell (1875) 92 U. S. 467, 23 L. Ed. 733; Bacon v. Bancroft (C. C. 1840) Fed. Cas. No. 714; Hutton v. Schell (C. C. 1879) Fed. Cas. No. 6,962; Zante Currants (C. C. 1896) 73 Fed. 183; Beatty's Ex'r v. U. S. (1856) Dev. Ct. Cl. § 244.

In the construction of tariff laws the ordinary meaning of a phrase in common speech is a question of law for the court; the commercial meaning is a question of fact for the jury. Vom Cleff v. Magone (C. C. 1893) 57 Fed. 198, judgment affirmed Magone v. Vom Cleff (1895) 70 Fed. 980, 17 C. C. A. 549. The question whether a particular importation, on which a duty has been imposed, is properly included in a particular name of a substance as em-

ployed in the tariff laws, is for the jury, and not the court. Weilbacher v. Merritt (C. C. 1888) 37 Fed. 85. Where the words in a statute imposing duties on imported merchandise are not technical, their interpretation is a matter of law for the court. Nix v. Hedden (C. C. 1889) 39 Fed. 109, judgment affirmed (1893) 13 Sup. Ct. 881, 149 U. S. 304, 37 L. Ed. 745, following Marvel v. Merritt (1885) 116 U. S. 11, 6 Sup. Ct. 207, 29 L. Ed. 550.

DUTIABLE LIST

SCHEDULE A.—CHEMICALS, OILS, AND PAINTS

1. Acids: Boracic acid, ¾ cents per pound; citric acid, 5 cents per pound; formic acid, 1½ cents per pound; gallic acid, 6 cents per pound; lactic acid, 1½ cents per pound; oxalic acid, 1½ cents per pound; pyrogallic acid, 12 cents per pound; [salicylic acid, 2½ cents per pound;] tannic acid and tannin, 5 cents per pound; tartaric acid, 3½ cents per pound; all other acids and acid anhydrides not specially provided for in this section, 15 per centum ad valorem.

The words in this paragraph "salicylic acid, 2½ cents per pound," inclosed in brackets, were repealed by Act Sept. 8, 1916, c. 463, § 502, post, § 5291c, and a different rate of duty imposed thereon by §§ 500, 501, of said Act Sept. 8, 1916, c. 463, post, §§ 5291a, 5291b.

Notes of Decisions

Acids commercially so known.—Two coal tar preparations, consisting of phtalic anhydride and tetrachlorphtalic anhydride, which, though not acids chemically, are commercially known as, and perform the functions of, acids, held "acids used for * * * manufacturing purposes," and not a coal tar preparation. Heller & Merz Co. v. U. S. (C. C. 1900) 124 Fed. 299.

Boracic acid.—An antiseptic preservative, consisting of an intimate mechanical mixture of boracic acid and borax, the former being the more valuable component, held an article not enumerated in Act 1897, either as "boracic acid," as "chemical compounds," or as "borax" or "borate material," and is therefore subject to assessment at the same rate of duty as boracic acid, under the similitude clause. Berth Levi & Co. v. U. S. (C. C. 1903) 126 Fed. 420.

Red oil or oleic acid.—So-called red oil or oleic acid, which is used otherwise than as soap stock, held not under Act 1897, an oil commonly used in soap making, fit only for such uses, but dutiable as an acid not specially provided for. Edwards Hill's Sons & Co. v. U. S. (C. C. 1906) 143 Fed. 361, judgment affirmed (1906) 151 Fed. 475, 81 C. C. A. 13.

Sulphotoluic acid.—Sulphotoluic acid, which is both an acid and a preparation of coal tar, but not a color or dye, held, under Act 1890, an acid not specially provided for, and not a color or dye. Matheson & Co. v. U. S. (1896) 71 Fed. 394, 18 C. C. A. 143.

Tannic acid.—Extract of nutgalls held dutiable as tannic acid. See paragraph 30.

2. Acetic anhydrid, 2½ cents per pound.

Notes of Decisions

Acetic acid anhydrid.—The term "acetic acid," under Act 1897, held to include "acetic acid anhydrid." George Lueders & Co. v. U. S. (C. C. 1905) 140 Fed. 970.

3. Acetone, 1 cent per pound.

4. Dried egg albumen, 3 cents per pound.

Notes of Decisions

Albumen. — Albumen commonly so called held not dutiable as albumen. See paragraph 392.

5. Alkalies, alkaloids, and all chemical and medicinal compounds, preparations, mixtures and salts, and combinations thereof not specially provided for in this section, 15 per centum ad valorem.

Notes of Decisions

Alkaloids.—Crude cocaine held dutiable as an alkaloid. Hirzel v. U. S. (1893) 58 Fed. 772, 7 C. C. A. 491; In re Hirzel (C. C. 1893) 53 Fed. 1006.

Alkaloid salt.—Hydrochlorate or muriate of cocaine held dutiable as an "alkaloid salt," under Act 1890, rather than as a "medicinal preparation

in the preparation of which alcohol is used." In re Mallinckrodt Chemical Works (C. C. 1894) 66 Fed. 746.

Chemical compound or salt.—Alizarin assistant held dutiable as a chemical compound. See paragraph 45.

An antiseptic preservative held not a chemical compound. See paragraph 1.

Bichromate of soda held dutiable as a chemical compound or salt. See paragraph 67.

Cadmium sulphite held not dutiable as a chemical compound or salt. See paragraph 63.

Carbolineum or carbolineum avenarius held not dutiable as a chemical compound. See paragraph 21.

Chloral hydrate held dutiable as a chemical compound. See paragraph 18.

Chrysarobin held not dutiable as a medicinal preparation. See paragraph 27.

Combination of asphalt and bitumen held not dutiable as a chemical compound or mixture. See paragraph 534.

Commercial carbonate of baryta held not dutiable as a chemical compound or salt. See paragraph 51.

Extract of logwood held not dutiable as a chemical compound. See paragraph 30.

Extract of nutgalls held not dutiable as a chemical compound. See paragraph 30.

Hyoscin hydrobromate held not dutiable as a chemical compound or salt. See paragraph 16.

Lanoline held dutiable as a medicinal proprietary preparation. See paragraph 44.

Lysol held not dutiable as a chemical compound. See paragraph 21.

Oil of mirbane or nitrobenzole held not dutiable as a chemical compound. See paragraph 23.

Preparations of coal tar held not dutiable as a chemical compound. See paragraph 21.

Refined carbonate of potash held not dutiable as a chemical compound or salt. See paragraph 580.

Saccharin held dutiable as a chemical compound. See paragraph 179.

Salol held dutiable as a chemical salt. See paragraph 18.

Tetrachloride of tin held not dutiable as a chemical compound. See paragraph 526.

Tolidine base and binitrotolule held not dutiable as a chemical compound. See paragraph 23.

Verdigris held not dutiable as a chemical compound. See paragraph 421.

Glycerophosphate of lime, though occasionally dispensed medicinally, held, not a "medicinal preparation," but a "chemical compound," within Act 1897. A. Klipstein & Co. v. U. S. (1909) 167 Fed. 535, 93 C. C. A. 67.

Borate of manganese or bormangan, which is a manufactured article made from manganese and borates of lime or soda, held dutiable as a chemical compound or salt. Hempstead v. Thomas (1904) 129 Fed. 907, 64 C. C. A. 339, reversing decree O. G. Hempstead & Son v. U. S. (C. C. 1903) 123 Fed. 346.

Acetate of copper, though a variety of verdigris, and known commercially as "pure or distilled verdigris," was dutiable under paragraph 76, Act 1890, as a chemical compound, and was not entitled to free entry under paragraph 749 as verdigris or subacetate of copper. U. S. v. Ducas (1897) 78 Fed. 339, 24 C. C. A. 121, reversing Ducas v. U. S. (C. C. 1896) 71 Fed. 954.

Crude cocaine, being an alkaloid derived from the leaves of the coca plant, in the extraction or purification whereof alcohol is used, but which contains, as imported, from 10 to 20 per cent. of impurities, and is used chiefly in the manufacture of oleates, cocaine salts, hydrochlorate of cocaine, cocaine wines, etc., though occasionally used for external applications as a cheap substitute for the pure article, held dutiable as a chemical compound, and not as a medicinal preparation in which alcohol is used. Hirzel v. U. S. (1893) 58 Fed. 772, 7 C. C. A. 491; In re Hirzel (C. C. 1893) 53 Fed. 1006.

Bone size substitute, consisting of chemical starch, dextrin, magnesium chloride, and silica, which is used for stiffening the backs of fabrics, held under Act 1897 not a preparation fit for use as starch, but a chemical compound. U. S. v. B. P. Ducas & Co. (C. C. 1903) 149 Fed. 253.

Dulcin, being a chemical compound, is dutiable as such under Act 1897, and not as saccharine, under paragraph 211 of that act. U. S. v. Lehn (C. C. 1902) 113 Fed. 1005.

Perfumed smelling salts were dutiable as chemical salts, under Act 1894, and not as articles of perfumery. U. S. v. Utard (C. C. 1899) 91 Fed. 522.

The phrase "chemical compound or salt," in section 2502 of the act of March 3, 1883, held too general to take an article out of the similitude clause of section 2499 of said act. Lloyd v. McWilliams (C. C. 1887) 31 Fed. 261, judgment affirmed (1890) 11 Sup. Ct. 173, 137 U. S. 576, 34 L. Ed. 788.

There must be some artificial mixture of chemicals or artificial compounding of substances to produce a chemical compound or chemical mixture. A natural ore which has received no treatment except to be mechanically ground is not a chemical compound or mixture. U. S. v. Davies, Turner & Co. (1914) 5 Ct. Cust. App. 196.

A chemical compound is not simply a mingling of components, but a combination of them, resulting in their destruction as distinct entities and in the development by chemical reaction of a new substance possessing properties radically different from those of

its constituent elements. Strohmeyer & Arpe Co. v. U. S. (1911) 2 Ct. Cust. App. 285.

Mixture implies that the corporeal integrity, the separate chemical nature, and individual properties of the mixed ingredients have been preserved. Id.

A combination of lime, carbonate of lime, and manganese oxide, for use in drying and hardening varnish, held under Act 1897, dutiable as a chemical compound. Id.

Perborate of sodium held under Acts of 1897 and of 1909 not dutiable as borate material, but as a chemical compound. Morgenstern & Co. v. U. S. (1911) 2 Ct. Cust. App. 213.

Binoxide of barium does not occur in a state of nature; it is not a clay or earth, wrought or unwrought; nor is it a mere mechanical mixture, but is an artificially produced chemical compound, and dutiable as such under act of 1897. McKesson v. U. S. (1911) 1 Ct. Cust. App. 213.

Tri-nitro-iso-butyl-xylol, or artificial musk, held, under Act 1897, not dutiable as a coal tar preparation, but as a chemical compound. Magnus v. U. S. (1911) 1 Ct. Cust. App. 166.

Medicinal preparations.—Acetanilid held not a medicinal preparation. See paragraph 18.

Anthrax vaccine or blackleg held not dutiable as a medicinal preparation. See paragraph 400.

Diphtheria antitoxine held dutiable as a medicinal preparation. See paragraph 400.

Elaterium in cakes held not dutiable as a medicinal preparation. See paragraph 477.

Guaiacol carbonate held dutiable as a medicinal preparation. See paragraph 18.

Guarana held not dutiable as a medicinal preparation. See paragraph 477.

Loretin held not dutiable as a medicinal preparation. See paragraph 387.

Orange flower water and rose water held dutiable under act of 1897 as medicinal preparation, but not dutiable as such under Act 1883. See paragraph 48.

Powder made from juice of papaw melon held not dutiable as a medicinal preparation. See paragraph 477.

Salol held dutiable as a medicinal preparation. See paragraph 18.

Soluble creosote held not dutiable as a chemical compound. See paragraph 452.

The expression "medicinal preparations" means such articles as are of use or believed by the prescriber or user fairly and honestly to be of use in curing or alleviating or palliating or preventing some disease or affection of the human frame. Dodge & Olcott v. U. S. (C. C. 1891) 130 Fed. 624.

Chloral hydrate, now specifically mentioned in paragraph 18, held, under Act 1897, not dutiable as an alcoholic medicinal preparation, but as a medicinal preparation not containing alcohol, or in the preparation of which alcohol is not used. U. S. v. Schering (C. C. 1902) 119 Fed. 473 (judgment reversed [1903] 123 Fed. 65, 59 C. C. A. 283); Battle & Co. Chemists' Corp. v. U. S. (C. C. 1901) 108 Fed. 216.

Muriate of cocaine, which is made and used solely as a medicine, was dutiable as a medicinal preparation, under paragraph 74, Act 1890, and not as a chemical salt, under paragraph 76, though it in fact belongs to this class of substances. The former description, being more narrow and specific, must prevail over the latter. Fink v. U. S. (1898) 18 S. Ct. 770, 170 U. S. 584, 42 L. Ed. 1153, affirming Lehn v. U. S. (C. C. 1895) 66 Fed. 748.

The term "medicinal preparations," in Act 1897, includes adeps lanæ anhydrous and adeps lanæ cum aqua, which are highly finished products of wool grease, are used principally in therapeutics, are sold generally to the drug trade, and are used to some extent in salves and medicinal soaps, and wool grease does not include them. Zinkeisen & Co. v. U. S. (1909) 167 Fed. 312, 92 C. C. A. 624.

Gaduol, an extract of cod liver oil, which in the form in which imported is not prepared for the use of the apothecary or physician, and which is not dispensed in that form, held under Act 1897, not a medicinal preparation, but a chemical compound. U. S. v. Merck & Co. (1905) 136 Fed. 817, 69 C. C. A. 472, affirming judgment Merck & Co. v. U. S. (C. C. 1903) 126 Fed. 438.

The articles designated by the phrase "medicinal preparations" will be such as from time to time come within its meaning, and not solely those meant by it at the time of the passage of the act. U. S. v. Roessler & Hasslacher Chemical Co. (1897) 79 Fed. 313, 24 C. C. A. 604, affirming judgment Roessler & Hasslacher Chemical Co. v. U. S. (C. C. 1896) 71 Fed. 957.

Gelatin capsules containing balsam are dutiable as "medicinal preparations," under Act 1897. U. S. v. Lehn & Fink (C. C. 1909) 172 Fed. 171.

Hexamethylentetramin held a medicinal preparation in the preparation of which alcohol is not used, within act of 1897. Lehn & Fink v. U. S. (C. C. 1906) 147 Fed. 640.

Paraldehyde, though produced from aldehyde, which is a by-product in the distillation of alcohol, but contains no alcohol, is a medicinal preparation in the preparation of which alcohol is not used, within Act 1897. Merck & Co. v. U. S. (C. C. 1905) 147 Fed. 895.

Creolin-Pearson is not a medicinal preparation within Act 1897. Merck & Co. v. U. S. (C. C. 1903) 147 Fed. 896.

Fruit juice which has been concentrated and medicated but is not used

by itself as a medicine, but as an ingredient in the preparation of a medicine, held not dutiable as a medicinal preparation under Act 1890. C. B. Richard & Co. v. U. S. (C. C. 1892) 147 Fed. 891.

6. Alumina, hydrate of, or refined bauxite; alum, alum cake, patent alum, sulphate of alumina, and aluminous cake, and all other manufactured compounds of alumina, not specially provided for in this section, 15 per centum ad valorem.

Notes of Decisions

Refined bauxite.—The white powder known to the trade as "refined bauxite," which is manufactured from bauxite by removing from the crude ore the impurities of iron, silica, and titanic acid, held not bauxite, within paragraph 501 of the free list of Act 1890. In re Irwin (C. C. 1894) 62 Fed. 150, judgment affirmed Irwin v. U. S. (1895) 67 Fed. 232, 14 C. C. A. 381.

7. Ammonia, carbonate of, and muriate of, ¾ of 1 cent per pound; phosphate of, 1 cent per pound; liquid anhydrous, 2½ cents per pound; ammoniacal gas liquor, 10 per centum ad valorem.

8. Argols or crude tartar or wine lees crude or partly refined, containing not more than 90 per centum of potassium bitartrate, 5 per centum ad valorem; containing more than 90 per centum of potassium bitartrate, cream of tartar, and Rochelle salts or tartrate of soda and potassa, 2½ cents per pound; calcium tartrate crude, 5 per centum ad valorem.

9. Balsams: Copaiba, fir or Canada, Peru, tolu, and all other balsams, which are natural and uncompounded and not suitable for the manufacture of perfumery and cosmetics, if in a crude state, not advanced in value or condition by any process or treatment whatever beyond that essential to the proper packing of the balsams and the prevention of decay or deterioration pending manufacture, all the foregoing not specially provided for in this section, 10 per centum ad valorem; if advanced in value or condition by any process or treatment whatever beyond that essential to the proper packing of the balsams and the prevention of decay or deterioration pending manufacture, all the foregoing not specially provided for in this section, 15 per centum ad valorem: Provided. That no article containing alcohol shall be classified for duty under this paragraph.

Notes of Decisions

Balsams advanced in value.—Balsam in gelatin capsules cannot be considered simply as balsam and classified as "balsams * * * advanced in value or condition," under Act 1897, because nothing whatever has been done to the balsam itself. U. S. v. Lehn & Fink (C. C. 1909) 172 Fed. 171.

10. Barium, chloride of, ¼ cent per pound; dioxide of, 1½ cents per pound; carbonate of, precipitated, 15 per centum ad valorem.

11. Blacking of all kinds, polishing powders, and all creams and preparations for cleaning or polishing, not specially provided for in this section, 15 per centum ad valorem: Provided, That no preparations containing alcohol shall be classified for duty under this paragraph.

Notes of Decisions

Polishing powders.—Oxides of iron, which are in general use both as "colors" and as "polishing powders," held dutiable under Act 1883, as "polishing powders of every description, by whatever name known;" and not as "colors and paints, including lakes, whether dry or mixed, or ground with water or oil, and not specially enumerated or provided for in this act." Zucker & Levett Chemical Co. v. Magone (C. C. 1889) 37 Fed. 776.

When an imported article is a "painters' color," and also a "polishing powder," it is not necessary to show that its predominant use is as a polishing powder, in order to make it dutiable as such, but it is sufficient if its use for that purpose is a substantial use. Id.

12. Bleaching powder, or chloride of lime, 1/10 cent per pound.

13. Caffein, $1 per pound; compounds of caffein, 25 per centum ad valorem; impure tea, tea waste, tea siftings or sweepings, for manufacturing purposes in bond, pursuant to the provisions of the Act of May sixteenth, nineteen hundred and eight, 1 cent per pound.

14. Calomel, corrosive sublimate, and other mercurial preparations, 15 per centum ad valorem.

15. Chalk, precipitated, suitable for medicinal or toilet purposes; chalk put up in the form of cubes, blocks, sticks, or disks, or otherwise, including tailors', billiard, red, and other manufactures of chalk not specially provided for in this section, 25 per centum ad valorem.

Notes of Decisions

Chalk prepared for toilet purposes.—While the provision of Act 1897 for chalk "prepared for toilet purposes," the preparation referred to is not, perhaps, such as is necessary to make a completed toilet article, there must be advancement toward use for toilet purposes, by the admixture of flavoring or other ingredients, or otherwise; and chalk that has been merely precipitated artificially, bolted, and packed in bags is not within that provision. U. S. v. P. E. Anderson & Co. (1909) 175 Fed. 961, 99 C. C. A. 451.

Precipitated chalk.—The article produced by the artificial precipitation of chalk, and bolting and packing it in bags, held not "manufactures" of chalk, within Act 1897, but chalk itself. U. S. v. P. E. Anderson & Co. (1909) 175 Fed. 961, 99 C. C. A. 451.

Precipitated chalk, dried and bolted, and imported to be used for making tooth powder, held not taxable under Act 1897, "as chalk (not medicine nor prepared for toilet purposes), when ground, precipitated naturally or artificially, or otherwise, prepared," but taxable as manufacturers of chalk not specially provided for. I. W. Lyon & Son v. U. S. (C. C. 1903) 121 Fed. 204.

16. Chemical and medicinal compounds and preparations, including mixtures and salts, distilled oils, essential oils, expressed oils, rendered oils, greases, ethers, flavoring and other extracts and fruit essences, all the foregoing and their combinations when containing alcohol, and all articles consisting of vegetable or mineral objects immersed or placed in, or saturated with, alcohol, except perfumery and spirit varnishes, and all alcoholic compounds not specially provided for in this section, if containing 20 per centum of alcohol or less, 10 cents per pound and 20 per centum ad valorem; containing more than 20 per centum and not more than 50 per centum of alcohol, 20 cents per pound and 20 per centum ad valorem; containing more than 50 per centum of alcohol, 40 cents per pound and 20 per centum ad valorem.

Notes of Decisions

Alcoholic compounds.—Concentrated cherry juice held dutiable as an alcoholic compound. See paragraph 247.

Herbs immersed in alcohol held not dutiable as an alcoholic compound. See paragraph 385.

Pinaud's eau de quinine tonique held not dutiable as an alcoholic compound. See paragraph 48.

Under Act 1897 the word "compound" as used in section 1 is not limited by any trade usage or technical adaptation, but is used in its common broad sense of being any union or mixture of elements, ingredients, or parts. U. S. v. Stone & Downer Co. (1909) 175 Fed. 33, 99 C. C. A. 49.

"Thompson's patent prune wine," containing between 14.6 and 16.28 per cent. of alcohol at the time of importation, held dutiable under Act 1883, as an "alcoholic compound," and not as a nonenumerated manufactured article. Mackie v. Erhardt (1896) 77 Fed. 610, 23 C. C. A. 351, affirming (C. C. 1893) 59 Fed. 771.

Medicinal preparations.—Chloral Hydrate held not dutiable as a medicinal preparation in which alcohol is used. See paragraph 18.

Crude cocaine held not dutiable as a medicinal preparation in which alcohol is used. See paragraph 5.

Hydrochlorate or muriate of cocaine held not dutiable as medicinal preparation in which alcohol is used. See paragraph 5.

Medicinal soap held subject to classification as a medicinal preparation. See paragraph 66.

Salol held not dutiable as a medicinal

preparation in which alcohol is used. See paragraph 18.

Scammony resin held not dutiable as a medicinal preparation containing alcohol. See paragraph 27.

"Medicinal preparations containing alcohol, or in the preparation of which alcohol is used," under Act 1897, applies to an import which is a medicinal preparation, in the preparation of which alcohol is used, though alcohol need not be, and sometimes is not, used in the preparation of the article. U. S. v. Schering (1903) 123 Fed. 65, 59 C. C. A. 283, reversing judgment (C. C. 1902) 119 Fed. 473.

"Medicinal preparations * * * of which alcohol is a component part or in the preparation of which alcohol is used, not specially provided for," includes all such preparations in the manufacture of which alcohol is used in any way, though it may be broken up to form other ingredients. Koechl v. U. S. (1898) 91 Fed. 110, 33 C. C. A. 363.

Antipyrine, now specifically mentioned in paragraph 18, held, under Act 1890, dutiable as a medicinal preparation in which alcohol is used, and not as a coal tar product not a color or dye. Id.

Hyoscin hydrobromate, shown to be a chemical salt of solely medicinal use, in the preparation of which alcohol is necessarily used, held dutiable under Act 1890, as a medicinal preparation in which alcohol is used, and not as a chemical compound or salt. Schering v. U. S. (C. C. 1900) 119 Fed. 472.

The expression "medicinal preparations," means such articles as are of use, or believed by the prescriber or user fairly and honestly to be of use, in curing or alleviating, or palliating or preventing, some disease or affection of the human frame. Dodge & Olcott v. U. S. (C. C. 1891) 130 Fed. 624.

Sirup of rhamnus, extract of gentian, and extract of taraxacum held not natural drugs under Act 1909, but medicines artificially produced and ready for use. Lehn & Fink v. U. S. (1913) 4 Ct. Cust. App. 325.

Menthol as imported is sometimes used without the addition of any carrying material for medicinal purposes, while its more common use is in solution or as a salve mixed with inert matter or the like. It was properly classified as a medicinal preparation under Act 1909. McKesson & Robbins v. U. S. (1913) 3 Ct. Cust. App. 515. See, also, Fink v. Same (1898) 18 Sup. Ct. 770, 170 U. S. 584, 42 L. Ed. 1153; Battle & Co. Chemists' Corporation v. Same (C. C. 1901) 108 Fed. 216; U. S. v. Sheldon (1912) 2 Ct. Cust. App. 485.

Ducro's alimentary elixir held under Act 1897 dutiable as a medicinal preparation containing alcohol. Fougera v. U. S. (1911) 1 Ct. Cust. App. 146.

Proprietary preparations.—A fluid sold as malt extract held not dutiable as a proprietary preparation. See paragraph 246.

Agnostura bitters held not dutiable as a medicinal preparation. See paragraph 243.

Amer picon held not dutiable as a proprietary preparation. See paragraph 240.

Benedictine held not dutiable as a proprietary preparation. See paragraph 240.

Medicinal soap held not dutiable as a proprietary preparation. See paragraph 66.

"Boonekamp bitters," held, under Act 1883, not to be similar to cordials, liqueurs, absinthe, and like beverages, but to be dutiable as a "proprietary preparation." Erhardt v. Steinhardt (1894) 14 Sup. Ct. 775, 777, 153 U. S. 177, 38 L. Ed. 678.

Under Act 1883, the similitude clause does not require a proprietary preparation which also contains spirits to be assessed under spirit schedule instead of as a proprietary preparation, since the latter paragraph is so specific that such an article cannot be considered as falling within two separate classes. Id.

Henry's calcined magnesia held a proprietary preparation. Ferguson v. Arthur (1886) 6 Sup. Ct. 861, 117 U. S. 482, 29 L. Ed. 979.

Wolfe's aromatic schiedam schnapps held dutiable under Act 1883 as a proprietary preparation. Wolfe v. U. S. (1901) 105 Fed. 940, 45 C. C. A. 144.

The medicinal use for which a proprietary preparation is designed dominates its chemical composition for the purpose of classification. U. S. v. E. Fougera & Co. (C. C. 1898) 90 Fed. 801.

A preparation called "Bovrill Wine," labeled "Nutritious Tonic," composed of port wine, extract of beef, and extract of malt, and containing 17.90 of alcohol, held dutiable under Act 1890 as a proprietary preparation containing alcohol, and not as a still wine. U. S. v. Shoemaker (C. C. 1897) 84 Fed. 146.

Arp's pepsin bitters held dutiable as "proprietary preparations" under Act 1883, and not as "bitters containing spirits." Grommes v. Seeberger (C. C. 1889) 41 Fed. 32, writ of error dismissed Seeberger v. Grommes (1891) 11 S. Ct. 1027, 140 U. S. 696, 35 L. Ed. 596.

17. Chemical and medicinal compounds, combinations and all similar articles dutiable under this section, except soap, whether specially provided for or not, put up in individual packages of two and one-half pounds or less gross weight (except samples without commercial value) shall be dutiable at a rate not less than 20 per

centum ad valorem: Provided, That chemicals, drugs, medicinal and similar substances, whether dutiable or free, imported in capsules, pills, tablets, lozenges, troches, ampoules, jubes, or similar forms, shall be dutiable at not less than 25 per centum ad valorem.

18. Chloral hydrate, salol, phenolphthalein, urea, terpin hydrate, acetanilid, acetphenetidin, antipyrine, glycerophosphoric acid and salts and compounds thereof, acetylsalicylic acid, aspirin, guiacol carbonate, and thymol, 25 per centum ad valorem.

Notes of Decisions

Antipyrine.—Antipyrine held not dutiable under Act 1890 as a medicinal preparation in which alcohol is used. Koechl v. U. S. (1898) 91 Fed. 110, 33 C. C. A. 363; Schulze-Berge v. U. S. (C. C. 1895) 66 Fed. 748, certified to and determined Fink v. U. S. (1898) 18 Sup. Ct. 770, 170 U. S. 584, 42 L. Ed. 1153.

Acetanilid.—Acetanilid, held dutiable under Act 1890 as a coal tar preparation, not a color or dye. Roessler & Hasslacher Chemical Co. v. U. S. (C. C. 1896) 71 Fed. 957, judgment affirmed U. S. v. Roessler & Hasslacher Chemical Co. (1897) 79 Fed. 313, 24 C. C. A. 604.

Chloral hydrate.—Chloral hydrate was held dutiable under Act 1897 as a medicinal preparation. U. S. v. Schering (1903) 123 Fed. 65, 59 C. C. A. 283; Battle & Co. Chemists' Corp. v. U. S. (C. C. 1901) 108 Fed. 216.

Chloral hydrate held dutiable under Act 1890 as a "chemical compound * * * not specially provided for," and not as a "medicinal preparation, * * * of which alcohol is a component part, or in the preparation of which alcohol is used." U. S. v. Battle & Co. (1893) 54 Fed. 141, 4 C. C. A. 249, affirming judgment Appeal of Battle & Co. (C. C. 1892) 50 Fed. 402.

Chloral hydrate held dutiable under Act 1897, as medicinal preparations in the preparation of which alcohol is not used, and not as medicinal preparations in the preparation of which alcohol is used. Phair v. U. S. (C. C. 1900) 105 Fed. 508.

Guaiacol carbonate.—Guaiacol carbonate held dutiable under Act 1897 as a medicinal preparation that contained no alcohol. U. S. v. Lehn (1911) 2 Ct. Cust. App. 59.

Salol.—Salol, in the preparation of which alcohol may or may not be used held dutiable under Act 1890, as a chemical compound or salt, and not as a medicinal preparation in the making of which alcohol is used. Schering v. U. S. (C. C. 1900) 119 Fed. 472.

Salol held dutiable under Act 1897 as a medicinal preparation in the preparation of which alcohol is not used rather than a preparation in which alcohol is used. Phair v. U. S. (C. C. 1900) 105 Fed. 508.

19. Chloroform, 2 cents per pound; carbon tetrachloride, 1 cent per pound.

20–23. (Repealed.)

Paragraphs 20–23 of this schedule were repealed by Act Sept. 8, 1916, c. 463, § 502, post, § 5291c, and other duties imposed on the articles included therein by §§ 500, 501, of said Act Sept. 8, 1916, c. 463, post, §§ 5291a, 5291b. These paragraphs read as follows:

"20. Coal-tar dyes or colors, not specially provided for in this section, 30 per centum ad valorem."

Notes of Decisions

1. In general.
2. Alizarin color.
3. Alizarin black.
4. Alizarin violet.
5. Aniline dyes.
6. Bleachers' blue.
7. Bromofluorescic acid.
8. Gallein and coeruline.
9. Hansa yellow.
10. Primuline buff.
11. Sulphotoluic acid.

1. In general.—An article which contains all the essential elements and determining characteristics of a color or dye, needing only to have its coloring properties rendered accessible by dropping it into water containing an alkali, held a color or dye within Act 1897. Kuttroff, Pickhardt & Co. v. U. S. (1907) 154 Fed. 1004, 83 C. C. A. 679, affirming judgment U. S. v. Kuttroff, Pickhardt & Co. (C. C. 1906) 147 Fed. 758.

To hold all insoluble coloring matters, lakes, or pigments which may be derived from coal tar unclassifiable under paragraph 20, Act 1913, woud practically limit the scope of the paragraph to coal-tar dyes, leaving nothing dutiable as coal tar colors. Farbwerke-Hoechst Co. v. U. S. (1916) 6 Ct. Cust. App. 483.

A pigment is a special kind of coloring matter, and a lake is a special kind of pigment. "Coal tar colors," then, enumerates coal tar pigments and coal-tar lakes (if any such there be), and this enumeration in paragraph 20, Act 1913, is a narrower one than that

of pigments and lakes generally in paragraph 63. Id.

2. **Alizarin color.**—Coal tar colors or dyes which are not derived from anthracin held not "artificial alizarin," within the meaning of the free list of the tariff act of 1894. Farbenfabriken of Elberfeld & Co. v. U. S. (1900) 102 Fed. 603, 42 C. C. A. 525; Farbenfabriken of Elberfeld Co. v. U. S. (C. C. 1900) 99 Fed. 554.

Where the weight of the evidence is that the product in question is a coal tar color or dye, a finding by the board of general appraisers that it is dutiable as such, and not as an alizarin color, will be sustained, though the fact that it is used with a mordant may raise a doubt whether it is not properly an alizarin. Klipstein v. U. S. (C. C. 1899) 91 Fed. 520.

3. **Alizarin black.**—Alizarin black held not dutiable as a coal tar preparation. See paragraph 394.

4. **Alizarin violet.**—Alizarin violet held not dutiable as a coal tar preparation. See paragraph 394.

5. **Aniline dyes.**—In an action to recover duties paid on importations, on the ground that they were improperly classified as aniline dyes, it is proper to instruct that if the articles in question, according to the understanding of commercial men, dealers in and importers of them, would, when imported, be included in the class of articles known as "aniline dyes," by whatever name they had come to be known, they are subject to duty as aniline dyes, though such articles were unknown when the statute imposing duties on aniline dyes was enacted. Pickhardt v. Merritt (1889) 10 Sup. Ct. 80, 132 U. S. 252, 33 L. Ed. 353.

Under the similitude clause it is proper to instruct that if any one of the articles in question did not fall within the class of aniline dyes, but bore a similitude in material or quality, or in the use to which it might be applied, to what were known as "aniline dyes" when the statute imposing the duty thereon was enacted, it was dutiable at the same rate as an aniline dye, and that the mere application to the dyeing of fabrics would not create a similitude in use; but if there were a similitude in the same kind of dyeing, producing the same colors in substantially the same way, so as to take the place of aniline dyes in use, then there would be a similitude in use. Id.

6. **Bleachers' blue.**—Bleachers' blue held not dutiable as a coal tar color or dye. See paragraph 21.

7. **Bromofluorescic acid.**—Bromofluorescic acid held dutiable as a coal tar color or dye under Act 1897. Kuttroff, Pickhardt & Co. v. U. S. (1907) 154 Fed. 1004, 83 C. C. A. 679.

8. **Gallein and coeruline.**—"Gallein" and "coeruline" being dyestuffs of which phthalic acid (a coal tar product) is one of the constituents, held to be dutiable as coal tar colors or dyes, under Act 1890. Pickhardt v. U. S. (1895) 67 Fed. 111, 14 C. C. A. 341.

9. **Hansa yellow.**—Hansa yellow, an insoluble dry coloring matter derived from coal tar, is dutiable under paragraph 20, Act 1913, "coal tar dyes or colors, not specially provided for in this section." Farbwerke-Hoechst Co. v. U. S. (1916) 6 Ct. Cust. App. 483.

10. **Primuline buff.**—Primuline buff held not a coal tar dye. See paragraph 30.

11. **Sulphotoluic acid.**—Sulphotoluic acid held not dutiable as a color or dye. See paragraph 1.

"21. All other products or preparations of coal tar, not colors or dyes, not specially provided for in this section, 15 per centum ad valorem."

Notes of Decisions

In general.—Where the determining characteristic of a product is something which it has derived from coal tar, the same is dutiable ad valorem as a "preparation of coal tar," under Act 1883, instead of as a "chemical compound," notwithstanding that some of the constituents of coal tar have been eliminated and other materials added. In re Roessler & Hasslacher Chemical Co. (1892) 56 Fed. 481, 4 C. C. A. 1; In re W. J. Matheson & Co. (1892) 56 Fed. 482, 4 C. C. A. 3; In re Roessler & Hasslacher Chemical Co. (C. C. 1891) 49 Fed. 272.

Coal tar products, not shown to be oils in fact or to be chemically, commercially, or commonly known as distilled oils, held classifiable under Act 1894, as products of coal tar not specifically provided for, and not as distilled oils. Warren Chemical Manuf'g Co. v. U. S. (C. C. 1897) 78 Fed. 810.

The merchandise consists of preparations of coal tar known as bases. These bases, after acid treatment, are used in dyeing fabrics. The proof does not show there is a commercial designation of these goods as coal tar colors and dyes, and as brought in they are not coal tar colors and dyes, but a product or preparation of coal tar, not medicinal, and were dutiable as such under paragraph 15, Act 1909. U. S. v. Badische Co. (1914) 5 Ct. Cust. App. 226.

Acetanilid.—Acetanilid held a coal tar preparation not a color or dye. See paragraph 18.

Acids commercially so known.—Acids commercially so known held not du-

tiable as coal tar products. See paragraph 1.

Antipyrine.—Antipyrine held dutiable as a coal tar preparation not a color or dye. See paragraph 18.

Bleachers' blue.—Bleachers' blue, which is not used as a color or dye, but solely as a bleaching mixture, held, under Act 1897, not a coal tar color or dye, but a coal tar product or preparation not a color or dye. Abram De Ronde & Co. v. U. S. (C. C. 1903) 148 Fed. 653.

Carbolineum avenarius.—"Carbolineum," or "carbolineum avenarius," which consists of dead oil modified by the action of chlorine gas, held dutiable under Act 1897 as a "preparation of coal tar, not color or dye and not medicinal, not specially provided for," and not as a "chemical compound," or free of duty as "dead or creosote oil." Downing v. U. S. (C. C. 1901) 123 Fed. 1000.

Crystal carbolic acid.—Crystal carbolic acid held not dutiable as a preparation of coal tar. See paragraph 387.

Crude carbolic acid.—Crude carbolic acid held not dutiable as a preparation of coal tar. See paragraph 387.

Lysol.—Lysol held dutiable under Act 1897 as a "preparation of coal tar, * * * not medicinal," and not as "chemical compounds." U. S. v. Lehn (C. C. 1901) 124 Fed. 87.

"22. Coal-tar distillates, not specially provided for in this section; benzol, naphtol, resorcin, toluol, xylol; all the foregoing not medicinal and not colors or dyes, 5 per centum ad valorem."

Notes of Decisions

Tri-nitro-iso-butyl-xylol.—Tri-nitro-iso-butyl-xylol, or artificial musk, held not dutiable as a coal tar preparation. See paragraph 5.

"23. Coal-tar products known as anilin oil and salts, toluidine, xylidin, cumidin, binitrotoluol, binitrobenzol, benzidin, tolidin, dianisidin, naphtylamin, diphenylamin, benzaldehyde, benzyl chloride, nitro-benzol and nitrotoluol, naphtylaminsulfoacids and their sodium or potassium salts, naphtolsulfoacids and their sodium or potassium salts, amidonaphtolsulfoacids and their sodium or potassium salts, amidosalicylic acid, binitrochlorbenzol, diamidostilbendisulfoacid, metanilic acid, paranitranilin, dimethylanilin; all the foregoing not medicinal and not colors or dyes, 10 per centum ad valorem."

Notes of Decisions

Binitrotoluol.—Binitrotoluol held dutiable under Act 1890 as a coal tar preparation, and not as a chemical compound. In re W. J. Matheson & Co. (1892) 56 Fed. 482, 4 C. C. A. 3, affirming (C. C. 1891) 49 Fed. 272.

Naphthionate of soda.—Naphthionate of soda held dutiable under Act 1890 as a preparation of coal tar. In re Roessler & Hasslacher Chemical Co. (1892) 56 Fed. 481, 4 C. C. A. 1.

Nitrobenzole.—Nitrobenzole, being an unenumerated article, falls under section 20 of the act of Aug. 30, 1842 called the "similitude clause." Murphy v. Arnson (1877) 96 U. S. 131, 24 L. Ed. 773.

Oil of mirbane or nitro-benzole.—"Nitro-benzole" held dutiable under the act of 1864, as an article manufactured from two or more materials, and not as an essential oil not otherwise provided for. Murphy v. Arnson (1877) 96 U. S. 131, 132, 24 L. Ed. 773.

Oil of mirbane, or nitrobenzole, which is in fact a preparation of coal tar, and is not known commercially as an essential oil, held, under Act 1890, dutiable as a coal tar preparation, and not as an essential oil or chemical compound. Wm. J. Matheson & Co. v. U. S. (C. C. 1895) 90 Fed. 275.

Tolidine.—Tolidine base held, under Act 1890, dutiable as a preparation of coal tar, and not as chemical compound. In re W. J. Matheson & Co. (1892) 56 Fed. 482, 4 C. C. A. 3 (affirming [C. C. 1891] 49 Fed. 272); In re Roessler & Hasslacher Chemical Co. (1892) 56 Fed. 481, 4 C. C. A. 1; In re Roessler & Hasslacher Chemical Co. (C. C. 1891) 49 Fed. 272; (1886) 18 Op. Atty. Gen. 383.

24. Cobalt, oxide of, 10 cents per pound.

25. Collodion and all other liquid solutions of pyroxylin, or of other cellulose esters, or of cellulose, 15 per centum ad valorem; compounds of pyroxylin or of other cellulose esters, whether known as celluloid or by any other name, if in blocks, sheets, rods, tubes, or other forms not polished, wholly or partly, and not made into finished or partly finished articles, 25 per centum ad valorem; if polished, wholly or partly, or if finished or partly finished articles, of which collodion or any compound of pyroxylin or other

cellulose esters, by whatever name known, is the component material of chief value, 40 per centum ad valorem.

Notes of Decisions

Celluloid.—Sheets of celluloid, polished on both sides, held dutiable under the third clause of paragraph 17 of the act of 1897, as "finished or partly finished articles," and not under the second clause, which covers celluloid "rolled or in sheets, unpolished." U. S. v. Eschwege (1899) 98 Fed. 600, 39 C. C. A. 169.

Celluloid sheets, tubes, and rods, which have not been subjected to any process designed to polish them, but which may have been polished to some extent as an incident to their undergoing a process for smoothing and straightening them, are dutiable at 25 per cent. ad valorem as "not polished, wholly or partly," under the second clause of paragraph 25, Act 1913. U. S. v. Cohn Co. (1915) 6 Ct. Cust. App. 426.

Collodion.—Collodion in sheets 55x24 inches, and polished, for use by being cut up and made into combs and other things, held dutiable at 60 cents per pound, under the second clause of paragraph 17 of the act of 1897 (30 Stat. 152), and not under the third clause, which provides for collodion in finished or partly finished articles, etc. Eschwege v. U. S. (C. C. 1899) 91 Fed. 754.

Ping-pong balls.—Ping-pong balls held not "toys," as provided for in paragraph 418, Act 1897, but dutiable under paragraph 17 of said act as articles of collodion. U. S. v. Strauss Bros. & Co. (1905) 136 Fed. 185, 69 C. C. A. 201 (reversing judgment [C. C. 1904] 128 Fed. 473); U. S. v. Wanamaker (C. C. 1905) 136 Fed. 266.

Pyroxylin.—Hand-decorated booklets with pyroxylin covers held not dutiable as manufactures of pyroxylin. See paragraph 325.

Imitation horsehair braids held not dutiable as articles of pyroxylin. See paragraph 358.

Pyroxylin smokers' articles held not dutiable as compounds of pyroxylin. See paragraph 381.

Toys made of celluloid held not dutiable as manufactures of pyroxylin. See paragraph 342.

Umbrella sticks with celluloid handles held not dutiable as articles of pyroxylin. See paragraph 383.

Pyroxylin rods partly finished held dutiable as partly finished "articles" of pyroxylin, under Act 1897. Rice & Hochster v. U. S. (C. C. 1909) 176 Fed. 581.

Combs, boxes, and handles made wholly of pyroxylin or celluloid are dutiable under paragraph 17, Act 1909. Cauvigny Brush Co. v. U. S. (1910) 1 Ct. Cust. App. 118.

26. Coloring for brandy, wine, beer, or other liquors, 40 per centum ad valorem.

27. Drugs, such as barks, beans, berries, buds, bulbs, bulbous roots, excrescences, fruits, flowers, dried fibers, dried insects, grains, gums, herbs, leaves, lichens, mosses, roots, stems, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, and weeds; any of the foregoing which are natural and uncompounded drugs and not edible, and not specially provided for in this section, but which are advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture, 10 per centum ad valorem: Provided, That no article containing alcohol shall be classified for duty under this paragraph.

Notes of Decisions

1. Articles used in dyeing or tanning.
2. Caffeine.
3. Chrysarobin.
4. Elaterium in cakes.
5. Extract of nutgalls.
6. Herbs immersed in alcohol.
7. Moss.
8. Oil of cypress.
9. Olive pits ground.
10. Orchil and Persian berry extracts.
11. Papaw melon juice powder.
12. Powdered opium.
13. Sago flour.
14. Scammony resin.
15. Sirup of rhamnus.
16. Wai san.
17. Young fustic dyewood.

1. Articles used in dyeing or tanning.—Articles used in dyeing or tanning held not "drugs," within Act 1897; that term being limited in its common acceptance to medicinal preparations, though broadly it may include besides all preparations used in the arts. Leber & Meyer v. U. S. (C. C. 1904) 135 Fed. 243.

2. Caffeine.—A compound to make caffeine held not dutiable as a drug advanced in value. See paragraph 477.

3. Chrysarobin.—Chrysarobin held dutiable as a drug advanced in value, un-

der Act 1897, and not as a medicinal preparation. Levi v. U. S. (C. C. 1905) 140 Fed. 126.

4. Elaterium in cakes.—Elaterium in cakes held not dutiable as a drug advanced in value. See paragraph 477.

5. Extract of nutgalls.—Extract of nutgalls held dutiable as drugs, etc. See paragraph 30.

6. Herbs immersed in alcohol.—Herbs immersed in alcohol held not dutiable as drugs advanced in value. See paragraph 385.

7. Moss.—Dyed moss, used by florists, held dutiable under Act 1890 as "mosses * * * not edible, but which have been advanced in value or condition," and not as a nonenumerated manufactured article. In re Kraft (C. C. 1893) 53 Fed. 1016.

8. Oil of cypress.—Oil of cypress, oil of cloves, oil of cardamom, and oil of pennyroyal held not dutiable as drugs. See paragraph 46.

9. Olive pits ground.—Ground olive nuts held improperly classified for duty as drugs, such as nuts not edible, advanced in value by grinding, "one-fourth of one cent per pound and ten per centum ad valorem," under Act 1897. Kessler v. U. S. (C. C. 1900) 107 Fed. 264.

Olive pits ground held not dutiable under Act 1890 as an unenumerated manufactured article, but as nuts, seeds, etc., which are not edible, but which have been advanced in value or condition by refining, grinding, etc. Haulenbeck v. U. S. (C. C. 1897) 84 Fed. 148.

10. Orchil and Persian berry extracts.—Orchil and Persian berry extracts held not dutiable as drugs. See paragraph 30.

11. Papaw melon juice powder.—Powder from the juice of the papaw melon, which in use is made into various forms of medicinal vegetable pepsin, held not dutiable, under Act 1897, as a manufactured article not otherwise provided for, nor entitled to free entry as a crude drug, but dutiable as a drug not edible, which has been advanced in value or condition by grinding. U. S. v. American Ferment Co. (C. C. 1901) 108 Fed. 802.

12. Powdered opium.—Powdered opium held a "drug advanced in value or condition," within Act 1897, rather than opium crude or unmanufactured. Merck v. U. S. (1906) 151 Fed. 14, 80 C. C. A. 510 (reversing decision Merck & Co. v. U. S. [C. C. 1906] 143 Fed. 694); U. S. v. McKesson, Robbins & Co. (C. C. 1909) 172 Fed. 168.

13. Sago flour.—Sago flour held not dutiable as a drug. See paragraph 590.

14. Scammony resin.—Scammony resin, prepared from gum scammony, or scammony root, and used principally in compounding medicines, held dutiable as a drug advanced in value or condition, under Act 1897, rather than as a medicinal preparation. U. S. v. Martin (C. C. 1907) 155 Fed. 264.

15. Sirup of rhamnus.—Sirup of rhamnus, extract of gentian, and extract of taraxacum held not dutiable as drugs. See paragraph 16.

16. Wai san.—Wai san held not dutiable as a drug. See paragraph 215.

17. Young fustic dyewood.—Young fustic dyewood, cut or shredded into pieces, suitable to be packed in burlaps for shipment, has been thereby advanced in condition. The statutory provision of the act of 1897 relating to an advance in condition is unqualified and the importation of corresponding date was dutiable under paragraph 20 of that act. Perry, Ryer & Co. v. U. S. (1911) 2 Ct. Cust. App. 374.

But paragraph 559, Act 1909, expressly provides for the free entry of such an importation, if not advanced in value or condition by any process or treatment whatever beyond that essential to the proper packing of it. This is the case here, and the rule of stare decisis does not apply. The importation of corresponding date was free of duty under Act 1909. Id.

28. Ergot, 10 cents per pound.

29. Ethers: Sulphuric, 4 cents per pound; amyl nitrite, 20 per centum ad valorem; amyl acetate and ethyl acetate or acetic ether, 5 cents per pound; ethyl chloride, 20 per centum ad valorem; ethers and esters of all kinds not specially provided for in this section, 20 per centum ad valorem: Provided, That no article containing more than 10 per centum of alcohol shall be classified for duty under this paragraph.

30. Extracts and decoctions of nutgalls, Persian berries, sumac, logwood, and other dyewoods, and all extracts of vegetable origin suitable for dyeing, coloring, or staining, not specially provided for in this section; all the foregoing not containing alcohol and not medicinal, ⅜ of 1 cent per pound.

Notes of Decisions

Extract of logwood.—Extract of logwood, mordanted with a salt of chromium for printing colors on cotton fabrics—the mixture being mechanical, and

not chemical—held, under Act 1890, dutiable under the description "extracts and decoctions of logwood," "such as are commonly used for dyeing," and not as a chemical compound. John J. Keller & Co. v. U. S. (C. C. 1896) 90 Fed. 274.

Extract of nutgalls.—Extract of nutgalls held, under act 1897, not dutiable as tannin or tannic acid, nor as a chemical compound, but either directly or by similitude as "drugs, such as * * * nutgalls, * * * advanced in value or condition." W. N. Proctor & Co. v. U. S. (C. C. 1905) 139 Fed. 586, judgment affirmed U. S. v. W. N. Proctor & Co. (1906) 145 Fed. 126, 76 C. C. A. 96.

Orchil and Persian berry extracts.—Orchil and Persian berry extracts held not dutiable as "drugs," but as unenumerated manufactured articles under section 6, 30 Stat. 205. G. Siegle & Co. v. U. S. (C. C. 1908) 166 Fed. 1015.

Persian berry extract, which is used in staining food products, and also as a dyestuff for coloring fabrics, held not dutiable under Act 1897 as a color, not belonging to the "paints, colors, pigments," etc., therein enumerated, nor, by similitude, under paragraph 20 or 22, relating respectively to berries advanced in value and to extracts of barks, etc., used for dyeing but is dutiable as an unenumerated manufactured article. U. S. v. Berlin Aniline Works (C. C. 1907) 154 Fed. 925.

Primuline buff.—Primuline buff, a compound of a preparation from quercitron or black oak bark, 80 per cent., and alizarin, a preparation from coal tar, 20 per cent., held dutiable under Act 1890 as a dyewood extract, and not a coal tar dye. In re Matheson (C. C. 1893) 54 Fed. 492.

31. Extract of chlorophyll, 15 per centum ad valorem; saffron and safflower, and extract of, and saffron cake, 10 per centum ad valorem: Provided, That no article containing alcohol shall be classified for duty under this paragraph.

32. Formaldehyde solution containing not more than 40 per centum of formaldehyde, or formaline, 1 cent per pound.

33. Fusel oil, or amylic alcohol, ¼ cent per pound.

34. Gelatin, glue, and glue size, valued not above 10 cents per pound, 1 cent per pound; valued above 10 cents per pound and not above 25 cents per pound, 15 per centum ad valorem; valued above 25 cents per pound, 25 per centum ad valorem; manufactures of gelatin or manufactures of which gelatin is the component material of chief value, 25 per centum ad valorem; isinglass and prepared fish sounds, 25 per centum ad valorem; agar-agar, 20 per centum ad valorem.

Notes of Decisions

Bone size.—Bone size held not dutiable as glue. See paragraph 385.

Finings.—So-called "finings," an article consisting of gelatin containing a considerable proportion of sulphurous acid or sulphite as a preservative, held, under Act 1897, dutiable as "gelatin," and not as a manufacture of gelatin, or as an unenumerated manufactured article. Sonoma Wine & Brandy Co. v. U. S. (C. C. 1900) 123 Fed. 999.

Gelatin spangles.—Gelatin spangles held not dutiable as manufactures of gelatin. See paragraph 333.

Sheets of gelatin.—To determine what is a "sheet" in a given case, the particular facts of that case are to be considered; and the facts here showing the merchandise to be edible gelatin with irregular edges and uneven surfaces do not make it clear that the article is properly classifiable as sheets of gelatin. The doubt must be resolved in favor of the importer and the goods are dutiable as gelatin under paragraph 23, Act 1909. American Express Co. v. U. S. (1913) 3 Ct. Cust. App. 475.

35. Glycerin, crude, not purified, 1 cent per pound; refined, 2 cents per pound.

36. Gums: Amber, and amberoid unmanufactured, or crude gum, not specially provided for in this section, $1 per pound; arabic, or senegal, ½ cent per pound; camphor, crude, natural, 1 cent per pound; camphor, refined and synthetic, 5 cents per pound; chicle, crude, 15 cents per pound; refined or advanced in value by drying, straining, or any other process or treatment whatever beyond that essential to the proper packing, 20 cents per pound; dextrine, made from potato starch or potato flour, 1¼ cents per pound;

dextrine, not otherwise provided for, burnt starch or British gum, dextrine substitutes, and soluble or chemically treated starch, ¾ of 1 cent per pound.

Notes of Decisions

Burnt starch.—The term "burnt starch" is to receive the meaning given it in ordinary commercial operations unless a trade meaning different from that in ordinary use is established by a preponderance of evidence. Weilbacher v. Merritt (C. C. 1888) 37 Fed. 85.

Camphor oil.—Camphor oil obtained from the same tree as gum camphor held not dutiable as essential oil. See paragraph 385.

Dextrine.—White dextrine, produced by the chemical treatment of starch, while not a dextrine, technically speaking, held, under Act 1897, classible as "dextrine." Charles Morningstar & Co. v. U. S. (C. C. 1907) 159 Fed. 287.

Gum substitute.—The term "gum substitute" is to receive the meaning given it in ordinary commercial operations, unless a trade meaning different from that in ordinary use is established by a preponderance of evidence. Weilbacher v. Merritt (C. C. 1888) 37 Fed. 85.

Liquid camphor refuse.—Liquid camphor refuse held not dutiable as camphor crude. See paragraph 46.

Synthetic camphor.—Synthetic camphor held, under Act 1897, if it still retains impurities that bring it far below the standard of refined camphor, and closely resembles the crude natural product, dutiable as "camphor, crude," rather than as "camphor, refined." U. S. v. Schering & Glatz (1908) 163 Fed. 246, 90 C. C. A. 192.

37. Ink and ink powders, 15 per centum ad valorem.

38. Iodoform, and potassium iodide, 15 cents per pound.

39. Leaves and roots: Buchu leaves, 10 cents per pound; coca leaves, 10 cents per pound; gentian, ¼ cent per pound; licorice root, ¼ cent per pound; sarsaparilla root, 1 cent per pound.

40. Licorice, extracts of, in pastes, rolls, or other forms, 1 cent per pound.

41. Lime, citrate of, 1 cent per pound.

42. Magnesia: Calcined, 3½ cents per pound; carbonate of, precipitated, 1½ cents per pound; sulphate of, or Epsom salts, 1/10 cent per pound.

Notes of Decisions

Epsom salts.—Sulphate of magnesia, or Epsom salts, which, by the act of 1894, were placed both upon the dutiable and the free list, held to be admitted free, as the ambiguity must be resolved in favor of the importer. U. S. v. Merck (C. C. 1899) 91 Fed. 639.

43. Menthol, 50 cents per pound.

44. Oils, rendered: Sod, seal, herring, and other fish oil, not specially provided for in this section, 3 cents per gallon; whale oil, 5 cents per gallon; sperm oil, 8 cents per gallon; wool grease, including that known commercially as degras or brown wool grease, crude and not refined or improved in value or condition, ¼ cent per pound; refined or improved in value or condition, and not specially provided for in this section, ½ cent per pound; lanolin, 1 cent per pound; all other animal oils, rendered oils and greases, and all combinations of the same, not specially provided for in this section, 15 per centum ad valorem.

Notes of Decisions

Adeps lanæ anhydrons.—Adeps lanæ anhydrons and adeps lanæ cum aqua, which are highly finished products of wool grease, held dutiable as medicinal preparations. See paragraph 5.

Brown grease.—The fatty matter known as "de gras," or brown grease, held, under Act 1883, not dutiable as an "expressed" or "rendered" oil. Miller v. Seeberger (C. C. 1890) 44 Fed. 261.

Cod oil.—"Cod oil," made from putrid fish livers, which, while used principally for dressing leather, is fit for some other purposes not enumerated, and, while not technically known in the trade as a "fish oil," held, under Act 1897, dutiable as fish oil. Swan & Finch Co. v. U. S. (1902) 113 Fed. 243, 51 C. C. A. 200 (affirming judgment [C. C. 1901] 109 Fed. 949); Wells v. U. S. (C. C. 1899) 99 Fed. 258.

The term "fish oil" in Act 1897, cov-

ers all oil made from any fish or any part thereof, including oil made from the livers of cod and other fish of the cod species. Swan & Finch Co. v. U. S. (C. C. 1901) 109 Fed. 949, judgment affirmed (1902) 113 Fed. 243, 51 C. C. A. 200.

Hard yellow grease.—Substances obtained by washing the solid residuum left after the distillation of wool grease, known as "hard yellow grease" and "white grease" held under Act 1897, dutiable as "wool grease," and not entitled to free entry. U. S. v. Leonard (1901) 108 Fed. 42, 47 C. C. A. 181, reversing judgment (C. C. 1900) 100 Fed. 288.

Japanese fish oil.—Japanese fish oil held not dutiable as whale and other fish oil. See paragraph 498.

Lanolin.—"Lanolin" held, under Act 1890, dutiable as a "medicinal proprietary preparation," and not as "wool grease." Movius v. U. S. (C. C. 1895) 66 Fed. 734.

Adeps lanæ, or lanolin, is used as a basis for ointments and as a carrier for soluble medicinal salts, and the evidence shows that without the addition of medicinal agents it has no therapeutic value. The more specific provision levying duty upon it is to be found in paragraph 290, Act 1909. It is dutiable under that paragraph as wool grease refined or improved in value or condition. Koechl & Co. v. U. S. (1912) 3 Ct. Cust. App. 316.

Refined wool grease.—The provision for "wool grease" in Act 1897 includes a refined wool grease, from which the natural odor and mineral matter have been removed by a superior process, and which is commercially known as "wool grease." Swan & Finch Co. v. U. S. (C. C. 1903) 149 Fed. 304.

45. Oils, expressed: Alizarin assistant, sulphoricinoleic acid, and ricinoleic acid, and soaps containing castor oil, any of the foregoing in whatever form, and all other alizarin assistants and all soluble greases used in the processes of softening, dyeing, or finishing, not specially provided for in this section, 25 per centum ad valorem; castor oil, 12 cents per gallon; flaxseed and linseed oil, raw, boiled, or oxidized, 10 cents per gallon of 7½ pounds; poppy-seed oil, raw, boiled, or oxidized, rapeseed oil, and peanut oil, 6 cents per gallon; hempseed oil, 3 cents per gallon; almond oil, sweet, 5 cents per pound; sesame or sesamum seed or bean oil, 1 cent per pound; olive oil, not specially provided for in this section, 20 cents per gallon; olive oil, in bottles, jars, kegs, tins, or other packages having a capacity of less than five standard gallons each, 30 cents per gallon; all other expressed oils and all combinations of the same, not specially provided for in this section, 15 per centum ad valorem.

Notes of Decisions

Alizarin assistant.—Soluble grease used in dyeing cotton held not dutiable as an alizarin assistant. See paragraph 385.

Alizarin assistant, used as a mordant by calico printers, the principal ingredient in which is castor oil, held under Act 1883 chargeable with a duty of 80 cents per gallon, under the "similitude clause" that being the duty on castor oil. Lloyd v. McWilliams (C. C. 1887) 31 Fed. 261, judgment affirmed (1890) 11 Sup. Ct. 173, 137 U. S. 576, 34 L. Ed. 788.

From the testimony the analysis made by the chemist employed by the appellees must be assumed correct; and there is no proof to the effect that castor oil may have been used in the manufacture of the alizarin assistant which would not be revealed by the analysis. As the oil contained less than 50 per cent. of castor oil, it was dutiable under paragraph 32, Act 1909. U. S. v. Koons, Wilson & Co. (1913) 4 Ct. Cust. App. 452.

"Alizarin assistant" held dutiable as a chemical compound, under the Revised Statutes. (1885) 18 Op. Atty. Gen. 106.

Olive oil.—Duty on bottles filled with olive oil. See paragraph 83.

It is clear in view of the decisions and of the change in language appearing in paragraph 38, Act 1909, that it was intended by that paragraph to levy the duty there fixed upon the contents rather than upon the capacity of tins containing olive oil. U. S. v. Palma (1913) 4 Ct. Cust. App. 140. See, also, U. S. v. La Manna (C. C. 1907) 154 Fed. 927; Gandolfi & Co. v. U. S. (C. C. 1907) 152 Fed. 656.

Construing Act 1897, par. 40, providing (1) for olive oil "in bottles, jars, tins, or similar packages," and (2) for "olive oil, not specially provided for," held, that oil in 5-gallon tins, in which form it is not sold to the consumer but to hotels and retail dealers, is not subject to the first provision, but to the latter. U. S. v. La Manna, Azema &

Farnan (1908) 158 Fed. 1022, 86 C. C. A. 673, affirming judgment (C. C. 1907) 154 Fed. 927.

All the tins in this case hold less than the quantity of oil which would entitle the goods to assessment at 40 per cent. ad valorem. They were dutiable according to contents at 50 per cent. under paragraph 38, Act 1909. U. S. v. Sprague, Warner (1913) 4 Ct. Cust. App. 358. See, also, Same v. Palma, Id. 140.

The merchandise was olive oil contained in tins, the oil in each container being slightly less than 5 gallons in quantity. Held, under paragraph 38, Act 1909, the oil was dutiable at 50 cents per gallon as olive oil in tins containing less than 5 gallons each, and this notwithstanding the treasury regulation of June 20, 1911. U. S. v. Younglove Grocery Co. (1914) 5 Ct. Cust. App. 377.

All olive oils are not of the same specific gravity. The method adopted here by the collector for determining the quantity of the importation in gallons was correct. The English wine gallon of 231 cubic inches capacity, and not a lesser quantity, though accepted by the trade, is the "gallon" of paragraph 38, Act 1909. U. S. v. Moos & Co. (1914) 5 Ct. Cust. App. 322.

Rapeseed oil.—It was not shown that the sample used by the government was a part of the importation. The evidence here makes out a prima facie case for the importer and is sufficient to overcome the presumption of correctness attaching to the collector's decision. The merchandise was dutiable as rapeseed oil. U. S. v. Lang (1913) 4 Ct. Cust. App. 494.

The contention was made that the importation is not rapeseed oil as assessed, but is a sulphur colza oil, commonly used for soap making. The testimony falls short of maintaining this. Larkin Co. v. U. S. (1912) 2 Ct. Cust. App. 483.

46. Oils, distilled and essential: Orange and lemon, 10 per centum ad valorem; peppermint, 25 cents per pound; mace oil, 6 cents per pound; almond, bitter; amber; ambergris; anise or anise seed; bergamot; camomile; caraway; cassia; cinnamon; cedrat; citronella and lemon-grass; civet; fennel; jasmine or jasimine; juniper; lavender, and aspic or spike lavender; limes; neroli or orange flower; origanum, red or white; rosemary or anthoss; attar of roses; thyme; and valerian; all the foregoing oils, and all fruit ethers, oils, and essences, and essential and distilled oils and all combinations of the same, not specially provided for in this section, 20 per centum ad valorem: Provided, That no article containing alcohol shall be classified for duty under this paragraph.

Notes of Decisions

Camphor oil. — Camphor oil obtained from the same tree as gum camphor held not dutiable as an essential oil. See paragraph 385.

Citral.—Citral held free of duty as lemon oil, or oil of lemon, under Act 1890, and not dutiable as an essential oil. In re Fritzsche (C. C. 1893) 56 Fed. 819.

Coal tar products.—Coal tar products not shown to be oil in fact held not dutiable as distilled oils. See paragraph 21.

Essential oils. — A concentrated essence produced by the enfleurage process held not dutiable as an essential oil. See paragraph 49.

Oil of mirbane or nitrobenzole held not dutiable as an essential oil. See paragraph 23.

Oil of cypress, oil of cloves, oil of cardamom, and oil of pennyroyal held under Act 1909, dutiable as essential oils, and not as drugs. National Aniline & Chemical Co. v. U. S. (1913) 4 Ct. Cust. App. 109.

A dressing oil distilled from grease or degras being found by the board of general appraisers to be fit for the other purposes than for dressing or stuffing leather, the evidence being conflicting, this finding will not be disturbed, and the importation was dutiable under paragraph 8, Act 1897. Stone & Downer Co. v. U. S. (1911) 1 Ct. Cust. App. 513.

Dead oil.—Dead oil held not dutiable as distilled oil. See paragraph 452.

Liquid camphor refuse.—Liquid camphor refuse, the substance obtained, by drainage, from crude camphor, and used for the manufacture of camphor oil, held dutiable, under act 1894, as an oil, and not entitled to free entry, as "camphor, crude." Dodge v. U. S. (C. C. 1896) 77 Fed. 602, judgment affirmed (1898) 84 Fed. 449, 28 C. C. A. 152.

Lubricating oil.—Lubricating oil held not dutiable as a combination of oils. See paragraph 385.

Olein. — So-called olein, a distillate from wool grease, in the form of an oil, held, under Act 1897, not "wool grease," but dutiable as a "distilled oil." Swan & Finch Co. v. U. S. (C. C. 1909) 172 Fed. 173.

Oil of petit grain.—Oil of petit grain, distilled from the leaves, twigs, and immature fruit of the orange tree, was

found by the jury to have been generally known and recognized in trade and commerce in 1883 as one of the subdivisions of oil neroli (mentioned in the free list). Dodge v. Hedden (C. C. 1889) 42 Fed. 446.

47. Opium, crude or unmanufactured, and not adulterated, containing 9 per centum and over of morphia, $3 per pound; opium of the same composition, dried to contain 15 per centum or less of moisture, powdered, or otherwise advanced beyond the condition of crude or unmanufactured, $4 per pound; morphia or morphine, sulphate of, and all alkaloids of opium, and salts and esters thereof, $3 per ounce; cocaine, ecgonine, and all salts and derivatives of the same, $2 per ounce; aqueous extract of opium, for medicinal uses, and tincture of, as laudanum, and other liquid preparations of opium, not specially provided for in this section, 60 per centum ad valorem; opium containing less than 9 per centum of morphia, $6 per pound; but preparations of opium deposited in bonded warehouses shall not be removed therefrom without payment of duties, and such duties shall not be refunded: Provided, That nothing herein contained shall be so construed as to repeal or in any manner impair or affect the provisions of an Act entitled "An Act to prohibit the importation and use of opium for other than medicinal purposes," approved February ninth, nineteen hundred and nine.

Act Feb. 9, 1909, c. 100, mentioned in this paragraph, is set forth post, §§ 8800, 8801.

Notes of Decisions

Cocaine. — Muriate or hydrochlorate of cocaine, which was covered both by paragraph 76 and paragraph 74 of act of October 1, 1890, held dutiable under the former, relating to chemical salts. Lehn v. U. S. (C. C. 1895) 66 Fed. 748, following Mallinckrodt Chemical Works Case (C. C. 1895) 66 Fed. 746, and certified to and determined Fink v. U. S. (1898) 18 Sup. Ct. 770, 170 U. S. 584, 42 L. Ed. 1153.

"Crude."—Whether an article is crude is to be determined not by the processes which brought it into being, but by the additional processes to which it is submitted after its creation in order to fit it for its chief or only use. Merck & Co. v. U. S. (1914) 5 Ct. Cust. App. 347.

Opium.—Powdered opium held not dutiable as opium crude or unmanufactured. See paragraph 27.

An indictment for smuggling "smoking opium" and "prepared opium" sufficiently describes dutiable merchandise under Schedule A, prescribing a duty on "opium prepared for smoking, and all other preparations of opium not specially enumerated or provided for in this act." U. S. v. Gardner (C. C. 1890) 42 Fed. 832, 833.

Opium shipped on board a steamship at Honolulu, for Panama, by way of San Francisco, intended to be transferred, without landing, to another steamer at San Francisco, running to Panama, in connection with the steamship from Honolulu, and entered on the manifest and bills of lading, and reported to the collector, as being in transit for Panama, the owner having applied to the collector for a permit to make the transshipment, and offered to give the security prescribed by the statute, and a permit having been refused, was held not to be liable to duties, and a seizure for nonpayment of duties adjudged to be illegal. R. S. §§ 2502, 2931, and section 2979 (section 5665, post), construed. McLean v. Hager (C. C. 1887) 31 Fed. 602.

The opium of the importation was not "dried," as that term is used in paragraph 41, nor powdered nor otherwise advanced in condition, and it was properly dutiable as opium, crude or unmanufactured, and not adulterated, containing 9 per cent. and over of morphia. Merck & Co. v. U. S. (1914) 5 Ct. Cust. App. 347.

Salts of opium.—The alkaloids here are produced from morphine, but morphine is derived from opium, and in paragraph 43, Act 1897, "alkaloids" is employed to embrace generically all known or possible alkaloids of opium, and it embraces codeine. Merck & Co. v. U. S. (1915) 6 Ct. Cust. App. 41.

While there are no salts of opium proper, that expression in paragraph 43, Act 1897, should be interpreted to mean such salts as are produced by the chemical action of an acid radical on organic bases that are component parts of opium. The merchandise was dutiable under that paragraph. Id. See, also, U. S. v. Merck & Co. (1909) 168 Fed. 244, 94 C. C. A. 74.

48. Perfumery, including cologne and other toilet waters, articles of perfumery, whether in sachets or otherwise, and all preparations used as applications to the hair, mouth, teeth, or skin, such as cosmetics, dentifrices, including tooth soaps, pastes, including theatrical grease paints, and pastes, pomades, powders, and other toilet preparations, all the foregoing, if containing alcohol, 40 cents per pound and 60 per centum ad valorem; if not containing alcohol, 60 per centum ad valorem; floral or flower waters containing no alcohol, not specially provided for in this section, 20 per centum ad valorem.

Notes of Decisions

Articles of perfumery.—Victoria cachous (being small pellets, made in part of licorice, with a peppermint or wintergreen flavor, used by smokers and others, to sweeten the breath) were dutiable as "articles of perfumery," under paragraph 61 of the act of 1894, and not as "licorice and extracts of," under paragraph 23, or as "confectionery," under paragraph 183. Volkman, Stollwerck & Co. v. U. S. (C. C. 1897) 84 Fed. 442.

Floral extracts.—Floral extracts, which are articles composed of about 95 per cent. of alcohol and 5 per cent. of sediment, and used in the manufacture of perfumery, held not dutiable at the rate of $2 per gallon and 50 per centum ad valorem as "alcoholic perfumery," but dutiable at the rate of $2 per gallon for the alcohol contained, and 25 per centum ad valorem, as "alcoholic compounds not otherwise specially enumerated or provided for." Fritzsche v. Magone (C. C. 1889) 40 Fed. 228.

Floral waters.—Floral waters held dutiable as unenumerated manufactured articles, under Act 1897, § 6, rather than as "waste," under paragraph 463. Burr v. U. S. (1909) 167 Fed. 801, 93 C. C. A. 191.

Flower water.—Orange flower water and rose water held, under Act 1897, not dutiable as medicinal preparations but as unenumerated manufactured articles. Euler & Robeson v. U. S. (C. C. 1906) 147 Fed. 765.

Orange flower water and rose water, which are articles used to some extent medicinally, but chiefly for other purposes not mentioned in any enumerations of the tariff, held, under Act 1883, dutiable as "medicinal preparations," and not as articles not "enumerated." Dodge & Olcott v. U. S. (C. C. 1891) 130 Fed. 624.

Marasque water.—The article known as "marasque water" or "eau de marasque," which is produced by distilling the juice of crushed cherries, diluted somewhat with water used in the distilling process, held not dutiable as cherry juice, under Act 1897, par. 299, but as an unenumerated manufactured article under section 6. Leerberger Bros. v. U. S. (C. C. 1904) 141 Fed. 1023.

Perfumed smelling salts.—Perfumed smelling salts held not dutiable as articles of perfumery. See paragraph 5.

Toilet preparations.—A dentifrice held properly assessed for duty under Act 1897, as a toilet preparation in which alcohol is used. Russman v. U. S. (C. C. 1900) 107 Fed. 266.

Pinaud's eau de quinine tonique, a toilet preparation used as an application to the hair held dutiable under Act 1894, as a preparation for the hair, etc., and not as "alcoholic perfumery, including cologne water, and other toilet waters, and alcoholic compounds not specially provided for," nor as "all compounds or preparations * * * of which distilled spirits are a component part, not specially provided for." In re Merchandise Imported by Hoit (C. C. 1896) 75 Fed. 998.

The phrase "and other toilet preparations" in paragraph 48, Act 1913, must be taken to include the merchandise here—a preparation for polishing finger nails. These preparations are not to be limited to such as are for use or application to the hair, mouth, teeth, or skin. Graf Bros. v. U. S. (1915) 6 Ct. Cust. App. 190.

Tooth soap.—Tooth soap held not dutiable as preparation used as application to the teeth. See paragraph 66.

49. Ambergris, enfleurage greases and floral essences by whatever method obtained; flavoring extracts, musk, grained or in pods, civet, and all natural or synthetic odoriferous or aromatic substances, preparations, and mixtures used in the manufacture of, but not marketable as, perfumes or cosmetics; all the foregoing not containing alcohol and not specially provided for in this section, 20 per centum ad valorem.

Notes of Decisions

Enfleurage grease.—So-called muguet pomade, produced by the combination of several kinds of enfleurage grease, to which is added about one-half of 1 per

cent. of various essential oils to fortify and combine the article, thus producing an odor like that of the lily of the valley, held free of duty, under Act 1897, as enfleurage grease. Lueders v. U. S. (C. C. 1905) 143 Fed. 918.

A concentrated essence produced by the enfleurage process, in which a variety of petroleum was used as the original solvent, is free of duty as "enfleurage grease," within Act 1894, and not dutiable as "essential oil." U. S. v. Dodge & Olcott (C. C. 1899) 94 Fed. 481.

Muguet de mai, shown by a preponderance of testimony to contain no essential oil, is not fluorescence valley lily, but enfleurage grease, and free of duty under Act 1897. Burr v. U. S. (1911) 1 Ct. Cust. App. 126.

50. Plasters, healing or curative, of all kinds, and court-plaster, 15 per centum ad valorem.

51. Baryta, sulphate of, or barytes, including barytes earth, unmanufactured, 15 per centum ad valorem; manufactured, 20 per centum ad valorem; blanc-fixe, or artificial sulphate of barytes, and satin white, or artificial sulphate of lime, 20 per centum ad valorem.

Notes of Decisions

Carbonate of baryta.—Commercial carbonate of baryta held exempt from duty under Act 1897, and not dutiable as a chemical compound or salt not provided for. Gabriel & Schall v. U. S. (C. C. 1903) 121 Fed. 208.

52. Blues, such as Berlin, Prussian, Chinese, and all others, containing ferrocyanide of iron, in pulp, dry or ground in or mixed with oil or water, 20 per centum ad valorem; ultramarine blue, whether dry, in pulp, or ground in or mixed with oil or water, and wash blue containing ultramarine, 15 per centum ad valorem.

Notes of Decisions

Ultramarine blue.—Ultramarine blue in pulp, which consists of the ultramarine ground in water so as to form a thick paste, held dutiable, under Act 1890, at 4½ cents a pound on the full weight of the paste, and not on the weight of the ultramarine contained therein when dry. U. S. v. Zentgraf (1894) 60 Fed. 1014, 9 C. C. A. 335.

Where there were two importations of material resembling ultramarine blue, and assessed as ultramarine blue by the collector of customs, under paragraph 52, Act 1897, the board of general appraisers, after testimony taken, finding one item properly assessed and the other improperly assessed, because this rightfully fell under paragraph 58 of said act, the facts being reviewed, the board is affirmed. U. S. v. Riebe (1910) 1 Ct. Cust. App. 19.

53. Black pigments, made from bone, ivory, or vegetable substance, by whatever name known; gas black and lampblack, dry or ground in or mixed with oil or water, 15 per centum ad valorem.

54. Chrome yellow, chrome green, and all other chromium colors in the manufacture of which lead and bichromate of potash or soda are used, in pulp, dry, or ground in or mixed with oil or water, 20 per centum ad valorem.

55. Ocher and ochery earths, sienna and sienna earths, and umber and umber earths, 5 per centum ad valorem; Spanish brown, venetian red, Indian red, and colcothar or oxide of iron, not specially provided for in this section, 10 per centum ad valorem.

Notes of Decisions

Ochery earth.—A red pigment to be used as a color held not dutiable as an ochery earth. See paragraph 63.

Oxide of iron.—Oxides of iron in use as a polishing powder held not dutiable as colors and paints, etc. See paragraph 11.

56. Lead pigments: Litharge, orange mineral, red lead, white lead, and all pigments containing lead, dry or in pulp, and ground or mixed with oil or water, not specially provided for in this section, 25 per centum ad valorem.

57. Lead, acetate of, white, and nitrate of, 1¼ cents per pound; acetate of, brown, gray, or yellow, 1 cent per pound; all other lead compounds not specially provided for in this section, 20 per centum ad valorem.

58. Varnishes, including so-called gold size or japan, 10 per centum ad valorem: Provided, That spirit varnishes containing less than 10 per centum of methyl alcohol of the total alcohol contained therein, shall be dutiable at $1.32 per gallon and 15 per centum ad valorem.

Notes of Decisions

Varnish.—Enamel paint in which varnish was used held not dutiable as varnish. See paragraph 63.

Shellac varnish held dutiable under section 2504, R. S., which declares that "on all compounds or preparations of which distilled spirits is a component part of chief value there shall be levied a duty not less than that imposed upon distilled spirits," namely, $2 per proof gallon. (1881) 17 Op. Atty. Gen. 105.

59. Vermilion reds, containing quicksilver, dry or ground in oil or water, 15 per centum ad valorem; when not containing quicksilver but made of lead or containing lead, 25 per centum ad valorem.

Notes of Decisions

Vermillion red.—Imitation vermillion red containing no quicksilver held, under Act 1890, subject to the same duty as the genuine. In re Downing (1893) 56 Fed. 470, 5 C. C. A. 575.

Vermillion held dutiable as such, and not as a "mercurial preparation." Boving v. Lawrence (C. C. 1850) Fed. Cas. No. 1,711.

60. Whiting and Paris white, dry, and chalk, ground or bolted, 1/10 cent per pound; whiting and Paris white, ground in oil, or putty, 15 per centum ad valorem.

Notes of Decisions

Whiting.—Chemical substances and mineral substances are distinguished for dutiable purposes in the statute. The main constituent of the powder here is a mineral rather than a chemical, 94.89 per cent. of it being mineral. It was properly held dutiable under paragraph 54, Act 1909. U. S. v. Kraemer & Co. (1913) 4 Ct. Cust. App. 433. See, also, Same v. Holland-American Trading Co. (1913) 4 Ct. Cust. App. 336; Strohmeyer & Arpe Co. v. Same (1911) 2 Ct. Cust. App. 285.

Goddard's plate powder held, under Act 1909, not to be classed as "articles and wares composed of mineral substances," but according to an established legislative construction dutiable, by similitude, to whiting. Bartley Bros. & Hall v. U. S. (1912) 3 Ct. Cust. App. 363.

A powder put up in small packages for use by jewelers in polishing metals, and composed of over 93 per cent. carbonate of lime, held whiting, and dutiable as such, under Act 1894, and not as an article composed of earthen or mineral substances not specially provided for. U. S. v. Tiffany (C. C. 1902) 117 Fed. 367.

61. Zinc, oxide of, and pigments containing zinc but not containing more than 5 per centum of lead, ground dry, 10 per centum ad valorem; when ground in or mixed with oil or water, lithopone and white sulphide of zinc, 15 per centum ad valorem.

Notes of Decisions

Lithofone.—Where it was proved that lithofone, composed of 70 per cent. sulphate of barytes and 30 per cent. sulphide of zinc, was known as "lithofone," whether dry or ground in oil, and by commercial designation was known as "sulphide of zinc white," it was classifiable for duty as such under Act 1897, and not as a white paint or pigment containing zinc, but not containing lead. Gabriel & Schall v. U. S. (1903) 123 Fed. 296, 59 C. C. A. 352, affirming judgment (C. C. 1902) 114 Fed. 401.

So-called "lithophone," a dry, white material, held to be dutiable as "white paint containing zinc, but not containing lead," under Act 1890, and not as "all other paints and colors, whether dry or mixed," under paragraph 61. Gabriel v. U. S. (C. C. 1895) 65 Fed. 422.

Lithofone, which is a compound composed of 70 per cent. sulphate of barytes, and 30 per cent. sulphide of zinc, held dutiable, under Act 1897, as a "white paint or pigment containing zinc, but not containing lead, dry," and not as sulphide of zinc. U. S. v. Gabriel (D. C. 1899) 97 Fed. 934.

62. Zinc, chloride of and sulphate of, ½ cent per pound.

63. Enamel paints, and all paints, colors, pigments, stains, crayons, including charcoal crayons or fusains, smalts, and frostings,

and all ceramic and glass fluxes, glazes, enamels, and colors, whether crude, dry, mixed, or ground with water or oil or with solutions other than oil, not specially provided for in this section, 15 per centum ad valorem; all paints, colors, and pigments commonly known as artists' paints or colors, whether in tubes, pans, cakes, or other forms, 20 per centum ad valorem; all color lakes, whether dry or in pulp, not specially provided for in this section, 20 per centum ad valorem.

Notes of Decisions

1. Artists' colors.
2. Bleach.
3. Cadmium sulphite.
4. Ceramic colors.
5. Chlorophyll.
6. Collins' oxide.
7. Colors in general.
8. Crayons.
9. Crocus.
10. Enamel paint.
11. Flitters.
12. Hematite iron ore.
13. Lakes.

1. Artists' colors.—All artists' colors are dutiable under paragraph 61, Act 1890, in the paint and color schedule. Rich v. U. S. (1894) 61 Fed. 501, 9 C. C. A., 596.

An importation of "artists' colors," in tubes, composed of ochre and umber, but elaborately prepared for that use, held not dutiable as "colors and paints, including lakes, whether dry or mixed, or ground with water or oil, and not specially enumerated, but should be assessed under the clause which provides that "ochre and ochre earth, umber and umber earths, and sienna and sienna earths, when dry, one-half of one cent per pound; when ground in oil, one and one-half cents per pound." Thayer v. Seeberger (C. C. 1887) 31 Fed. 883.

2. Bleach.—Bleach containing ferrocyanide of iron held not dutiable as a color. See paragraph 385.

3. Cadmium sulphite.—Cadmium sulphite held dutiable under Act 1897 as a pigment or color, and not as a chemical compound or salt. Drakenfeld & Co. v. U. S. (1912) 2 Ct. Cust. App. 512. See, also, Fink v. Same (1898) 18 Sup. Ct. 770, 170 U. S. 584, 42 L. Ed. 1153.

4. Ceramic colors.—Powders composed in different proportions of silica alumina, alkalies, tin, copper, zinc, magnesia, etc., held, under Act 1909, dutiable as ceramic colors. Reusche & Co. v. U. S. (1912) 3 Ct. Cust. App. 387.

Enamel or ceramic colors containing no quicksilver were dutiable at 5 cents the pound, under paragraph 54, Act 1897. U. S. v. Marsching (1911) 1 Ct. Cust. App. 216.

5. Chlorophyll.—Chlorophyll held not dutiable as a color. See paragraph 385.

6. Collins' oxide.—Collins' oxide, which cannot be profitably smelted and which has been made unfit for smelting by the pulverizing treatment to which it has been subjected, held not dutiable under act 1897 as iron ore, but dutiable as "colors or pigments." Collins & Co. v. U. S. (1912) 3 Ct. Cust. App. 83. See, also, Drakenfeld & Co. v. Same (1912) 2 Ct. Cust. App. 512.

7. Colors in general.—The provision for "colors * * * not containing quicksilver, but * * * containing lead," in Act 1897, held a more specific enumeration of colors containing lead than the provision for "colors * * * not otherwise specially provided for." U. S. v. Marsching & Co. (C. C. 1909) 177 Fed. 593.

A red pigment imported to be used as a color and filler, found by the appraisers not to be an ochery earth, and not commercially known as an ocher, held dutiable as a color, under Act 1894. Vandegrift v. U. S. (C. C. 1900) 107 Fed. 265.

A pigment is a special kind of coloring matter, and a lake is a special kind of pigment. "Coal tar colors" then enumerates coal tar pigments and coal tar lakes (if any there be) and this enumeration in paragraph 20, Act 1913, is a narrower one than that of pigments and lakes generally in paragraph 63. Farbwerke-Hoechst Co. v. U. S. (1916) 6 Ct. Cust. App. 483.

8. Crayons.—School crayons held not dutiable as crayons. See paragraph 378.

9. Crocus.—Crocus, which is a color, but in most largely used as a polishing powder, held dutiable as a color, under Act 1890, under the words, "all other paints and colors, whether dry or mixed," and not as dross residuum from burnt pyrites, or as a nonenumerated article. Smith v. U. S. (C. C. 1897) 84 Fed. 158, judgment affirmed (1899) 93 Fed. 194, 35 C. C. A. 265.

10. Enamel paint.—Enamel white paint, which contains zinc, but not lead, and is ground in oil, and to which, after grinding, ingredients are added to increase the gloss, held dutiable as "white paint * * * containing zinc, but not containing lead, * * * ground in oil," rather than "paints * * * ground * * * with solutions other than oil," under Act 1897. U. S. v. J. A. & W. Bird & Co. (1909) 167 Fed. 319, 92 C. C. A. 631.

Enamel paint, consisting of a white paint containing zinc, but not containing lead, ground in linseed oil, varnish being added to give a gloss, but without affecting the character of the mixture as a paint, held more specifically enumerated under Act 1897 for "white paint or pigment containing zinc, but not containing lead," than under the provision for "varnishes," or for "all paints, * * * whether crude or dry or mixed, or ground with water or oil or with solutions other than oil, not otherwise specially provided for." Pomeroy & Fischer v. U. S. (C. C. 1903) 126 Fed. 583.

11. Flitters.—Flitters held not dutiable as a color or pigment. See paragraph 146.

12. Hematite iron ore.—Hematite iron ore held not dutiable as a pigment. See paragraph 518.

13. Lakes.—Lake pigment classed as an Alizarin color held not dutiable as lakes, etc. See paragraph 394.

Lakes containing lead are more specifically provided for as "colors * * * containing lead," under Act 1897, than as "lakes * * * not specially provided for." U. S. v. G. Siegle Co. (C. C. 1909) 175 Fed. 885; U. S. v. Siegle (1910) 1 Ct. Cust. App. 32.

64. Potash: Bicarbonate of, refined, and chlorate of, ½ cent per pound; chromate and bichromate of, 1 cent per pound; nitrate of, or saltpeter, refined, $7 per ton; permanganate of, 1 cent per pound; prussiate of, red, 2 cents per pound; yellow, 1¼ cents per pound.

65. Salts and all other compounds and mixtures of which bismuth, gold, platinum, rhodium, silver, or tin constitute the element of chief value, 10 per centum ad valorem.

66. Soaps: Perfumed toilet soaps, 30 per centum ad valorem; medicinal soaps, 20 per centum ad valorem; castile soap, and unperfumed toilet soap, 10 per centum ad valorem; all other soaps and soap powder not specially provided for in this section, 5 per centum ad valorem.

Notes of Decisions

Soap in general.—The question is not one of commercial designation; it is, simply, whether the presence of 17 per cent in volume of alcohol in the mixture serves to make the classification of the merchandise as a soap improper. "Soap" is not limited in common understanding to solid combinations, but has been broadened in meaning to include substances liquid in form. The merchandise was properly held dutiable not as a chemical mixture, but as "other soaps not specially provided for" under paragraph 69, Act 1909. U. S. v. Farbenfabriken of Elberfeld Co. (1912) 3 Ct. Cust. App. 358.

Fancy soap.—Where there are irreconcilable differences in the testimony as to the use of the term "fancy soap" in commerce, it cannot be said to have a commercial meaning that is definite, uniform, and general; but since the importation in question consists of cakes of soap, oval in form, translucent, attractive in appearance, agreeable in odor, and appealing to a fastidious taste, it is properly to be regarded as a fancy toilet soap, and was dutiable as such under paragraph 69, Act 1909, and this regardless of whether or not it was perfumed. Downing v. U. S. (1911) 1 Ct. Cust. App. 500.

Medicinal soap.—Calvert's medical soap, containing 20 per cent. of carbolic acid, and used for curative purposes, held not to be dutiable as a "toilet soap," under Act 1890, but under the last clause of said paragraph, "all other soaps not provided for in this act." Park v. U. S. (C. C. 1895) 66 Fed. 731.

"Medicinal soap" held not dutiable as "proprietary medicines," but as soaps not otherwise provided for or as a medicinal preparation or compound. (1886) 18 Op. Atty. Gen. 344.

Tooth soap.—The provision in Act 1897, for "all descriptions of toilet soap" constitutes a more specific enumeration of tooth soap, used as an application to the teeth, than does the provision for "preparations used as applications to the * * * teeth, * * * such as * * * dentifrices, * * * not specially provided for." U. S. v. Park & Tilford (C. C. 1907) 155 Fed. 143.

67. Soda: Benzoate of, 5 cents per pound; chlorate of, and nitrite of, ½ cent per pound; bicarbonate of, or supercarbonate of, or saleratus, and other alkalies containing 50 per centum or more of bicarbonate of soda; hydrate of, or caustic; phosphate of; hyposulphite of; sulphid of, and sulphite of, ¼ cent per pound; chromate and bichromate of, and yellow prussiate of, ¾ cent per pound; borate of, or borax refined; crystal carbonate of, mono-

hydrate, and sesquicarbonate of; sal soda, and soda crystals, ⅛ cent per pound; and sulphate of soda crystallized, or Glauber salts, $1 per ton.

Notes of Decisions

Bichromate of soda.—Bichromate of soda held a "chemical compound or salt," under R. S. § 2502, and not a nonenumerated article. Mason v. Robertson (1891) 11 Sup. Ct. 668, 669, 139 U. S. 624, 35 L. Ed. 293 (reversing [C. C. 1887] 29 Fed. 684); Mason v. Robertson (1890) 139 U. S. 624, 11 Sup. Ct. 668, 35 L. Ed. 293 (reversing [C. C. 1887] 29 Fed. 684). CONTRA, Biddle v. Hartranft (C. C. 1886) 29 Fed. 90.

The jury found that bichromate of soda, a nonenumerated article under the act of March 3, 1883, bears a similitude, in the use to which it may be applied, to bichromate of potash, an enumerated article in said act. Held, that bichromate of soda was subject to the same rate of duty that that act imposes upon bichromate of potash. Biddle v. Hartranft (C. C. 1886) 29 Fed. 90.

68. Sponges: Trimmed or untrimmed but not advanced in value by chemical processes, 10 per centum ad valorem; bleached sponges and sponges advanced in value by processes involving chemical operations, manufactures of sponges, or of which sponge is the component material of chief value, not specially provided for in this section, 15 per centum ad valorem.

Notes of Decisions

Rubber sponges.—Rubber sponges held not dutiable as sponges. See paragraph 368.

69. Talcum, ground talc, steatite, and French chalk, cut, powdered, washed, or pulverized, 15 per centum ad valorem.

Notes of Decisions

French chalk.—Talc in the form of cubes, which is used in making gas burners and insulators, held dutiable as French chalk by similitude, under Act 1897. Kraemer & Foster v. U. S. (C. C. 1910) 180 Fed. 638.

Ground or powdered talc.—Ground talc held dutiable under section 6, Act 1897, as a nonenumerated article partly manufactured, and not under paragraph 97. U. S. v. Gabriel (1901) 122 Fed. 1021, 57 C. C. A. 681, affirming judgment (C. C. 1900) 99 Fed. 716.

Ground talc held dutiable under Act 1897 as a nonenumerated article partly manufactured. U. S. v. Gabriel (C. C. 1900) 99 Fed. 716.

Talc and French chalk are not treated in the decisions as being the same substance. Under these decisions the classification of talc is a question of fact rather than of law, the classification to be determined by the evidence in the particular case. The evidence here on review would make it appear there are two varieties of talc, one crystalline and the other massive—that is, French chalk—and that these commercially are different articles with different uses. The talc of the importation at the port of New York had been sawed to a form and size convenient for the economical manufacture of gas burners and electric insulators, and being a mineral advanced in value and condition was dutiable at 20 per cent. ad valorem as articles partly manufactured and not provided for under section 6, Act 1897, and paragraph 480, Act 1909. There was no evidence to support tne protest of the American Lava Company, and the collector's finding is sustained. American Lava Co. v. U. S. (1913) 3 Ct. Cust. App. 522.

Powdered talc is a substance in itself, not a material made up of a mineral substance; and having a proper regard for the rule that language employed in an act is presumed to have been used in accordance with the construction which has been given it by a long-continued practice of an administrative department or by a court, powdered talc may not be deemed French chalk and dutiable as such, but it is dutiable as a manufactured article under paragraph 480, Act 1909. Salomon v. U. S. (1911) 2 Ct. Cust. App. 92.

70. Vanillin, 10 cents per ounce; vanilla beans, 30 cents per pound; tonka beans, 25 cents per pound.

SCHEDULE B.—EARTHS, EARTHENWARE, AND GLASSWARE

71. Fire brick, magnesite brick, chrome brick, and brick not specially provided for in this section, not glazed, enameled, painted,

vitrified, ornamented, or decorated in any manner, 10 per centum ad valorem; if glazed, enameled, painted, vitrified, ornamented, or decorated in any manner, and bath brick, 15 per centum ad valorem.

Notes of Decisions

Brick other than fire brick.—Certain magnesic brick, glazed, not known in commerce as fire brick, held not within the provision in Act 1894 for "magnesic fire brick," but dutiable as "brick * * * glazed," under paragraph 76 of said act. Fleming v. U. S. (C. C. 1899) 124 Fed. 1014.

The word "brick," other than fire brick, relates to brick used for structural or kindred purposes, and does not apply to all articles in which the word occurs as a designation. Waddell & Co. v. U. S. (1914) 5 Ct. Cust. App. 63.

Fire brick.—Retort settings (fire brick) weighing more than 10 pounds held dutiable by similitude as "fire-brick weighing not more than ten pounds each," under Act 1897. U. S. v. Behrend (1909) 167 Fed. 317, 92 C. C. A. 629.

The rule that the provision in act 1897, for decorated and undecorated articles composed of mineral substances does not cover articles not susceptible of decoration excludes from that paragraph fire brick, which can be, but never are, decorated. Id.

The phrase "fire brick," in Act 1897, is a well-known commercial designation, which means brick made from fire clay, and therefore does not include magnesite brick. U. S. v. O. G. Hempstead & Son (C. C. 1907) 153 Fed. 483.

Fire brick, not capable of decoration, over 10 pounds in weight, designed for linings to retort ovens, held dutiable, under the similitude clause of Act 1897 as "fire brick, weighing not more than ten pounds each, not glazed, enameled, ornamented, or decorated," and not as decorated or undecorated articles and wares of earthy or mineral substances not specially provided for. Wing v. U. S. (C. C. 1902) 119 Fed. 479.

Magnesic brick.—Magnesic brick, which are not fire brick, held dutiable as brick under Act 1894, and not as "magnesic fire brick." Fleming Cement & Brick Co. v. U. S. (C. C. 1897) 84 Fed. 158.

Certain magnesic brick glazed, not known in commerce as fire brick, is dutiable as brick glazed, not as magnesic fire brick. Fleming v. U. S. (C. C. 1899) 124 Fed. 1014.

Welsh quarries.—So-called "Welsh quarries" held not dutiable as "tiles" under Act 1897, but as "brick, other than fire brick." Traitel Bros. v. U. S. (C. C. 1904) 131 Fed. 994.

72. Tiles, plain unglazed, one color, exceeding two square inches in size, 1½ cents per square foot; glazed, ornamented, hand-painted, enameled, vitrified, semivitrified, decorated, encaustic, ceramic mosaic, flint, spar, embossed, gold decorated, grooved and corrugated, and all other earthenware tiles and tiling, except pill tiles and so-called quarries or quarry tiles, but including tiles wholly or in part of cement, 5 cents per square foot; so-called quarries or quarry tiles, 20 per centum ad valorem; mantels, friezes, and articles of every description or parts thereof, composed wholly or in chief value of earthenware tiles or tiling, except pill tiles, 30 per centum ad valorem.

Notes of Decisions

Construction in general.—Of the provisions in Act 1897 (1) for "tiles, plain unglazed one color, exceeding two square inches in size," and (2) for "tiles * * * semivitrified, flint," etc., the latter is more specific; and tiles embraced in both descriptions are dutiable under the latter. Schroeder v. U. S. (1907) 156 Fed. 957, 84 C. C. A. 457.

Glazed tile.—Glazed tile as dutiable under Act 1883, making provision for paving tile. See Rossman v. Hedden (1892) 12 Sup. Ct. 925, 927, 145 U. S. 561, 36 L. Ed. 817 (affirming [C. C. 1888] 37 Fed. 99); Davis v. Seeberger (1890) 44 Fed. 260 (writ of error dismissed Seeberger v. Best [1894] 14 Sup. Ct. 1152, 154 U. S. 516, 38 L. Ed. 1083); Morris v. Seeberger (C. C. 1889) 40 Fed. 58; Rossman v. Hedden (C. C. 1888) 37 Fed. 99.

Articles composed of tiles, which are put together in rows before being fired, their faces forming a plane surface, on which a picture is painted with brown mineral paint, mixed with oil or water, the tiles being then separated and fired, by which process the color of the painting is changed from brown to blue, and the surface of the tile is glazed, after which the tiles are reassembled and framed, in which condition they are imported, being used in the frames for wall decoration, or removed and set in mantles or wainscoting, are dutiable, under Act 1890, as "tiles glazed, painted or vitrified," and not as "paintings in oil or water colors." U. S. v. Richard (1900) 99 Fed. 268, 39 C. C. A. 504.

Painted tiles.—Tiles placed together and painted held not dutiable as tiles. See paragraph 652.

Welsh quarries.—Welsh quarries held not dutiable as tile. See paragraph 71.

73. Lime, 5 per centum ad valorem.

74. Plaster rock or gypsum, crude, ground or calcined, pearl hardening for paper makers' use; white, non-staining Portland cement, Keene's cement, or other cement of which gypsum is the component material of chief value, and all other cements not specially provided for in this section, 10 per centum ad valorem.

Notes of Decisions

Cement.—"Chalk slags," consisting of raw chalk and a small proportion of mud, mixed, dried, and kiln-burned, and afterwards crushed into lumps and used in the manufacture of Portland cement by grinding to a fine powder, which in itself makes a fair low order of cement, held assessable for duty under Act 1883 "as cement, Roman, Portland, and all others." Anglo-American Portland Cement Co. v. Seeberger (C. C. 1889) 39 Fed. 763.

Pearl hardening.—Pearl hardening, an artificial sulphate of lime, obtained by precipitated carbonate of lime with dilute sulphuric acid, held dutiable, under Act 1890, as a nonenumerated manufactured article, and not under paragraph 97 as "plaster of Paris, or gypsum ground." U. S. v. Watson (C. C. 1897) 84 Fed. 160.

75. Pumice stone, unmanufactured, 5 per centum ad valorem; wholly or partially manufactured, ¼ cent per pound; manufactures of pumice stone, or of which pumice stone is the component material of chief value, not specially provided for in this section, 25 per centum ad valorem.

Notes of Decisions

Pumice stone.—Paragraph 89, Act 1909, provides not only for manufactured and unmanufactured pumice stone, but also for partially manufactured pumice stone, and the filed or rolled pumice stone of the importation was dutiable thereunder. Gallagher & Ascher v. U. S. (1914) 5 Ct. Cust. App. 59.

The article known as "composition pumice stone," consisting of ground pumice stone mixed with clay, in the form of bricks or cakes, held not dutiable under the provision in Act 1897 for "articles or wares composed wholly or in chief value of earthy or mineral substances * * * not decorated," but by virtue of the similitude clause dutiable as being substantially similar in texture, material, and use to the "pumice stone, wholly or partially manufactured," therein enumerated. R. J. Waddell & Co. v. U. S. (C. C. 1900) 124 Fed. 301.

76. Clays or earths, unwrought or unmanufactured, not specially provided for in this section, 50 cents per ton; wrought or manufactured, not specially provided for in this section, $1 per ton; china clay or kaolin, $1.25 per ton; fuller's earth, unwrought and unmanufactured, 75 cents per ton; wrought or manufactured, $1.50 per ton; fluorspar, $1.50 per ton: Provided, That the weight of the casks or other containers shall be included in the dutiable weight.

Notes of Decisions

China clay.—Under Act 1897, making china clay dutiable by the ton, duty may properly be laid upon the actual weight of the clay and the moisture therein, if the moisture is not more than is ordinarily found; but duty should not be exacted on an abnormal amount of moisture. The duty on china clay in casks may properly be based on the actual weight of the importation, regardless of the custom of the trade to consider a cask as half a ton and to pay for it on that basis. Perkins, Goodwin & Co. v. U. S. (C. C. 1908) 160 Fed. 272.

Plastillina or modeling clay.—Plastillina or modeling clay held not dutiable as clay. See paragraph 385.

Volcanic earth.—Volcanic earth dried and ground in a mill and used for external application to the human body held not a medicinal preparation for the use of the apothecary or physician as a remedy for disease. U. S. v. Roessler & Hasslacher Chemical Co. (1897) 79 Fed. 313, 24 C. C. A. 604. Dry pulverized earth used as a mud bath can not be deemed a plaster, healing or curative, but dutiable as an earth, wrought or manufactured, under Act 1909. U. S. v. Van Oefele (1913) 4 Ct. Cust. App. 15.

77. Mica, unmanufactured, valued at not above 15 cents per pound, 4 cents per pound; valued above 15 cents per pound, 25

per centum ad valorem; cut mica, mica splittings, built-up mica, and all manufactures of mica, or of which mica is the component material of chief value, 30 per centum ad valorem; ground mica, 15 per centum ad valorem.

Notes of Decisions

Cut mica.—Where mica had been subjected to a treatment which converted the clear sheets into such figures and patterns as are useful in industry and merchantable, the resulting pieces held dutiable as "cut mica," even though some of these are not exactly true in geometric form, and though the sizes are not the standard sizes commonly quoted in trade catalogues. Watson Bros. v. U. S. (1913) 4 Ct. Cust. App. 416.

Mica in small pieces.—Mica in small sheets or pieces, which fall off in the process of thumb-trimming, varying in width from one to two inches and in length from two to three and a half inches, held dutiable under Act 1897, as "mica unmanufactured," and not as "waste, not specially provided for." Myers v. U. S. (C. C. 1901) 110 Fed. 940.

Rough trimmed mica.—Splittings of mica are not manufactures, but are rough-trimmed mica. U. S. v. Myers (1911) 1 Ct. Cust. App. 257.

78. Common yellow, brown, or gray earthenware made of natural unwashed and unmixed clay; plain or embossed, common salt-glazed stoneware; stoneware and earthenware crucibles; all the foregoing, not ornamented, incised, or decorated in any manner, 15 per centum ad valorem; if ornamented, incised, or decorated in any manner and manufactures wholly or in chief value of such ware, not specially provided for in this section, 20 per centum ad valorem; Rockingham earthenware, 30 per centum ad valorem.

Notes of Decisions

Carmelite ware.—So-called "carmelite ware," consisting of earthen cooking ware of a dark brown color, some of the articles having a white lining, and some no lining, are not within the provision for "common * * * brown * * * earthenware," in Act 1897. G. M. Thurnauer & Co. v. U. S. (C. C. 1908) 165 Fed. 62.

Ice tanks.—The provision in paragraph 92, Act 1909, is for yellow earthenware "coated with white or transparent vitreous glaze." This covers all yellow earthenware coated with white or transparent vitreous glaze that has no other ornamentation or decoration than white or vitreous glaze, and this specifically describes an importation of ice tanks made of china or earthenware. Langley v. U. S. (1914) 5 Ct. Cust. App. 76.

Rockingham earthenware.—Decorated teapots held not dutiable as Rockingham earthenware. See paragraph 80.

Sarreguemines.—In Act 1897, providing for "common yellow * * * earthenware," "common" is not a commercial, but a descriptive, term; and Sarreguemines ware, which is of a superior quality, is not within said provision. U. S. v. Reugger (C. C. 1908) 167 Fed. 142.

Seger cones.—Seger cones used to test the temperature of ovens held not dutiable as earthenware made of clay. See paragraph 81.

79. Earthenware and crockery ware composed of a nonvitrified absorbent body, including white granite and semiporcelain earthenware, and cream-colored ware, and stoneware, including clock cases with or without movements, pill tiles, plaques, ornaments, toys, charms, vases, statues, statuettes, mugs, cups, steins, lamps, and all other articles composed wholly or in chief value of such ware; if plain white, plain yellow, plain brown, plain red, or plain black, not painted, colored, tinted, stained, enameled, gilded, printed, ornamented or decorated in any manner, and manufactures in chief value of such ware not specially provided for in this section, 35 per centum ad valorem; if painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner, and manufactures in chief value of such ware not specially provided for in this section, 40 per centum ad valorem.

Notes of Decisions

Decorated earthenware.—Plates and mugs, decorated with pictures and with the letters of the alphabet, and intended for children, known in trade as

"A B C" plates and mugs, held not toys, but dutiable as "decorated earthenware." Maddock v. Magone (C. C. 1890) 41 Fed. 882, judgment affirmed (1894) 14 Sup. Ct. 588, 152 U. S. 368, 38 L. Ed. 482.

Decorated teapots held, under Act 1909, not dutiable as Rockingham earthenware, but as decorated earthenware. Masson v. U. S. (1912) 3 Ct. Cust. App. 420.

80. China and porcelain wares composed of a vitrified nonabsorbent body which when broken shows a vitrified or vitreous, or semivitrified or semivitreous fracture, and all bisque and parian wares, including clock cases with or without movements, plaques, ornaments, toys, charms, vases, statues, statuettes, mugs, cups, steins, lamps, and all other articles composed wholly or in chief value of such ware, if plain white, or plain brown, not painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner; and manufactures in chief value of such ware not specially provided for in this section, 50 per centum ad valorem; if painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner and manufactures in chief value of such ware not specially provided for in this section, 55 per centum ad valorem.

Notes of Decisions

1. Bisque rings.
2. Carmelite ware.
3. Decorated ware.
4. Enameled.
5. Marquardt-masse.
6. Plaques.
7. Porcelain.
8. Printed.
9. Stained ware.
10. Statuettes.
11. Toys.
12. Undecorated porcelain.

1. **Bisque rings.**—Bisque rings for incandescent burners held not dutiable as bisque. See paragraph 385.

2. **Carmelite ware.**—Earthenware cooking utensils known as carmelite ware and in the shape of bowls, which had imposed on them a thin white layer of vitreous glass, forming a smooth, hard coating that differs in color and character from the body on which it is laid, are enameled, and dutiable as such. Frank v. U. S. (1911) 2 Ct. Cust. App. 85.

3. **Decorated ware.**—Merely adding a color to white china for utilitarian purposes does not make decorated china, and china and cooking serving dishes of which the sloping undersides are irregularly colored brown in order to conceal smoke and finger marks, and without decorative effect, are dutiable as undecorated china under Act 1897. G. W. Thurnauer & Bro. v. U. S. (1908) 159 Fed. 122, 86 C. C. A. 86, reversing judgment U. S. v. G. M. Thurnauer & Bro. (C. C. 1907) 152 Fed. 660.

Bottle stoppers of china or porcelain, on which there have been printed in various colors firm names, and trademarks indicated by various devices, such as a monogram, a star, a bird, a lion, etc., held not ornamented or decorated, within paragraphs 84, 85, when "not changed in condition by superadded ornamentation or decoration" (paragraph 84), but "printed or otherwise decorated in any manner" (paragraph 85), and are dutiable under the former, and not the latter, of these provisions. U. S. v. Borgfeldt (C. C. 1900) 123 Fed. 196.

Where "Cenco" is so placed on white china plates and so printed as to be attractive in color and design, it becomes, as well as a trade-mark, a matter of adornment or decoration. U. S. v. Bernard, Judae & Co. (1913) 4 Ct. Cust. App. 403. See, also, Richard & Co. v. U. S. (1913) 4 Ct. Cust. App. 359.

4. **Enameled.**—"Enameled" as employed in paragraph 94, Act 1909, has the limited meaning which it appears always to have borne in ceramics; that is to say, an opaque or colored semivitrified coating applied to the surface of pottery either as a decoration or for a utilitarian purpose. Richards & Co. v. U. S. (1912) 3 Ct. Cust. App. 193.

5. **Marquardt-masse.**—The importer claims the merchandise is made of marquardt-masse. This term is not in common use and no authority is given that sheds any light on the question of what marquardt-masse is, of what it is composed, or how made. The record shows no chemical analysis of the tubes in controversy. Stegemann v. U. S. (1914) 5 Ct. Cust. App. 393.

The importer's contention is that the tubes were not dutiable under paragraph 94, but paragraph 95, Act 1909. The burden is on him of establishing both these claims. Under the evidence if it were assumed the first contention is sound there is no proof of the other. Id.

6. **Plaques.**—Flat, rectangular porcelain panels decorated by means of paints known as mineral colors, as distinguished from oil and water colors, and completed by firing, held dutiable, under Act 1894, as plaques, and not

free, as "paintings in oil or water colors, * * * not otherwise specifically provided for, * * * and not made wholly or in part by stenciling or other mechanical process." Bour v. U. S. (C. C. 1898) 91 Fed. 533.

Free-hand paintings on plaques, painted with mineral colors, and subjected to a process of firing, held dutiable as "plaques * * * painted in any manner," under Act 1894, and not free as "paintings, in oil or water colors, * * * not otherwise provided for," and "not made wholly or in part by * * * mechanical process." Altman & Co. v. U. S. (C. C. 1896) 71 Fed. 393.

7. **Porcelain.**—Porcelain paintings held not dutiable under this paragraph. See paragraph 652.

Proof that insulators for spark plugs is talc does not disprove the collector's return that the article is porcelain; and no satisfactory disproof of return in this case having been made, its correctness stands unimpeached. Herz & Co. v. U. S. (1915) 5 Ct. Cust. App. 547.

Porcelain is a highly finished translucent pottery, usually glazed, while earthenware is a cruder and inferior product. They are both earthenware, but the statute distinguishes them, and under the statute crucibles of porcelain held not earthenware, but dutiable under paragraph 94, Act 1909. Sargent Co. v. U. S. (1913) 4 Ct. Cust. App. 462.

8. **Printed.**—Neither the tariff act nor the trade-mark statute contains any express provision according to which the employment of "Rajah" printed on a porcelain spark plug can be taken to fix an exemption in favor of such a ware as against similar ware printed with similar names in common use. The spark plugs held dutiable as printed ware. Richard & Co. v. U. S. (1913) 4 Ct. Cust. App. 359.

9. **Stained ware.**—Earthenware, to which a single color glaze has been added, held under Act 1897, not only "decorated," but "stained." U. S. v. L. Straus & Co. (C. C. 1909) 168 Fed. 569.

10. **Statuettes.**—Statuettes composed of plaster of paris held not dutiable as chinaware, including statuettes, etc. See paragraph 369.

11. **Toys.**—If decorated china earthenware is bought, sold, and used under the name of "toys," it is to be classified for duty under paragraph 425, Act 1883, and it is unimportant whether the articles are used for playthings for children or for household purposes. Zeh v. Cadwalader (C. C. 1889) 42 Fed. 525, judgment affirmed Cadwalader v. Zeh (1894) 14 Sup. Ct. 288, 151 U. S. 171, 38 L. Ed. 115.

12. **Undecorated porcelain.**—A substance made of waste melilite or lava that has been pulverized, and after an addition made of oxide of magnesia and alkalies has been molded in the fashion of porcelain and then fired, held dutiable within paragraph 96, Act 1897. U. S. v. Morris European & American Express Co. (1911) 1 Ct. Cust. App. 300.

81. Earthy or mineral substances wholly or partially manufactured and articles and wares composed wholly or in chief value of earthy or mineral substances, not specially provided for in this section, whether susceptible of decoration or not, if not decorated in any manner, 20 per centum ad valorem; if decorated, 25 per centum ad valorem; unmanufactured carbon, not specially provided for in this section, 15 per centum ad valorem; electrodes for electric furnaces, electrolytic and battery purposes, brushes, plates, and disks, all the foregoing composed wholly or in chief value of carbon, 25 per centum ad valorem; manufactures of carbon not specially provided for in this section, 20 per centum ad valorem.

Notes of Decisions

1. Construction of paragraph in general.
2. "Composed."
3. "Mineral substance."
4. Carbon.
5. Ceylon sapphire.
6. Fire brick.
7. Flint glazing stones.
8. Granite.
9. Ground talc.
10. Hone stones.
11. Jade.
12. Lava stone.
13. Magnesia rings.
14. Metal polish.
15. Modeling clay.
16. Molybdenite.
17. Nicol prisms.
18. Polishing powder.
19. Polishing stones.
20. Pumice stone.
21. Rubbing or scouring bricks.
22. Sapphires.
23. Seger cones.
24. Water of Ayr whetstone.

1. **Construction of paragraph in general.**—The phrase, "all articles composed * * * of mineral substances," in Act 1894, must be construed, by reason of the collocation of the paragraph in a restricted sense, as applying only to articles composed of mineral substances similar to those enumerated in that schedule. Dingelstedt v. United States, 91 Fed. 112, 33 C. C. A. 395,

affirming judgment (C. C. 1897) 87 Fed. 190.

The provision in Act 1897 for mineral substances being limited to articles susceptible of decoration, wares not susceptible of decoration are not to be brought within the paragraph through the operation of the similitude clause. M. Kirschberger & Co. v. U. S. (C. C. 1908) 166 Fed. 1012.

This case was based upon the tariff law of 1897, in which the provision relating to articles composed of earthy or mineral substances was restricted by the phrase "whether decorated or not"; and this phrase had been held to exclude from the operation of the paragraph articles not susceptible of decoration. Jackson & Co. v. U. S. (1916) 6 Ct. Cust. App. 512.

Earthy and mineral substances are not dutiable under paragraph 95, Act 1909, but articles made out of earthy or mineral substances are—that is to say, articles that are something more than the material out of which they are made, being distinguishable from the mass out of which they were developed by a definite shape and form adapted to a final use. U. S. v. Embossing Co. (1912) 3 Ct. Cust. App. 220. See, also, Same v. Tamm & Co. (1912) 2 Ct. Cust. App. 425; Salomon v. U. S. (1911) 2 Ct. Cust. App. 92.

2. **"Composed."**—"Composed," under Act 1909, does not imply that an article to be "composed" must be made of more than one substance; an article may be composed of a single substance. U. S. v. Tamm & Co. (1912) 2 Ct. Cust. App. 425.

3. **"Mineral substance."**—The phrase "mineral substances" does not mean substances in the plural, to the exclusion of substance in the singular. U. S. v. Tamm & Co. (1912) 2 Ct. Cust. App. 425.

4. **Carbon.**—Blood charcoal held not dutiable as an article of carbon. See paragraph 447.

Carbon points held not dutiable as articles composed of mineral substances. See paragraph 82.

Carbon sticks, which must undergo a slight process of manufacture to be fit for use in electric lamps, not being dutiable under Act 1897 as "carbons for electric lighting," because unfinished, nor, as articles composed of carbon, not specially provided for, decorated or undecorated, because not susceptible of decoration, held dutiable under the similitude clause, at the rate levied by paragraph 98 on the finished product. Judgment U. S. v. R. F. Downing & Co. (1906) 26 Sup. Ct. 476, 477, 201 U. S. 354, 50 L. Ed. 786, reversing judgment U. S. v. Downing (1904) 129 Fed. 90, 63 C. C. A. 532.

Carbon sticks, intended for use in electric lighting, which must be cut into suitable lengths, and the ends pointed or ground, before they can be so used, held dutiable under Act 1897, as articles or wares composed wholly of carbon, not specially provided for, and not as carbons for electric lighting. U. S. v. Reisinger (1899) 94 Fed. 1002, 36 C. C. A. 626.

The rods of the importation, when fitted with brass caps, make poles of a galvanic battery of a kind, though not completed poles. Reviewing the legislative history of paragraph 95, Act 1909, and the construction it has received by the courts, the intention is manifest that articles like those described are not subject to the duties imposed by that paragraph upon articles and wares composed of earthy or mineral substances. The merchandise is a manufacture of carbon and is classifiable and dutiable as a nonenumerated manufacture under paragraph 480. Stegemann v. U. S. (1913) 4 Ct. Cust. App. 5.

5. **Ceylon sapphire.**—Small pieces of Ceylon sapphires used as bearings for electrical meters, etc., held dutiable under Act 1909 as articles composed of earthy or mineral substances, and not as semiprecious stones or as precious stones cut, but not set. U. S. v. General Electric Co. (1913) 4 Ct. Cust. App. 287.

6. **Fire brick.**—Fire brick held not dutiable under the terms of this paragraph. See paragraph 71.

7. **Flint glazing stones.**—Solid flint glazing stones held dutiable as articles composed wholly or in chief value of earthy or mineral substances. U. S. v. Tamm & Co. (1912) 2 Ct. Cust. App. 425.

8. **Granito.**—Granito, a manufacture of marble waste, crushed and screened, is dutiable under paragraph 81, Act 1913, as an article composed of earthy or mineral substance, not specially provided for. Jackson & Co. v. U. S. (1916) 6 Ct. Cust. App. 512.

9. **Ground talc.**—Ground talc held not dutiable under the terms of this paragraph. See paragraph 69.

10. **Hone stones.**—Hone stones designed as polishers held properly assessed as marble polishers composed of a mineral substance under Act 1909. Waddell & Co. v. U. S. (1912) 3 Ct. Cust. App. 406.

11. **Jade.**—Articles such as tableware, ornaments, etc., manufactured from jade, held, under Act 1897, not "precious stones," or unenumerated articles, but dutiable as "articles and wares composed wholly or in chief value of * * * mineral substances." C. L. Tiffany & Co. v. U. S. (C. C. 1903) 126 Fed. 255.

12. **Lava stone.**—Lava stone per se held not in all cases a monumental or building stone, and was not free as lava unmanufactured, but dutiable as articles composed wholly or in chief

value of earthy or mineral substances not specially provided for. U. S. v. Manufacturers' Paper Co. (1913) 4 Ct. Cust. App. 110. See, also, Waddell & Co. v. U. S. (1912) 3 Ct. Cust. App. 406; U. S. v. Stouffer (1912) 3 Ct. Cust. App. 67; Same v. Tamm & Co. (1912) 2 Ct. Cust. App. 425.

13. Magnesia rings.—Magnesia rings used for holding in place the incandescent mantles of gas burners held dutiable under Act 1909, as articles composed wholly or in chief value of earthy or mineral substances, not specially provided for and not decorated, whether susceptible of decoration or not. U. S. v. Fensterer & Ruhe (1911) 2 Ct. Cust. App. 368. See, also, Fensterer v. U. S. (1910) 1 Ct. Cust. App. 93.

14. Metal polish.—Metal polish held not dutiable as earthy or mineral substance. See paragraph 385.

15. Modeling clay.—Modeling clay containing saponifiable matter held not dutiable as earthy or mineral substance. See paragraph 385.

16. Molybdenite.—Molybdenite held not dutiable as a mineral substance partly manufactured. See paragraph 549.

17. Nicol prisms.—The importations of nikols or Nicol prisms are manufactured from the mineral substance known as carbonate of calcium, and, as articles or wares of that class are not otherwise provided for, these are dutiable at 35 per cent. ad valorem under the provisions of paragraph 95, Act 1909. U. S. v. Bausch & Lomb Optical Co. (1914) 5 Ct. Cust. App. 416.

18. Polishing powder.—Polishing powder held not dutiable as articles composed of mineral substances. See paragraph 60.

19. Polishing stones.—Tam O'Shanter stones for polishing held dutiable under paragraph 95, Act 1909, as articles or wares in chief value of earthy or mineral substances, and not classifiable as waste or minerals crude. Waddell & Co. v. U. S. (1914) 5 Ct. Cust. App. 188.

20. Pumice stone.—Composition pumice stone held not dutiable under the terms of this paragraph. See paragraph 75.

21. Rubbing or scouring bricks.—The importation is a stone, in brick shape it is true, but it is used in water in the process of rubbing, scouring, and cleaning marble, thus disintegrating in its use. It was properly assessed as an article or ware composed wholly or in chief value of earthy or mineral substances not specially provided for, not decorated, under paragraph 95, Act 1909. Waddell & Co. v. U. S. (1914) 5 Ct. Cust. App. 63.

22. Sapphires.—Sapphires intended for bearings held not dutiable as articles composed of mineral substances. See paragraph 357.

23. Seger cones.—"Seger cones," used as a rough test of the temperature of ovens, held dutiable under Act 1909 as articles of earthy or mineral substances. U. S. v. Eimer & Amend (1913) 4 Ct. Cust. App. 478.

24. Water of Ayr whetstone.—Water of Ayr whetstone, used to smooth the rough surfaces of engraved rollers held dutiable as an article of earthy or mineral substance under Act 1909. U. S. v. Johnson & Co. (1913) 4 Ct. Cust. App. 104. See, also, Waddell & Co. v. U. S. (1912) 3 Ct. Cust. App. 406; Manufacturers' Paper Co. v. U. S. (1912) 3 Ct. Cust. App. 72; U. S. v. Tamm & Co. (1912) 2 Ct. Cust. App. 425.

82. Gas retorts, 10 per centum ad valorem; lava tips for burners, 15 per centum ad valorem; carbons for electric lighting, wholly or partly finished, made entirely from petroleum coke, 15 cents per hundred feet; if composed chiefly of lampblack or retort carbon, 40 cents per hundred feet; carbons for flaming arc lamps, not specially provided for in this section, and filter tubes, 30 per centum ad valorem; porous carbon pots for electric batteries, 15 per centum ad valorem.

Notes of Decisions

Carbon.—Carbon sticks held not dutiable as carbons for electric lighting. See paragraph 81.

Carbon points for arc lights, composed chiefly of lampblack, natural graphite, and carbon products resulting from the distillation of coal, coke, or petroleum and coal tar, in varying proportions, the lampblack being produced by the combustion of either mineral or vegetable substances, held dutiable, under Act 1894 as manufactured articles not provided for, and not as articles composed of mineral substances not specially provided for. Judgment (C. C. 1897) 87 Fed. 190, affirmed. Dingelstedt v. U. S. (1898) 91 Fed. 112, 33 C. C. A. 395.

Soapstone gas tips.—Soapstone gas tips held dutiable as nonenumerated manufactured articles. See paragraph 385.

83. Plain green or colored, molded or pressed, and flint, lime, or lead glass bottles, vials, jars, and covered and uncovered demi-

johns, and carboys, any of the foregoing, filled or unfilled, not otherwise specially provided for in this section, and whether their contents be dutiable or free (except such as contain merchandise subject to an ad valorem rate of duty, or to a rate of duty based in whole or in part upon the value thereof which shall be dutiable at the rate applicable to their contents), 30 per centum ad valorem: Provided, That the terms bottles, vials, jars, demijohns, and carboys, as used herein, shall be restricted to such articles when suitable for use as and of the character ordinarily employed as containers for the holding or transportation of merchandise, and not as appliances or implements in chemical or other operations.

Notes of Decisions

1. Blanks.
2. Bottles filled.
3. Bottles for scientific purposes.
4. Etched bar bottles.
5. Hock bottles or secondhand bottles.
6. Jars.
7. Molded and pressed glass bottles.
8. Molded flint glass bottles.
9. Plain glass bottles.
10. Reagent bottles.
11. Siphon bottles.
12. Thermo bottles.
13. Vials.

1. Blanks.—Oval glass blanks blown in molds held not dutiable as glassware. See paragraph 95.

2. Bottles filled.—Separate duty on bottles filled with ginger ale. See paragraph 248.

Separate duty on bottles filled with liquor. See paragraphs 243–245.

Separate duty on bottles filled with soda water. See paragraph 248.

Glass soda bottles holding less than one pint, and which constitute the usual and necessary coverings of the soda water imported therein, held not dutiable under Act 1894. In paragraph 88 of that act, fixing the duties on glass bottles, the clause "whether filled or unfilled and whether their contents are dutiable or free" applies only to the articles previously enumerated in the subdivision in which such clause is found, namely, bottles holding more than one pint, and demijohns and carboys. U. S. v. Ross (1898) 91 Fed. 108, 33 C. C. A. 361 (affirming judgment [C. C. 1897] 84 Fed. 153); Merck v. U. S. (C. C. 1899) 99 Fed. 432.

The provisions for filled glass bottles prescribed in the act of 1883 held not repealed by force of the provision as to coverings, Act 1890, § 19, post, § 5599. U. S. v. Austin Nicholls & Co. (1902) 22 Sup. Ct. 918, 186 U. S. 298, 46 L. Ed. 1173.

In imposing the ad valorem duty provided by Act 1897 on bottles filled with olive oil, there should be taken as the dutiable value of the bottles only the value of the bottles by themselves, exclusive of corks, capsules, labels, reed envelopes, wooden cases, cost of filling, etc., all of which should be attributed to the contents rather than to the bottle. James A. Hayes & Co. v. U. S. (1906) 150 Fed. 63, 80 C. C. A. 17, writ of certiorari denied U. S. v. James A. Hayes & Co. (1907) 28 Sup. Ct. 261, 207 U. S. 595, 52 L. Ed. 356.

Paragraph 258, Act 1897, relating to "anchovies * * * in bottles," and paragraph 276, relating to extract of meat, and providing that "the dutiable weight of the fluid extract of meat shall not include the weight of the package in which the same is imported," held not to be construed as removing bottles containing the merchandise enumerated in said paragraphs from the provision in paragraph 99 for "bottles * * * filled or unfilled, not otherwise specially provided for, and whether their contents be dutiable or free." James P. Smith & Co. v. U. S. (1904) 130 Fed. 104, 64 C. C. A. 438, affirming judgment (C. C. 1903) 124 Fed. 291.

Act 1897, par. 99, provides that glass bottles "filled or unfilled, * * * and whether their contents be dutiable or free (except such as contain merchandise subject to an ad valorem rate of duty, * * * which shall be dutiable at the rate applicable to their contents) shall pay duty as follows: If holding more than one pint, one cent per pound; if holding not more than one pint, * * * one and one-half cents per pound: * * * provided, that none of the above articles shall pay a less rate of duty than 40 per centum ad valorem." Held, that the proviso applies as well to bottles containing merchandise subject to an ad valorem duty as to others. U. S. v. Hensel (1901) 106 Fed. 70, 45 C. C. A. 226.

Held, that the cost of the fittings for filled bottles, consisting of corks, caps, capsules, labels, and wiring, should be treated as part of the value of the bottles on which the ad valorem duty should be assessed which is provided on filled bottles by paragraph 99, Act 1897. Francis H. Leggett & Co. v. U. S. (C. C. 1905) 138 Fed. 970.

Glass bottles, filled with a medicinal preparation dutiable at 25 per cent. ad valorem, are dutiable under the exception in paragraph 99 of the act of 1897, relating to glass bottles and vials, filled or unfilled, "such as contain merchandise subject to an ad valorem rate of duty, or to a duty based in whole or in part on the value thereof, which shall be dutiable at the rate

applicable to their contents." Hensel v. U. S. (C. C. 1900) 99 Fed. 259.

Under paragraph 104, Act 1890, which provides that glass bottles filled with an article that pays an ad valorem duty shall pay the same duty as the contents, the dutiable value being ascertained by adding the value of the contents to the value of the bottles, "provided that no article manufactured from glass described in the preceding paragraph shall pay a less rate of duty than forty per centum ad valorem," glass bottles filled with blacking, dutiable at 25 per cent. ad valorem, under paragraph 11, are liable to duty at the rate of 40 per centum ad valorem. In re Salomon (C. C. 1893) 55 Fed. 285.

Act 1909, par. 97, excepting bottles the contents of which are subject to an ad valorem duty, and section 5599, post, making coverings part of the value of the article are in pari materia and are to be construed together. The parenthetical clause of paragraph 97 operates to except the bottles there described, leaving these for assessment at the same rate with their contents under the provisions and in the mode pointed out by section 5599. U. S. v. Conkey & Co. (1912) 3 Ct. Cust. App. 245.

3. Bottles for scientific purposes.—"Bottles," in Act 1897, par. 99, exclude blown glass flasks for chemical laboratories, dutiable under paragraph 100 as "blown glassware." Eimer & Amend v. U. S. (1909) 168 Fed. 240, 93 C. C. A. 454.

Held, that certain bottle-like containers, of glass, used in chemical operations, and known as Koch flasks, and certain so-called Woulf flasks, shaped like bottles, but having two or three necks apiece, are "bottles" or "jars," within the meaning of Act 1897, par. 99. Eimer & Amend v. U. S. (C. C. 1903) 126 Fed. 439.

An importation of bottles and bottle-shaped receptacles holding less than a pint, used by chemists for their operations, held dutiable under Act 1894, par. 88, as "bottle glassware, not specially provided for," at three-fourths of a cent a pound. Eimer v. U. S. (C. C. 1900) 99 Fed. 423.

4. Etched bar bottles.—Hollow, translucent vessels, molded from glass, and etched with fluoric acid, representing female figures, the head separable from the body, and fitting closely on a narrow neck, so as to form a stopper, of the capacity of 7½ and 18⅛ fluid ounces, respectively, and used as bar bottles, held dutiable as "bottles," under Act 1890, par. 103, and not as "pressed glassware," under paragraph 105; nor are they dutiable under paragraph 106, which does not include "etched" glassware in its enumeration of ornamental glassware. In re Smith (C. C. 1893) 55 Fed. 476, judgment affirmed Smith v. Mihalovitch (1894) 61 Fed. 399, 9 C. C. A. 552.

5. Hock bottles or secondhand bottles.—Empty pint wine bottles, commercially known as "hock bottles," held dutiable under the final clause of paragraph 88 of the tariff act of 1894, at 40 per cent. ad valorem, and not under the second clause, at 1¾ cents per pound, as vials holding not more than one pint, and not less than one-quarter of a pint. Grace v. Collector of Customs of Port and District of San Francisco (1897) 79 Fed. 315, 24 C. C. A. 606.

Secondhand bottles, capable of being used as bottles, held not junk, within Act 1897, but bottles, under paragraph 99. Carberry v. U. S. (C. C. 1902) 116 Fed. 773.

Hock bottles, holding not more than one pint, and not less than one-quarter of a pint, though commercially known as "bottles," and not as "vials," held dutiable at 1⅛ cents per pound, under the second clause of paragraph 88, Act 1894. In re Grace (C. C. 1896) 75 Fed. 2.

6. Jars.—A receptacle 2 by 6 by 10 inches, with open top, and no apparent provision for covering, used by photographers as a bath for sensitized photographers' plates, does not fall within the provision for jars in paragraph 97 of the act of 1909, as the term "jars," as there employed, is expressly restricted to such as are ordinarily employed as containers for the holding or transportation of merchandise. Gallagher & Ascher v. U. S. (1915) 6 Ct. Cust. App. 387.

7. Molded and pressed glass bottles.—Molded and pressed glass bottles with cut glass stoppers held not dutiable as molded and pressed glass. See paragraph 84.

In Act 1897, par. 99, the term "molded," as applied to glassware, is synonymous with "pressed." U. S. v. Heil Chemical Co. (1910) 178 Fed. 537, 102 C. C. A. 47.

8. Molded flint glass bottles.—Flint-glass bottles, molded, and holding more than one pint, held dutiable under Act 1890, par. 103, and not under paragraph 105. Smith v. Mihalovitch (C. C. A. 1894) 61 Fed. 399, affirming judgment In re Smith (C. C. 1893) 55 Fed. 476.

9. Plain glass bottles.—Glass bottles having a name sand blasted thereon held not dutiable as plain glass bottles. See paragraph 84.

The provision in Act 1897, par. 99, for "plain" glass bottles, held not to include fancy bottles with metal mountings. Mark Cross Co. v. U. S. (C. C. 1906) 150 Fed. 610.

10. Reagent bottles.—Reagent bottles are admissible free of duty as plain glass bottles, or, at most, should only be charged with duty, under paragraph

99, Act 1897, and not as ornamental or lettered, under paragraph 100, the lettering on them being for utility, and not for ornament. O. G. Hempstead & Son v. U. S. (C. C. A. 1903) 122 Fed. 752.

11. **Siphon bottles.**—Glass siphon bottles, intended for holding gas-charged waters, having etched thereon merely a name and address, with the words, "This siphon not to be sold," all inclosed in rectangular lines, held not dutiable under paragraph 90, Act 1894, as ornamented or decorated bottles, but as plain glass bottles, under paragraph 88. Koscherak v. U. S. (1899) 98 Fed. 596, 39 C. C. A. 166.

12. **Thermo bottles.**—It is not shown that the goods (thermo bottles) consist of the ordinary articles recognized as containers for holding or transporting merchandise. They are a product which, while still known as bottles, and while blown, are in class by themselves, and, so far as the record discloses, fall without the provisions of paragraph 97, Act 1909, and within those of paragraph 98, there being an entire absence of proof to overcome the presumption arising in favor of the action of the collector. Stegemann v. U. S. (1913) 4 Ct. Cust. App. 26.

13. **Vials.**—Glass bottles filled with merchandise at ad valorem rates, holding not more than a pint, held not subject to duty under Act 1894, par. 88, as vials holding not more than a pint, and not less than a quarter of a pint, or as "all other glassware." U. S. v. Austin, Nichols & Co. (1903) 121 Fed. 729, 58 C. C. A. 149.

Glass jars containing preserves, and holding one pint or less, held not "vials," within paragraph 88, Act 1894, but dutiable as part of the market value of the merchandise contained in them, as provided in section 19 of the customs administrative act of 1890 (section 5599, post). Smith v. U. S. (C. C. 1899) 91 Fed. 757.

84. Glass bottles, decanters, and all articles of every description composed wholly or in chief value of glass, ornamented or decorated in any manner, or cut, engraved, painted, decorated, ornamented, colored, stained, silvered, gilded, etched, sand blasted, frosted, or printed in any manner, or ground (except such grinding as is necessary for fitting stoppers or for purposes other than ornamentation), and all articles of every description, including bottles and bottle glassware, composed wholly or in chief value of glass blown either in a mold or otherwise; all of the foregoing, not specially provided for in this section, filled or unfilled, and whether their contents be dutiable or free, 45 per centum ad valorem: Provided, That for the purposes of this Act, bottles with cut-glass stoppers shall, with the stoppers, be deemed entireties.

Notes of Decisions

1. Construction of paragraph in general.
2. Blown glassware.
3. Bohemian glass.
4. Bottles with stoppers.
5. Colored glass.
6. Containers.
7. Cut glass.
8. Etched glass.
9. Glass articles ground.
10. Microscopic slides.
11. Mosaics.
12. Ornamented or decorated glassware.
13. Thermo bottles.

1. **Construction of paragraph in general.**—To bring glass bottles within paragraph 90, Act 1894, the cutting, engraving, etching, etc., thereon must be substantial and sufficient to amount to an ornament or decoration; otherwise, they are dutiable as plain glass bottles under paragraph 88. Koscherak v. U. S. (1899) 98 Fed. 596, 39 C. C. A. 166.

2. **Blown glassware.**—Blanks held not dutiable as blown glassware. See paragraph 95.

Glass blanks produced by blowing glass into a mold held not blown glassware. See paragraph 95.

Thermometer and lactoscopes composed chiefly of blown glass held not dutiable as blown glassware. See paragraph 95.

In Act 1897 the term "blown glassware" includes articles blown in a mold as well as free-handed. U. S. v. Heil Chemical Co. (1910) 178 Fed. 537, 102 C. C. A. 47.

The term "glassware" in the provision for "blown glassware" in Act 1897 is not a term of general commercial designation. U. S. v. Durand, 137 Fed. 382, 69 C. C. A. 566, affirming judgment (C. C. 1903) 127 Fed. 624.

Gauge glasses, consisting of sections of glass tubes ready for mounting, made by a workman inserting a hollow iron rod into a pot of molten glass, and blowing a bulb from the glass adhering to the rod, and again dipping the bulb into the pot to secure the adherence of enough more glass to draw out the tube to the required length, held "blown glassware," within Act 1897, and not manufactures of glass not specially provided for. Rogers v. U. S. (1903) 121 Fed. 546, 57 C. C. A. 608, affirming judgment (C. C. 1902) 115 Fed. 233.

Act 1897, imposing a 60 per cent. ad

valorem duty on "vessels of glass, * * * decorated, * * * and any articles of which such glass is the component material of chief value, and porcelain, opal and other blown glassware, all of the foregoing filled or unfilled," covers decorated articles of glass not susceptible of being filled. Stern v. U. S. (1901) 105 Fed. 937, 45 C. C. A. 141.

Photographic glass baths held dutiable under Act 1909 as blown glass. Gallagher & Ascher v. U. S. (1915) 6 Ct. Cust. App. 387.

This glassware is composed of blown bowls with molded stems and feet. There was no evidence by which a finding could be made of the value of the blown bowl or that of the molded stem and foot when these first took on the character of blown or molded glass; and the finding of the collector that blown glass was the component material of chief value was unimpeached. U. S. v. Gredelue (1914) 5 Ct. Cust. App. 298.

The general rule is that an excepting clause relates to what immediately precedes it, and that it will be so construed unless the legislature has clearly manifected a contrary intent, and there is in paragraph 98, Act 1909, no indication of intent to apply the exemption to what follows as well as to what goes before it. The given articles of glass blown in a mold were dutiable under that paragraph. Scientific Supply Importing Co. v. U. S. (1914) 5 Ct. Cust. App. 56.

3. **Bohemian glass.**—The tariff act of 1890 held a substitute for all prior tariff legislation, so far, at least, as such legislation lays a duty upon imported articles of any kind; and Bohemian glass, imported after October 6, 1890, although specifically enumerated eo nomine in the tariff act of 1883, and only generally enumerated as an "article of glass, colored," etc., in Act 1890, held dutiable under the latter act, and not under the former act, which is no longer in force, as to the imposition of duties. In re Straus (C. C. 1891) 46 Fed. 522.

4. **Bottles with stoppers.**—Bottles, made of glass, plain, blown, or molded, designed to be subsequently fitted with cut-glass stoppers, held, under Act 1897, not dutiable as articles apart from the glass stoppers imported with them. Park & Tilford v. U. S. (C. C. 1909) 174 Fed. 831; Park & Tilford v. U. S. (1910) 1 Ct. Cust. App. 34.

Held, that certain bottles made of molded or pressed glass, with stoppers that have been cut or ground more than is necessary for fitting, held dutiable under Act 1897, relating to "glass bottles * * * cut, * * * ground (except such grinding as is necessary for fitting stoppers)," and not as "molded or pressed * * * glass bottles," under paragraph 99. Utard v. U. S. (1904) 128 Fed. 422, 63 C. C. A. 164, affirming judgment (C. C. 1903) 124 Fed. 997.

Glass bottles, fitted with cut glass stoppers that constitute the element of chief value in the whole article, held dutiable as articles in chief value of cut glass, under Act 1897. Park & Tilford v. U. S. (C. C. 1909) 174 Fed. 831.

5. **Colored glass.**—The goods in controversy are small hemispherical glass insulators, to the glass of which in a melted state an amber color has been given by mixing appropriate coloring matter. From its terms and its legislative history, paragraph 98, Act 1909, must be taken to cover all articles of colored glass not otherwise specifically provided for, and the colored glass insulators here are dutiable as assessed under that paragraph. U. S. v. Wakem & McLaughlin (1912) 2 Ct. Cust. App. 411.

6. **Containers.**—In paragraph 98, Act 1909, it was intended to declare that, if an article otherwise within the paragraph was susceptible of use as a container, no difference should be made in its assessment whether unfilled or filled, as imported, with contents dutiable or free. Scientific Supply Importing Co. v. U. S. (1914) 5 Ct. Cust. App. 56. See, also, Stern v. U. S. (1901) 105 Fed. 937, 45 C. C. A. 141; Dingelstedt v. U. S. (1898) 91 Fed. 112, 33 C. C. A. 395.

7. **Cut glass.**—Articles in chief value of paste cut held not dutiable as cut glass. See paragraph 95.

Glass tumblers the entire surface of the bottom of which has been smoothed previous to their importation into the United States held cut glass. Binns v. Lawrence (1851) 12 How. 9, 14, 13 L. Ed. 871.

Glass tumblers, on the sides of which ornamental figures have been engraved previous to their importation into the United States, held cut glass. Id.

Small squares, triangles, and circles of glass, the squares from 2½x2½ to 4x4, and the circles from 5 to 6 inches in diameter, with edges beveled and polished, held dutiable as "articles of glass cut," under Act 1883, rather than as "cast polished plate glass, unsilvered," not exceeding 10x15 inches square. In re Popper (C. C. 1891) 50 Fed. 66.

Disks of glass known as "spectacle lenses," which have been ground or polished for use in spectacles, and which only require to be cut and fitted to the frame, are not exempt from duty as "plates or disks of glass unwrought, for use in the manufacture of optical instruments," but are dutiable as "articles of glass cut, engraved," etc. Fox v. Cadwalader (C. C. 1889) 42 Fed. 209.

8. **Etched glass.**—The provision in Act 1897 for "articles of glass, * * * etched, * * * or otherwise orna-

mented, decorated," etc., held not to apply to articles that have been etched otherwise than for ornamentation or decoration. Eimer & Amend v. U. S. (C. C. 1903) 126 Fed. 439.

9. Glass articles ground.—In Act 1897, par. 100, the provision for "articles of glass * * * ornamented, decorated, or ground (except such grinding as is necessary for fitting stoppers)," is not limited to articles in which the grinding is done for ornamental or decorative purposes, but includes plain goods ground for utility purposes only. U. S. v. Heil Chemical Co. (1910) 178 Fed. 537, 102 C. C. A. 47; Thos. McMullen & Co. v. U. S. (C. C. 1901) 123 Fed. 847.

Glass bottles having the words "Thos. McMullen & Co.'s White Label" ground thereon by means of the process of sand-blasting held dutiable under the provision in paragraph 100, Act 1897, for "glass bottles, * * * ground," and not under paragraph 99 of said act, relating to "plain * * * glass bottles." Thos. McMullen & Co. v. U. S. (C. C. 1901) 123 Fed. 847.

Glass blanks ground on the edge and bottom are dutiable under Act 1897, as "articles of glass, ground," without regard to the purpose for which the grinding was done. U. S. v. Louis Hinsberger Cut Glass Co. (C. C. 1899) 94 Fed. 645.

10. Microscopic slides.—Microscopic slides held not dutiable as articles of glass cut. See paragraph 85.

In Act 1897, par. 100, providing for "vessels or articles of glass, * * * all the foregoing, filled or unfilled, and whether their contents be dutiable or free," the reference to the filling of such articles does not, in view of the history of the legislation, imply that only articles capable of being used as containers are covered by the paragraph; and microscope slides cannot for that reason be excluded. O. G. Hempstead & Son v. U. S. (1907) 158 Fed. 584, 86 C. C. A. 42.

11. Mosaics.—These goods have been so far advanced beyond the condition of a mere raw material that they have received not only a distinctive name, but a special definite form that commits them to a specific ultimate use and apparently renders them commercially unfit for anything else. The language of paragraph 98, Act 1909, is broad enough to cover articles of glass other than those denominatively provided for, and these glass mosaics were dutiable under that paragraph. U. S. v. Foscato (1915) 6 Ct. Cust. App. 15.

12. Ornamented or decorated glassware.—Etched bottles held not dutiable as ornamented glassware. See paragraph 83.

Reagent bottles held not dutiable as ornamented bottles. See paragraph 83.

Siphon bottles held not ornamented or decorated. See paragraph 83.

Glass eyes for dolls, in which the iris and the pupil have been skillfully painted or traced held dutiable under Act 1897 as "articles of glass, * * * painted * * * or otherwise ornamented, decorated," etc. R. Hoehn Co. v. U. S. (1905) 142 Fed. 1038, 73 C. C. A. 595, affirming judgment (C. C. 1904) 139 Fed. 301.

Glass siphon bottles intended for holding gas-charged water, having etched thereon the outlines of the figure of a woman inclosed in an oval panel resting on a scrolled base, held ornamented or decorated. Koscherak v. U. S. (1899) 98 Fed. 596, 39 C. C. A. 166.

Glassware ornamented with metal filigree work held dutiable as "articles of glass, * * * ornamented, decorated," etc., under Act 1897, par. 100, regardless of whether glass or metal is the component of chief value. Gallenkamp v. Rachman (C. C. 1906) 147 Fed. 769.

As to certain cut glass thermometers, the cutting on which is not shown to ornament or decorate the articles, held, that they are not within the provision in Act 1897, for "articles of glass, cut, * * * or otherwise ornamented, decorated, or ground." U. S. v. D. S. Hesse & Bro. (C. C. 1905) 141 Fed. 492.

Glass ornamented or decorated lamp shades and chimneys held dutiable, under Act 1897, as articles of glass, ornamented or decorated, and not as all glass or manufactures of glass "not specially provided for." Stern Bros. v. U. S. (C. C. 1900) 99 Fed. 260.

Siphon bottles for mineral waters, having private names, trade-marks, and directions etched ornamentally upon them, not for the purpose of identifying the wares of the importers, but for sale to persons who may want them so decorated for their own use, held dutiable, under paragraph 90, Act 1894, as ornamented or decorated glassware. Koscherak v. U. S. (C. C. 1899) 91 Fed. 524.

13. Thermo bottles.—It is not shown that the goods (thermo bottles) consist of the ordinary articles recognized as containers for holding or transporting merchandise. They are a product which, while still known as bottles, and while blown, are in a class by themselves, and, so far as the record discloses, fall without the provisions of paragraph 97, Act 1909, and within those of paragraph 98, there being an entire absence of proof to overcome the presumption arising in favor of the action of the collector. Stegemann, Jr., v. U. S. (1913) 4 Ct. Cust. App. 26.

85. Unpolished, cylinder, crown, and common window glass, not exceeding one hundred and fifty square inches, 7/8 of 1 cent per pound; above that, and not exceeding three hundred and eighty-four square inches, 1 cent per pound; above that, and not exceed-

ing seven hundred and twenty square inches, 1⅛ cents per pound; above that, and not exceeding one thousand two hundred square inches, 1½ cents per pound; above that, and not exceeding two thousand four hundred square inches, 1⅞ cents per pound; above that, 2 cents per pound: Provided, That unpolished, cylinder, crown, and common window glass, imported in boxes, shall contain fifty square feet, as nearly as sizes will permit, and the duty shall be computed thereon according to the actual weight of glass.

Notes of Decisions

Common window glass.—Disks of glass used in the manufacture of auto goggles held, under Act 1909, not so far advanced by processes of manufacture as to acquire a name, character, and use different from common window glass, and not dutiable as coquil glasses. U. S. v. American Thermo-Ware Co. (1913) 4 Ct. Cust. App. 21; U. S. v. American Thermo Ware Co. (1911) 2 Ct. Cust. App. 9.

Microscopic slides.—Small rectangular pieces of common window glass, used for microscope slides, are dutiable as "common window glass, not exceeding ten by fifteen inches square," and not as "articles of glass cut," since the term "cut" applies to work done on the surface of the glass to produce a form or property, and not to simple cutting to size. Fox v. Cadwalader (C. C. 1889) 42 Fed. 209.

86. Cylinder and crown glass, polished, not exceeding three hundred and eighty-four square inches, 3 cents per square foot; above that, and not exceeding seven hundred and twenty square inches, 4 cents per square foot; above that, and not exceeding one thousand four hundred and forty square inches, 7 cents per square foot; above that, 10 cents per square foot.

87. Fluted, rolled, ribbed, or rough plate glass, or the same containing a wire netting within itself, not including crown, cylinder, or common window glass, not exceeding three hundred and eighty-four square inches, ½ cent per square foot; all above that, 1 cent per square foot; and all fluted, rolled, ribbed, or rough plate glass, weighing over one hundred pounds per one hundred square feet, shall pay an additional duty on the excess at the same rates herein imposed: Provided, That all of the above plate glass, when ground, smoothed, or otherwise obscured, shall be subject to the same rate of duty as cast polished plate glass unsilvered.

Notes of Decisions

Plate glass.—Small squares and circles of glass with edges beveled and polished held not dutiable as cast polished plate glass unsilvered.* See paragraph 84.

Plate glass, which has passed through the various processes of manufacture up to and including the process of grinding and smoothing on both sides, in which state it is an unfinished product in the manufacture of polished plate glass, held dutiable under Act 1883, which includes "porcelain and Bohemian glass, chemical glassware, painted glassware, stained glass, and all other manufactures of glass or of which glass shall be the component material of chief value, not specially enumerated or provided for in this act," and not under the same schedule as "cast polished plate glass, unsilvered." U. S. v. Semmer (C. C. 1890) 41 Fed. 324.

88. Cast polished plate glass, finished or unfinished and unsilvered, or the same containing a wire netting within itself, not exceeding three hundred and eighty-four square inches, 6 cents per square foot; above that, and not exceeding seven hundred and twenty square inches, 8 cents per square foot; all above that, 12 cents per square foot.

89. Cast polished plate glass, silvered, cylinder and crown glass, silvered, and looking-glass plates exceeding in size one hundred and forty-four square inches, shall be subject to a duty of 1 cent per square foot in addition to the rates otherwise chargeable on such glass unsilvered: Provided, That no looking-glass plates or glass silvered, when framed, shall pay a less rate of duty than that imposed upon similar glass of like description not framed, but

shall pay in addition thereto upon such frames the rate of duty applicable thereto when imported separate.

90. Cast polished plate glass, silvered or unsilvered, and cylinder, crown, or common window glass, silvered or unsilvered, polished or unpolished, when bent, ground, obscured, frosted, sanded, enameled, beveled, etched, embossed, engraved, flashed, stained, colored, painted, ornamented, or decorated, shall be subject to a duty of 4 per centum ad valorem in addition to the rates otherwise chargeable thereon.

Notes of Decisions

Bent glass.—The testimony in this case establishes without contradiction that the parabolic mirrors of the importation are cast, polished plate glass, silvered, and bent. They were dutiable with their frames, if any there were, as provided by paragraphs 103 and 104, Act 1909. General Electric Co. v. U. S. (1915) 5 Ct. Cust. App. 528.

Bent disks of glass used in the manufacture of auto goggles held not so far advanced by process of manufacture as to acquire a name, character, and use different from common window glass bent. U. S. v. American Thermo-Ware Co. (1913) 4 Ct. Cust. App. 21; U. S. v. American Thermo-Ware Co. (1911) 2 Ct. Cust. App. 9.

Cast polished plate glass.—Cast polished plate glass, silvered and beveled, from which looking glasses are made, held dutiable at 6 cents a square foot, and also to an additional duty of 10 per cent. ad valorem, under paragraphs 116, 118, Act 1890, and not dutiable under paragraph 116 only, as "looking glass plates." Herrman v. U. S. (C. C. 1894) 62 Fed. 149.

Colored glass.—Cylinder crown or common window glass which has been either colored throughout when melted or colored on the outside by flashing held, under Act 1890, subject to the additional duty on glass colored, and not dutiable as stained or painted glass windows. Bache v. U. S. (C. C. A.) 81 Fed. 162, 26 C. C. A. 325, affirming judgment (C. C. 1896) 77 Fed. 603.

Cut glass.—Glass tumblers, with bottoms smoothed by cutting or grinding, or with engraved sides, are subject, under July 30, 1846 (9 Stat. 42), to a duty of 40 per cent. as "glass cut," and not to a duty of 30 per cent. as "glass tumblers, plain, moulded, or pressed, not cut or punted." Binns v. Lawrence (1851) 53 U. S. (12 How.) 9, 13 L. Ed. 871.

Cylinder glass polished.—The provision in paragraph 107, Act 1897, for an additional duty of 5 per cent. ad valorem on "cylinder * * * glass, * * * when * * * beveled * * * or otherwise ornamented or decorated," is applicable to the "cylinder glass, * * * polished," that is enumerated in paragraph 102 of said act. Riegelman v. U. S. (C. C. 1903) 127 Fed. 493.

91. Spectacles, eyeglasses, and goggles, and frames for the same, or parts thereof, finished or unfinished, 35 per centum ad valorem.

Notes of Decisions

"Or parts thereof."—Avoiding what would be a conflict between paragraphs 108 and 109 in the tariff act of 1897, the words "or parts thereof" in the former paragraph must be taken to refer not to spectacles, eyeglasses or goggles, but to the frames for these. U. S. v. American Thermo-Ware Co. (1911) 2 Ct. Cust. App. 9.

Spectacles, eyeglasses, and goggles.—From the use of the words "spectacles, eyeglasses, and goggles" in paragraph 105, Act 1909, and "spectacles and eyeglasses" only, goggles being omitted, in paragraph 577, it may be reasonably inferred that Congress understood goggles to be different things from spectacles or eyeglasses and deliberately refrained from making material for them dutiable under paragraph 577. Bache & Co. v. U. S. (1916) 6 Ct. Cust. App. 507.

92. Lenses of glass or pebble, molded or pressed, or ground and polished to a spherical, cylindrical, or prismatic form, and ground and polished plano or coquill glasses, wholly or partly manufactured, strips of glass, not more than three inches wide, ground or polished on one or both sides to a cylindrical or prismatic form, including those used in the construction of gauges, and glass slides for magic lanterns, 25 per centum ad valorem.

Notes of Decisions

Construction in general.—Construction of this paragraph with the preceding one, see paragraph 91.

Coquil glasses.—Disks of glass used in the manufacture of auto goggles held not dutiable as coquil glasses. See paragraph 85.

Lenses ground "and" polished.—It is necessary that lenses should be both ground and polished in order to be

brought within the provision of Act 1897 for "lenses * * * ground and polished to a spherical, cylindrical or prismatic form"; and where they have been brought to such form by molding they are not within that provision. U. S. v. Robinson (C. C. 1905) 140 Fed. 968.

Lenses of glass.—Rough lenses, see paragraph 494.

A patent portrait lens, used as a part of a photographic camera, consisting of eight single lenses arranged in pairs and mounted in metal, which constitutes but a small part of the value of the whole, the complete articles being commercially known as lenses, held dutiable, under Act 1894 as "lenses of glass," and not as "optical instruments." E. & H. T. Anthony & Co. v. U. S. (C. C. 1898) 90 Fed. 802.

Prismatic form.—In Act 1897 the provision for strips of glass ground or polished to "prismatic form" held not limited to strips so ground that a side in itself forms a prism, but includes also strips that fulfill the functions of a prism, as where there are ground in one side fine parallel longitudinal incisions forming prisms. U. S. v. Ashcroft Mfg. Co. (1910) 176 Fed. 736, 100 C. C. A. 281, affirming judgment (C. C. 1909) 172 Fed. 449.

Slides.—Glass slides held dutiable as toys. See paragraph 342.

93. Opera and field glasses, optical instruments and frames and mountings for the same; all the foregoing not specially provided for in this section, 35 per centum ad valorem.

Notes of Decisions

Opera glasses.—Pearl opera glasses dutiable as manufacture of mother of pearl, see paragraph 369.

Opera glasses, composed of metal tubes covered with polished mother of pearl, and held together by a metal framework, were dutiable at 45 per cent. ad valorem, as "manufactured articles composed in part of metal," under Schedule C of the act of 1883, although the shell was of greater value than the other component materials; and they could not properly be classed as "shells, whole or parts of," under Schedule N, or as "articles composed of shell, metal, and glass in which shell is the component of chief value," under R. S. § 2499, as amended by the act of 1883. Seeberger v. Schlesinger (1894) 14 Sup. Ct. 729, 731, 152 U. S. 581, 38 L. Ed. 560, modifying judgment Schlesinger v. Seeberger (C. C. 1889) 40 Fed. 872, and overruling U. S. v. Manassee (1893) 56 Fed. 828, 6 C. C. A. 155.

Opera glasses held dutiable under Act 1883 as "articles composed in part of metal," and not as nonenumerated articles. Aloe v. Churchill (C. C. 1890) 44 Fed. 50.

Opera glasses, composed of metal, glass, and pearl or shell, in which the pearl or shell is the component of chief value, held dutiable at 25 per cent. ad valorem (Heyl's Dig. pt. 2, p. 32); but, when the metal and pearl or shell are of equal value, they were dutiable at 45 per cent. ad valorem, as a manufacture of copper not otherwise provided for (Heyl's Dig. pt. 2, p. 13, cl. 216). Young v. Spalding (C. C. 1885) 24 Fed. 87.

Optical instruments.—Azimuth mirrors, sextants, and octants held not dutiable, as optical instruments. See paragraph 167.

Magic lanterns for children held not dutiable as optical instruments. See paragraph 342.

Portrait lens held not dutiable as optical instrument. See paragraph 92.

94. Surveying instruments, telescopes, microscopes, photographic and projection lenses, and frames and mountings for the same, 25 per centum ad valorem.

Notes of Decisions

Surveyors' compasses. — Surveyors' compasses do not come within the meaning of "philosophical instruments," but are more properly "mathematical instruments." Manasse v. Spalding (C. C. 1885) 24 Fed. 86.

95. Stained or painted glass windows, or parts thereof, and all mirrors, not exceeding in size one hundred and forty-four square inches, with or without frames or cases; incandescent electric-light bulbs and lamps, with or without filaments; and all glass or manufactures of glass or paste or of which glass or paste is the component material of chief value, not specially provided for in this section, 30 per centum ad valorem.

Notes of Decisions

Manufactures of glass.—Buttons of glass and fish scales held not dutiable as manufactures of glass. See paragraph 339.

Cords, fringes, tassels, and braids in chief value of metal held not dutiable as manufactures of glass. See paragraph 167.

Paste pearls held not dutiable as manufactures of glass. See paragraph 357.

Pins with glass head held not dutiable as manufactures of glass. See paragraph 158.

Spectacle lenses held not dutiable as manufacture of glass. See paragraph 494.

Watch enamel held not dutiable as manufacture of glass. See paragraph 493.

Glass beads strung together and colored in imitation of precious stones held dutiable under Act 1890 as manufactures of glass, and as imitations of precious stones not set. U. S. v. E. A. Morrison & Son (1900) 21 Sup. Ct. 195, 179 U. S. 456, 45 L. Ed. 275.

Spectacles made of glass and steel are not subject to a duty of 45 per cent., under Act June 30, 1864, § 3 (13 Stat. 202), as a manufacture of steel, or of which steel shall be a component part not otherwise provided for, but under section 9, which fixes a duty of 40 per cent. on pebbles for spectacles and all manufactures of glass, or of which glass shall be a component material not otherwise provided for. Arthur v. Sussfield (1877) 96 U. S. 128, 24 L. Ed. 772.

Articles in chief value of blown glass, but in part of other glass or other material, held not "blown glassware" in Act 1897, but dutiable as manufactures of glass. U. S. v. Heil Chemical Co. (1910) 178 Fed. 537, 102 C. C. A. 47.

Crude, incomplete articles of glass, known as "blanks," produced by blowing glass into a mold, which are suitable only to be placed in the hands of glass cutters for further manufacture into finished articles, held not "blown glassware" in Act 1897, but dutiable under the provision for "all glass or manufactures of glass." U. S. v. Durand (1905) 137 Fed. 382, 69 C. C. A. 566, affirming judgment (C. C. 1903) 127 Fed. 624.

Merchandise, consisting of glass disks of various colors and sizes, colored and cut in imitation of precious stones, held dutiable under Act 1883 as "compositions of glass or paste, when not set," and not as "articles of glass, cut, engraved, painted, colored," etc. U. S. v. Popper (1895) 66 Fed. 51, 13 C. C. A. 325.

Hat trimmings composed of black glass and wire, the glass being the component of chief value, and made in imitation of jet, held dutiable, under Act 1890 as "manufactures of glass," instead of as "manufactures of jet," though they are commercially known as "jet goods." Goldberg v. U. S. (1894) 61 Fed. 91, 9 C. C. A. 380, affirming In re Goldberg (C. C. 1893) 56 Fed. 818.

Thermometers and lactoscopes, composed chiefly of blown glass, but in part of other materials, held not dutiable under Act 1897, as "blown glassware," but as "manufactures * * * of which glass * * * is the component material of chief value, not specially provided for." Eimer & Amend v. U. S. (C. C. 1903) 126 Fed. 439.

Molded glass articles, consisting of spatulas and solid rods, held dutiable under Act 1897, as "manufactures * * * of which glass * * * is the component material of chief value, not specially provided for." Id.

Black hat ornaments, composed of metal and black glass, made to resemble jet, held under Act 1897, not articles commonly known as jewelry, but millinery trimmings dutiable either as manufactures of glass or as articles made wholly or in part of metal, not specially provided for, depending upon whether or not the glass is the component material of chief value. A. Bader & Co. v. U. S. (C. C. 1902) 116 Fed. 541.

Trimming made of glass beads, silvered, and also of tinsel and cotton, commercially known as "steel trimmings" or "steel bead trimmings," held dutiable either as "articles or manufactures of glass," or as "manufactures of metal, metal chief value," and not as "bead ornaments," nor as "manufactures of metal not otherwise specifically provided for." Loewenthal v. U. S. (C. C. 1898) 91 Fed. 644.

Narrow cotton trimming, covered with black glass beads, known in trade as "jet headings or trimmings" or "imitations of jet," held dutiable as "manufactures and imitations of jet," under Act 1883, and not as "bead ornaments." Id.

Atomizers, consisting of ornamented glass vessels, with metal and rubber tops which are essential parts of the articles, the glass being the most valuable component, held dutiable under Act 1894 as manufactures of glass, and not as articles of glass or glass bottles, under paragraphs 88–90. Borgfeldt v. U. S. (C. C. 1897) 78 Fed. 809.

Oval glass blanks blown in molds, to be finished by cutting into dishes for table use, held dutiable as "manufactures of glass," under Act 1894, and not as "glassware," under paragraph 88. U. S. v. Fensterer (C. C. 1897) 84 Fed. 148; U. S. v. Louis Hinsberger Cut Glass Co. (C. C. 1899) 94 Fed. 645.

Glass beads, strung, and glass ornaments, similar to beads, but without holes for stringing, held dutiable as manufactures of glass, under Act 1890, and not as glass beads, loose, unthreaded, or unstrung. Morrison v. U. S. (C. C. 1896) 77 Fed. 605.

Imitations of pearls, consisting of hollow glass beads with wax insert-

ed, giving an appearance like pearls, strung, and not capable of being set, held dutiable as manufactures of glass, under Act 1890, and not as "imitations of precious stones, composed of paste or glass, not set." Id.

A finding of the general appraisers, supported by evidence, that glass beads, threaded on strings, were strung beads, dutiable as "manufactures of glass," under Act 1890, and not as "glass beads, loose, unthreaded, or unstrung," should be sustained. In re Steiner (C. C. 1894) 66 Fed. 726.

Pins of different sizes, having iron or steel shanks from 1½ to 6 inches in length, with more or less ornamental glass heads, some polished and some of a dull black, the articles being commercially known as "lace pins," "hat pins," and "bonnet pins," the glass heads of some of the bonnet pins being in the form of sprays or sprigs, held dutiable as manufactures of glass under Act 1890, and not as "pins, metallic." In re Goldberg (C. C. 1893) 53 Fed. 1015.

Certain so-called "jet trimmings," being ornamental articles manufactured from black glass and iron, glass being the material of chief value, held properly dutiable as "manufactures of glass," under Act 1890, and not as "manufactures of jet," or of which jet is the component material of chief value. In re Goldberg (C. C. 1893) 56 F. 818, judgment affirmed Goldberg v. U. S. (1894) 61 Fed. 91, 9 C. C. A. 380.

The term "aigrette" embraces not only the feather of the heron or egret, but also tufts of precious stones worn on the headdress of men and women. The glass aigrettes of the importation are not to be deemed artificial flowers, either because of their name or of the effect they are intended to produce. They are in chief value of glass and fall within the provisions of paragraph 109, Act 1909, as manufactures in chief value of glass. Judkins & McCormick Co. v. U. S. (1915) 6 Ct. Cust. App. 112.

The merchandise here is composed of window glass, but it is cut to form and shape and is adapted and designed for use alone as parts in the making of goggles, so removing it from the classification and assessment as made. Such of these glasses as are not colored are held as dutiable under paragraph 109, Act 1909; and while those colored would seem dutiable under paragraph 98, no claim having been made thereunder, the judgment as to these is affirmed. American Thermo-Ware Co. v. U. S. (1915) 6 Ct. Cust. App. 218.

This glass might probably be regarded as a manufacture from waste, but it is not itself waste in the proper sense of the term. It was dutiable as a manufacture of glass under paragraph 109, Act 1909. Chrystal v. U. S. (1915) 5 Ct. Cust. App. 489.

Small imitation diamonds, rubies, and other precious stones set in metal claws that hold the stones in position and that are used as the proof shows chiefly for dress trimming are dutiable as manufactures of glass under Act 1909. U. S. v. American Bead Co. (1913) 3 Ct. Cust. App. 509.

Technically "jet goods" are not, of course, imitation jet, but where the record discloses the importer, the collector, and the board of general appraisers all considered the importation an imitation jet it could not be properly assessed as jet, and was rightly held to be dutiable as imitation jet under paragraph 109, Act 1909. U. S. v. Sheldon & Co. (1911) 2 Ct. Cust. App. 283. See, also, Same v. Beierle (1911) 1 Ct. Cust. App. 457.

Mirrors.—Mirror plates, not framed, but intended to be put in frames or cases, held dutiable as mirrors, under paragraph 102 of Act 1894. Wiederer v. U. S. (C. C. 1897) 78 Fed. 809.

Table mirrors, known as "mirror plateaus" or "circles," made of plate glass, silvered, beveled, and framed, in circular form, held not dutiable under Act 1883, as a "manufacture of glass," but dutiable at a square-foot duty according to measurement. In re Maddock (C. C. 1892) 49 Fed. 219.

Pocket imitation leather goods holding small mirrors and combs, or pencils and memorandum tablets held dutiable as mirrors. U. S. v. Metropolitan Aluminum Co. (1912) 3 Ct. Cust. App. 224.

Paste.—Buttons of paste held not dutiable as manufactures of paste. See paragraph 339.

The provision in Act 1897 for manufactures of "paste" includes only the form of paste which is a variety of glass, and does not embrace articles made from rice paste. Morimura Bros. v. U. S. (1909) 169 Fed. 279, 94 C. C. A. 555.

Articles in the form of buttons having a metal shank and back, and set with a cluster of imitation diamonds, commercially known as paste, the paste being the component material of chief value, and the articles not being commercially known as buttons nor as jewelry held dutiable under Act 1894, as manufactures of paste, etc., and not as "buttons of glass." U. S. v. Marshall Field & Co. (1898) 85 Fed. 862, 29 C. C. A. 458.

Tariff legislation having distinguished between glass and form of it known as paste, articles in chief value of paste, cut, held not within Act 1897, for goods in chief value of cut "glass," but dutiable as manufactures of "paste." U. S. v. New York Merchandise Co. (C. C. 1909) 167 Fed. 684, judgment affirmed (1910) 174 Fed. 1022, 98 C. C. A. 638.

Rhinestones, composed of metal and paste, the latter being the more valuable component, which are merely used to decorate and ornament women's outer apparel, held dutiable as manu-

factures of paste, under Act 1897. B. Blumenthal & Co. v. U. S. (C. C. 1904) 135 Fed. 254, judgment affirmed (1905) 144 Fed. 384, 75 C. C. A. 322.

Millinery or hat ornaments composed chiefly in value of paste, in the form of so-called "Rhinestones," their remaining material being metal backs and frames to hold the paste stones, held dutiable under Act 1890 as manufactures of paste, as articles of jewelry. Worthington v. U. S. (C. C. 1898) 90 Fed. 797.

Barettes made of base metal and set with imitation jet are not dutiable as "jewelry," but are dutiable as manufactures of paste under Act 1909. U. S. v. Beierle (1911) 1 Ct. Cust. App. 457.

Stained or painted window glass.—Cylinder, crown or common window glass which has been either colored throughout when melted or colored on the outside by flashing held not dutiable as stained or painted window glass. See paragraph 90.

Under Act 1890 stained glass windows containing representations of saints and biblical subjects and imported in fragments for the use of a convent held not exempt from duty as "paintings" specially imported in good faith for the use of any society or institution established for religious purposes, but dutiable as "stained or painted window glass and stained or painted glass windows." U. S. v. Perry (1892) 13 Sup. Ct. 26, 27, 146 U. S. 71, 36 L. Ed. 890.

96. Fusible and glass enamel, not specially provided for in this section, 20 per centum ad valorem; opal or cylinder glass tiles or tiling, 30 per centum ad valorem.

97. Marble, breccia, and onyx, in block, rough or squared only, 50 cents per cubic foot; marble, breccia, and onyx, sawed or dressed, over two inches in thickness, 75 cents per cubic foot; slabs or paving tiles of marble or onyx, containing not less than four superficial inches, if not more than one inch in thickness, 6 cents per superficial foot; if more than one inch and not more than one and one-half inches in thickness, 8 cents per superficial foot; if more than one and one-half inches and not more than two inches in thickness, 10 cents per superficial foot; if rubbed in whole or in part, 2 cents per superficial foot in addition; mosaic cubes of marble or onyx, not exceeding two cubic inches in size, if loose, 20 per centum ad valorem; if attached to paper or other material, 35 per centum ad valorem.

Notes of Decisions

Marble in block.—Marble cut into blocks simply for convenience in transportation is not dutiable as manufactured marble. Act 1832. U. S. v. Wilson (D. C. 1838) Fed. Cas. No. 16,736.

Breccia.—The provisions of Act 1909, construed in pari materia show a purpose to classify breccia and marble alike for dutiable purposes; to make them, whenever in similar conditions, dutiable at the same rate. "Marble," too, and "breccia in blocks" are more specific terms than "minerals crude or not advanced in value or condition," and moreover, according to the rule, where there are two provisions applicable, the one carrying the higher rate must be applied, breccia is held to be dutiable by similitude as marble. Jackson v. U. S. (1911) 2 Ct. Cust. App. 70.

Hauteville stone.—Hauteville stone held by the Circuit Court of Appeals in the Bockman Case dutiable as marble, and not limestone. See paragraph 99.

Hauteville and other like stones being a granular substance, capable of a high degree of polish and susceptible of use for decorative purposes, held, under Act 1897, not limestones, but marble. U. S. v. Jackson (1910) 1 Ct. Cust. App. 25.

Istrian stone or marble.—Istrian stone or marble, quarried in Istria, some 10 miles from Trieste, held dutiable under Act 1894, as "marble of all kinds," and not as "limestone," etc. Fisher v. U. S. (C. C. 1899) 91 Fed. 759; U. S. v. Jackson (1910) 1 Ct. Cust. App. 25.

Mexican onyx.—Mexican onyx held dutiable as "onyx," rather than as "marble," under Act 1897. Blochman Banking Co. v. Blake (C. C. 1909) 168 Fed. 572,

So-called "Mexican onyx," a mineral consisting chiefly of carbonate of lime and certain impurities, used in ornamental and interior decoration as marble, held dutiable as "marble in block," under Act 1890, and not free of duty as a "crude mineral." Mexican Onyx & Trading Co. v. U. S. (C. C. 1895) 66 Fed. 732.

"Mexican onyx" not being a chalcedony or onyx proper, as defined in mineralogy, but being a carbonate of lime, containing a small proportion of carbonate of magnesia and ferrous oxides, and having the other characteristics of marble in respect of texture, hardness,

and capacity for being worked and polished, held "marble," within Act 1883, Batterson v. Magone (C. C. 1891) 48 Fed. 289.

Mosaic cubes.—Pieces of marble less than an inch in length and breadth, and pasted on paper in the form of blocks, or loose in bags, and intended to be imbedded in cement, so as to form a mosaic pavement, are dutiable at $1.10 per cubic foot, as marble paving tiles, under Act 1890, and not as manufactures of marble not specially provided for. U. S. v. Davis (1893) 54 Fed. 147, 4 C. C. A. 251.

Small cubes or half cubes, some manufactured from veined marble and some of marble not veined, made from waste marble, partly by hand and partly by machinery, sawed on one face, and suitable to be laid in cement for certain ordinary kinds of mosaic floors or pavements, but not for fine work, held dutiable, those of veined marble, as "veined marble," under Act 1883, and those of marble not veined, by similitude to "marble paving tiles." In re Herter Bros. (C. C. 1891) 50 Fed. 72, judgment reversed (1892) 53 Fed. 913, 4 C. C. A. 107; Baumgarten v. Magone (C. C. 1891) 50 Fed. 69.

98. Marble, breccia, onyx, alabaster, and jet, wholly or partly manufactured into monuments, benches, vases, and other articles, or of which these substances or either of them is the component material of chief value, and all articles composed wholly or in chief value of agate, rock crystal, or other semiprecious stones, except such as are cut into shapes and forms fitting them expressly for use in the construction of jewelry, not specially provided for in this section, 45 per centum ad valorem.

Notes of Decisions

Jet.—Hat trimmings of black glass and wire, glass being chief value, held not dutiable as jet goods. See paragraph 95.

Jet trimmings, glass being material of chief value, held not dutiable as manufactures of jet. See paragraph 95.

So-called jet goods held not dutiable as jet. See paragraph 95.

The tariff act defined the meaning of "jet" as covering only the mineral substance of that name; especially with reference to Schedule N, Tariff Ind. (paragraph 458, Act 1883), which provided for "jet, manufactures and imitations of," the provision for imitations of jet being omitted in the act of 1890; and congress used the word "jet" with the same meaning in the act of 1890 that it had in the act of 1883, referring only to the mineral jet and manufactures thereof. In re Goldberg (C. C. 1893) 56 Fed. 818, judgment affirmed Goldberg v. U. S. (1894) 61 Fed. 91, 9 C. C. A. 380.

Manufactures of agate.—Cut agate for use as settings for jewelry held not dutiable as manufacture of agate. See paragraph 357.

Pieces of agate to be used as scale bearings held dutiable as precious stones advanced in value. See paragraph 357.

Pieces of agate which have been cut, polished, and grooved to fit them for specific use as scale bearings held dutiable under Act 1897 as manufactures of agate, and not as precious stones advanced in condition or value and not set. U. S. v. Albert Lorsch & Co. (1907) 158 Fed. 398, 86 C. C. A. 34 (reversing judgment [C. C. 1907] 152 Fed. 591); Smith v. Computing Scale Co. (C. C. 1906) 147 Fed. 890.

Where Congress, having provided in general terms for a group of articles, which includes many different species, as "precious stones," selects by name one of those species and prescribes that manufactures of that particular species shall be dutiable at a different rate, as "manufactures of agate, not specially provided for," it has so clearly indicated its intention to withdraw the article from the general group as soon as it becomes a completed manufacture that the absence of the limiting clause, "not specially provided for," from the group provision, is not particularly significant. U. S. v. Albert Lorsch & Co. (1907) 158 Fed. 398, 86 C. C. A. 34, reversing judgment (C. C. 1907) 152 Fed. 591.

Manufactured articles made from agate or onyx, such as handles for penholders, knives, and shoe and glove hooks, paper weights, etc., are subject to the same rate of duty imposed by paragraph 480 of the tariff act of 1883 on precious stones, under the similitude clause of such act, being identical in "material" with well-known kinds of precious stones, although advanced, by their manufacture into specific commercial articles, beyond the condition of stones. Hahn v. U. S. (1900) 100 Fed. 635, 40 C. C. A. 622, reversing judgment U. S. v. Hahn (C. C. 1899) 91 Fed. 755.

Articles, such as paper cutters, paper weights, knife handles, and pen or pencil holders or handles, made wholly or chiefly of agate or onyx, held dutiable by similitude to "precious stones cut, but not set," under Act 1890, § 5 (R. S. § 2499), laying on "every nonenumerated article which bears a similitude * * * to any article enumerated" "the same rate of duty which is levied and charged on the enumerated article which it most resembles," etc. Hahn v. U. S. (C. C. 1903) 121 Fed. 152.

Agate and tiger-eye stones, cut in parts, and ground into shapes of pen-

holder handles and other articles, and known to the trade by the names of "agate penholder handles," "tiger-eye penholder handles," etc., held dutiable under Act 1883 as nonenumerated manufactured articles, and not admissible duty free, as "agate unmanufactured," nor assessable as "precious stones." Hahn v. Erhardt (C. C. 1891) 46 Fed. 519, reversed in Erhardt v. Hahn (1893) 55 Fed. 273, 5 C. C. A. 99.

Manufactures of marble.—Marble cut into block for convenience in transportation held not dutiable as manufactured marble. See paragraph 97.

Manufactures of onyx.—Merchandise invoiced as "onyx columns, vases, and candelabras," and known by dealers in marble and similar material as "onyx marble" or "onyx," and for which no specific duty is provided, held assessable as "manufactures of marble" under the similitude clause. Mandel v. Seeberger (C. C. 1889) 39 Fed. 760.

Marble parts of garden temple.—Marble parts of a temple designed as an ornament for a yard or garden, which are embellished or ornamented with more or less elaborately cut or carved representations of various kinds, there being no claim that they are the professional production of a sculptor, are dutiable, under paragraph 98, Act 1913, as manufactures of marble, and not under paragraph 376 as works of art or sculpture. U. S. v. Downing & Co. (1916) 6 Ct. Cust. App. 545.

Rock crystal.—Rock crystal articles held not dutiable as manufactures of rock crystal. See paragraph 357.

Rock crystal is a colorless or nearly colorless transparent quartz, and quartz is not a carbonate of calcium but a dioxide of silicon. U. S. v. Bausch & Lomb Optical Co. (1914) 5 Ct. Cust. App. 416.

Sculptures.—See notes under paragraph 376.

Semiprecious stones.—Small pieces of Ceylon sapphire used as bearings for electrical instruments, etc., held not dutiable as semiprecious stones. See paragraph 81.

99. Freestone, granite, sandstone, limestone, lava and all other stone suitable for use as monumental or building stone, except marble, breccia, and onyx, not specially provided for in this section, hewn, dressed, or polished, or otherwise manufactured, 25 per centum ad valorem; unmanufactured, or not dressed, hewn, or polished, 3 cents per cubic foot.

Notes of Decisions

Building stones.—Hewn lava stone of the importation employed in the construction of chimneys, being used as lining to carry the inner surface of the chimney from the bottom to within 2 feet of the shaft's top held to be a building stone and dutiable as such under Act 1909. U. S. v. Grasselli Chemical Co. (1913) 3 Ct. Cust. App. 486. See, also, Manufacturers' Paper Co. v. U. S. (1912) 3 Ct. Cust. App. 72.

Pieces of granite, ornamented and polished to size, scale, and design, and ready after being cemented or leaded together to be set up, are building or monumental stones and were dutiable as such under Act 1897. Austin v. U. S. (1911) 1 Ct. Cust. App. 510. See, also, Austin, Baldwin & Co. v. U. S. (C. C. 1906) 144 Fed. 702; Murphy & Co. v. U. S. (1908) 162 Fed. 871, 89 C. C. A. 561; Vantine & Co. v. U. S. (C. C. 1907) 159 Fed. 289.

Hauteville stone.—Hauteville stone held not limestone. See paragraph 97.

In Act 1897, the term "marble" is used according to its more precise definition as a limestone having a granular and crystalline structure, rather than in its broader sense of being a limestone susceptible of a high polish. Therefore, Hauteville stone, which, though an ornamental, polishable high-grade limestone, is not crystalline, held not dutiable under said provision, but as "limestone." Bockmann v. U. S. (1908) 158 Fed. 807, 86 C. C. A. 67 (reversing judgment [C. C. 1907] 154 Fed. 1000); U. S. v. C. D. Jackson & Co. (C. C. 1909) 175 Fed. 884.

Istrian stone.—Istrian stone or marble held not dutiable as limestone. See paragraph 97.

Lava stone.—Dressed lava stone for use in wood pulp machine held not dutiable as lava stone. See paragraph 385.

Lava stone held not dutiable as monumental or building stone. See paragraph 81.

Monuments and monumental stone.—Japanese granite lanterns held not dutiable as monumental stone. See paragraph 385.

Act 1897, relating to granite, etc., "and other building or monumental stone," "hewn, dressed or polished," and "unmanufactured or undressed," was intended to cover the general subject of building and monumental stone; and granite monuments imported in sections dressed, ornamented, and polished abroad and ready to be set up and leaded or cemented together are dutiable under said paragraph 118 as "granite * * * dressed." Alexander Murphy & Co. v. U. S. (1908) 162 Fed. 871, 89 C. C. A. 561.

Monuments in sections, consisting of pieces of dressed granite intended to be assembled and erected as monuments without further manipulation, held du-

tiable as dressed granite, under Act 1897, and not as articles composed of mineral substances. Austin Baldwin & Co. v. U. S. (1906) 149 Fed. 1022, 79 C. C. A. 531, affirming judgment (C. C. 1906) 144 Fed. 702.

100. Grindstones, finished or unfinished, $1.50 per ton.

101. Slates, slate chimney pieces, mantels, slabs for tables, roofing slates, and all other manufactures of slate, not specially provided for in this section 10 per centum ad valorem.

SCHEDULE C.—METALS AND MANUFACTURES OF

102. Chrome or chromium metal ferrochrome or ferrochromium, ferromolybdenum, ferrophosphorus, ferrotitanium, ferrotungsten, ferrovanadium, molybdenum, titanium, tantalum, tungsten or wolfram metal, and ferrosilicon, and other alloys used in the manufacture of steel, not specially provided for in this section, 15 per centum ad valorem.

Notes of Decisions

Alloys experimentally wrought.—Proof that the alloys ferro-chrome, ferro-tungsten, and ferro-vanadium have been experimentally wrought held not to sufficiently show them to be capable of being wrought to enable them to be classified as "unwrought metals" under Act 1897, but dutiable by similitude as ferro-manganese under paragraph 122. E. J. Lavino & Co. v. U. S. (C. C. 1909) 171 Fed. 245, decree affirmed U. S. v. E. J. Lavino & Co. (1909) 175 Fed. 964, 99 C. C. A. 637, writ of certiorari denied (1910) 30 Sup. Ct. 573, 216 U. S. 618, 54 L. Ed. 640.

Alloys for hardening bronze.—An alloy for hardening bronze held dutiable as mineral substance in a crude state. See paragraph 154.

Ferrochrome and other ferroalloys.—The provision in Act 1897, par. 183, for "unwrought metals," does not include ferroalloys which though capable of being wrought into different forms and shapes, are not to any extent shown to be imported to be themselves wrought into useful articles, but are generally used for imparting certain qualities to steel in the process of its manufacture. U. S. v. E. J. Lavino & Co. (1909) 175 Fed. 964, 99 C. C. A. 637, affirming decree E. J. Lavino & Co. v. U. S. (C. C. 1909) 171 Fed. 245, and writ of certiorari denied (1910) 30 Sup. Ct. 573, 216 U. S. 618, 54 L. Ed. 640.

Under Act 1897 ferro-chrome ferromolybdenum, ferro-tungsten, and ferrovanadium held not dutiable as metals unwrought. U. S. v. Roesseler v. Hasslacher Chemical Co. (1905) 137 Fed. 770, 70 C. C. A. 346.

Ferrochrome held dutiable under Act 1894, by reason of its similarity in use, as ferromanganese, and not as a manufactured article not enumerated or provided for. U. S. v. Dana (1900) 99 Fed. 433, 39 C. C. A. 590.

Ferrochrome held not dutiable under Act 1897 as a metal "unwrought," it being obtained from chrome ore by a blast furnace process, the same as that by which pig iron is made from iron ore. Dana v. U. S. (C. C. 1902) 116 Fed. 933.

Tungsten ore, or wolfram.—Tungsten ore, or wolfram, held dutiable under paragraph 183, Act 1897, as "metallic mineral substances in a crude state," and not exempt under Free List, par. 614, as "minerals, crude, or not advanced in value or condition by refining or grinding, or by other process, not specifically provided for," nor dutiable as a "raw or unmanufactured article not enumerated or provided for." Hempstead v. U. S. (C. C. 1902) 115 Fed. 256.

103. Muck bars, bar iron, square iron, rolled or hammered, round iron, in coils or rods, bars or shapes of rolled or hammered iron not specially provided for in this section, 5 per centum ad valorem.

Notes of Decisions

Bar iron.—The words "bar iron," in paragraph 123, Act 1897, which fixes the duty on such iron of certain dimensions, and the words "iron bars," as used in the last proviso of paragraph 124, which fixes the duty at a different and uniform rate on "all iron bars in the manufacture of which charcoal is used as fuel," must be held to mean the same thing, in the absence of evidence showing that the term "bar iron" had a commercial meaning at the date of the passage of the act, and the two paragraphs must be construed together. As so construed, bar iron in the manufacture of which charcoal is used as fuel, of whatever dimensions, is dutiable under the proviso. Milne v. U. S. (C. C. 1902) 115 Fed. 410.

Where bar or bolt iron has been changed by subsequent manufacture, it ceases to be subject to duty as such,

although it may not have become a new and distinct manufacture, having a new name or use. U. S. v. Sarchet (D. C. 1832) Fed. Cas. No. 16,224.

Muck bars.—Muck bars, produced by converting pig iron into wrought iron in the puddling furnace, and then rolling the wrought iron through a set of rolls, from which it comes in the form known as "muck bars," held dutiable under Act 1897 as "bar iron," and not as "steel in all forms and shapes not specially provided for," nor as "iron in * * * forms less finished than iron bars and more advanced than pig iron." Moorhead Bro. & Co. v. U. S. (C. C. 1904) 127 Fed. 779.

Rolled and hammered iron.—Swedish iron nail rods should be classified as a description of "rolled and hammered iron not otherwise provided for," and not as "bar iron, rolled or hammered, comprising flats less than three-eighths of an inch or more than two inches thick, or less than one inch or more than six inches wide." Worthington v. Abbott (1888) 8 Sup. Ct. 562, 124 U. S. 434, 31 L. Ed. 494, affirming judgment Abbott v. Worthington (C. C. 1884) 20 Fed. 495.

104. Beams, girders, joists, angles, channels, car-truck channels, TT, columns and posts or parts or sections of columns and posts, deck and bulb beams, sashes, frames, and building forms, together with all other structural shapes of iron or steel, whether plain, punched, or fitted for use, or whether assembled or manufactured, 10 per centum ad valorem.

Notes of Decisions

Structural shapes.—Where steel parts have been assembled and united into complete window sashes, they have been too far advanced in manufacture to permit their inclusion within Act 1897 as "structural shapes of iron or steel * * * fitted for use." Ackerson v. U. S. (C. C. 1909) 172 Fed. 303, judgment affirmed (1910) 178 Fed. 1003, 101 C. C. A. 416.

105. Boiler or other plate iron or steel, and strips of iron or steel, not specially provided for in this section; sheets of iron or steel, common or black, of whatever dimensions, whether plain, corrugated or crimped, including crucible plate steel and saw plates, cut or sheared to shape or otherwise, or unsheared, and skelp iron or steel, whether sheared or rolled in grooves, or otherwise, 12 per centum ad valorem.

Notes of Decisions

Plate steel.—Thin checkered steel plates, adapted for use in construction of floors for boiler rooms, held not dutiable as plate steel. See paragraph 110.

Plate steel sheared.—Steel plates cut at a slight variation from a right angle held not dutiable as boiler or other plate iron sheared, etc. See paragraph 110.

Saw plates.—Cold-rolled untempered steel strips held not dutiable as saw plates. See paragraph 110.

The provision in Act 1897, par. 141, for "steel circular saw plates," includes plates that resemble circular saw plates in size, shape, general finish, and general quality of steel, though imported for other uses. Hermann Boker & Co. v. U. S. (C. C. 1909) 168 Fed. 573.

An article enumerated according to its use as "saw plates" includes articles intended for other uses having the qualities and characteristics of the article designated. Id.

A strip of high-grade steel, 50 feet long by 8 inches wide, fitted by its composition to be used only for making saws, and which is commercially known as a "saw plate," held dutiable as such under paragraph 122, Act 1894, and not under paragraph 116, as "band steel," or under paragraph 124, as "sheet steel in strips." Belcher v. U. S. (C. C. 1898) 91 Fed. 975.

106. Iron or steel anchors or parts thereof; forgings of iron or steel, or of combined iron and steel, but not machined, tooled, or otherwise advanced in condition by any process or operation subsequent to the forging process, not specially provided for in this section, 12 per centum ad valorem; antifriction balls, ball bearings, and roller bearings, of iron or steel or other metal, finished or unfinished, and parts thereof, 35 per centum ad valorem.

Notes of Decisions

Anchors.—Construction of terms "anchor iron," "anchors," "straight, bent, and turned links," "cables and parts thereof." U. S. v. Thirty-One Boxes and Packages of Imported Articles (D. C. 1833) Fed. Cas. No. 16,465a.

Ball bearings.—Act 1897, par. 135, does not include such distinctively finished articles as ball bearings in the provision for "steel in all forms and shapes." Maldonado & Co. v. U. S. (C. C. 1909) 172 Fed. 170, judgment affirmed (1910) 176 Fed. 737, 100 C. C. A. 282.

These articles are so far finished when imported as to indicate per se their ultimate use, and their shape and condition unfit them commercially for any other than this use. The words "finished or unfinished, and parts thereof," paragraph 106, Act 1913, apply to finished or unfinished ball bearings, and also to parts of finished or unfinished ball bearings. The importations were properly assessed under that paragraph. Norma Co. of America v. U. S. (1915) 6 Ct. Cust. App. 13.

Forgings of iron or steel.—Iron hooks used in the manufacture of feeders for wicker cards in a carding machine held not dutiable as forgings, etc. See paragraph 167.

Machined steel articles held not dutiable as forgings. See paragraph 167.

Scythes, grass hooks, and carpenters' pincers held not dutiable as forgings, etc. See paragraph 167.

Drawplates and wortles forged from the ingot through various stages and reaching the final shape in which they were delivered to the consumer, the adjusting processes to which they were necessarily subjected being merely incidental to the common use of drawplates and wortles, held "forgings of steel," under paragraph 127, Act 1897, and not articles of steel wholly or partly manufactured. Newman v. U. S. (1907) 159 Fed. 123, 86 C. C. A. 511 (affirming judgment U. S. v. C. Newman Wire Co. [C. C. 1907] 152 Fed. 488); Newman-Andrew v. U. S. (1911) 2 Ct. Cust. App. 4.

In Act 1897, the words forgings of whatever "degree or stage of manufacture" relate only to different stages of the forging process, not extending beyond the completion of that process; and forms that, after being subjected to the final forging process, are further advanced into completed articles practically ready for use, such as axles, piston rods, etc., are removed from said provision into that for manufactured metal in paragraph 193. U. S. v. Thomas Prosser & Son (C. C. 1910) 177 Fed. 569.

So-called machined forgings, being such as in addition to the forging process have been subjected to a machining process wholly or partly complete, held not within Act 1897, for "forgings * * * of whatever degree or stage of manufacture." Thomas Prosser & Son v. U. S. (C. C. 1907) 154 Fed. 721, order reversed (1907) 158 Fed. 971, 86 C. C. A. 175.

Comparing paragraph 127, Act 1897, with paragraph 123, Act 1909, and especially taking into view what would appear to be a manifest legislative intention with respect to paragraph 123, as evidenced by its history, a forging is advanced in condition when the burr on the edge of the rough-forged article is removed by passing it over a grindstone, and a hoe rough-forged, but so manipulated, is dutiable under paragraph 123. U. S. v. Anderson & Co. (1911) 2 Ct. Cust. App. 350.

Steel piston rods, which have been rough-machined and not further advanced than close forged, remain forgings of steel, under paragraph 127, Act 1897. Prosser & Son v. U. S. (1911) 1 Ct. Cust. App. 550.

The phrase "forgings of iron and steel," as used in Act 1883, includes forgings made of iron and forgings made of steel, and is not limited to articles composed of both iron and steel combined in the same forging. (1888) 19 Op. Atty. Gen. 157.

107. Hoop, band, or scroll iron or steel not otherwise provided for in this section, and barrel hoops of iron or steel, wholly or partly manufactured, 10 per centum ad valorem.

Notes of Decisions

Cotton ties.—Cotton ties held not dutiable as band hoop and scroll iron. See paragraph 167.

Hoop iron.—Hoop iron subjected to mechanical treatment held not dutiable as hoop iron. See paragraph 167.

108. Railway fishplates or splice bars made of iron or steel, 10 per centum ad valorem.

Notes of Decisions

Worn-out fish plates.—Worn-out fish plates held not dutiable as fish plates. See paragraph 518.

109. All iron or steel sheets, plates, or strips, and all hoop, band, or scroll iron or steel, when galvanized or coated with zinc, spelter, or other metals, or any alloy of those metals; sheets or plates composed of iron, steel, copper, nickel, or other metal with layers of other metal or metals imposed thereon by forging, hammering, rolling, or welding; sheets of iron or steel, polished, planished, or glanced, by whatever

name designated, including such as have been pickled or cleaned by acid, or by any other material or process, or which are cold rolled, smoothed only, not polished, and such as are cold hammered, blued, brightened, tempered, or polished by any process to such perfected surface finish or polish better than the grade of cold rolled, smoothed only; and sheets or plates of iron or steel, or taggers iron or steel, coated with tin or lead, or with a mixture of which these metals, or either of them is a component part, by the dipping or any other process, and commercially known as tin plates, terne plates, and taggers tin, and tin plates coated with metal, and metal sheets decorated in colors or coated with nickel or other metals by dipping, printing, stenciling, or other process, 15 per centum ad valorem.

Notes of Decisions

Articles of metal enameled.—Mythological paintings on enameled copper held not dutiable as articles of metal enameled. See paragraph 652.

Corrugated iron sheets galvanized.—Corrugated iron sheets galvanized held not dutiable under the terms of this paragraph. See paragraph 167.

Metal plates welded together.—A thin plate of iron or steel, common or black, three-eighths of an inch thick, on which a thin sheet of nickel or copper of the same dimensions has been laid and then subjected to a process of hot rolling to weld the metals together, held not sheet iron or steel; and since in thickness it exceeds No. 10 wire gauge, it was not dutiable under either paragraph 126 or paragraph 131, Act 1897, but under paragraph 193 of that act as "manufactures of metal." Boker v. U. S. (C. C. 1910) 180 Fed. 959; Boker v. U. S. (1911) 2 Ct. Cust. App. 162.

Steel strips plated with nickel.—Steel strips plated with nickel held not dutiable as steel sheets or plate coated, etc. See paragraph 167.

Terne tin.—"Terne tin" in strips formed of short plates locked together, and coated, held dutiable as "terne tin," and not as articles or manufactures of tin. Act July 14, 1862. Bruce v. Murphy (C. C. 1872) Fed. Cas. No. 2,047.

Tin plates.—Under Act 1890, "finished gunstocks with locks and mountings" are dutiable at 45 per cent. ad valorem, under paragraph 215, as "manufactures, articles, or wares not specially enumerated," "composed wholly or in part of iron, steel," etc., and the fact that the finished gun barrels are imported separately by another firm, under an arrangement with the importer of the stocks with intent that they shall be brought together here, does not render the importation dutiable at the higher rate prescribed by paragraph 170 for all double-barreled, sporting, breech-loading shotguns, when it does not appear that the stocks had ever formed part of completed guns in Europe. U. S. v. Schoverling (1892) 146 U. S. 76, 13 Sup. Ct. 24, 36 L. Ed. 893, affirming (C. C. 1891) 45 Fed. 349, following Robertson v. Gerdan (1889) 132 U. S. 454, 10 Sup. Ct. 119, 33 L. Ed. 403, and distinguishing Falk v. Robertson (1890) 137 U. S. 225, 11 Sup. Ct. 41, 34 L. Ed. 645.

The term "sheets * * * commercially known as tin plates," in Act 1897, par. 134, means rectangular sheets, and does not include small disks. Shallus v. U. S. (1908) 162 Fed. 653, 89 C. C. A. 445, reversing decree (C. C. 1907) 155 Fed. 213.

"Tin plates" are not included in R. S. § 2503, under the terms "metals not herein otherwise provided for," or "manufactures of metals." May v. Simmons (C. C. 1880) 4 Fed. 499.

110. Steel bars, and tapered or beveled bars; mill shafting; pressed, sheared, or stamped shapes, not advanced in value or condition by any process or operation subsequent to the process of stamping; hammer molds or swaged steel; gun-barrel molds not in bars; all descriptions and shapes of dry sand, loam, or iron molded steel castings, sheets, and plates; all the foregoing, if made by the Bessemer, Siemens-Martin, open-hearth, or similar processes, not containing alloys, such as nickel, cobalt, vanadium, chromium, tungsten or wolfram, molybdenum, titanium, iridium, uranium, tantalum, boron, and similar alloys, 8 per centum ad valorem; steel ingots, cogged ingots, blooms and slabs, die blocks or blanks; billets and bars and tapered or beveled bars; pressed, sheared, or stamped shapes not advanced in value or condition by any process or operation subsequent to the process of stamping; hammer molds or swaged steel; gun-barrel molds not in bars; alloys used as substitutes for steel in the manufacture of tools; all descriptions and shapes of dry sand, loam, or

iron molded castings, sheets, and plates; rolled wire rods in coils or bars not smaller than twenty one-hundredths of one inch in diameter, and steel not specially provided for in this section, all the foregoing when made by the crucible, electric, or cementation process, either with or without alloys, and finished by rolling, hammering, or otherwise, and all steels by whatever process made, containing alloys such as nickel, cobalt, vanadium, chromium, tungsten, wolfram, molybdenum, titanium, iridium, uranium, tantalum, boron, and similar alloys, 15 per centum ad valorem.

Notes of Decisions

Pressed or stamped shapes.—Steel shapes ready for conversion into pitchers, knobs, handles, spouts, etc., held not dutiable as pressed, sheared, or stamped shapes. See paragraph 167.

Act 1897, par. 135, relating to "pressed or stamped shapes," includes steel stampings which have been pressed or stamped into an openwork or raised pattern and are used in manufacturing ornaments, etc. U. S. v. A. & H. Veith (C. C. 1909) 169 Fed. 665.

Articles were for use as frames of automobiles. Paragraph 121, Act 1909, enumerates as dutiable thereunder articles which have been subjected to the more common processes in steel working, namely, hammering, rolling, or casting. Paragraph 131 provides for "pressed, sheared, or stamped shapes." The goods here are admittedly "pressed." Paragraph 131 applies. Kuyper & Co. v. U. S. (1914) 5 Ct. Cust. App. 175.

Rolling, hammering, etc.—Pile protectors held advanced in condition beyond hammering, rolling, etc. See paragraph 167.

Sheared shapes of steel.—As in steel plates changed from the usual form by being cut at a slight variation from a right angle, for a special purpose and not for evasion, held that they are provided for in Act 1897, par. 135, enumerating "sheared * * * shapes" of steel and "plates and steel in all forms and shapes not specially provided for" rather than in paragraph 126, enumerating "boiler, or other plate iron or steel * * * sheared or unsheared." U. S. v. Vandegrift (1905) 142 Fed. 448, 73 C. C. A. 564, affirming decree In re F. B. Vandegrift & Co. (C. C. 1905) 139 Fed. 790.

Sheets and plates of steel in general.—Ball bearings held not dutiable as steel in all forms and shapes. See paragraph 106.

Cast steel, machined, worked, and forming a combination of parts ready for use in a cement mill, held not dutiable as sheets. See paragraph 167.

Drawplates and wortles held not dutiable as plates. See paragraph 106.

Drill rods held not dutiable as steel in all forms and shapes. See paragraph 113.

Horseshoe calks held not dutiable as steel in all forms and shapes. See paragraph 167.

Muck bars held not dutiable as steel in all forms and shapes not specially provided for. See paragraph 103.

The provision in Act 1897, par. 135, for "plates and steel in all forms and shapes," does not include plates that have been manufactured into some other completed commercial article, such as a so-called engraved steel table, consisting of a rectangular slab incised with a pattern to be impressed upon plate glass. Theodore W. Morris & Co. v. U. S. (1909) 174 Fed. 656, 98 C. C. A. 410 (affirming judgment [C. C. 1909] 169 Fed. 666); Morris v. U. S. (C. C. 1903) 140 Fed. 774.

Crop ends of Bessemer steel rails are taxable at 45 per cent. ad valorem, under R. S. § 2502, Schedule C, as "steel not specially enumerated or provided for," and not under the amendment (Act March 3, 1883, c. 121, § 6) imposing a duty of 20 per cent. ad valorem on "mineral substances in a crude state, and metals unwrought, not specially enumerated or provided for." Robertson v. Perkins (1889) 129 U. S. 233, 9 Sup. Ct. 279, 32 L. Ed. 686, reversing (C. C. 1887) 29 Fed. 842.

Thin, checkered, steel plates about 12 by 5 feet, specially adapted for use in the construction of floors for boiler rooms, held dutiable as steel "plates," under Act 1897, par. 135, rather than as "plate * * * steel," under paragraph 126. Hill v. R. D. Wood & Co. (1908) 163 Fed. 51, 89 C. C. A. 635.

Misnomer alone cannot make a tariff provision applicable; and the appellation of "drawplates" cannot bring articles within the enumeration of "plates," which are not plates in form, nor commercially known as plates, and to which such name has clung inappropriately because plates were formerly used for the same purpose. Newman v. U. S. (1907) 159 Fed. 123, 86 C. C. A. 511.

Steel in strips, varying from ½ inch to 6 inches in width, and from No. 10 wire gauge to No. 36 in thickness, mostly in coils exceeding 100 feet in length, produced by rolling a billet or bar cold, and not by shearing from commercial sheet steel of greater width, and known commercially as "steel strips," or "cold-rolled steel," held dutiable under Act 1894, par. 122 which provides for "steel in all forms and shapes," and not under paragraph 124, as "sheet steel in strips," regardless of its value. Boker v. U. S. (1903) 124 Fed. 59, 59 C.

C. A. 425, reversing judgment (C. C. 1902) 116 Fed. 1015.

"Diamond steel," which is made by crushing small steel ingots, after they have been submitted to a special treatment, to various degrees of fineness, from the size of a buckwheat kernel to an impalpable grain, and which is used in sawing stone and for like purposes, was dutiable under the provision for "steel in all forms and shapes," in paragraph 122, Act 1894, and not as a manufactured article not specially provided for, under paragraph 177. U. S. v. Binney (1896) 82 Fed. 992, 27 C. C. A. 347.

Act 1897, pars. 135, 208, relating to steel shapes, do not include in that provision articles so far completed as to be practically ready for use. U. S. v. Thomas Prosser & Son (C. C. 1910) 177 Fed. 569.

The provision for steel plates in Act 1897, par. 135, while not covering all steel articles that are known as plates, includes so-called monogram dies and plates used in engraving, which, besides being called plates, are within the dictionary definitions of "plates." U. S. v. Sellers (C. C. 1908) 160 Fed. 518, judgment affirmed (1909) 166 Fed. 1022, 91 C. C. A. 334.

Sheets of iron or steel valued at more than 3 cents per pound held not covered by paragraph 142, Act 1890, but dutiable, according to value, under paragraph 215, as manufactures of metal not specially provided for, and not subject to the additional rate imposed by paragraph 144 when pickled or cleaned; such paragraph being applicable only to sheets dutiable by gauge under paragraph 142. Hampton v. U. S. (C. C. 1902) 116 Fed. 109.

Steel strips flattened from round steel wire, not smaller than 13 wire gauge, and cut into lengths, not valued at above three cents per pound, held dutiable under paragraph 122, Act 1894, covering "steel in all forms and shapes valued above two and two-tenths cents and not above three cents per pound," and not under paragraph 124, as articles manufactured from round steel wire. U. S. v. H. Boker & Co. (C. C. 1898) 90 Fed. 804.

"Plate" both in common parlance and in commerce is used to designate an article distinct from "drawplate," being in fact the thing out of which "drawplates" are made. The term "plate" is not generic, including "drawplate" as a species. Newman-Andrew v. U. S. (1911) 2 Ct. Cust. App. 4.

Flat pieces of steel, 3 inches by one-eighth of an inch in thickness, and 30 or more feet in length, and known commercially as "flat rods," held not flat wire rods and were dutiable not as flat wire rods, but under the clause "steel in all forms and shapes not specially provided for," paragraph 135, Act 1897. Athenia Steel & Wire Co. v. U. S. (1911) 1 Ct. Cust. App. 494.

111. Steel wool or steel shavings, 20 per centum ad valorem.

Notes of Decisions

Steel wool.—In Act 1897, par. 137, the provision for "articles manufactured from * * * wire," cannot be restricted to manufactured articles which contain the round wire in its integrity; and "steel wool," consisting of filaments shaved from steel wire, and constituting a finished commercial article, is embraced in said provision. Buehne Steel Wool Co. v. U. S. (1907) 159 Fed. 107, 86 C. C. A. 297, reversing decree U. S. v. Buehne Steel Wool Co. (C. C. 1907) 154 Fed. 93, and writ of certiorari denied U. S. v. Buehne Steel Wool Co. (1908) 28 S. Ct. 763, 210 U. S. 435, 52 L. Ed. 1137.

Steel wool, consisting of the filaments or shavings produced by passing toothed knives over steel wire, held dutiable under paragraph 135, Act 1897, as "steel in all forms and shapes," rather than under paragraph 193, as articles composed of steel "not specially provided for." Buehne v. U. S. (C. C. 1905) 140 Fed. 772, judgment affirmed Buehne Steel Wool Co. v. U. S. (1906) 145 Fed. 1021, 74 C. C. A. 680.

112. Grit, shot, and sand made of iron or steel, that can be used as abrasives, 30 per centum ad valorem.

Notes of Decisions

Iron sand.—Iron sand held dutiable as manufacture of metal. See paragraph 167.

Iron sand, a completed article manufactured from cast iron and steel scrap, held not dutiable as "unwrought metals," under Act 1897. Harrison Supply Co. v. U. S. (C. C. 1908) 164 Fed. 155.

113. Rivet, screw, fence, nail, and other iron or steel wire rods, whether round, oval, or square, or in any other shape, and flat rods up to six inches in width ready to be drawn or rolled into wire or strips, all the foregoing in coils or otherwise, including wire rods and iron or steel bars, cold rolled, cold drawn, cold hammered, or polished in any way in addition to the ordinary process of hot rolling or ham-

mering, not specially provided for in this section, 10 per centum ad valorem: Provided, That all round iron or steel rods smaller than twenty one-hundredths of one inch in diameter shall be classed and dutiable as wire.

Notes of Decisions

Drill rods.—Polished steel rods made by Stubbs, in England, commonly and commercially known as "drill rods," or "Stubbs steel," which are in fact used for making drill rods, being the standard for making the best drills, held dutiable under paragraph 124, Act 1894, as drill rods, and not under paragraph 122, covering steel in all forms and shapes not specially provided for. U. S. v. Frasse (C. C. 1899) 94 Fed. 483.

Steel bars or rods cold rolled.—In paragraph 141, Act 1897, relating to steel strips "cold rolled, * * * brightened, * * * or polished by any process to such perfected surface finish, or polish better than the grade of cold-rolled, smoothed only," these words were employed by Congress with the meaning theretofore given them by customs authorities under earlier acts, and they, therefore, do not include strips whose only polish or brightening is incidentally acquired during the cold-rolling, and which were not included in similar former provisions. U. S. v. Crucible Steel Co. (1907) 154 Fed. 1005, 83 C. C. A. 679 (affirming decree [C. C. 1906] 147 Fed. 537); Id. (1905) 137 Fed. 384, 69 C. C. A. 576 (affirming judgment Crucible Steel Co. v. U. S. [C. C. 1904] 132 Fed. 269).

Act 1897, par. 141, provides, for "iron * * * rods * * * cold drawn * * * in addition to the ordinary process of hot rolling," a duty "in addition to the rates * * * on * * * rods * * * which are hot rolled." Held, as to wire screw rods which have been cold drawn after being hot rolled, that they are subject to this additional duty, regardless of the fact that such articles are specially enumerated in another paragraph as "wire screw rods," and that cold drawing is a necessary part of the process of making such rods. U. S. v. George Nash & Co. (1907) 158 Fed. 401, 85 C. C. A. 511, reversing judgment George Nash & Co. v. U. S. (C. C. 1907) 152 Fed. 573.

Steel in the form of strips, 3 to 3½ inches wide, less than 25-1000 of an inch thick, and more than 100 feet long, which were cold rolled to a surface finish, held not subject to the additional duty imposed on "steel bars or rods, of whatever shape or section, which are cold rolled," by Act 1890. In re Wetherell (C. C. 1894) 60 Fed. 267, judgment reversed (1894) 65 Fed. 987, 13 C. C. A. 264.

Swedish iron nail rods.—Swedish iron nail rods should be classified as a description of "rolled and hammered iron not otherwise provided for," and not as "bar iron, rolled or hammered, comprising flats less than three-eighths of an inch or more than two inches thick, or less than one inch or more than six inches wide. Worthington v. Abbott (1888) 124 U. S. 434, 8 Sup. Ct. 562, 31 L. Ed. 494, affirming (C. C. 1884) 20 Fed. 495.

The language of paragraph 113, Act 1913, is comprehensive, including, as it does, "rivet, screw, fence, nail, and other iron or steel wire rods," The testimony shows the goods were sold as iron wire rods and are used in this country as such. The record sustains the conclusion of the board that the merchandise was iron wire rods and dutiable under paragraph 113. Swedish Iron & Steel Corporation v. U. S. (1915) 6 Ct. Cust. App. 225. See, also, Athenia Steel & Wire Co. v. U. S. (1911) 1 Ct. Cust. App. 494.

114. Round iron or steel wire; wire composed of iron, steel, or other metal, except gold or silver, covered with cotton, silk, or other material; corset clasps, corset steels, dress steels, and all flat wires and steel in strips not thicker than number fifteen wire gauge and not exceeding five inches in width, whether in long or short lengths, in coils or otherwise, and whether rolled or drawn through dies or rolls, or otherwise produced; telegraph, telephone, and other wires and cables composed of metal and rubber, or of metal, rubber, and other materials; iron and steel wire coated by dipping, galvanizing, or similar process with zinc, tin, or other metal; all other wire not specially provided for in this section and articles manufactured wholly or in chief value of any wire or wires provided for in this section; all the foregoing 15 per centum ad valorem; wire heddles and healds, 25 per centum ad valorem; wire rope, 30 per centum ad valorem.

Notes of Decisions

1. Articles made from coated wire.
2. Cables.
3. Coated wire.
4. Coiled wire articles.
5. Covered wire.
6. Flat steel wire.

7. Staples.
8. Steel strips.
9. Steel wool.
10. Wire made of nickel alloy.

1. Articles made from coated wire.—Act 1897, par. 137, imposes a duty on steel wire smaller than No. 16 wire gauge of 2 cents per pound, with an additional duty of 1¼ cents per pound on articles manufactured from such wire, "and on iron or steel wire coated with zinc, tin, or any other metal two-tenths of 1 cent per pound in addition to the duty imposed on the wire from which it is made." In 1900 the Treasury Department ruled that articles manufactured from steel wire coated were subject to all three of such duties, but shortly thereafter, and in the same year, formally reversed such ruling, and has since uniformly ruled that the additional duty of two-tenths of 1 cent was not to be imposed on articles manufactured from coated steel wire. Held, that in view of the uncertainty of the language of the statute such uniform ruling by the executive department, continued for five years, would be treated as a practical construction of the act, and would not be reversed by the courts. Burditt & Williams Co. v. U. S. (1907) 153 Fed. 67, 82 C. C. A. 201, reversing judgment (C. C. 1906) 147 Fed. 892.

2. Cables.—A cable used for making connections with a telephone switch board, consisting of 64 wires bound together, which, both individually and in the group, are covered with various materials for insulating and waterproofing purposes, held an "article," within the meaning of the second proviso in paragraph 137, Act 1897, relating to "articles manufactured from * * * copper wire," and not dutiable under the provision in the same paragraph for "wire not specially provided for, * * * whether uncovered or covered," nor under paragraph 193 of said act, as a manufacture of metal not specially provided for. Salt v. U. S. (1904) 134 Fed. 1021, 68 C. C. A. 442, affirming judgment (C. C. 1903) 127 Fed. 890.

Telegraph cable, composed of iron wire and gutta percha, held dutiable as a manufacture not otherwise provided for, of which iron is the component material of chief value. Act 1861, § 22. U. S. v. United States Tel. Co. (D. C. 1868) Fed. Cas. No. 16,603.

3. Coated wire.—The provision for "coated wire" in Act 1897, held not limited to a process of covering by galvanizing, dipping, or other similar method; and wire, made by inserting an iron wire in a hollow tube of nickel and then drawing the whole wire down until the nickel covering becomes welded to and a part of the iron core, held "coated," within the meaning of the law. Hermann Boker & Co. v. U. S. (C. C. 1909) 168 Fed. 464, judgment affirmed U. S. v. Herman Boker & Co. (1910) 176 Fed. 730, 100 C. C. A. 276.

4. Coiled wire articles.—The coiling process to which this wire has been subjected has given the wire a new character, name, and use. It is not according to the accepted definition of "wire," "a slender rod, strand, or thread of ductile metal," but is essentially different from this. It has a use as a spring, resulting from the changed form into which the original wire has been permanently converted. It was dutiable as an article manufactured of wire. Boye Needle Co. v. U. S. (1913) 5 Ct. Cust. App. 43.

5. Covered wire.—Silk-covered collar supporters held not dutiable as covered wire. See paragraph 318.

6. Flat steel wire.—Strips of steel, 3 inches wide, from 100 to 250 feet long, and less than $^{25}/_{1000}$ of an inch in thickness, which have been shaped by passing through cold rolls, held dutiable as "flat steel wire, or sheet steel in strips," under paragraph 148, Act 1890. U. S. v. Wetherell (1894) 65 Fed. 987, 13 C. C. A. 264, reversing judgment In re Wetherell (C. C. 1894) 60 Fed. 267.

Merchandise commercially known as "ribbon wire," held not brought within the terms "round iron or steel wire," as used in paragraph 135, Act 1909. Steinhardt & Bro. v. U. S. (1913) 4 Ct. Cust. App. 420.

7. Staples.—Wire in U-forms of heavy wire, used in the manufacture of automobile tires were not imported nor are they designed for use as staples, that is, as fasteners. They have been advanced beyond the condition of a staple proper and should not be classified as such. U. S. v. Goodrich Co. (1915) 6 Ct. Cust. App. 200.

8. Steel strips.—Steel strips flattened from round steel wire held not dutiable as articles manufactured from round steel wire. See paragraph 110.

The provision in Act 1897, par. 137, for "sheet steel in strips," does not include long, narrow, thin, cold-rolled steel strips, because they are not sheet steel, nor stripped from sheet steel, nor commercially known as sheet steel in strips. U. S. v. Hermann Boker & Co. (1907) 158 Fed. 396, 86 C. C. A. 32, affirming judgment Hermann Boker & Co. v. U. S. (C. C. 1907) 154 Fed. 174.

Strips of steel, from 6 to 12 millimeters wide, $^{12}/_{100}$ to $^{20}/_{100}$ of a millimeter long, cold rolled, tempered, polished, with edges slightly rounded, which are used for the manufacture of steel tape measures, held dutiable under paragraph 177, Act 1883, as steel strips, and not as "flat steel, No. 39," at 45 per cent. ad valorem, under paragraph 183. Magone v. Vom Cleff (1895) 70 Fed. 980, 17 C. C. A. 549, affirming

judgment Vom Cleff v. Magone (C. C. 1893) 57 Fed. 198.

Strips of steel from 1 to 6 inches wide, in coils of 100 feet or more in length, varying in thickness from No. 10 wire gauge to No. 36, and shaped by passing through cold rolls, held, when of sufficient value, dutiable under Tariff Act 1894, par. 124, providing for sheet steel in strips valued above 4 cents per pound; otherwise, under paragraph 122, providing for steel in all forms and shapes not otherwise provided for. Boker v. U. S. (C. C. 1902) 116 Fed. 1015, judgment reversed (1903) 124 Fed. 59, 59 C. C. A. 425.

Cold-rolled, untempered steel, from 1¼ to 4½ inches wide, and from 500 to 1,500 feet long, which is largely used for making band saws, but not shown to be unfitted in its composition for other uses, held dutiable under paragraph 124, Act 1894, as "sheet steel in strips," and not under paragraph 116, as "band steel not otherwise provided for," or under paragraph 122, as "saw plates." Belcher v. U. S. (C. C. 1898) 91 Fed. 975.

Steel in the form of strips 3 to 3½ inches wide, less than 25-1000 of an inch thick, and more than 100 feet long, which were cold rolled to a surface finish, and not cut from wider pieces, held not "sheet steel in strips," within Act 1890, par. 148, for "sheet steel," as commercially understood, is always hot rolled. In re Wetherell (C. C. 1894) 60 Fed. 267, judgment reversed (1894) 65 Fed. 987, 13 C. C. A. 264.

Paragraph 135, Act 1909, held to exhibit certain well-defined changes from previous enactments that dealt with the same subject-matter and was not to be construed according to the practice of the customs or the decisions of law controlling the first enactment. Strouse, Adler & Co. v. U. S. (1912) 3 Ct. Cust. App. 184.

9. Steel wool.—Steel wool held dutiable as articles made from wire. See paragraph 111.

10. Wire made of nickel alloy.—Wire made of nickel alloy held dutiable as a manufactured article not specially provided for. See paragraph 167.

115. No article not specially provided for in this section, which is wholly or partly manufactured from tin plate, terne plate, or the sheet, plate, hoop, band, or scroll iron or steel herein provided for, or of which such tin plate, terne plate, sheet, plate, hoop, band, or scroll iron or steel shall be the material of chief value, shall pay a lower rate of duty than that imposed on the tin plate, terne plate, or sheet, plate, hoop, band, or scroll iron or steel from which it is made, or of which it shall be the component thereof of chief value.

Notes of Decisions

Disks.—Small disks produced in the manufacture of tin held not dutiable as articles wholly or partly manufactured from tin. See paragraph 167.

Tagger's tin.—Under R. S. §§ 2503, 2504, certain articles imported in 1874, and known as "tin in plates," "terne plates," and "tagger's tin," held to be dutiable only at 90 per cent. of the rate of 15 per cent. ad valorem. Arthur v. Dodge (1879) 101 U. S. 34, 25 L. Ed. 948, affirming (C. C. 1876) Fed. Cas. No. 3,950.

116. No allowance or reduction of duties for partial loss or damage in consequence of rust or of discoloration shall be made upon any description of iron or steel, or upon any article wholly or partly manufactured of iron or steel, or upon any manufacture of iron or steel.

117. All metal produced from iron or its ores, which is cast and malleable, of whatever description or form, without regard to the percentage of carbon contained therein, whether produced by cementation, or converted, cast, or made from iron or its ores, by the crucible, Bessemer, Clapp-Griffith, pneumatic, Thomas-Gilchrist, basic, Siemens-Martin, or open-hearth process, or by the equivalent of either, or by a combination of two or more of the processes, or their equivalents, or by any fusion or other process which produces from iron or its ores a metal either granular or fibrous in structure, which is cast and malleable, excepting what is known as malleable-iron castings, shall be classed and denominated as steel.

Notes of Decisions

Malleable.—The term "malleable," as applied to steel dutiable under the tariff laws, means "capable of being drawn out and extended by beating; capable of extension by hammering; reducible to laminated form by beating." Farris v. Magone (C. C. 1891) 46 Fed. 845.

Steel.—Billets of metal produced from iron or its ores, containing 20 per cent. of carbon and smaller percentages of

silicon, manganese, phosphorus, and sulphur, which is granular in structure, malleable, and which, at any stage of the process of production, has been cast, held within the definition of "steel," in Act 1890, par. 150. Gary v. Cockley (1895) 65 Fed. 497, 13 C. C. A. 17.

118. Anvils of iron or steel, or of iron and steel combined, by whatever process made, or in whatever stage of manufacture, 15 per centum ad valorem.

119. Automobiles, valued at $2,000 or more, and automobile bodies, 45 per centum ad valorem; automobiles valued at less than $2,000, 30 per centum ad valorem; automobile chassis, and finished parts of automobiles, not including tires, 30 per centum ad valorem.

Notes of Decisions

Automobiles.—When an automobile is imported without tires, tires contained in the same crate as the car are not dutiable separately; but the whole is dutiable as an entirety, under the provision in Act 1897 relating to "manufactures wholly or in part of metal," though other tires may be substituted for those imported with the car. U. S. v. Auto Import Co. (1909) 168 Fed. 242, 93 C. C. A. 456.

120. Bicycles, motor cycles, and finished parts thereof, not including tires, 25 per centum ad valorem.

121. Axles, or parts thereof, axle bars, axle blanks, or forgings for axles, whether of iron or steel, without reference to the stage or state of manufacture, not otherwise provided for in this section, 10 per centum ad valorem: Provided, That, when iron or steel axles are imported fitted in wheels, or parts of wheels, of iron or steel, they shall be dutiable at the same rate as the wheels in which they are fitted.

Notes of Decisions

Axles.—The commercial character of importations does not depend upon the mere fact that they were or were not finished axles, but whether they were understood and recognized in commerce and the business of trade as axles, by those engaged in such trade, at the time of the passage of the law. Ross v. Fuller (C. C. 1883) 17 Fed. 224.

122. Blacksmiths' hammers, tongs, and sledges, track tools, wedges, and crowbars, whether of iron or steel, 10 per centum ad valorem.

Notes of Decisions

Track tools.—Steel picks, spike hammers, and clawed bars, held to be "track tools," and dutiable as such under Act 1883. Procter v. Spalding (C. C. 1885) 26 Fed. 610.

123. Nuts or nut blanks, and washers, 5 per centum ad valorem; bolts of iron or steel, with or without threads or nuts, or bolt blanks, finished hinges or hinge blanks, 10 per centum ad valorem; spiral nut locks and lock washers, whether of iron or steel, 30 per centum ad valorem.

Notes of Decisions

Washers.—The authorities concur in the conclusion that lock washers or nut locks, such as these of the importation, intended for use on automobiles, are an evolution of the common washer, and they are properly to be designated "washers." The importation held dutiable as such under paragraph 162, Act 1909, and not as manufactures of steel not specially provided for. U. S. v. Motor Car Equipment Co. (1912) 3 Ct. Cust. App. 77.

124. Card clothing not actually and permanently fitted to and attached to carding machines or to parts thereof at the time of importation, when manufactured with round iron or untempered round steel wire, 10 per centum ad valorem; when manufactured with tempered round steel wire, or with plated wire or other than round iron or steel

wire, or with felt face, or wool face, or rubber face cloth containing wool, 35 per centum ad valorem.

Notes of Decisions

Card clothing.—Card clothing attached to iron flats held not dutiable as card clothing. See paragraph 167.

125. Cast iron pipe of every description, cast-iron andirons, plates, stove plates, sadirons, tailor's irons, hatter's irons, and castings and vessels wholly of cast iron, including all castings of iron or cast-iron plates which have been chiseled, drilled, machined, or otherwise advanced in condition by processes or operations subsequent to the casting process but not made up into articles or finished machine parts; castings of malleable iron not specially provided for in this section; cast hollow ware, coated, glazed, or tinned, 10 per centum ad valorem.

Notes of Decisions

Castings.—Nickel-plated cast-iron eccentrics held not dutiable as castings. See paragraph 167.

The term "cashings," in Act 1897, par. 148, does not include articles which have been advanced in condition by work bestowed on them after they were cast. John Bromley & Sons v. U. S. (C. C. 1907) 154 Fed. 399.

The provision for "castings" in Act 1897, par. 148, does not include cast-iron machinery parts, which have been drilled, bored, planed, fitted, and finished. Lehigh Mfg. Co. v. U. S. (C. C. 1907) 153 Fed. 596.

Iron castings, intended to form parts of an ice machine, but which require to be put together after their arrival, and other parts added, in order to make a complete machine held "castings of iron" within Act 1883. Julius Winkelmeyer Brewing Co. v. Whitney (C. C. 1887) 29 Fed. 780; Wolff v. Spalding (C. C. 1885) 26 Fed. 609.

Parts of textile machinery, made ready for immediate attachment to the machines for which they had been severally designed, held iron castings advanced in condition, as defined by paragraph 147, Act 1909. U. S. v. Leigh & Butler (1913) 4 Ct. Cust. App. 304. See, also, Jackson Co. v. U. S. (1912) 2 Ct. Cust. App. 475.

Hollow ware.—See, also, paragraph 134.

Spelter ware held not dutiable as cast hollow ware. See paragraph 167.

"Hollow ware," as used in Act 1883, means cast iron ware. Strausky v. Erhardt (C. C. 1892) 52 Fed. 808.

Legislation, and the judicial interpretation of this, establishes the intent of congress to preserve in the tariff act of 1909 the distinction long maintained between glazed cast-iron goods and other glazed iron wares, and to subject glazed iron hollow ware and glazed cast-iron hollow ware to different rates of duty. Sittig v. U. S. (1913) 4 Ct. Cust. App. 281.

Make-up.—The imported articles were finished castings, molded, drilled, and machined; but to make the machine complete rubber gaskets, filter cloths, bronze fittings, cocks, etc., are required. They are not adapted to the final use for which they were made; they are not "made up into articles." Lang v. U. S. (1914) 5 Ct. Cust. App. 362.

"To make up" invariably expresses a process of aggregating or assembling different units into a composite entirety. A made-up article is one which has been composed by uniting together various parts. U. S. v. Leigh & Butler (1913) 4 Ct. Cust. App. 304.

Plates.—Cast-iron disks subjected to a process of manufacture held not plates. See paragraph 167.

126. Chain or chains of all kinds, made of iron or steel, not specially provided for in this section, 20 per centum ad valorem; sprocket and machine chains, 25 per centum ad valorem.

Notes of Decisions

Bicycle chains.—Steel chains used for bicycle gearing held dutiable under the provision in Act 1883, for "chain or chains of all kinds, made of iron or steel," etc., and not as "manufactures, articles, or wares, not specifically enumerated or provided for." (1890) 19 Op. Atty. Gen. 527.

Chain links.—To authorize the entry of small pieces of bolt iron under the name of "chain links," it must be proved that they have been previously known in commerce by that name. U. S. v. Sarchet (D. C. 1832) Fed. Cas. No. 16,224.

Shot chains.—So-called "shot chains" of iron or steel, consisting of iron or steel balls fastened together with swivels or links, held not dutiable, under paragraph 216 of Act 1883, as an arti-

cle composed wholly or in part of iron, steel, etc., but under paragraph 171, under the description, "chains of all kinds made of iron or steel" (according to their diameter). In re Lorsch (C. C. 1892) 49 Fed. 221.

127. Lap-welded, butt-welded, seamed, or jointed iron or steel tubes, pipes, flues, or stays; cylindrical or tubular tanks or vessels, for holding gas, liquids, or other material, whether full or empty; flexible metal tubing or hose, not specially provided for in this section, whether covered with wire or other material, or otherwise, including any appliances or attachments affixed thereto; welded cylindrical furnaces, tubes or flues made from plate metal, and corrugated, ribbed, or otherwise reenforced against collapsing pressure, and all other iron or steel tubes, finished, not specially provided for in this section, 20 per centum ad valorem.

Notes of Decisions

Copper tubing or hose.—Generally speaking, "pipe" implies an article tubular in form and rigid, while "tubing" implies an article that is flexible. Paragraph 151, Act 1909, provides in precise language for flexible metal tubing or hose, and this being a more specific, definite enumeration than "copper pipes," the importation was dutiable not under paragraph 176 of that act, but under paragraph 151. Hensel v. U. S. (1911) 2 Ct. Cust. App. 221.

Furnaces.—The provision for "furnaces," in Act 1897, par. 152, does not include so-called arched Purves furnaces, consisting simply of corrugated steel cylinders or tubes, which are not furnaces in fact, but are intended to be used in the manufacture of furnaces. Such articles held dutiable under the provision in the same paragraph for boiler tubes or flues. Thomas v. F. B. Vandegrift & Co. (1908) 162 Fed. 645, 89 C. C. A. 437, affirming judgment (C. C. 1907) 153 Fed. 591.

"Purves' ribbed boiler flues" held dutiable as "boiler flues," under Act 1890, par. 157, and not under par. 215, as manufactures not specially enumerated, composed wholly or in part of iron, steel, or other metal. In re Whitney (C. C. 1892) 53 Fed. 235.

Cylindrical or tubular tanks or vessels.—Steel cylinders, severally 19 feet in length and 4 feet in diameter and 35 feet in length and 8 feet in diameter used as storage tanks for illuminating gas, held "tubes finished," within Act 1897, par. 152. U. S. v. Knauth, Nachod & Kuhne (1909) 168 Fed. 539, 93 C. C. A. 619.

The provision in Act 1897, par. 152, for "steel tubes, finished," held to include bottle-shaped vessels of steel, which are used in the transportation of gas and are about four feet long and eight inches in diameter, with one end permanently closed and the other tapered to a neck. U. S. v. Liquid Carbonic Co. (1908) 160 Fed. 455, 87 C. C. A. 671.

Finding of the board of general appraisers that imports were steel tubes, finished, dutiable under Act 1897, par. 152, held not to be disturbed. Page v. U. S. (C. C. 1902) 113 Fed. 1006.

Tubes of wrought steel for holding gas under pressure held dutiable under Act 1894, par. 130, as tubes of steel for "boiler or other tubes," and not as manufactures of steel not otherwise provided for, under paragraph 177. Downing v. U. S. (C. C. 1900) 99 Fed. 423.

Strong sheet-iron drums, containing binoxide of barium, some barrel-shaped and some tubular, the barrel-shaped ones having in the head an opening closed by a readily removable and replaceable lid, and the tubular one, closed by a cork and sealed by a tin cap the removal of which does not injure the container, the single completed use of which did not destroy them or affect their status as containers, are dutiable under paragraph 127, Act 1913, as "* * * cylindrical or tubular tanks or vessels, for holding gas, liquids, or other material." U. S. v. Bene (1916) 6 Ct. Cust. App. 523. See, also, Same v. Braun Chemical Co. (1911) 2 Ct. Cust. App. 57.

Within the meaning of paragraph 127, Act 1913, a barrel-shaped drum may properly be regarded as a cylindrical vessel. U. S. v. Bene (1916) 6 Ct. Cust. App. 523.

Strong sheet-iron drums containing sulphide of sodium, which, when in proper condition, will admit of their contents being removed without destroying them or their usefulness as containers, are dutiable under paragraph 127, Act 1913, as "* * * cylindrical or tubular tanks or vessels, for holding gas, liquids, or other material"; and this tariff status is not affected by their having, since importation, become damaged so that the removal of their contents necessitates their destruction. U. S. v. Geisenheimer & Co. (1916) 6 Ct. Cust. App. 520. See, also, Same v. Braun Chemical Co. (1911) 2 Ct. Cust. App. 57.

Paragraph 151, Act 1909, imposes a duty upon cylindrical or tubular tanks or vessels for holding gas, liquids, or other material whether full or empty,

This duty is laid upon containers, and not upon the things contained, and this regardless of whether the contents bear specific duties or are free of duty. Colby & Co. v. U. S. (1912) 3 Ct. Cust. App. 234. See, also, Merritt v. Stephani (1883) 108 U. S. 106, 2 Sup. Ct. 308, 27 L. Ed. 668; U. S. v. Braun Chemical Co. (1911) 2 Ct. Cust. App. 57.

"Cylindrical or tubular tanks or vessels," made and used for "holding gas, liquids, or other material," and "full" when imported, and after they have been emptied of their contents, some are used again in the transportation of crude or refined glycerine and some are sold in competition with similar articles in the domestic market, held dutiable under paragraph 151, Act 1909. Marx & Rawolle v. U. S. (1912) 3 Ct. Cust. App. 94.

In view of the legislative history of the clause and its judicial interpretation, and in view of the common significance of the language employed, the cylindrical containers as described in paragraph 151, § 1, Act 1909, cannot be taken to remove small tin cans with contents of tomatoes and of tomato sauce from the operation of subsection 18 of section 28 of that act, though these tins are cylindrical in shape and they were dutiable ad valorem under said subsection 18. U. S. v. Garramone (1911) 2 Ct. Cust. App. 30.

It would seem "cylindrical or tubular tanks or vessels" appearing in paragraph 151, Act 1909, must be taken to refer to containers made in part at least of metal and of such strong and permanent construction that on being emptied of their contents they might properly be devoted to further similar use and possessing appreciable value for such purposes. Id.

Reviewing in full the history of legislation affecting these containers, cylindrical iron drums used in commerce to convey glycerine are held dutiable under paragraph 151, Act 1909. U. S. v. Marx (1911) 1 Ct. Cust. App. 152.

128. Penknives, pocketknives, clasp knives, pruning knives, budding knives, erasers, manicure knives, and all knives by whatever name known, including such as are denominatively mentioned in this section, which have folding or other than fixed blades or attachments, and razors, all the foregoing, whether assembled but not fully finished or finished; valued at not more than $1 per dozen, 35 per centum ad valorem; valued at more than $1 per dozen, 55 per centum ad valorem: Provided, That blades, handles, or other parts of any of the foregoing knives, razors, or erasers shall be dutiable at not less than the rate herein imposed upon the knives, razors and erasers, of which they are parts. Scissors and shears, and blades for the same, finished or unfinished, 30 per centum ad valorem: Provided further, That all articles specified in this paragraph shall, when imported, have the name of the maker or purchaser and beneath the same the name of the country of origin die-sunk conspicuously and indelibly on the blade, shank, or tang of at least one or, if practicable, each and every blade thereof.

Notes of Decisions

Hair clippers.—Hair clippers held not dutiable as scissors or shears. See paragraph 167.

"Hair clippers" used by barbers in cutting hair close or short should be rated for duty as "cutlery," and charged duty at 35 per cent. ad valorem. Koch v. Seeberger (C. C. 1887) 30 Fed. 424.

Knives with other than fixed blades.—The fact that some of the articles dutiable under paragraph 128, Act 1913, may be put to agricultural uses and that paragraph 391 exempts from duty all agricultural implements creates no irreconcilable conflict. Quirk v. U. S. (1915) 6 Ct. Cust. App. 444. See, also, Powers v. Barney (C. C. 1863) Fed. Cas. No. 11,361.

Knives with folding blades and spring backs, designated as budding and pruning knives, are dutiable under paragraph 128, Act 1913; and are not to be admitted free under paragraph 391 as agricultural implements because they are capable of being put to agricultural uses. Id.

A strip of metal suitable for opening envelopes that has been riveted to the handle of a knife makes of this something other than the ordinary penknife; it remains, however, a knife, with folding or other than fixed blades or attachments under paragraph 152, Act 1909. Silberstein v. U. S. (1912) 3 Ct. Cust. App. 239.

Metal erasers.—Erasers of metal with fixed or rigid blades set into handles of wood or other material are dutiable under paragraph 152, Act 1909. Irwin & Co. v. U. S. (1911) 2 Ct. Cust. App. 296.

Parts of knives.—Mother of pearl cut for knife handles held not dutiable as parts of knives. See paragraph 369.

Penknives.—Small knives used as toys held not dutiable as penknives. See paragraph 342.

Pocketknives.—Pocketknives, with all but the scales for the sides of the han-

dles, held dutiable under Act 1897, par. 153, as pocketknives, or parts thereof, partly or wholly manufactured. U. S. v. Silberstein (C. C. 1900) 99 Fed. 263.

Scissors and shears.—Sheep shears held included within the meaning of the word "cutlery," as used in Act 1883. Simmons Hardware Co. v. Lancaster (C. C. 1887) 31 Fed. 445.

These articles have been brought into a condition where their only practical use or purpose is to be finished as scissors blades, and they are commercially unsuitable for any other purpose. They were properly assessed under the provision for "scissors and shears, and blades for the same, finished or unfinished," in paragraph 152, Act 1909. Redden & Martin v. U. S. (1915) 5 Ct. Cust. App. 485.

The definition of "shears" in Knight's American Mechanical Dictionary is accepted as correct: A cutting instrument operating like scissors, but on a larger scale and somewhat differently shaped; the edges of the blades are beveled and the handles adapted for thumb and fingers, respectively, instead of being duplicates. Sheldon v. U. S. (1911) 2 Ct. Cust. App. 109.

129. Sword blades, and swords and side arms, irrespective of quality or use, in part of metal, 30 per centum ad valorem.

Notes of Decisions

Side arms.—A bayonet when in use is affixed to a gun, but is not to be considered a part of the gun, but dutiable as side arms under paragraph 153, Act 1909. American Express Co. v. U. S. (1911) 2 Ct. Cust. App. 312.

Swords.—The provision for "swords" in Act 1897, par. 154, held not to include so-called "bone swords," used as curios, ornaments, etc. Morimura Bros. v. U. S. (C. C. 1908) 165 Fed. 64.

130. Table, butchers', carving, cooks', hunting, kitchen, bread, butter, vegetable, fruit, cheese, carpenters' bench, curriers', drawing, farriers', fleshing, hay, tanners', plumbers', painters', palette, artists', and shoe knives, forks and steels, finished or unfinished, without handles, 25 per centum ad valorem; with handles, 30 per centum ad valorem: Provided, That all the articles specified in this paragraph, when imported, shall have the name of the maker or purchaser, and beneath the same the name of the country of origin indelibly stamped or branded thereon in a place that shall not be covered thereafter.

Notes of Decisions

Hunting knives.—A 6-inch knife, with a 5-inch folding blade that when opened fastens with a spring lock, blade and handle measuring 10 inches in length, held dutiable under Act 1897 as a "hunting knife." U. S. v. Borgfeldt (1911) 1 Ct. Cust. App. 255.

Kitchen knives.—Certain knives, used in the kitchen by cooks, held dutiable under Act 1890, par. 167, and not as a manufacture of metal, under paragraph 215. U. S. v. Curley (C. C. 1895) 66 Fed. 720.

131. Files, file blanks, rasps, and floats, of all cuts and kinds, 25 per centum ad valorem.

Notes of Decisions

Nail files.—Silver handled nail files held not dutiable as files. See paragraph 167.

132. Muskets, air-rifles, muzzle-loading shotguns and rifles, and parts thereof, 15 per centum ad valorem.

Notes of Decisions

Gun stocks.—Gun stocks held dutiable as manufactured articles not specially enumerated. See paragraph 133.

133. Breech-loading shotguns and rifles, combination shotguns and rifles, and parts thereof and fittings therefor, including barrels further advanced than rough bored only; pistols, whether automatic, magazine, or revolving, or parts thereof and fittings therefor, 35 per centum ad valorem.

Notes of Decisions

Gun stocks.—The fact that finished gun barrels are imported separately by another firm, under an arrangement with the importer of the finished stocks

with intent that they shall be brought together here, does not render the importation of stocks dutiable at the higher rate prescribed by paragraph 170, Act 1890, for all double-barreled, sporting, breech-loading shotguns, when it does not appear that the stocks had ever formed part of completed guns in Europe. U. S. v. Schoverling (1892) 13 Sup. Ct. 24, 146 U. S. 76, 36 L. Ed. 893, affirming In re Schoverling (C. C. 1891) 45 Fed. 349, following Robertson v. Gerdan (1889) 10 Sup. Ct. 119, 132 U. S. 454, 33 L. Ed. 403, and distinguishing Falk v. Robertson (1890) 11 Sup. Ct. 41, 137 U. S. 225, 43 L. Ed. 645.

Gun barrels and gun stocks, with locks, etc., constituting all the parts of complete breech-loading shotguns, and so adapted to each other in the process of manufacture as to be made into complete shotguns by inserting the barrels into the stocks, held dutiable, when shipped to the same person, on the same vessel, under the tariff act of 1890, as shotguns, and not as manufactures of metal not specially provided for, though the barrels and stocks are separately packed and invoiced. U. S. v. Irwin (1897) 78 Fed. 799, 24 C. C. A. 349.

Parts of rifles.—The provision in Act 1897, par. 157, for "parts of rifles," is not limited to those in a finished condition, but embraces parts, such as rough-bored rifle barrels, advanced to a condition unfitting them for any other use than in connection with rifles. U. S. v. Riga (C. C. 1909) 171 Fed. 783.

Rubber recoil pads.—Rubber recoil pads held not dutiable as parts or fittings of guns. See paragraph 368.

134. Table, kitchen, and hospital utensils or other similar hollow ware composed of iron or steel, enameled or glazed with vitreous glasses; table, kitchen, and hospital utensils or other similar hollow ware composed wholly or in chief value of aluminum; all the foregoing not especially provided for in this section, 25 per centum ad valorem.

Notes of Decisions

Hollow ware.—See, also, paragraph 125, ante.

Spelter ware held not dutiable as hollow ware. See paragraph 167.

Blue and white kitchen utensils, consisting of pots, kettles, saucepans, coffeepots, and similar ware, made of sheet steel, and glazed or enameled, held not dutiable as "hollow ware, coated, glazed, or tinned," under Act 1883, but are "manufactures, articles or wares * * * composed wholly or in part of iron, steel, etc.," under Schedule C, par. 216, of that act. Strausky v. Erhardt (C. C. 1892) 52 Fed. 808.

Legislation and the judicial interpretation thereof establishes the intent of Congress to preserve in the act of 1909 the distinction long maintained between glazed cast-iron goods and other glazed iron wares, and to subject glazed iron hollow ware and glazed cast-iron hollow ware to different rates of duty. Sittig v. U. S. (1913) 4 Ct. Cust. App. 281.

135. Needles for knitting or sewing machines, latch needles, crochet needles, and tape needles, knitting and all other needles not specially provided for in this section, bodkins of metal, and needle cases or needle books furnished with assortments of needles or combinations of needles and other articles, 20 per centum ad valorem; but no articles other than the needles which are specifically named in this section shall be dutiable as needles unless having an eye and fitted and used for carrying a thread.

Notes of Decisions

Needle books.—Paper folders of a flimsy nature held not dutiable as needlecases. See paragraph 555.

Needlecases in which steel needles constitute the element of chief value should be considered as manufactures in chief value of needles, rather than as articles composed in part of steel under Act 1897, par. 193, and as needles are on the free list, and there is no tariff provision for manufacture of needles, such articles are dutiable as unenumerated manufactured articles under section 6. Dieckerhoff, Raffloer & Co. v. U. S. (C. C. 1907) 151 Fed. 957, judgment affirmed U. S. v. Dieckerhoff, Raffloer & Co. (1908) 160 Fed. 449, 87 C. C. A. 410.

These boxes contain needles in combination with pins, thread, and a thimble. A needlecase is a case of metal or other material to contain needles, and the statute has enlarged the meaning to include other articles required in the use of the needle itself. The goods fall under paragraph 135 as needlecases furnished with assortments of needles or combination of needles and other articles. U. S. v. Poirier & Lindeman (1915) 6 Ct. Cust. App. 239.

Needle books, containing needles, and the like articles, are not dutiable as

manufactures in chief value of metal. Paragraph 164, Act 1909, singles them out and establishes a rule for the determination of their dutiable status, and that is according to the chief components included within and going to make up the entirety. The importations were dutiable as nonenumerated manufactured articles under the provisions of paragraph 480. Steinhardt & Bro. v. U. S. (1911) 2 Ct. Cust. App. 361. See, also, Hartranft v. Sheppard (1888) 8 Sup. Ct. 920, 125 U. S. 337, 31 L. Ed. 763.

136. Fishhooks, fishing rods and reels, artificial flies, artificial baits, snelled hooks, and all other fishing tackle or parts thereof, not specially provided for in this section, except fishing lines, fishing nets and seines, 30 per centum ad valorem: Provided, That any prohibition of the importation of feathers in this section shall not be construed as applying to artificial flies used for fishing.

Notes of Decisions

Cork floats.—Cork floats held not dutiable as fishing tackle. See paragraph 342.

137. Steel plates engraved, stereotype plates, electrotype plates, halftone plates, photogravure plates, photo-engraved plates, and plates of other materials, engraved for printing, plates of iron or steel engraved or fashioned for use in the production of designs, patterns, or impressions on glass in the process of manufacturing plate or other glass, 15 per centum ad valorem; lithographic plates of stone or other material engraved, drawn, or prepared, and wet transfer paper or paper prepared wholly with glycerin, or glycerin combined with other materials, containing the imprints taken from lithographic plates, 25 per centum ad valorem.

138. Rivets, studs, and steel points, lathed, machined, or brightened, and rivets or studs for nonskidding automobile tires, and rivets of iron or steel, not specially provided for in this section, 20 per centum ad valorem.

139. Crosscut saws, mill saws, pit and drag saws, circular saws, steel band saws, finished or further advanced than tempered and polished, hand, back, and all other saws, not specially provided for in this section, 12 per centum ad valorem.

140. Screws, commonly called wood screws, made of iron or steel, 25 per centum ad valorem.

141. Umbrella and parasol ribs and stretchers, composed in chief value of iron, steel, or other metal, in frames or otherwise, and tubes for umbrellas, wholly or partially finished, 35 per centum ad valorem.

142. Wheels for railway purposes, or parts thereof, made of iron or steel, and steel-tired wheels for railway purposes, whether wholly or partly finished, and iron or steel locomotive, car, or other railway tires or parts thereof, wholly or partly manufactured, 20 per centum ad valorem: Provided, That when wheels for railway purposes, or parts thereof, of iron or steel, are imported with iron or steel axles fitted in them, the wheels and axles together shall be dutiable at the same rate as is provided for the wheels when imported separately.

Notes of Decisions

Steel bicycle rims.—Steel bicycle rims held not dutiable as wheels, etc. See paragraph 167.

Steel tire blooms.—R. S. § 2504, provides that "all manufactures of steel, or of which steel shall be a component part, not otherwise provided for," shall pay duty at "forty-five per cent. ad valorem. But all articles of steel partially manufactured, not otherwise provided for, shall pay the same rate of duty as if wholly manufactured." "Locomotive tires, or parts thereof, three cents per pound." "Steel in any form, not otherwise provided for, thirty per cent. ad valorem." Held, that "steel tire blooms" which had been cast and hammered, and had had a hole swedged in the middle and had been then hammered on the horn of an anvil, expanding the circumference, and on which the rudiments of a flange had been swedged

on the outer periphery of the circle, and were all ready to be rolled or spun into the proper size and shape, and finished on a lathe for use as tires of locomotive and car wheels, were manufactures of steel, and subject to the duty of 45 per cent. ad valorem. Chicago Tire & Spring Works Co. v. Spaulding (1886) 6 Sup. Ct. 498, 116 U. S. 541, 29 L. Ed. 720, affirming judgment Chicago Tire & Spring Works Co. v. Spaulding (C. C. 1884) 19 Fed. 412.

143. Aluminum, aluminum scrap, and alloys of any kind in which aluminum is the component material of chief value, in crude form, 2 cents per pound; aluminum in plates, sheets, bars, strips, and rods, 3½ cents per pound; barium, calcium, magnesium, sodium, and potassium, and alloys of which said metals are the component material of chief value, 25 per centum ad valorem.

Notes of Decisions

Aluminum.—Aluminum in coils held not dutiable as sheet aluminum. See paragraph 167.

Blanks cut from aluminum held not dutiable as sheets of aluminum. See paragraph 167.

Reviewing the processes by which aluminum is prepared for market and also the legislation affecting aluminum itself, these disks are found not to be included in any of the terms "plates," "sheets," "bars," "strips," or "rods," as these are employed in paragraph 143, Act 1913; nor is it aluminum in crude form or an alloy thereof under the same paragraph. Guiterman, Rosenfeld & Co. v. U. S. (1915) 5 Ct. Cust. App. 514. See, also, Universal Shipping Co. v. Same (1913) 4 Ct. Cust. App. 245.

Sheets.—The term "sheets" is ordinarily applied to a broad general surface, and in paragraph 172, Act 1909, may fairly be said to mean the sheet of the metal made in that form as one of the developments in the process of manufacture, and not intended to include the articles made from such sheets. Universal Shipping Co. v. U. S. (1913) 4 Ct. Cust. App. 245.

144. Antimony, as regulus or metal, and matte containing antimony but not containing more than 10 per centum of lead, 10 per centum ad valorem; antimony oxide, salts, and compounds of, 25 per centum ad valorem.

145. Argentine, albata, or German silver, unmanufactured, 15 per centum ad valorem.

146. Bronze powder, brocades, flitters, and metallics; bronze, or Dutch-metal or aluminum, in leaf, 25 per centum ad valorem.

Notes of Decisions

Flitters.—Flitters held not free of duty as "composition metal," under Act 1897, par. 533, but dutiable as manufactures of metal under paragraph 193. U. S. v. George Meier & Co. (1905) 136 Fed. 764, 69 C. C. A. 421, reversing judgment Geo. Meier & Co. v. U. S. (C. C. 1904) 128 Fed. 472.

Flitters, which are produced by hammering metal clippings into minute flakes, and are used on wall paper, held not dutiable as bronze powder, under paragraph 175, Act 1897, nor as a color or pigment, under paragraph 58, but as manufactures of metal, under paragraph 193 of said act. Baer v. U. S. (C. C. 1903) 130 Fed. 391.

147. Copper, in rolled plates, called braziers' copper, sheets, rods, strips, pipes, and copper bottoms, sheathing or yellow metal of which copper is the component material of chief value, and not composed wholly or in part of iron ungalvanized, 5 per centum ad valorem.

Notes of Decisions

Copper in rolled plates.—Rollers used in printing patterns composed wholly of copper held, under Act 1883, dutiable as "copper in rolled plates, * * * and all manufactures of copper, or of which copper shall be a component of chief value," and not as manufactured articles, not specifically enumerated. Magone v. King (1892) 51 Fed. 525, 2 C. C. A. 363.

Copper pipes.—Copper tubing or hose held not dutiable as copper pipes. See paragraph 127.

Copper sheets.—Small copper plates, completely finished for engravers' use, are not within the provision for copper "sheets," in Act 1897, par. 176. B. F. Drakenfeld & Co. v. U. S. (C. C. 1909) 172 Fed. 296, judgment reversed

contained in imported lead bullion is to be by official weighing only, and the application of assay to lead bullion under the current treasury regulations for bonded smelters and refiners is without warrant of law. (1902) 24 Op. Atty. Gen. 45, affirmed (1903) 24 Op. Atty. Gen. 569.

153. Lead dross, lead bullion or base bullion, lead in pigs and bars, lead in any form not specially provided for in this section, old refuse lead run into blocks and bars, and old scrap lead fit only to be remanufactured; lead in sheets, pipe, shot, glaziers' lead, and lead wire; all the foregoing, 25 per centum ad valorem, on the lead contained therein.

Notes of Decisions

Base bullion.—"Base bullion," an intermediate or provisional product in the crude reduction of gold and silver ore, formed by smelting the same with a flux of lead ore or silver lead ore, and which is composed of gold, silver, and lead, held not dutiable, under paragraph 166 Act 1894, covering "lead in pigs and bars, molten and old refuse lead run into blocks and bars, and old scrap lead fit only to be remanufactured," which includes only pure lead in its different forms; nor within the terms of paragraph 165, fixing the duty on lead ores and lead dross and the lead contained in other ores, since it is not an ore; but dutiable as a nonenumerated article "similar" to the ores containing lead as therein described, within the provisions of section 4, in view of the intention evidenced by section 21, that metals in crude form, unless expressly exempted, should be dutiable. In re Guggenheim Smelting Co. (1901) 112 Fed. 517, 50 C. C. A. 374, writ of certiorari denied U. S. v. Guggenheim Smelting Co. (1902) 22 S. Ct. 942, 186 U. S. 485, 46 L. Ed. 1260.

Pig and bar lead.—Pig and bar lead held dutiable under paragraph 166, Act 1894, at one cent per pound on the gross weight of the metal imported, without deduction for loss or wastage in refining; the duty being fixed at the time of entry, and being the same whether the metal is withdrawn before refining, or refined in a bonded smelter. Collector of Customs at Newark v. Balbach Smelting & Refining Co. (C. C. 1897) 81 Fed. 950.

154. Metallic mineral substances in a crude state, and metals unwrought, whether capable of being wrought or not, not specially provided for in this section, 10 per centum ad valorem; monazite sand and thorite; thorium, oxide of and salts of; gas, kerosene, or alcohol mantles treated with chemicals or metallic oxides, 25 per centum ad valorem; and gas-mantle scrap consisting in chief value of metallic oxides, 10 per centum ad valorem.

Notes of Decisions

Alloy.—An alloy in the form of pigs, which is used chiefly in hardening manganese bronze, and which, in order to produce that effect must be melted and mixed with other metals, held dutiable under paragraph 183, Act 1897, as "metallic mineral substances in a crude state, and metals unwrought," rather than under paragraph 193, relating to articles composed of metal, or paragraph 122, by similitude to the "ferromanganese" there enumerated. Thomas v. William Cramp & Sons Ship & Engine Bldg. Co. (1906) 142 Fed. 734, 74 C. C. A. 66, affirming judgment William Cramp & Sons Ship & Engine Bldg. Co. v. U. S. (C. C. 1905) 139 Fed. 303.

Without meaning to imply that no alloy is entitled to be called ferromanganese in case its manganese content exceeds in any measure 80 per cent. of the entire article, yet where the manganese is so considerable and the iron and carbon so slight, as in the present importation, the commodity held not to be deemed ferromanganese as that term appears in the law. The importation was properly assessed as metal unwrought, not specially provided for, under paragraph 183, Act 1909. Goldschmidt-Thermit Co. v. U. S. (1912) 3 Ct. Cust. App. 187.

Asphalt mastic.—Asphalt mastic, an article produced by crushing an asphaltum mined or quarried in rough chunks, and by melting and mixing together such crushed asphaltum and a natural mineral bitumen, and by afterwards casting for transportation the mixture so obtained in molds into loaves or cakes, is dutiable at 10 per cent. ad valorem under the provision for "all nondutiable crude minerals, but which have been advanced in value or condition by refining or grinding, or by other process of manufacture, not specially enumerated or provided for in this act," contained in Schedule A, par. 95, Act 1883. Wootton v. Magone (C. C. 1892) 54 Fed. 673.

Metals unwrought.—Alloys experimently wrought held not dutiable as unwrought metals. See paragraph 102.

Ferroalloys held not dutiable as metals unwrought. See paragraph 102.

Iron sand held not dutiable as unwrought metal. See paragraph 112.

In construing the provision in paragraph 183, Act 1897, for "metals unwrought," held, that "unwrought" implies a metal which is capable of being wrought, and not a substance fit only to be used with other ingredients to produce an entirely different and distinct product. U. S. v. Roesseler & Hasslacher Chemical Co. (1905) 137 Fed. 770, 70 C. C. A. 346.

Tungsten ore or wolfram.—Tungsten ore or wolfram held dutiable as metallic mineral substances. See paragraph 102.

Zinc dust.—Zinc dust held not dutiable as a metallic mineral substance in a crude state. See paragraph 624.

155. Nickel, nickel oxide, alloy of any kind in which nickel is a component material of chief value, in pigs, ingots, bars, rods, or plates, 10 per centum ad valorem; sheets or strips, 20 per centum ad valorem.

Notes of Decisions

Construction of paragraph in general.—In construing Act 1897, par. 185, relating to nickel, nickel oxide, and nickel alloy, "in pigs, ingots, bars, or sheets," held, that only nickel in one of the forms enumerated is included. Hermann Boker & Co. v. U. S. (1907) 157 Fed. 1003, 85 C. C. A. 678, affirming judgment (C. C. 1907) 152 Fed. 589.

Alloys.—Wire made of nickel alloy held not dutiable as an alloy. See paragraph 167.

Nickel alloy, in rods and sheets, which is incapable of practical use without being subjected to further manipulation and manufacture, held dutiable under paragraph 167½ of Act 1894, as an alloy "in which nickel is the component material of chief value," and not under paragraph 177, covering "manufactured articles or wares, not specifically provided for, composed wholly or in part of any metal." Boker v. U. S. (1899) 97 Fed. 205, 38 C. C. A. 114.

Rods and plates of nickel alloy, incapable of practical use without further manipulation or manufacture, held dutiable as alloy in which nickel is the component material of chief value, under paragraph 167½, Act 1894, and not as manufactured articles composed in whole or in part of any metal, not specifically provided for. Boker v. U. S. (C. C. 1898) 86 Fed. 119.

Anodes.—Anodes, consisting of nickel plates, held dutiable as manufacture of nickel. See paragraph 167.

156. Pens, metallic, not specially provided for in this section, 8 cents per gross; with nib and barrel in one piece, 12 cents per gross.

157. Penholder tips, penholders and parts thereof, gold pens, fountain pens, and stylographic pens; combination penholders, comprising penholder, pencil, rubber eraser, automatic stamp, or other attachment, 25 per centum ad valorem: Provided, That pens and penholders shall be assessed for duty separately.

Notes of Decisions

Fountain pens.—Fountain pens held not dutiable as penholders. See paragraph 369.

The legislative history of paragraph 187, Act 1909, shows that the several parts of fountain pens are to be distinguished on assessment from fountain pens themselves; that a fountain pen is an ink-holding writing instrument with a pen and complete for use; hence parts of fountain pens were properly assessed under paragraph 464, as manufactures of hard rubber. Schrader & Ehlers v. U. S. (C. C. 1910) 180 Fed. 953; Schrader & Ehlers v. U. S. (1913) 4 Ct. Cust. App. 100.

158. Pins with solid heads, without ornamentation, including hair, safety, hat, bonnet, and shawl pins; any of the foregoing composed wholly of brass, copper, iron, steel, or other base metal, not plated with gold or silver and not commonly known as jewelry, 20 per centum ad valorem.

Notes of Decisions

Hairpins.—Iron and steel wire hairpins, which are not specifically enumerated in the act of 1883, held not dutiable as "pins, solid head or other," mentioned in section 2502, Schedule C, of that act, but as "manufactures, articles or wares, not specifically enumerated, * * * composed wholly or in part of iron, steel," etc., as previous tariff acts treated hairpins as distinct from "pins, solid head or other." Robertson v. Rosenthal (1889) 10 Sup. Ct. 120, 132 U. S. 460, 33 L. Ed. 392.

"Metallic."—The word "metallic," in paragraph 170, Act 1894, qualified the whole paragraph; and pins which were not metallic were not within its provisions. H. B. Claflin Co. v. U. S. (C.

C. 1897) 78 Fed. 805, judgment reversed U. S. v. Giese (1897) 83 Fed. 692, 28 C. C. A. 380.

Pins with glass heads.—Pins with glass heads held not dutiable as pins metallic. See paragraph 95.

Black-headed pins held dutiable under paragraph 206 of the act of 1890, as "pins, metallic," and not under paragraph 108, as manufactures of glass, or of which glass is the component material of chief value. Steinhardt v. U. S. (C. C. 1898) 92 Fed. 139.

Fancy pins, with metal shafts, and metal, glass, or paste heads, held dutiable under paragraph 206, Act 1890, as "pins, metallic," and not under paragraph 108, as "manufactures of which glass is the component of chief value, not specially provided for." Worthington v. U. S. (C. C. 1898) 90 Fed. 797.

Hat and lace pins, having heads of glass or similar material, held dutiable as "metallic" bonnet and lace or belt pins, under Act 1890, par. 206, and not as manufactures of metal, under paragraph 215. U. S. v. Wolff (C. C. 1895) 69 Fed. 327.

"Mourning pins," "hat pins," "bonnet pins," "shawl pins," being articles composed of a steel or hardened-iron shank, having a round or cut head of glass or jet, either polished or dull, held "pins, solid head or other," dutiable under Schedule C of Act 1883, and not as "manufactures, articles, or wares not specially enumerated." Dieckerhoff v. Robertson (C. C. 1890) 44 Fed. 160.

Plated.—Whether paragraph 188 be considered independently or in its relation to other parts of the law, there is no ground either in its legislative history or its administrative construction for going beyond its express terms in fixing its meaning. No commercial designation is shown, and according to the very terms of the paragraph all the hairpins or safety pins of the importation overlaid or coated with precious or base metals were "plated" within those terms. Bloomingdale Bros. v. U. S. (1912) 3 Ct. Cust. App. 204.

Safety pins.—"Safety pins," composed of metal and having a shank of about 1¼ inches in length, the point being protected by a shield or guard, also composed of metal, held "pins, solid head or other," dutiable, under Schedule C, Act 1883. Dieckerhoff v. Robertson (C. C. 1890) 44 Fed. 160.

159. Quicksilver, 10 per centum ad valorem. The flasks, bottles, or other vessels in which quicksilver is imported shall be subject to the same rate of duty as they would be subjected to if imported empty.

160. Type metal, and types, 15 per centum ad valorem.

Notes of Decisions

Type metal.—The provision for "types, old," in Act 1897, par. 690, does not include an alloy, containing approximately 85 per cent. of lead, 12 per cent. of antimony, and 3 per cent. of tin and copper, made from the dross of type metal refined and melted with 15 to 20 per cent. of old movable types, and cast in the form of stereotype plates, which were never used as such, but broken into pieces and packed in barrels for importation. Such material is dutiable as "type metal," under paragraph 190. Sapery v. U. S. (1905) 135 Fed. 332, 68 C. C. A. 140.

Roughly smelted lead bullion, imported and deposited in the bonded smelting warehouse of the importer; later refined, precious metals and a percentage of refined lead being extracted and leaving a by-product of lead, antimony, and other substances; this by-product is not to be deemed bullion, but type metal, and when this is withdrawn from the bonded warehouse for domestic consumption it is dutiable under paragraph 191, Act 1909. American Smelting & Refining Co. v. U. S. (1911) 2 Ct. Cust. App. 231.

161. Watch movements, whether imported in cases or not, watch-cases and parts of watches, chronometers, box or ship, and parts thereof, lever clock movements having jewels in the escapement, and clocks containing such movements, all other clocks and parts thereof, not otherwise provided for in this section, whether separately packed or otherwise, not composed wholly or in chief value of china, porcelain, parian, bisque, or earthenware, 30 per centum ad valorem; all jewels for use in the manufacture of watches, clocks, or meters, 10 per centum ad valorem; time detectors 15 per centum ad valorem; enameled dials and dial plates for watches or other instruments, 30 per centum ad valorem: Provided, That all watch and clock dials, whether attached to movements or not, shall have indelibly painted or printed thereon the name of the country of origin, and that all watch movements, and plates, lever clock movements with jewels in the escapement, whether imported assembled or knocked down for reassembling, and cases of foreign manufacture, shall have the name of

the manufacturer and country of manufacture cut, engraved, or die-sunk conspicuously and indelibly on the plate of the movement and the inside of the case, respectively, and the movements and plates shall also have marked thereon by one of the methods indicated the number of jewels and adjustments, said numbers to be expressed either in words or in Arabic numerals; and if the movement is not adjusted, the word "unadjusted" shall be marked thereon by one of the methods indicated; and none of the aforesaid articles shall be delivered to the importer unless marked in exact conformity to this direction.

Notes of Decisions

Cases covering watch movements.—Act 1897, par. 191, imposes specific and ad valorem duties on "watch movements, whether imported in cases or not," and then provides that "watch cases and parts of watches" shall pay 40 per cent. ad valorem. Held, that while such paragraph assumed that completed watches, including case and works, would sometimes be imported, it nevertheless imposed duties on the cases separately, and that they were not dutiable as an entirety, under the first half of such paragraph, as "watch movements in cases." Racine v. U. S. (1901) 107 Fed. 111, 46 C. C. A. 171, affirming judgment (C. C. 1899) 99 Fed. 557.

The first part of paragraph 191, Act 1897, imposing upon "watch movements, whether imported in cases, or not," a specific duty, based on the number of jewels, in addition to an ad valorem duty applies only to the movements; and, when imported in cases, such cases are dutiable separately, under the succeeding part of the paragraph. Racine v. U. S. (C. C. 1899) 99 Fed. 557.

Under the act of 1897 it was held that "watch movements" included "time-detector movements," and the insertion in paragraph 192, Act 1909, after "watch movements," the words "including time-detectors," plainly adopts that construction. Accordingly the merchandise was not dutiable as entireties, but as assessed under paragraph 192 and 199 of the later act. Chicago Watchman's Clock Works v. U. S. (1913) 4 Ct. Cust. App. 105.

Jewels.—The merchandise here is watch jewels made of reconstructed rubies. They cannot, it would seem, be devoted to any other use or purpose except as jewels for watches. They are the more specifically provided for by paragraph 192, Act 1909. U. S. v. Elgin Nat. Watch Co. (1914) 5 Ct. Cust. App. 336.

Parts of clocks.—The question whether pieces of glass are dutiable as articles of glass, or as parts of clocks, is to be determined by whether their principal or chief use is as parts of clocks, and not by whether that is their exclusive use or exclusive commercial use. Magone v. Wiederer (1895) 16 Sup. Ct. 122, 123, 159 U. S. 555, 40 L. Ed. 258.

Watch movements.—So-called time detectors, used for registering the movements of watchmen, which have a clock mechanism or time indicator, held dutiable under paragraph 191, Act 1897, as "watch movements, whether imported in cases or not." Hensel, Bruckmann & Lorbacher v. U. S. (C. C. 1904) 135 Fed. 255.

Certain incomplete watch movements, adjusted so as to run, the only parts lacking being the dial, or the dial, the various hands, and the minute wheel, held dutiable as "watch movements," and not as "parts of watches, * * * not otherwise provided for," under paragraph 191, Act 1897. Hipp, Didisheim & Bro. v. U. S. (C. C. 1901) 123 Fed. 998.

White hard enamel.—White hard enamel held not dutiable as watch material. See paragraph 385.

162. Zinc-bearing ores of all kinds, including calamine, 10 per centum ad valorem upon the zinc contained therein: Provided, That on all importations of zinc-bearing ores the duties shall be estimated at the port of entry, and a bond given in double the amount of such estimated duties for the transportation of the ores by common carriers bonded for the transportation of appraised or unappraised merchandise to properly equipped sampling or smelting establishments, whether designated as bonded warehouses or otherwise. On the arrival of the ores at such establishments they shall be sampled according to commercial methods under the supervision of Government officers, who shall be stationed at such establishments, and who shall submit the samples thus obtained to a Government assayer, designated by the Secretary of the Treasury, who shall make a proper assay of the sample and report the result to the proper custom officers, and the import entries shall be liquidated thereon, except in case of ores that

shall be removed to a bonded warehouse to be refined for exportation as provided by law. And the Secretary of the Treasury is authorized to make all necessary regulations to enforce the provisions of this paragraph.

Notes of Decisions

Zinc-bearing ores.—The zinc ores known as carbonate, silicate, and sulphide of zinc held free of duty, the carbonate and silicate as "calamine," and the sulphide as "minerals, crude," under Act 1897, Free List, pars. 514, 614, except that when they contain lead they are subject to the duty provided on "lead-bearing ore of all kinds," paragraph 181. U. S. v. Brewster (1909) 167 Fed. 122, 92 C. C. A. 574.

A commodity, it is true, is properly assessable in its condition as imported, but where ore, as here, is shown to have contained, as imported, both lead and zinc, the zinc appearing in a quantity exceeding 10 per cent, the metal content in both is dutiable, the lead under paragraph 181, the zinc under paragraph 193, Act 1909. Consolidated Kansas City Smelting & Refining Co. v. U. S. (1911) 1 Ct. Cust. App. 472.

163. Zinc in blocks, pigs, or sheets, and zinc dust; and old and worn-out zinc fit only to be remanufactured, 15 per centum ad valorem.

Notes of Decisions

Lithographic zinc sheets.—"Lithographic zinc sheets," commercially so known, being sheets of zinc as they come from the rolling mill, but coated on one side with a preparation suiting them for use by lithographers, held dutiable as "zinc in sheets," under paragraph 213, Act 1890, and not as manufactures not specially provided for, under paragraph 215. Langerman & Petty v. U. S. (C. C. 1896) 75 Fed. 1.

Sheets of zinc enameled and baked.—Sheet of zinc enameled and baked held not dutiable as zinc in sheets. See paragraph 167.

Zinc dust.—Zinc dust, used in dyeing, held entitled to free entry, under paragraph 386, Act 1894, as an article in a crude state, used in dyeing, not specially provided for, and not dutiable under section 3, as a nonenumerated manufactured article, nor under paragraph 174 and section 4, as assimilated to zinc in pigs and blocks. U. S. v. Roessler & Hasslacher Chemical Co. (1900) 99 Fed. 552, 39 C. C. A. 651; Roessler & Hasslacher Chemical Co. v. U. S. (C. C. 1899) 94 Fed. 822.

164. Bottle caps of metal, collapsible tubes, and sprinkler tops, if not decorated, colored, waxed, lacquered, enameled, lithographed, electroplated, or embossed in color, 30 per centum ad valorem; if decorated, colored, waxed, lacquered, enameled, lithographed, electroplated, or embossed in color, 40 per centum ad valorem.

Notes of Decisions

Bottle caps of metal.—Viscose bottle caps held not dutiable as bottle caps of metal. See paragraph 385.

"Bottle caps of metal" in paragraph 196, Act 1909, is not to be deemed a term of exclusion forbidding classification by similitude thereunder. Nevin v. U. S. (1914) 5 Ct. Cust. App. 423. See, also, Strauss & Co. v. Same (1911) 2 Ct. Cust. App. 203.

165. All steam engines, steam locomotives, printing presses, and machine tools, 15 per centum ad valorem; embroidering machines, and lace-making machines, including machines for making lace curtains, nets, or nettings, 25 per centum ad valorem; machine tools as used in this paragraph shall be held to mean any machine operated by other than hand power which employs a tool for working on metal.

Notes of Decisions

Machines.—In an importation of carding machines some of the clothing was packed separately. This clothing was so made as to fit the different parts of the machines, except that a certain amount of stretching would be necessary in the final adjustment. It would have been impracticable to import the machines with all the clothing attached, and it was customary to pack this part of the clothing separately. Held, that this clothing was not dutiable separately from the rest of the machines, but that the whole apparatus was dutiable as an entirety at the same rate. U. S. v. Leigh (C. C. 1908) 159 Fed. 314.

A machine may be dutiable as an entirety though imported in separate packages and requiring labor and adjustment to be assembled; but if, under the name of adjustment, a consider-

able part of the manufacture of a machine takes place, so that the component parts when imported are related to the machine as a raw material, the raw material is dutiable accordingly. Id.

Squeezers, doublers, spreaders, drawing frames, roving frames, and spinning frames, which operate directly on the jute and are all suitable, necessary, and are actually used for the making of jute yarns of the accepted and recognized commercial sizes, held dutiable as jute manufacturing machinery, under act 1909. U. S. v. Murphy & Co. (1913) 4 Ct. Cust. App. 301.

Machine tools.—A machine designed and used for shearing or cutting metal plates held not a machine tool. See paragraph 167.

Appliance for sharpening pencils held not a machine tool. See paragraph 167.

Bench lathe held not dutiable as machine tool. See paragraph 167.

Meat-slicing machines held not dutiable as machine tools. See paragraph 167.

Pantograph machines held not dutiable as machine tools. See paragraph 167.

Power-driven machine for cutting bark off logs held not dutiable as a machine tool. See paragraph 167.

Machine tools in paragraph 197, Act 1909, include the machine proper and one set of such alternate parts thereof as are necessary for the proper performance of the several functions of the machine, but does not include duplicate, extra, or spare parts, or parts designed for use upon machines not covered by the importations, or any that are hand tools or appliances. Norma Co. of America v. U. S. (1915) 6 Ct. Cust. App. 89.

"Machine tools" connotes the application of power to an implement or tool in its use and operation other than hand power alone, and the multiplication of the manual power of the operator by mechanical device is not such other motive power. U. S. v. Bernard, Judae & Co. (1913) 3 Ct. Cust. App. 503. See, also, Same v. Georgia Paper & Pulp Mfg. Co. (1912) 3 Ct. Cust. App. 410; Sears, Roebuck & Co. v. U. S. (1911) 2 Ct. Cust. App. 329.

Paragraph 197, Act 1909, applies according to the usual and common or chief use of the articles there designated, and it is not necessary to show that the imported machinery is used solely in the manufacture of jute, to make the importation assessable as jute machinery. U. S. v. Hempstead & Son (1912) 3 Ct. Cust. App. 436.

The machines are composed of metal, are used for pinking or cutting the edges of samples or other textile materials, giving them a scalloped edge, and are operated entirely by hand power. Being operated by hand power, they are not "machine tools," and were properly assessed as composed wholly or in part of metal, under paragraph 199, Act 1909. Knauth, Nachod & Kuhne v. U. S. (1912) 3 Ct. Cust. App. 435. See, also, Sears, Roebuck & Co. v. Same (1911) 2 Ct. Cust. App. 329.

The importation is not a "machine tool," and it was properly assessed under paragraph 199, Act 1909, as an article composed wholly or in part of metal. Surgical Supply Importing Co. v. U. S. (1912) 3 Ct. Cust. App. 429. See, also, Sears, Roebuck & Co. v. Same (1911) 2 Ct. Cust. App. 329.

Floor planers, with an electric motor for the attached planes, resembling generally lawn mowers, but portable and when in use propelled by hand, held machine tools under Act 1909. Myers v. U. S. (1911) 1 Ct. Cust. App. 226.

Printing press. — Bench-lever embossers held not dutiable as printing presses. See paragraph 167.

A printing press is a machine used in letterpress printing on paper and like substances, and is designed to produce books, newspapers, magazines, circulars, handbills, and the like. Lang v. U. S. (1914) 5 Ct. Cust. App. 199.

Steam engines.—Rock drills and bar hoists held not dutiable as steam engines. See paragraph 167.

166. Nippers and pliers of all kinds wholly or partly manufactured, 30 per centum ad valorem.

Notes of Decisions

Surgical instruments.—Surgical instruments are not made classifiable as "nippers" or "pliers" under paragraph 166, by reason of the fact that they have two lever handles working on a pivot and operating two cutting, gripping, or pinching jaws or blades. Koch & Co. v. U. S. (1916) 6 Ct. Cust. App. 534.

Congress rejected a motion to amend paragraph 166 so as to include surgical and dental instruments; and the court declines to adopt a construction effecting a result precisely contrary to this action by congress. Id.

To hold this would reduce to surplusage the enumeration elsewhere in the act of other instruments embodying this mechanical principle and render either the word "nippers" or the word "pliers" in this paragraph unnecessary. Id.

167. Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver, and whether partly or wholly

manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

Notes of Decisions

1. Construction of paragraph in general.
2. Abrasives.
3. Acetylene lamp lighter.
4. Advertising cards.
5. Aigrettes.
6. Alloy.
7. Aluminum in coils.
8. Anodes.
9. Articles in part of silver.
10. Articles of bronze and glass.
11. Artificial grasses bound with metal wire.
12. Azimuth mirrors, sextants, and octants.
13. Ball bearings.
14. Bench-lever embossers.
15. Bicycle chains.
16. Bicycle rims.
17. Blanks cut from aluminum.
18. Boiler flues.
19. Braids.
20. Brass.
21. Bronze ornaments.
22. Buckles.
23. Bullion fringe.
24. By-products of tin.
25. Cables.
26. Card clothing attached to iron flats.
27. Castings.
28. Cast-iron desks.
29. Cast steel machine worked.
30. Coin swords.
31. Combs.
32. Compasses.
33. Composition metal.
34. Corrugated iron sheets galvanized.
35. Cotton ties.
36. Dragees.
37. Electric light bulbs.
38. Figures of animals.
39. Fireplace and mantel sets.
40. Flitters.
41. Floor frame.
42. Furniture.
43. Gallilith belts.
44. Hair clippers.
45. Hairpins.
46. Hoop iron.
47. Harmonicas.
48. Hollow ware.
49. Hooks and eyes.
50. Horseshoe calks.
51. Iron hooks.
52. Iron sand.
53. Iron turnings.
54. Kitchen knives.
55. Lawn rakes.
56. Machined steel articles.
57. Machines and appliances.
58. Mechanism for marking collapsible metal tubes.
59. Metallic bedsteads.
60. Metal vessels used in reducing metals.
61. Millinery articles, ornaments, dress trimmings, braids, cords, etc.
62. Neckchain.
63. Miniature frames set with precious stones.
64. Nickel-plated cast-iron eccentrics.
65. Night lights.
66. Old cannon.
67. Opera glasses.
68. Paper lamp shades.
69. Parts of lamps for burning gas.
70. Philosophical apparatus.
71. Pile protectors.
72. Plated with gold and silver.
73. Rock drills and bar hoists.
74. Rollers used in printing patterns.
75. Scythes, grasshooks, etc.
76. Sheets of zinc enameled and baked.
77. Shot chains.
78. Silver hand bags.
79. Silver-handled nail cleaners.
80. Sparklers or sparklets.
81. Statues and busts.
82. Steam dredge.
83. Steel shapes.
84. Steel rods tipped with diamond chips.
85. Steel strips plated with nickel.
86. Terne tin.
87. Tin boxes for use of smokers.
88. Tin parings and lead shavings.
89. Tin plates.
90. Traveling clock.
91. Traveling set.
92. Tubes for holding gas.
93. Washers.
94. Watch cases.
95. Wax tapers.
96. Wire cloth.
97. Wire composed of nickel alloy.
98. Wreaths, artificial flowers, etc., made of cotton and wire.
99. Zinc sheets.

1. Construction of paragraph in general.—The term "manufactures of metal," in Act 1872, refers to manufactured articles in which metals form a component part, and not to articles in which they have lost their form entirely, and have become the chemical ingredients of new forms. Meyer v. Arthur (1875) 91 U. S. 570, 576, 23 L. Ed. 455.

White lead, nitrate of lead, oxide of zinc, and dry or orange mineral, are not metals; they have no metallic qualities. Id.

This paragraph, being a catch-all clause and imposing a high rate of duty, should not be construed to include any article which, upon a fair and reasonable interpretation of the preceding paragraphs, may be included in one or the other of them. Dieckerhoff v. Robertson (C. C. 1890) 44 Fed. 160, 162.

The third clause of the schedule of articles not specially enumerated cannot be construed to specifically enumerate an article, and therefore an article coming within its general description cannot be held to be specifically enumerated, within the meaning of the last clause of the metal schedule, imposing duties upon articles composed in whole or in part of metal not elsewhere specifically enumerated. Aloe v. Churchill (C. C. 1890) 44 Fed. 50, 51.

An article is not composed in part of metal unless a substantial part thereof is composed of metal. Id.

2. Abrasives.—The term "artificial abrasives" implies an abrasive product resulting from some processing or

treatment, and the word "crude" implies that such artificial product must be in a crude condition. The merchandise here is a finished, not a crude, article, not being designed for further processing. Harrison Supply Co. v. U. S. (1915) 6 Ct. Cust. App. 72.

3. **Acetylene lamp lighter.**—Acetylene lamp lighters held not smokers' articles, but dutiable as a manufacture of metal under paragraph 199, Act 1909. Sheldon & Co. v. U. S. (1912) 2 Ct. Cust. App. 439.

4. **Advertising cards.**—Iron show or advertising cards, printed in different colors, on plates of sheet iron, held dutiable under R. S. § 2502, as "manufactures * * * not specially enumerated, * * * composed wholly or in part of iron," etc., and not as "printed matter." Forbes Lithograph Mfg. Co. v. Worthington (1889) 10 Sup. Ct. 180, 132 U. S. 655, 33 L. Ed. 453, affirming judgment (C. C. 1886) 25 Fed. 899.

5. **Aigrettes.**—So far as appears from the record and the samples in evidence, these aigrettes are manufactures of metal, and therefore dutiable under the provisions of paragraph 199, Act 1909. Lang v. U. S. (1914) 5 Ct. Cust. App. 85; U. S. v. Edson Keith & Co., Id. 82.

6. **Alloy.**—An alloy in the form of pigs, which alloy is mixed with other metals, held not dutiable as an article composed of metal. See paragraph 154.

Rods and plates of nickel alloy held not dutiable as manufactured articles not specially provided for. See paragraph 155.

7. **Aluminum in coils.**—Sheet aluminum and aluminum in sheets are not the same, and proof of a commercial designation of the first is not applicable to the other article. But aluminum in coils, the goods here, differs inherently from aluminum in sheets, and the testimony sustains this view. The aluminum coils were properly held dutiable under paragraph 199, Act 1909. Seligmann v. U. S. (1915) 6 Ct. Cust. App. 85.

8. **Anodes.**—Anodes, consisting of nickel plates, held not dutiable as sheets of nickel, but as a manufacture of nickel, under paragraph 193, Act 1897. Hermann Boker & Co. v. U. S. (1907) 157 Fed. 1003, 85 C. C. A. 678, affirming judgment (C. C. 1907) 152 Fed. 589.

9. **Articles in part of silver.**—The presence in an article of .276 per cent. of silver, constituting the silver coating therefor, is sufficiently substantial to affect its classification under a tariff provision for articles "in part" of silver. La Manna, Azema & Farnan v. U. S. (C. C. 1907) 154 Fed. 955.

10. **Articles of bronze and glass.**—Articles of bronze and glass and china, such as inkstands, stamp boxes, etc., where the component material of chief value is metal, held, under Act 1897, dutiable as articles of chief value of metal. Vandiver v. U. S. (1911) 1 Ct. Cust. App. 194.

11. **Artificial grasses bound with metal wire.**—Artificial grasses bound with metal wire held dutiable within the metal paragraph (paragraph 193, Act 1897), according to the weight of the evidence. U. S. v. Edson Keith & Co. (1914) 5 Ct. Cust. App. 82.

12. **Azimuth mirrors, sextants, and octants.**—Azimuth mirrors, sextants, and octants are dutiable as composed chiefly of metal, under paragraph 167, Act 1913; and, not being aids to vision, are not classifiable as optical instruments under paragraph 93. U. S. v. Bliss & Co. (1915) 6 Ct. Cust. App. 433.

13. **Ball bearings.**—Ball bearings held dutiable as manufactures of metal. See paragraph 106.

14. **Bench-lever embossers.**—Every printing press may be correctly described as a printing machine, but not every printing machine as a printing press; and bench-lever embossers built and used to emboss and stamp in gold various substances, particularly leather employed in the manufacture of pocketbooks and notebooks, held properly dutiable under paragraph 199, Act 1909, as manufactures in part of metal. Petry & Co. v. U. S. (1912) 3 Ct. Cust. App. 348.

15. **Bicycle chains.** — Bicycle chains held not dutiable as manufactures of iron or steel. See paragraph 126.

16. **Bicycle rims.**—Light steel rims used in the manufacture of bicycle wheels held dutiable under Act 1890 as nonenumerated articles composed of steel, and not as "wheels, or parts thereof, made of iron or steel, and steel-tired wheels for railway purposes, whether wholly or partly finished." Stone v. U. S. (1893) 56 Fed. 826, 6 C. C. A. 153; Stover Bicycle Co. v. U. S. (1893) 56 Fed. 1023, 16 C. C. A. 683.

17. **Blanks cut from aluminum.**—Blanks cut from aluminum held not sheets of aluminum under Act 1909, but articles or wares composed wholly of aluminum, party manufactured, and dutiable under paragraph 199 of that act. Universal Shipping Co. v. U. S. (1913) 4 Ct. Cust. App. 245.

18. **Boiler flues.**—Purves' ribbed boiler flues held not dutiable as manufactures not specially enumerated. See paragraph 127.

19. **Braids.**—Narrow metal braids, used as garment trimmings, held not dutiable as manufacture of metal. See paragraph 358.

20. Brass.—Brass is a metal within the tariff acts, and Dutch metal, being a manufacture of brass, will not be considered a manufacture of which copper is a component of chief value. Act Fed. 24, 1869. U. S. v. Ullman (D. C. 1871) Fed. Cas. No. 16,593.

21. Bronze ornaments.—Bronze ornaments, being manufactured articles and advanced beyond the condition of the "old copper," "clipping" and "composition metal," in Free List, Act 1894, held dutiable as manfactures of metal under paragraph 177. Tiffany v. U. S. (C. C. 1896) 142 Fed. 282.

22. Buckles.—Shoe buckles held not dutiable as manufactures of metal. See paragraph 356.

Slides or buckles, made of steel or a base metal, some ornamented with rhinestones and some colored in imitation of precious metals, and used in ornamenting slippers, held not within the provision in Act 1897, for "articles commonly known as jewelry," but dutiable as manufactures of metal, not specially provided for, under paragraph 193 of said act. E. H. Bailey & Co. v. U. S. (C. C. 1905) 135 Fed. 917.

Buckles used on shoulder straps of overalls held not trouser buckles, dutiable under Act 1897, par. 412, as such, but dutiable under paragraph 193, as articles of steel or iron not specially provided for. U. S. v. Topken (C. C. 1902) 115 Fed. 233.

23. Bullion fringe.—Bullion fringe held not dutiable as a manufacture of metal not provided for. See paragraph 150.

24. By-products of tin.—Small disks produced in the manufacture of tin cans, being a by-product in the process of cutting an aperture for filling, and being of much less value than the tin from which they were cut, held not articles "wholly or partly manufactured from tin plate," under Act 1897, nor "waste" but are dutiable as articles of metal, "whether partly or wholly manufactured." Shallus v. U. S. (1908) 162 Fed. 653, 89 C. C. A. 445.

25. Cables.—A cable held not dutiable as a manufacture of metal. See paragraph 114.

26. Card clothing attached to iron flats.—Card clothing which is attached by means of rivets to iron flats, for the purpose of being attached to machines for carding cotton, held not card clothing, under Act 1883, but manufactures composed wholly or in part of iron, steel, etc. U. S. v. Leigh (C. C. 1890) 41 Fed. 33.

27. Castings.—Iron castings which by careful additional work have been fitted as parts of machines, held no longer dutiable as "castings," under Act 1897, but have been advanced to the condition of "articles * * * of iron * * * partly * * * manufactured." John Bromley & Sons v. U. S. (1907) 156 Fed. 958, 84 C. C. A. 458.

28. Cast-iron disks.—Cast-iron disks, when subjected to processes of manufacture and made thinner on one edge than the other and with an irregular surface, held not "plates" within the meaning of paragraph 148, Act 1897, and were dutiable under paragraph 193 of that act. Prosser v. U. S. (1910) 1 Ct. Cust. App. 29.

29. Cast steel machine worked.—Pieces of cast steel upon which machine work had been done after being cast, and so forming a combination of parts ready for immediate use in a cement mill, held finished articles, and not "plates," as provided for under paragraph 135, Act 1897, but dutiable under paragraph 193. U. S. v. Prosser (1910) 1 Ct. Cust. App. 22.

30. Coin swords.—So-called "coin swords," which consist of copper coins corded together and securely fastened around an iron bar or rod covered by metal foil, and used for ornamental purposes, held not within the provision for "coins," in Act 1897, but dutiable under paragraph 193 of the act. Soy Kee & Co. v. U. S. (C. C. 1910) 177 Fed. 601.

31. Combs.—Combs held not dutiable as manufacture of metal. See paragraph 356.

32. Compasses.—It is agreed these goods, of chief value in brass, were improperly assessed by the collector. From the testimony and the exhibits themselves it appears these articles are not intended for use as parts of watches or watchcases or as field glasses, and they are not jewelry or parts thereof. They are intended to be used as a part of something else and were dutiable as articles or wares not specially provided for composed wholly or in part of metal under paragraph 199, Act 1909. Sussfeld, Lorsch & Co. v. U. S. (1914) 5 Ct. Cust. App. 382.

33. Composition metal.—Composition metal held not dutiable as a partly manufactured article of metal. See paragraph 460.

34. Corrugated iron sheets galvanized.—An article of merchandise held dutiable in the condition it finds itself when imported; and corrugated iron sheets that have been galvanized were not dutiable under paragraph 131, Act 1897, but were dutiable under paragraph 193 of that act, though not subject to the additional duty of two-tenths of 1 cent per pound under paragraph 132 of said act. Moore v. U. S. (1910) 1 Ct. Cust. App. 115.

35. Cotton ties.—Cotton ties, each tie consisting of an iron strip and an iron buckle, imported in bundles, each bundle consisting of 30 strips and 30 buckles, each strip 11 feet long, the whole blackened, are subject to a duty of 35

per cent. ad valorem, as "manufactures of iron not otherwise provided for," under Schedule E, R. S. § 2504, and not to a duty of one and a half cents per pound, under said schedule, as "band, hoop, and scroll iron." Badger v. Ranlett (1882) 106 U. S. 255, 1 Sup. Ct. 346, 350, 27 L. Ed. 194; Kennedy v. Hartranft (C. C. 1881) 9 Fed. 18.

36. **Dragees.**—Dragees held not dutiable as articles in part of silver. See paragraph 180.

37. **Electric light bulbs.**—Electric light bulbs, colored and shaped as fruit, were assessed by the board as "articles or wares * * * composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum, or other metal; * * *" under paragraph 199, Act 1909. This assessment was proper. "Manufactures of metal" refers to the material and includes all the component classes of such by whatever distinctive name known. U. S. v. Wolff & Co. (1914) 5 Ct. Cust. App. 418.

38. **Figures of animals.**—The provision for toys in Act 1897, par. 434, does not include figures of animals, single or groups, which are known in trade as metal novelties, and are generally used as mantel or cabinet ornaments, but are dutiable under paragraph 193. Samstag & Hilder Bros. Co. v. U. S. (C. C. 1907) 154 Fed. 756.

39. **Fireplace and mantel sets.**—Fireplace and mantel sets, so designed, formed, shaped, and fitted together that they have lost their identity as castings and have become parts of a consistent whole, held dutiable under paragraph 199, Act 1909. Jackson Co. v. U. S. (1912) 2 Ct. Cust. App. 475.

40. **Flitters.**—Flitters held dutiable as manufacture of metal. See paragraph 146.

41. **Floor frame.**—Pieces of iron specially manufactured, fitted, purchased, and shaped, as parts of a particular floor frame held not dutiable under Act 1883 as "iron or steel beams, girders, joists, * * * and building forms, together with all other structural shapes of iron," but as "manufactures, articles, or wares not specially enumerated, * * * composed wholly or in part of iron." Birtwell v. Saltonstall (C. C. 1889) 39 Fed. 383, judgment reversed Saltonstall v. Birtwell (1893) 14 Sup. Ct. 169, 150 U. S. 417, 37 L. Ed. 1128.

T-beams, girders, joists, columns, posts, and other manufactures of iron, which, when put together, constitute a floor frame for one or more floors of a building, should not be classified under Act 1883 as an entirety as a manufacture, but the several parts should be classified under such several specific provisions of the act as are applicable to each class of merchandise in the entry. (1886) 18 Op. Atty. Gen. 475.

42. **Furniture.**—Furniture with metal ornamentation held not dutiable as manufacture of metal. See paragraph 176.

43. **Gallilith belts.**—Gallilith belts held not dutiable as manufactures of metal. See paragraph 356.

44. **Hair clippers.**—Hair clippers held dutiable as cutlery. See paragraph 128.

Steel hair clippers are not to be deemed machine tools and dutiable as such, but are dutiable as steel not specially provided for, under paragraph 199, Act 1909. Sears, Roebuck & Co. v. U. S. (1911) 2 Ct. Cust. App. 329.

A tool supplied with rotating or reciprocating knives or cutters arranged for clipping the hair short or close is not to be deemed scissors or shears, but is a manufacture of steel not specially provided for, and the importation was properly assessed under paragraph 199, Act 1909. Sheldon v. U. S. (1911) 2 Ct. Cust. App. 109.

45. **Hairpins.**—Hairpins held dutiable as nonenumerated manufactured articles. See paragraph 158.

46. **Hoop iron.**—If hoop iron has been subjected to such mechanical treatment as to convert it into an article fitted for a special use, without any further mechanical treatment, and unfitted for the general purposes to which hoop iron is adapted, such article is a manufacture of iron, dutiable as such, and not as hoop iron. Kennedy v. Hartranft (C. C. 1881) 9 Fed. 18.

47. **Harmonicas.**—Harmonicas made of metal held not dutiable as manufactures of metal. See paragraph 342.

48. **Hollow ware.**—Glazed hollow ware held dutiable as manufactures of iron, etc. See paragraph 134.

49. **Hooks and eyes.**—Hooks and eyes held not dutiable as manufactures of iron. See paragraph 151.

50. **Horseshoe calks.**—Act 1897, par. 135, does not include such distinctively finished articles as horseshoe calks in the provision for steel in all forms and shapes, but such calks held dutiable as a manufacture of metal. Maldonado & Co. v. U. S. (C. C. 1909) 172 Fed. 170, judgment affirmed (1910) 176 Fed. 737, 100 C. C. A. 282.

51. **Iron hooks.**—Iron hooks, used in the manufacture of feeders for wicker cards in a carding machine, sharpened after being set in the cylinder, but first hammered up in the iron and then struck in a die, and known to the trade as hooks, and not as iron forgings, held a manufactured article, within the meaning of the tariff act, and liable to duty under paragraph 216. Lemaire Feeder Co. v. Cadwalader (C. C. 1890) 42 Fed. 529.

52. **Iron sand.**—So-called "iron sand," a completed article produced by a series of manufacturing processes from

cast iron and steel scrap, held not within the provision for "all iron in * * * forms less finished than iron in bars, and more advanced than pig iron," in Act 1897, but dutiable as "iron manufactured," under paragraph 193. Harrison Supply Co. v. U. S. (C. C. 1908) 164 Fed. 155.

The testimony showed that the globular iron sand was used in substantial quantities as counterpoise in the manufacture of scales and cement, that the angular shapes thereof were used in the manufacture of cement, and so negatives the idea that the sand could only be used as abrasives, as required by paragraph 133, Act 1909. It was dutiable as an unenumerated manufactured article under paragraph 199 of that act. Harrison Supply Co. v. U. S. (1915) 6 Ct. Cust. App. 72.

53. **Iron turnings.**—Iron turnings held not dutiable as manufactured iron. (1884) 17 Op. Atty. Gen. 647.

54. **Kitchen knives.**—Kitchen knives held not dutiable as a manufacture of metal. See paragraph 130.

55. **Lawn rakes.**—Iron lawn rakes with wooden handles, chiefly, if not exclusively, used for raking lawns, either to clear them of leaves or other rubbish or to gather up the cut grass left by a lawn mower, serve no agricultural purpose and are not admissible free under paragraph 391, Act 1913. They are dutiable under paragraph 167 as a manufacture in chief value of metal. U. S. v. Tower (1916) 6 Ct. Cust. App. 562.

56. **Machined steel articles.**—Steel articles that have been either fully machined, or that are rough in part and fully machined in part, held something, not forgings, but articles of steel partly or wholly manufactured, under paragraph 193, Act 1897. Prosser & Sons v. U. S. (1911) 1 Ct. Cust. App. 550.

57. **Machines and appliances.**—Appliances for sharpening pencils, admittedly hand-power machines, held dutiable as manufactures of metal not specially provided for, under paragraph 199, Act 1909, and not as machine tools. Favor, Ruhl & Co. v. U. S. (1913) 4 Ct. Cust. App. 292.

Pantograph machines, operated by hand power, held, under Act 1909, not machine tools, but dutiable as a manufacture of metal. Johnson & Co. v. U. S. (1913) 4 Ct. Cust. App. 63.

Meat-slicing machines, whether operated by hand power or otherwise, held not used in mechanical work, so as to be regarded as machine tools, but dutiable under Act 1909 as manufacture of metal. Gallagher & Ascher v. U. S. (1913) 3 Ct. Cust. App. 520.

A bench lathe, operated exclusively by force applied to a treadle by the foot of the operator, held, under Act 1909, not a machine tool, but dutiable as a manufacture of metal. U. S. v. Bernard, Judae & Co. (1913) 3 Ct. Cust. App. 503.

Machines composed of metal, used for pinking or cutting the edges of samples or other textile materials, giving them a scalloped edge, operated entirely by hand power, are not "machine tools," and were properly assessed as composed wholly or in part of metal, under paragraph 199, Act 1909. Knauth, Nachod & Kuhne v. U. S. (1912) 3 Ct. Cust. App. 435.

Importation held not a "machine tool," and properly assessed under paragraph 199, Act 1909, as an article composed wholly or in part of metal. Surgical Supply Importing Co. v. U. S. (1912) 3 Ct. Cust. App. 429.

A machine, made wholly of metal, operated entirely by hand power, and designed and used for shearing or cutting metal plates or bars, held not a machine tool under Act 1909, but dutiable as a manufacture of metal. U. S. v. Knauth, Nachod & Kuhne (1912) 3 Ct. Cust. App. 419.

Large, power-driven machines, containing a mechanism for revolving logs while the bark on these is cut away by fixed knives, held not "machine tools," under Act 1909, but articles wholly or in part of metal not specially provided for. U. S. v. Georgia Pulp & Paper Mfg. Co. (1912) 3 Ct. Cust. App. 410. See, also, Hedden v. Richard (1893) 13 Sup. Ct. 891, 149 U. S. 346, 37 L. Ed. 763; Pickhardt v. Merritt (1889) 10 Sup. Ct. 80, 132 U. S. 252, 33 L. Ed. 353; Myers v. Same (1911) 1 Ct. Cust. App. 226.

Exhausters, composed of stoneware and iron, stoneware being the component material of chief value, but iron couplings and screws, connecting the stoneware parts, being substantial and material constituents of the machines, held dutiable under paragraph 193, Act 1897. U. S. v. Didier-March Co. (1912) 2 Ct. Cust. App. 436.

Machine in machine tools connotes the application of some kind of power in the operation of an implement other than hand power alone, and steel hair clippers held not dutiable as such, but as steel not specially provided for, under paragraph 199, Act 1909. Sears, Roebuck & Co. v. U. S. (1911) 2 Ct. Cust. App. 329.

58. **Mechanism for marking collapsible metal tubes.**—The article here, a printing mechanism for lacquering and marking collapsible metal tubes, is not used by "the art or trade of letterpress printing," and it was properly assessed as a manufacture of metal not specially provided for, under paragraph 199, Act 1909. Lang v. U. S. (1914) 5 Ct. Cust. App. 199.

59. **Metallic bedsteads.**—Bedstead mounts, brass and iron castings, bedstead tubes, bedstead knobs, vases, castors, etc., for use in the manufacture of metallic bedsteads, held not dutiable

as "house and cabinet furniture in piece or rough, and not finished," under Act 1883, but as "manufactures of metal." Combs v. Erhardt (C. C. 1891) 49 Fed. 635.

60. Metal vessels used in reducing metals.—Metal vessels designed to be incased in brick for use, fires being built under them, in the reduction of metals, held not containers dutiable under paragraph 151, Act 1909, but dutiable under paragraph 199 of that act. Roessler & Hasslacher Chemical Co. v. U. S. (1913) 4 Ct. Cust. App. 132.

61. Millinery articles, ornaments, dress trimmings, braids, cords, etc.—Metal beads temporarily strung on cotton cords or strings for the purpose of facilitating transportation held not dutiable, under Act 1897, as loose beads, but articles or wares not specially provided for in the act, composed wholly or in part of metal, whether wholly or partly manufactured. Henry E. Frankenberg Co. v. U. S. (1907) 27 Sup. Ct. 628, 206 U. S. 224, 51 L. Ed. 1034, affirming judgment (1906) 146 Fed. 63, 76 C. C. A. 514.

Millinery articles, made almost wholly of feathers, but containing a small quantity of wire, held dutiable as "articles in part of metal," under Act 1897, rather than as "feathers advanced or manufactured." U. S. v. Berlinger, Brown & Meyer (1909) 167 Fed. 800, 93 C. C. A. 190, writ of certiorari denied (1909) 29 S. Ct. 704, 214 U. S. 527, 53 L. Ed. 1068.

"Gold straw braids" and "silver straw braids," composed mostly of hemp fiber, the remainder being metal, cotton, and glue, held not entitled to free entry, under Act 1890, which puts on the free list braids, plaits, laces, and similar manufactures, "composed of straw, chip, grass, palm leaf, willow, osier or rattan," suitable for making or ornamenting hats, bonnets, and hoods, but assessable as manufactures in part of metal, not specially provided for. Schiff v. U. S. (1900) 99 Fed. 555, 39 C. C. A. 652.

"Soutache gilt braid," consisting of cotton cables around which is braided a gilt thread composed of metal wire and cotton thread, held dutiable under Act 1890, as a manufactured article composed in part of metal, and not as metal thread of gilt, silver, or other metals, not specially provided for. Wolff v. U. S. (1895) 71 Fed. 291, 18 C. C. A. 41.

Black hat ornaments, composed of metal and black glass, made to resemble jet, held not articles commonly known as jewelry, under Act 1897, but millinery trimmings, dutiable either as manufactures of glass, or as articles made wholly or in part of metal, not specially provided for, depending upon whether or not the glass is the component material of chief value. A. Bader & Co. v. U. S. (C. C. 1902) 116 Fed. 541.

Metal beads should be assessed under Act 1897, as articles composed wholly or in part of iron, steel, or other metal, and not as articles composed wholly or in part of beads. Steinhardt v. U. S. (C. C. 1902) 113 Fed. 996.

Steel bead trimmings held dutiable under Act 1883 as manufactures of metal, metal chief value. Loewenthal v. U. S. (C. C. 1898) 91 Fed. 644.

Strung beads of glass, metal lined or coated, the metal being of chief value, held dutiable under Act 1890, as manufactures of metal not specially provided for, and not as manufactures of which glass is the component of chief value, not specially provided for. Samuel Schiff & Co. v. U. S. (C. C. 1898) 90 Fed. 795.

Cords, fringes, tassels, and braids, composed in chief value of metal, and not known commercially as metal threads, nor as bullion held dutiable under Act 1890, as manufactures composed wholly or in part of metal, and not as a manufacture of glass. Bloomingdale v. U. S. (C. C. 1897) 89 Fed. 663.

Whether ornaments made of cut steel, steel, brass, copper, or mother of pearl, used for belts, dresses, and sometimes for the hair, are dutiable as "manufactured articles not specifically provided for, composed wholly or in part of iron, steel," etc., or as "jewelry of all kinds," depends on the meaning attached by the trade to the phrase "jewelry of all kinds," with reference to which congress is presumed to legislate in the tariff acts. Robbins v. Robertson (C. C. 1888) 33 Fed. 709.

Small imitation diamonds, rubies, and other precious stones, set in metal claws suitable for dress trimmings, held dutiable as manufactures of metal. U. S. v. American Bead Co. (1913) 3 Ct. Cust. App. 509.

62. Neck chain.—Metal neck chain held not dutiable as manufacture of metal. See paragraph 356.

63. Miniature frames set with precious stones.—The provision in Act 1897, par. 434, for "articles commonly known as jewelry," does not include miniature frames composed of precious metals set with diamonds and pearls, which are not used as articles of personal adornment but for utility, but they are dutiable under paragraph 193. U. S. v. M. Knoedler & Co. (C. C. 1907) 154 Fed. 928.

64. Nickel-plated cast-iron eccentrics.—Eccentrics for sewing machines were made of cast iron, drilled, reamed, and nickel plated. Paragraph 147, Act 1909, is limited to castings made wholly of iron. These goods, composed of cast iron and nickel, are strictly within the terms of paragraph 199, where a duty of 45 per cent. ad valorem is laid on articles or wares partly or wholly manufac-

tured not specially provided for and composed wholly or in part of metal. U. S. v. Durbrow & Hearne Mfg. Co. (1914) 5 Ct. Cust. App. 410.

65. Night lights.—Night lights of which metal forms not only a very considerable part, but is, in fact, a very important, substantial, and material constituent, held dutiable under Act 1909 as a manufacture of metal. U. S. v. American Import Co. (1912) 3 Ct. Cust. App. 361; Same v. Borgfeldt & Co. (1912) 3 Ct. Cust. App. 408.

66. Old cannon.—Old cannon, made of composition metal, and useless as artillery, but salable as relics and souvenirs, held dutiable under Act 1897 as manufactures of metal, and not free of duty as "old brass," or as "composition metal." Downing v. U. S. (1903) 122 Fed. 445, 58 C. C. A. 427, affirming judgment (C. C. 1902) 116 Fed. 779.

67. Opera glasses. — Opera glasses held dutiable as articles in part of metal. See paragraph 93.

68. Paper lamp shades.—Paper lamp shades, with rings of wire at the top and bottom to hold the paper in position, and with a wire framework across the top the metal constituting a substantial part of the article both in value and in use, held under R. S. § 2499, dutiable as "manufactures, articles, or wares not especially enumerated or provided for in this act, composed wholly or in part of iron, * * * or any other metal," etc., and not as "paper, manufactures of, or of which paper is a component material, not specially enumerated or provided for in this act." Hohenstein v. Hedden (C. C. 1889) 38 Fed. 94, judgment reversed (1893) 13 Sup. Ct. 1047, 149 U. S. 776, 37 L. Ed. 963.

69. Parts of lamps for burning gas.—Parts of lamps for burning gas cannot be said to be hollow ware of iron or steel similar to table, kitchen, and hospital utensils. The article is a part of a fixed device not complete in itself, lacking as it does the gas mantel and the globe which ordinarily accompany it, and it must be joined with a gas pipe when put in use. It was dutiable under paragraph 199, Act 1909. Fensterer & Ruhe v. U. S. (1914) 5 Ct. Cust. App. 61.

70. Philosophical apparatus. — Philosophical apparatus, see paragraph 573.

71. Pile protectors. — Pile protectors were made of sectional, semicircular, iron plates, which when riveted together took a drum shape. As to the point whether the holes in the plates were punched before or after rolling, the testimony is distinct that they were punched after rolling. This constitutes an advancement in the course of manufacture beyond hammering, rolling, or casting, resulting in changing the crude article into a form ready for actual use. The merchandise was properly assessed under paragraph 199, Act 1909, as manufactures of iron not specially provided for. U. S. v. American R. Co. of Porto Rico (1914) 5 Ct. Cust. App. 474.

72. Plated with gold and silver.—The term "plated with gold or silver," when used without limitation, signifies that the given articles are coated with gold or silver by any one of the several known processes which are employed to cover or coat such articles with a layer of gold or silver. It signifies a final condition rather than the process by which the condition was produced. The articles here in question held to be "plated with gold or silver." Tuska, Son & Co. v. U. S. (1915) 5 Ct. Cust. App. 506.

73. Rock drills and bar hoists.—The testimony shows both as to these rock drills and bar hoists that they were manufactured as machines to be operated by compressed air and as to the bar hoists they were specially designed for use underground where steam cannot be employed as a propelling force. The articles cannot be deemed steam engines and they were properly assessed as manufactures of metal. Hensel, Bruckmann & Lorbacher v. U. S. (1915) 5 Ct. Cust. App. 481.

74. Rollers used in printing patterns.—Rollers used in printing patterns held not dutiable as manufactured articles not enumerated. See paragraph 147.

75. Scythes, grasshooks, etc.—Scythes, grass hooks, and carpenters' pincers, subjected before completion to grinding, tempering, or polishing, held dutiable as "manufactures, articles, or wares, not specially enumerated * * * composed * * * of iron, steel, * * * or any other metal, and whether wholly or partly manufactured," and not as "forgings of iron and steel, or forged iron." Saltonstall v. Wiebusch & Hilger (1895) 15 Sup. Ct. 476, 156 U. S. 601, 39 L. Ed. 549, reversing Wiebusch & Hilger v. Saltonstall (C. C. 1891) 45 Fed. 40.

76. Sheets of zinc enameled and baked.—Sheets of zinc on which several coats of enamel had been applied, one coat at a time, and after each application baked in an oven, held not dutiable under Act 1909 as zinc in sheets coated or plated with nickel or other metal or solutions, but as zinc partly or wholly manufactured. Stengel v. U. S. (1911) 2 Ct. Cust. App. 137. See, also, Dejonge v. Magone (1895) 16 Sup. Ct. 119, 159 U. S. 562, 40 L. Ed. 260; Langerman & Petty v. U. S. (C. C. 1896) 75 Fed. 1.

77. Shot chains.—Shot chains held not dutiable as an article composed wholly or in part of iron, etc. See paragraph 126.

78. Silver hand bags. — Silver hand bags held dutiable as articles of silver. See paragraph 356.

79. Silver-handled nail cleaners.—Silver-handled nail cleaners held dutiable

as "manufactures of metal," under act 1890, and not as "files." Stern v. U. S. (C. C. 1896) 72 Fed. 52.

80. Sparklers or sparklets.—A mixture of iron filings, magnesium, aluminum, nitrate of barium, and gum, attached to a thin strip of metal to serve as a handle, constituting what are known as "sparklers" or sparklets," held not dutiable as toys under Act 1897, but as manufactures of metal. Illfelder v. U. S. (1910) 1 Ct. Cust. App. 109.

81. Statues and busts.—Bronze statuary, made by casting from a clay or plaster model, made by the artist, held not dutiable under Act 1890, as "statuary * * * wrought by hand * *. * from metal," but as a manufacture of metal. Tiffany v. U. S. (1896) 71 Fed. 691, 18 C. C. A. 297, affirming judgment (C. C. 1895) 65 Fed. 494.

Bronze statues molded, but finished by the hand of the sculptor, held dutiable as manufactures of metal, under Act 1890, and not as "statuary." Tiffany v. U. S. (C. C. 1895) 66 Fed. 737.

Under Act 1909, pars. 149, 158, cast hollow ware must be made of cast iron, and hence bronze statuary made of spelter must be assessed under paragraph 199, as a manufacture of metal. Sears, Roebuck & Co. v. U. S. (1912) 2 Ct. Cust. App. 451.

82. Steam dredge.—A steam dredge and scows used in connection therewith are "vessels," within the meaning of R. S. § 3, ante, § 3, and neither is dutiable under Act 1894, par. 177, as "manufactured articles," not specially provided for, and composed wholly or in part of metal. The International (1898) 89 Fed. 484, 32 C. C. A. 258, affirming decree (D. C. 1897) 83 Fed. 840.

83. Steel shapes.—No commercial designation appearing, a variety of steel shapes ready to be enameled and converted into pitchers, knobs, handles, spouts, etc., held, under Act 1897, less aptly described as pressed, sheared, or stamped shapes, or as steel in all forms and shapes, than as articles or wares composed of steel, whether wholly or partly manufactured. Lunham & Moore v. U. S. (1911) 2 Ct. Cust. App. 1.

84. Steel rods tipped with diamond chips.—Steel rods, 1⅛ of an inch in length and $^{3}/_{16}$ of an inch in diameter, tipped with diamond chips, and used in an engraving machine, held dutiable under Act 1897 as articles not specially provided for, composed wholly or in part of steel, and not as "precious stones set." In re John Hope & Sons Engraving & Manufacturing Co. (C. C. 1900) 100 Fed. 286.

85. Steel strips plated with nickel.—Steel strips plated with nickel, held dutiable under act 1909 as manufactures of metal not provided for. Hirsch & Co. v. U. S. (1913) 4 Ct. Cust. App. 82. See, also, Eckstein v. Same (C. C. 1905) 140 Fed. 94; Victor v. Same (C. C. 1904) 128 Fed. 472.

86. Terne tin.—Terne tin held not dutiable as manufacture of tin. See paragraph 109.

87. Tin boxes for use of smokers.—Tin boxes for use of smokers held not dutiable as manufactures of metal. See paragraph 381.

88. Tin parings and lead shavings.—Tin parings and lead shavings obtained by the use of a lathe in the ordinary methods of turning bars of metal to shape and form held dutiable under Act 1909, as articles or wares not specially provided for composed wholly or in part of lead or other metal, and not as waste. Hodgart & Co. v. U. S. (1911) 2 Ct. Cust. App. 311.

89. Tin plates.—Tin plates held not dutiable as manufactures of metal. See paragraph 109.

90. Traveling clock.—Traveling clocks held dutiable as manufactures of metal, under Act 1890. Tiffany v. U. S. (C. C. 1895) 66 Fed. 737.

91. Traveling set.—Leather cases fitted with an assortment of tools, consisting of a screw driver, saw, file, and small blades, for which a single handle suffices when used, held not dutiable under section 452, Act 1909, as a "traveling set," but, adapted and intended for emergencies only, they are dutiable as articles made wholly or in part of metal, under paragraph 199 of that act. U. S. v. Ovington Bros. & Co. (1912) 2 Ct. Cust. App. 393.

92. Tubes for holding gas.—Tubes of wrought steel for holding gas under pressure held not dutiable as manufacture of steel. See paragraph 127.

93. Washers.—Washers intended for use on automobiles held not dutiable as manufactures of steel. See paragraph 123.

94. Watch cases.—Cases covering watch movements held dutiable separately as manufactures of metal not provided for. See paragraph 161.

95. Wax tapers.—Wax tapers with metal base held not dutiable as articles in part of metal. See paragraph 367.

96. Wire cloth.—Brass and bronze wire cloth held not dutiable as articles made from metal threads, but dutiable as manufactures of metal under paragraph 199, Act 1909. Tyler Co. v. U. S. (1915) 6 Ct. Cust. App. 158.

97. Wire composed of nickel alloy.—Wire made of nickel alloy held not dutiable under Act 1894 as an alloy, but as a manufactured article not specially provided for. Boker v. U. S. (1899) 97 Fed. 205, 38 C. C. A. 114.

Wire composed of nickel alloy, imported in spools, and ready for use in the construction of rheostats, held dutiable as a manufactured ware not specifically provided for, composed wholly

or in part of metal, under Act 1894, and not as nickel alloy. Boker v. U. S. (C. C. 1898) 86 Fed. 119.

98. Wreaths, artificial flowers, etc., made of cotton and wire.—Wreaths and crosses mounted on wire held not dutiable as manufactures of metal. See paragraph 347.

Where artificial flowers, leaves, and the like, have taken on, through the use of metal wire in their construction, a new form and shape and name, they are to be deemed manufactures of metal. Gage Bros. & Co. v. U. S. (1912) 2 Ct. Cust. App. 427. See, also, U. S. v. Downing (1911) 1 Ct. Cust. App. 337.

Burial or bridal wreaths, made of wax, cotton, tin, wire, and other metal, held not dutiable under Act 1897, limited to feathers, fruits, grains, leaves, flowers and stems, or parts thereof, but under paragraph 193 of that act. U. S. v. Downing (1911) 1 Ct. Cust. App. 337. See, also, Seeberger v. Schlesinger (1894) 14 Sup. Ct. 729, 152 U. S. 581, 587, 38 L. Ed. 560.

99. Zinc sheets.—Lithographic zinc sheets held not dutiable as manufactures not specially provided for. See paragraph 163.

Zinc sheets, when nickel plated, held not within the provision in paragraph 192, Act 1897, for "zinc * * * in sheets," but dutiable under paragraph 193 of said act, covering "articles or wares not specially provided for, * * * composed wholly or in part of nickel, * * * zinc, * * * whether partly or wholly manufactured." Eckstein v. U. S. (C. C. 1905) 140 Fed. 94 (judgment affirmed [1906] 145 Fed. 1021, 74 C. C. A. 494); Victor v. U. S. (C. C. 1904) 128 Fed. 472.

SCHEDULE D.—WOOD AND MANUFACTURES OF

168. Briar root or briar wood, ivy or laurel root, and similar wood unmanufactured, or not further advanced than cut into blocks suitable for the articles into which they are intended to be converted, 10 per centum ad valorem.

169. Cedar commercially known as Spanish cedar, lignum-vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, and satinwood; all the foregoing when sawed into boards, planks, deals, or other forms, and not specially provided for in this section, and all cabinet woods not further manufactured than sawed, 10 per centum ad valorem; veneers of wood, 15 per centum ad valorem.

Notes of Decisions

Mahogany boards.—Sawed mahogany boards are not dutiable, under Schedule D, Act March 3, 1883 (22 Stat. 501), as "manufactures of mahogany," but are dutiable under the provision of that schedule "for all other articles of sawed lumber," etc. Opinion of Attorney General Garland of January 21, 1887 ([1887] 18 Op. 535), concurred in. (1889) 19 Op. Atty. Gen. 366.

Mahogany boards and planks held not dutiable as manufactures of mahogany, under the clause in Schedule D, Act March 3, 1883, imposing a duty on "manufactures of cedar wood," etc.; but they fall within the designation of lumber in the clause in same schedule which imposes a duty on "sawed boards, planks, deals," etc., and are dutiable under the latter clause. (1887) 18 Op. Atty. Gen. 535.

Sawed cedar.—Spanish cedar strips or boards, intended for use in the manufacture of cigar boxes, held properly assessed with duty as sawed cedar under paragraph 203, Act 1909. U. S. v. Owen & Co. (1913) 4 Ct. Cust. App. 480.

Veneers of wood.—As to veneers of wood of exceeding thinness, pasted on paper for the purpose of keeping them in shape, the paper being in some instances the component material of chief value, held, that they are within the provision in Act 1897, par. 198, for "veneers of wood." American Trading Co. v. U. S. (C. C. 1904) 142 Fed. 214.

170. Paving posts, railroad ties, and telephone, trolley, electric-light, and telegraph poles of cedar or other woods, 10 per centum ad valorem.

Notes of Decisions

Telephone poles.—Poles unnotched cannot be considered as a matter of law an unfinished telephone pole. U. S. v. Myers & Co. (1913) 4 Ct. Cust. App. 431.

171. Casks, barrels, and hogsheads (empty), sugar-box shooks, and packing boxes (empty), and packing-box shooks, of wood, not specially provided for in this section, 15 per centum ad valorem.

172. Boxes, barrels, or other articles containing oranges, lemons,

limes, grapefruit, shaddocks, or pomelos, 15 per centum ad valorem: Provided, That the thin wood, so called, comprising the sides, tops and bottoms of fruit boxes of the growth and manufacture of the United States, exported as fruit box shooks, may be reimported in completed form, filled with fruit, without the payment of duty; but proof of the identity of such shooks shall be made under regulations to be prescribed by the Secretary of the Treasury.

Notes of Decisions

Fruit box shooks.—Boxes containing oranges and lemons, the sides, tops, and bottoms of which were in fact of American growth and manufacture, and which were exported as shooks, held not to be deprived of the benefit of the proviso to paragraph 216, Act 1894, under which they were entitled to re-entry, when filled, on payment of half-rate duties, merely because proof of such facts was not made in the particular mode prescribed by the treasury regulations. U. S. v. E. L. Goodsell Co. (1899) 91 Fed. 519, 33 C. C. A. 661, affirming judgment Same v. Goodsell (C. C. 1897) 84 Fed. 155.

In showing that fruit boxes are entitled to classification under act 1897, par. 205, as being made from reimported shooks, it is not enough to establish a probability that many of the boxes were of such origin, but there must be definite evidence as to the quantity in each importation entitled to such classification. W. H. Westervelt & Co. v. U. S. (C. C. 1906) 150 Fed. 378.

173. Chair cane or reeds wrought or manufactured from rattans or reeds, 10 per centum ad valorem; osier or willow, including chip of and split willow, prepared for basket makers' use, 10 per centum ad valorem; manufactures of osier or willow and willow furniture, 25 per centum ad valorem.

Notes of Decisions

Manufactures of willow.—Under Act 1897, par. 206, relating to "willow prepared for basket makers' use, * * * manufactures of * * * willow," it was the intention for the final clause to cover completed manufactures from the "prepared" willow enumerated in the preceding clause; and baskets made from willow chip would be dutiable thereunder rather than as "manufactures of chip" under paragraph 449. Theodore Ollesheimer & Bro. v. U. S. (1907) 158 Fed. 977, 86 C. C. A. 181, affirming judgment (C. C. 1907) 154 Fed. 167.

The merchandise is composed of glass bottles and woven willow, and the willow is so woven and attached to the bottles that it produces an article differing from what is commonly understood to be a plain green, etc., glass bottle. The wicker is the component material of chief value, and the bottle so covered is classifiable as a manufacture of willow under paragraph 212, per force of the similitude clause in Act 1909. U. S. v. Mulhens & Kropff (1913) 4 Ct. Cust. App. 496. See, also, Same v. Zinn (1912) 2 Ct. Cust. App. 419.

Reeds manufactured from rattans.—Partly manufactured whipstocks, fishing poles, and canes held not dutiable as reeds manufactured from rattans. See paragraph 176.

Slab rattan and broom rattan, used only in the manufacture of brooms, held not dutiable as reeds, etc. See paragraph 648.

Rattan reeds, from which the outside has been removed, held not "in the rough," within the meaning of Act 1890, Free List, par. 756, but "reeds wrought or manufactured from rattans," within the meaning of paragraph 229. Foppes & Partisch v. U. S. (C. C. 1894) 154 Fed. 866, decree affirmed Foppes v. U. S. (1895) 79 Fed. 995, 24 C. C. A. 682.

The provision in paragraph 212, Act 1909, for "chair cane or reeds wrought or manufactured from rattans or reeds" is more specific than the free list provision for "reeds unmanufactured," and the clause applies to chair reeds made from rattans or other reeds, whatever their shape, and regardless of whether they are made by the first stripping of the rattan or by a subsequent reduction of stripped reeds. Rattan & Cane Co. v. U. S. (1915) 6 Ct. Cust. App. 1; U. S. v. Gerdau Co. (1915) 6 Ct. Cust. App. 7.

Willow.—"Willow" is used botanically, colloquially, and commercially to describe a kind of wood. Krauss & Co. v. U. S. (1911) 2 Ct. Cust. App. 17.

174. Toothpicks of wood or other vegetable substance, 25 per centum ad valorem; butchers' and packers' skewers of wood, 10 cents per thousand.

Notes of Decisions

Toothpicks.—Toothpicks held not dutiable as "quills, prepared or unprepared," under paragraph 768, Act 1883, but as nonenumerated articles, manu-

factured in part, under R. S. § 2516. U. S. v. Borgfeldt (1897) 79 Fed. 953, 25 C. C. A. 257, affirming judgment Same v. Stearns (C. C. 1896) 75 Fed. 833.

175. Blinds, curtains, shades, or screens any of the foregoing in chief value of bamboo, wood, straw, or compositions of wood, not specially provided for in this section, 20 per centum ad valorem; if stained, dyed, painted, printed, polished, grained, or creosoted, and baskets in chief value of like material, 25 per centum ad valorem.

Notes of Decisions

Baskets.—Bamboo basket bags, which may be closed at the top by drawing the material together, held improperly classified as a basket. U. S. v. Vantine & Co. (1913) 4 Ct. Cust. App. 516.

"Baskets" is a term, descriptive eo nomine, and the sole requirement needed to bring "baskets" within the provisions of paragraph 214, Act 1909, is that they should in fact be the articles there described, namely, baskets made of bamboo, wood, straw, or compositions of wood. U. S. v. Zinn & Co. (1912) 2 Ct. Cust. App. 419.

Baskets of wood, stained, dyed, or painted might be classed as baskets of wood under paragraph 214, or as manufactures of chip under paragraph 463, Act 1909; but as the applicable language in paragraph 214 is the more exact and specific, it must be held to be controlling, and the importation is dutiable under that paragraph. Thomsen v. U. S. (1911) 2 Ct. Cust. App. 36.

It was the purpose of congress in enacting paragraph 214, Act 1909, to constitute a new class for all baskets made of any kind of wood, and, instead of continuing a former provision whereby different kinds of wooden baskets should be classified differently and with differing rates of duty to make all wooden baskets dutiable at the same rate; and market baskets and hampers made of willow held dutiable, not as manufactures of willow, but, according to the more specific of two possible designations, as baskets of wood. Krauss & Co. v. U. S. (1911) 2 Ct. Cust. App. 17.

Manufactures of willow are covered by paragraph 212, Act 1909, and baskets of wood are covered by paragraph 214 of that act. Applying the recognized doctrine that an eo nomine provision is more specific than one of general description, it must be held that the term "baskets of wood," willow being concededly wood, is more specific than "manufactures of willow," and baskets made of willow wood are dutiable under paragraph 214 of the act in question. Brody v. U. S. (1911) 2 Ct. Cust. App. 15.

Manufactures of willow are covered by paragraph 212, Act 1909, and baskets of wood are covered by paragraph 214 of that act. Applying the recognized doctrine that an eo nomine provision is more specific than one of general description, it must be held that the term "baskets of wood," willow being concededly wood, is more specific than "manufactures of willow," and baskets made of willow wood are dutiable under paragraph 214 of the act in question. Id.

Both wistaria, a vine-like shrub with a bark, and rattan, which belongs to the palm family, have the appearance and general qualities of wood; and bags and baskets made of either held dutiable under paragraph 208, Act 1897. Tuska v. U. S. (1911) 1 Ct. Cust. App. 535.

Splash mats.—Wood strips, joined or sewed together with cords, with figures in imitation of paintings stenciled on these, used as splash mats, placed above washstands, held dutiable under paragraph 214, Act 1909. U. S. v. Butler Bros. (1912) 3 Ct. Cust. App. 390.

176. House or cabinet furniture wholly or in chief value of wood, wholly or partly finished, and manufactures of wood or bark, or of which wood or bark is the component material of chief value, not specially provided for in this section, 15 per centum ad valorem.

Notes of Decisions

1. Construction of paragraph in general.
2. Bamboo.
3. Bedsteads.
4. Boards planed and matched for splines.
5. Boards tongued and grooved.
6. Boxes veneered with rosewood or ebony.
7. Ceilings painted on wood.
8. Embroidered silk screens.
9. Frames for pictures.
10. Furniture with metal ornamentation.
11. Harmonicas.
12. Holly whips.
13. Lumber fireproofed.
14. Manicure sticks.
15. Paintings on panels of papier mâché.
16. Partly manufactured whipstocks, fishing poles, and canes.
17. Picture frames.
18. Racing shells.
19. Smokers' tables.
20. Split bamboo.
21. Spools.
22. Statues in wood.
23. Upholstered furniture.
24. Wood brushes.
25. Wood flour.

1. Construction of paragraph in general.—In Act 1897, par. 208, providing

for "furniture of wood, * * * or of which wood is the component material of chief value," the last clause as to chief value does not relate to the provision for furniture; and furniture whose frame work and principal bulk are of wood is furniture "of wood," within the meaning of the paragraph, though decorative metal may be the component of chief value. O. G. Hempstead & Son v. U. S. (C. C. 1909) 168 Fed. 450, judgment affirmed U. S. v. O. G. Hempstead & Son (1910) 175 Fed. 966, 99 C. C. A. 356.

The provision for house or cabinet furniture of wood wholly or partly finished and manufactures of wood, in Act 1897, par. 208, was intended to cover all finished manufactured wooden articles, however different they may be from house or cabinet furniture. Nairn Linoleum Co. v. U. S. (C. C. 1907) 151 Fed. 955.

"Manufactures of wood," as used in paragraph 181, Act 1894, means articles made of wood, and completed into things different from what the wood was before. Dudley v. U. S. (C. C. 1896) 74 Fed. 548, applying Hartranft v. Wiegmann (1887) 7 Sup. Ct. 1240, 121 U. S. 609, 30 L. Ed. 1012, and Maddock v. Magone (1894) 14 Sup. Ct. 588, 152 U. S. 368, 38 L. Ed. 482, and judgment affirmed U. S. v. Dudley (1897) 79 Fed. 75, 24 C. C. A. 449.

Cabinet ware and house furniture, whether in pieces fitted so that they can be put together and made ready for use, or actually put together and made ready for use, as such furniture, if "finished," held dutiable under the provision for "cabinet ware and house furniture, finished," in Act 1883, and not under the provision for "house or cabinet furniture in piece or rough, and not finished." Richard v. Hedden (C. C. 1890) 42 Fed. 672, judgment reversed Hedden v. Richard (1893) 13 Sup. Ct. 891, 149 U. S. 346, 37 L. Ed. 763.

The house or cabinet furniture dutiable under the provision for "house or cabinet furniture in piece or rough, and not finished," contained in Act 1883 is house or cabinet furniture, not only "in piece or rough," but also "not finished." Id.

The term "finished," as applied to house or cabinet furniture at and prior to the passage of Act 1883, in the furniture trade of this country, was used to designate not only house or cabinet furniture that was in pieces fitted so that they could be put together, and made ready for use as such furniture, but also house or cabinet furniture that was actually put together, and made ready for use as such furniture when shellacked or varnished or painted, etc. Id.

Where the importation consisted of the defined parts of a piece of furniture, it being apparent those parts were designed for a particular use and that their suitableness for any other purpose had been destroyed, the merchandise is taken out of the category of lumber or wood, it has become, as in the case here, a partly finished chair or an article of house furniture partly finished, and as such is dutiable under paragraph 215, Act 1909. Wanner v. U. S. (1911) 2 Ct. Cust. App. 68.

2. Bamboo.—Bamboo scrolls for wall decoration and bamboo blinds for window shades, composed of strips of bamboo, joined together by cords, held dutiable under paragraph 230, Act 1890, as manufactures of wood. U. S. v. China & Japan Trading Co. (1896) 71 Fed. 864, 18 C. C. A. 335, reversing China & Japan Trading Co. v. U. S. (C. C. 1895) 66 Fed. 733.

3. Bedsteads.—Metallic bedsteads held not dutiable as house or cabinet furniture. See paragraph 167.

4. Boards planed and matched for splines.—Boards planed and matched for splines held not dutiable as manufacture of wood. See paragraph 647.

5. Boards tongued and grooved.—Boards tongued and grooved held not dutiable as manufactures of wood. See paragraph 647.

6. Boxes veneered with rosewood or ebony.—Fancy boxes, of common wood, veneered with rosewood or ebony, and known to the trade as rosewood and ebony boxes, and as fancy boxes and furnished boxes, held dutiable under the act of 1846, as "manufactures of ebony, rosewood," etc. Sill v. Lawrence (C. C. 1850) Fed. Cas. No. 12,-850.

7. Ceilings painted on wood.—Ceilings painted on wood held not dutiable as manufactures of wood. See paragraph 652.

8. Embroidered silk screens.—Embroidered silk screens with wooden frames held not dutiable as screens of wood. See paragraph 358.

9. Frames for pictures.—Where paintings have been admitted free of duty, the frames on these, when framed, have, by a long course of practice in the customs, recognized in law, been dutiable; and where paintings are dutiable and are imported in frames, these frames are not integral parts of the pictures and cannot be deemed containers, either in themselves or by the rule ejusdem generis. The pictures and the frames are separable for tariff purposes. Kronfeld, Saunders & Co. v. U. S. (1914) 5 Ct. Cust. App. 222. See, also, U. S. v. Hensel (1899) 98 Fed. 418, 39 C. C. A. 121.

10. Furniture with metal ornamentation.—Act 1897, par. 208, includes under the provision for "furniture of wood" Buhl furniture, in which metal ornamentation is the element of chief value, but in which wood predominates in quantity. O. G. Hempstead & Son v. U. S. (C. C. 1909) 168 Fed. 450,

judgment affirmed U. S. v. O. G. Hempstead & Son (1910) 175 Fed. 966, 99 C. C. A. 356.

11. Harmonicas.—Harmonicas made of wood held not dutiable as manufactures of wood. See paragraph 342.

12. Holly whips.—Holly whips, kept for sale by carriage men and hardware men, held improperly classified as "saddlery," under Act 1897, par. 447, but dutiable under paragraph 208, as manufactures of which wood is the component material of chief value, not specially provided for. Davies v. U. S. (C. C. 1900) 107 Fed. 266.

13. Lumber fireproofed.—Lumber fireproofed held not dutiable as manufacture of wood. See paragraph 647.

14. Manicure sticks.—Manicure sticks, being completed articles of wood, several inches long, pointed at one end and beveled off at the other to form a cutting edge, held "manufactures of wood," under Act 1897, par. 208. E. B. Estes & Sons v. U. S. (C. C. 1909) 176 Fed. 932.

15. Paintings on panels of papier mâché.—Paintings in oil on panels of papier mâché to go into frames of a false door held not dutiable as manufactures of wood. See paragraph 652.

16. Partly manufactured whipstocks, fishing poles, and canes.—Rattan sticks for whip handles, painted, polished, and nearly completed, were dutiable as "manufactures of wood," under paragraph 230 of the act of 1890, and not as "reeds, wrought or manufactured from rattans or reeds," under paragraph 229. Foppes v. U. S. (C. C. 1896) 72 Fed. 45, following In re Foppes (C. C. 1893) 56 Fed. 817.

Partly-manufactured whipstocks, fishing poles, and canes, being made from rattans and malacca, having the outer rind or enamel removed, and being tapered, turned, sandpapered, and varnished, held dutiable as "manufactures of wood," under paragraph 230, Act 1890, and the similitude clause, and not as "reeds manufactured from rattans or reeds," under paragraph 229. In re Foppes (C. C. 1893) 56 Fed. 817.

17. Picture frames.—The word "paintings," as used in paragraph 454, Act 1894, cannot be construed to include the frames in which such paintings are imported; nor are the frames to be assessed for duty as "coverings," under section 19 of the customs administrative act of 1890 (section 5599, post), but they are to be classified as separate importations, and are dutiable, under paragraph 208, as manufactures of wood. U. S. v. Hensel (1899) 98 Fed. 418, 39 C. C. A. 121, reversing judgment (C. C. 1899) 91 Fed. 523.

An antique carved wood picture frame, imported in connection with a single painting, held subject to duty under Act 1890, par. 230, as a manufacture of wood, and not exempt as a part of a collection of antiquities. U. S. v. Gunther (1896) 71 Fed. 499, 18 C. C. A. 219.

18. Racing shells.—Racing shells held dutiable as manufactures of wood, under paragraph 215, Act 1909. Thayer v. U. S. (1912) 2 Ct. Cust. App. 526.

19. Smokers' tables.—Tables having smokers' accessories held not dutiable as cabinet furniture of wood. See paragraph 381.

20. Split bamboo.—Split bamboo held not dutiable as a manufacture of wood. See paragraph 648.

21. Spools.—Wooden spools being excluded from subsection 18, § 28, Act 1909, as they are neither coverings, containers, nor of the costs, charges, and expenses therein provided, they must be rated for duty as though separate and distinct importations under paragraph 215 of that act. U. S. v. Hogan (1913) 5 Ct. Cust. App. 1; Same v. Ringk & Co. (1913) 4 Ct. Cust. App. 349. See, also, Karthaus v. Frick (C. C. 1840) Fed. Cas. No. 7,615.

Spools not designed for use otherwise than in the bona fide transportation of the artificial silk yarn which they contained, and as used entering into the cost and value of their contents as appraised and assessed for duty, are not "containers or coverings" as those terms appear in subsection 18, § 28, Act 1909, and they are not ratable for duty as a separate entity under the fundamental rule that forbids double taxation. They are dutiable as a part of the contents themselves. U. S. v. Vandegrift & Co. (1913) 4 Ct. Cust. App. 355. See, also, Karthaus v. Frick (C. C. 1840) Fed. Cas. No. 7,615.

22. Statues in wood.—Statues in wood held not dutiable as manufactures of wood. See paragraph 652.

23. Upholstered furniture.—In Act 1897, par. 208, relating to "furniture of wood, * * * and manufactures of wood, or of which wood is the component material of chief value," the furniture provision is not modified by the chief value clause; and upholstered furniture, whose frames are of wood, held dutiable under that provision, though wood is not the most valuable component. A. J. Woodruff & Co. v. U. S. (C. C. 1909) 168 Fed. 452, judgment affirmed U. S. v. A. J. Woodruff & Co. (1909) 175 Fed. 776, 99 C. C. A. 348.

24. Wood brushes.—Sticks with the end cut so as to resemble a feather duster held dutiable as manufactures of wood under Act 1909, and not as brushes. U. S. v. Sheldon & Co. (1913) 4 Ct. Cust. App. 330.

25. Wood flour.—Wood flour or wood pulp held dutiable as manufacture of wood. See paragraph 648.

SCHEDULE E.—SUGAR, MOLASSES, AND MANUFACTURES OF

177. Sugars, tank bottoms, sirups of cane juice, melada, concentrated melada, concrete and concentrated molasses, testing by the polariscope not above seventy-five degrees, seventy-one one-hundredths of 1 cent per pound, and for every additional degree shown by the polariscopic test, twenty-six one-thousandths of 1 cent per pound additional, and fractions of a degree in proportion; molasses testing not above forty degrees, 15 per centum ad valorem; testing above forty degrees and not above fifty-six degrees, 2¼ cents per gallon; testing above fifty-six degrees, 4½ cents per gallon; sugar drainings and sugar sweepings shall be subject to duty as molasses or sugar, as the case may be, according to polariscopic test: Provided, That the duties imposed in this paragraph shall be effective on and after the first day of March, nineteen hundred and fourteen, until which date the rates of duty provided by paragraph two hundred and sixteen of the tariff Act approved August fifth, nineteen hundred and nine, shall remain in force: Provided, however, That so much of paragraph two hundred and sixteen of an Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes, approved August fifth, nineteen hundred and nine, as relates to the color test denominated as Number Sixteen Dutch standard in color, shall be and is hereby repealed.

This paragraph, as originally enacted, contained the following proviso: "Provided further, That on and after the first day of May, nineteen hundred and sixteen, the articles hereinbefore enumerated in this paragraph shall be admitted free of duty." Said proviso was repealed by Act April 27, 1916, c. 93, § 1, 39 Stat.

Notes of Decisions

Beet sugar.—In construing Act 1897, par. 209, relating to "sugar above number sixteen Dutch standard in color, and * * * sugar which has gone through a process of refining," held, that it is not necessary that, in order to come within the first clause of this provision, sugar should be capable of being used commercially, without refining, as cane sugar; and therefore beet sugar, which is not so capable, is included therein. Franklin Sugar Refining Co. v. U. S. (C. C. 1907) 153 Fed. 653.

Color test.—Color, not quality, held to be the test in determining the rate of duty on sugar under R. S. § 2504, Schedule G. Merritt v. Welsh (1881) 104 U. S. 694, 26 L. Ed. 896.

Loaf sugar.—In determining whether sugar drainings should be classed under a tariff act as "not above fifty-six degrees" by the polariscope, or as "fifty-six degrees and above," held, that the rule of de minimis non curat lex does not apply to drainings testing 56.-025, so as to require their classification under the former provision as testing 56, by disregarding the fraction of a degree. U. S. v. Lueder (1907) 154 Fed. 1, 83 C. C. A. 131, reversing decision (C. C. 1906) 146 Fed. 149.

In construing the provision in paragraph 209, Act 1897, regulating duty on sugars according to the polariscopic test, held that the expressions therein, "testing by the polariscope" and "shown by the polariscopic test," are not used with any special trade meaning that would confine them to a particular method of conducting such test, but import an intention on the part of Congress that the method adopted should be the one best calculated to make a scientific determination. U. S. v. Bartram Bros. (1904) 131 Fed. 833, 65 C. C. A. 557, reversing judgment Bartram Bros. v. U. S. (C. C. 1903) 123 Fed. 327, and writ of certiorari denied Bartram v. Same (1904) 25 Sup. Ct. 792, 195 U. S. 635, 49 L. Ed. 354.

Where no official polariscopic test had been made of the imported sugar, it was proper to classify the sugar in accordance with the settlement test, especially as the importers had agreed to accept such tests, and the Secretary of the Treasury had authorized their use. American Sugar Refining Co. v. U. S. (C. C. 1909) 175 Fed. 893.

Crushed loaf sugar is not "loaf sugar," within Act 1816, c. 107, where in commerce loaf sugar means sugar in loaves. U. S. v. Breed (C. C. 1832) Fed. Cas. No. 14,638.

Polariscope test.—Under Act 1897, specific rates of duties are laid upon imported sugars graduated according to the polariscopic test. These tests, while made by officers and experts sub-

ordinate to the appraiser, are reported to him, and by him, after ascertainment of the quality and value of the sugar, reported to the collector for classification. (1900) 23 Op. Atty. Gen. 238.

178. Maple sugar and maple sirup, 3 cents per pound; glucose or grape sugar, 1⅛ cents per pound; sugar cane in its natural state, or unmanufactured, 15 per centum ad valorem.

This paragraph, as originally enacted, contained the following proviso: "Provided, That on and after the first day of May, nineteen hundred and sixteen, the articles enumerated in this paragraph shall be admitted free of duty." Said proviso was repealed by Act April 27, 1916, c. 93, § 2, 39 Stat.

Notes of Decisions

Glucose and grape sugar.—Glucose and grape sugar are not dutiable as "burnt starch or gum substitute," as provided for in R. S. § 2504, Schedule M, but are properly assessed as nonenumerated manufactures, under section 2516. Weilbacher v. Merritt (C. C. 1888) 37 Fed. 85.

179. Saccharin, 65 cents per pound.

Notes of Decisions

Saccharine.—Dulcin held not dutiable as saccharine. See paragraph 5.

Saccharine held not free of duty under the provision in Act 1883, for "all acids used for medicinal, chemical, or manufacturing purposes not specially enumerated or provided for," but dutiable, as a "chemical compound," under the provision for "all chemical compounds, * * * by whatever name known, and not specially enumerated or provided for." Lutz v. Magone (C. C. 1890) 41 Fed. 128, judgment affirmed (1894) 14 Sup. Ct. 777, 153 U. S. 105, 38 L. Ed. 651; Cohn v. Spalding (C. C. 1885) 24 Fed. 19.

180. Sugar candy and all confectionery not specially provided for in this section, valued at 15 cents per pound or less, 2 cents per pound; valued at more than 15 cents per pound, 25 per centum ad valorem. The weight and the value of the immediate coverings, other than the outer packing case or other covering, shall be included in the dutiable weight and the value of the merchandise.

Notes of Decisions

Chocolate.—Chocolate held not dutiable as confectionery. See paragraph 231.

Dragées.—Dragées are "confectionery," within Act 1897, par. 212. U. S. v. La Manna, Azema & Farnan (1908) 166 Fed. 751, 92 C. C. A. 431, reversing judgments La Manna, Azema & Farnan v. U. S. (1906) 144 Fed. 683, 75 C. C. A. 485, and Id. (C. C. 1907) 154 Fed. 955.

Fruit tablets.—Confectionery known as "fruit tablets" held dutiable under Act 1883 as "sugar candy not colored." (1887) 18 Op. Atty. Gen. 606.

Sweet crackers.—Sweet crackers, known as "wafers and biscuits," in which the proportion of the sweetened centers to the pastry envelopes, is large, but in which flour is used to a substantial extent, held not dutiable either directly or by similitude as "confectionery," under Act 1897. U. S. v. Thomas Meadows & Co. (1907) 154 Fed. 1005, 83 C. C. A. 297, affirming decree (C. C. 1906) 147 Fed. 757.

SCHEDULE F.—TOBACCO AND MANUFACTURES OF

181. Wrapper tobacco, and filler tobacco when mixed or packed with more than 15 per centum of wrapper tobacco, and all leaf tobacco the product of two or more countries or dependencies when mixed or packed together, if unstemmed, $1.85 per pound; if stemmed, $2.50 per pound; filler tobacco not specially provided for in this section, if unstemmed, 35 cents per pound; if stemmed, 50 cents per pound.

Notes of Decisions

Percentage test.—Unstemmed leaf tobacco suitable for cigar wrappers, when mixed or packed with filler tobacco, though constituting less than 15 per cent. of the whole, is separately dutiable at $1.85 per pound as wrapper tobacco, under paragraph 213 of the tariff act of July 24, 1897, and not as filler tobacco at 35 cents per pound. Rothschild & Bro. v. U. S. (1900) 21 Sup. Ct.

197, 198, 179 U. S. 463, 45 L. Ed. 277, answering certified questions (1901) 109 Fed. 1062, 47 C. C. A. 686.

The percentage test is to be applied to the bale as a unit if the leaves are of such uniform character as to be collectively of one class, and otherwise to the amount of each class in the bale; the separate hands in the bale are not to be taken as the unit. The test of size is to be applied, not to a leaf as a whole, but to each half as divided by the stem, and there must be 85 halves out of each 100 halves having a portion sufficiently fine in texture, of the requisite size, to make at least one wrapper. The test of whether "100 leaves are required to weigh a pound" is applied to the whole leaves. Erhardt v. Schroeder (1894) 15 Sup. Ct. 45, 48, 155 U. S. 124, 39 L. Ed. 94.

Under Schedule F, Act 1883, the bale in which tobacco is imported held not the unit upon which duty is to be calculated, but such unit is the separate quantity of such tobacco. Falk v. Robertson (1890) 11 Sup. Ct. 41, 137 U. S. 225, 34 L. Ed. 645; (1884) 18 Op. Atty. Gen. 1.

Except for the purpose of imposing a penalty for importing a bale containing more than 15 per cent. of wrapper, and less than 85 per cent. of filler, any percentage system is abandoned in Act 1897, and all wrapper tobacco, wherever found, and in whatever amount, is subject to the duty of $1.85 per pound, provided in paragraph 213 of said act. Rothschild v. U. S. (1901) 106 Fed. 989, 46 C. C. A. 86, affirming judgment U. S. v. Rothschild (C. C. 1898) 87 Fed. 798.

In determining the classification of leaf tobacco under Act 1883, par. 246, the unit to which the percentage test is to be applied is the commercial bale. U. S. v. Rosenwald (1895) 67 Fed. 323, 14 C. C. A. 399, following Same v. Blumlein (1893) 5 C. C. A. 142, 55 Fed. 383, distinguishing Falk v. Robertson (1890) 11 Sup. Ct. 41, 137 U. S. 225, 34 L. Ed. 645; Erhardt v. Schroeder (1894) 15 Sup. Ct. 45, 155 U. S. 124, 39 L. Ed. 94, and reversing judgment In re Rosenwald (C. C. 1894) 59 Fed. 765.

Under the provisions of Act 1883, pars. 246, 247, that "leaf tobacco of which 85 per cent. is" suitable for wrappers, and of a specified grade, shall be subject to a certain duty, and that "all other tobacco in leaf" shall pay a lower duty, the unit upon which the percentage is to be calculated is the bale as packed at the plantation. In re Blumlein (1893) 55 Fed. 383, 5 C. C. A. 142, affirming (C. C. 1892) 49 Fed. 228; Hubbard v. Soby (1893) 55 Fed. 388, 5 C. C. A. 147, affirming judgment Soby v. Hubbard (C. C. 1892) 49 Fed. 234, and distinguishing Falk v. Robertson (1890) 11 Sup. Ct. 41, 137 U. S. 225, 34 L. Ed. 645.

The 85 per cent. clause does not refer merely to size and fineness, but to size, fineness, and weight. Id.

If a bale of tobacco contained any portion suitable for cigar wrappers, the whole bale was dutiable, under paragraph 242, Act 1890, as "suitable for cigar wrappers," and the court had no discretion to determine whether there was an appreciable percentage of such tobacco in the bale. Stachelberg v. U. S. (C. C. 1896) 72 Fed. 50.

182. The term wrapper tobacco as used in this section means that quality of leaf tobacco which has the requisite color, texture, and burn, and is of sufficient size for cigar wrappers, and the term filler tobacco means all other leaf tobacco. Collectors of customs shall not permit entry to be made, except under regulations to be prescribed by the Secretary of the Treasury, of any leaf tobacco, unless the invoices of the same shall specify in detail the character of such tobacco, whether wrapper or filler, its origin and quality. In the examination for classification of any imported leaf tobacco, at least one bale, box, or package in every ten, and at least one in every invoice, shall be examined by the appraiser or person authorized by law to make such examination, and at least ten hands shall be examined in each examined bale, box, or package.

Notes of Decisions

Wrapper tobacco.—Under Act 1883, § 246, declaring the duty on leaf tobacco of which 85 per cent. is of the requisite size and fineness of texture to be suitable for wrappers, and of which more than 100 leaves are required to weigh a pound, the percentage test is to be applied to the bale as a unit, if the leaves are of such uniform character as to be collectively of one class, otherwise to the amount of each class in the bale. The separate hands in the bale are not to be taken as the unit. Erhardt v. Schroeder (1894) 155 U. S. 124, 15 Sup. Ct. 45, 39 L. Ed. 94.

The test of size is to be applied, not to a leaf as a whole, but to each half as divided by the stem, and there must be 85 halves out of each 100 halves having a portion sufficiently fine in texture, of the requisite size, to make at least one wrapper. Id.

The test of whether "100 leaves are required to weigh a pound" is applied to the whole leaves. Id.

Evidence held to show that importa-

tions of unstemmed Sumatra tobacco were suitable for cigar wrappers, and therefore dutiable at $2 per pound under Act 1890, deteriorated by drying five months. In re Phelps (C. C. 1892) 53 Fed. 238.

183. All other tobacco, manufactured or unmanufactured, not specially provided for in this section, 55 cents per pound; scrap tobacco, 35 cents per pound.

Notes of Decisions

Manufactured tobacco.—A cigar-shaped bundle of tobacco of an extremely large size, if used for display, though capable of being smoked held dutiable as manufactured tobacco and not as a cigar. D'Estrinoz v. Gerker (C. C. 1890) 43 Fed. 285.

Scrap tobacco.—Tobacco sweepings, used in manufacture of stogies and cigarettes, held dutiable under Act 1897, par. 215, as unmanufactured tobacco, and not under paragraph 463, as waste not specially provided for. Latimer v. U. S. (1912) 32 Sup. Ct. 242, 223 U. S. 501, 56 L. Ed. 526.

Tobacco composed of fragments clipped from the ends of cigars, or broken off in the course of manufacture, held dutiable as "tobacco, unmanufactured, not specially enumerated," under Schedule F, and not as "tobacco, manufactured, of all descriptions * * * not specially enumerated," under the same Schedule. Seeberger v. Castro (1894) 14 Sup. Ct. 766, 153 U. S. 32, 38 L. Ed. 624.

Act 1890, having no provision for "tobacco, unmanufactured, not specially enumerated or provided for," the portions of leaf tobacco which break off in handling the tobacco before stemming or in the process of shipping, and are swept up, and are and can be used only for cigarettes and the fillers of the cheaper grades of cigars, and are not covered by any of the paragraphs of the tobacco schedule, may be classified as waste. U. S. v. Schroeder (1899) 93 Fed. 448, 35 C. C. A. 376, affirming judgment Schroeder v. U. S. (C. C. 1898) 87 Fed. 201.

Leaf tobacco scraps, which are the remnants of tobacco, left after making cigars, and are used in the manufacture of snuff, cigarettes, and cheap cigars, held dutiable under paragraph 244, Act 1890, as "tobacco, manufactured, not especially enumerated or provided for," and not as "waste," under paragraph 472, nor as "unenumerated, unmanufactured goods," under section 4. Sheldon v. U. S. (1893) 55 Fed. 818, 5 C. C. A. 282.

Imported scrap tobacco held dutiable as manufactured tobacco under Act 1883. (1884) 17 Op. Atty. Gen. 646.

Tobacco not specially provided for.—Under Act 1897, par. 214, and paragraph 215, defining wrapper and filler tobacco, held, that tobacco neither suitable for wrappers nor fillers, but which may be used as a filler in the manufacture of a very small size of tobacco cigars, was not leaf tobacco, and was properly dutiable under paragraph 215. Dominguez Bros. v. U. S. (D. C. 1903) 122 Fed. 556.

Unmanufactured tobacco.—Congress, in using the words "unmanufactured tobacco," in Act 1897, par. 215, held to have adopted the construction given by Supreme Court to those words in earlier tariff act. Latimer v. U. S. (1912) 32 Sup. Ct. 242, 223 U. S. 501, 56 L. Ed. 526.

184. Snuff and snuff flour, manufactured of tobacco, ground dry, or damp, and pickled, scented, or otherwise, of all descriptions, 55 cents per pound.

185. Cigars, cigarettes, cheroots of all kinds, $4.50 per pound and 25 per centum ad valorem, and paper cigars and cigarettes, including wrappers, shall be subject to the same duties as are herein imposed upon cigars.

Notes of Decisions

Cigars.—A cigar-shaped bundle of tobacco for display held not dutiable as a cigar. See paragraph 183.

SCHEDULE G.—AGRICULTURAL PRODUCTS AND PROVISIONS

186. Horses and mules, 10 per centum ad valorem.

187. All live animals not specially provided for in this section, 10 per centum ad valorem.

Notes of Decisions

Birds.—Act March 2, 1861, exempted from duty "animals of all kinds; birds, singing and other, and land and water fowls"; and Act May 16, 1866, levied a duty of 20 per cent. "on all horses, mules, cattle, sheep, hogs, and other

live animals." Held, that birds were not included in the terms "other live animals." The second statute must be read by the light of the first. Reiche v. Smythe (1871) 80 U. S. (13 Wall.) 162, 20 L. Ed. 566, reversing (C. C. 1870) Fed. Cas. No. 11,666.

Snails.—Words to which congress has given a special meaning in a tariff act will be presumed to retain that signification in a subsequent tariff act relating to the same subject matter, no contrary intention appearing. Accordingly snails may not be deemed "live animals." De Jonghe v. U. S. 1914) 5 Ct. Cust. App. 134. See, also, Reiche v. Smythe (1871) 13 Wall. 162, 20 L. Ed. 566.

188. Barley, 15 cents per bushel of forty-eight pounds.

189. Barley malt, 25 cents per bushel of thirty-four pounds.

190. Barley, pearled, patent, or hulled, 1 cent per pound.

191. Macaroni, vermicelli, and all similar preparations, 1 cent per pound.

192. Oats, 6 cents per bushel of thirty-two pounds; oatmeal and rolled oats, 30 cents per one hundred pounds; oat hulls, 8 cents per one hundred pounds.

Notes of Decisions

Oat hulls.—A by-product in the manufacture of oatmeal, which consists merely of the broken hulls of the oats, and is known as "oatmeal feed," held dutiable as "oat hulls," under paragraph 231, Act 1897. U. S. v. McGettrick (C. C. 1905) 139 Fed. 304.

193. Rice, cleaned, 1 cent per pound; uncleaned rice, or rice free of the outer hull and still having the inner cuticle on, 5/8 of 1 cent per pound; rice flour, and rice meal, and rice broken which will pass through a number twelve sieve of a kind prescribed by the Secretary of the Treasury, 1/4 cent per pound; paddy, or rice having the outer hull on, 3/8 of 1 cent per pound.

Notes of Decisions

Broken rice.—The fact that age and repeated handling of broken rice may have caused an infinitesimal increase in the percentage of the material that will pass through the standard sieve is not a sufficient reason for rejecting a test based on samples of such rice, especially where the failure to make a proper test at the time of importation was due to no fault of the importer. Seattle Brewing & Malting Co. v. U. S. (C. C. 1910) 176 Fed. 125.

Under paragraph 232, Act 1897, for "rice broken, which will pass through a sieve known commercially as number twelve wire sieve," the Secretary of the Treasury prescribed for the use of customs officers one of several kinds of sieves which were known commercially as "No. 12," though they varied somewhat in the size of their meshes. The kind selected was not the one which would allow the greatest quantity of rice to pass through. Held that the exclusive use of such a sieve might be prescribed, regardless of the fact that it was not the one most favorable to importers. Seattle Brewing & Malting Co. v. U. S. (C. C. 1910) 176 Fed. 125; Waken & McLaughlin v. Same (C. C. 1906) 147 Fed. 874.

Cleaned rice.—Patna or Bengal rice, from which both the outer and inner cuticle has been removed, held dutiable, under paragraph 193, Act 1894, as cleaned rice, though commercially known before the act as uncleaned rice. Talmage v. U. S. (C. C. 1896) 77 Fed. 826, judgment affirmed (1897) 80 Fed. 887, 26 C. C. A. 218.

194. Biscuits, bread, wafers, cakes, and other baked articles, and puddings, by whatever name known, containing chocolate, nuts, fruit, or confectionery of any kind, and without regard to the component material of chief value, 25 per centum ad valorem.

Notes of Decisions

Honey cakes.—Honey cakes, or so-called gingerbread, not containing chocolate, nuts, fruit, or confectionery of any kind are excluded from paragraph 194, Act 1913. The record does not sustain the claim that they are biscuits, bread, or wafers entitled to free entry under paragraph 417. The record does support the claim that the goods are classifiable as a nonenumerated manufactured article under paragraph 385 of the act. U. S. v. Neuman & Schwiers Co. (1915) 6 Ct. Cust. App. 228.

Iced sweetened biscuits.—These biscuits, surfaced with icing, "contain" the icing and this icing constitutes confectionery. It is not necessary that it should be made up into forms before it

can be so classed. They are dutiable under paragraph 194, Act 1913. U. S. v. Meadows & Co. (1915) 5 Ct. Cust. App. 532.

Waverly bread.—Waverly bread is clearly distinguishable by its form, consistency, and composition from both cake and bread, as these terms are commonly understood. Its characteristics make of it biscuits, a term covering not only a species of bread, but also both sweetened and unsweetened crackers. U. S. v. Dunlop & Ward (1915) 6 Ct. Cust. App. 278.

195. Butter and butter substitutes, 2½ cents per pound.

Notes of Decisions

Butter substitutes.—"Ghee" is within the provisions for "butter, and substitutes therefor," in Act 1897, par. 236. Sahadi Bros. v. U. S. (1908) 157 Fed. 1004, 85 C. C. A. 679, affirming judgment (C. C. 1906) 152 Fed. 486.

196. Cheese and substitutes therefor, 20 per centum ad valorem.

197. Beans, and lentils, not specially provided for, 25 cents per bushel of sixty pounds.

Notes of Decisions

Beans and lentils.—Beans in a dry state, used for food, are dutiable as "vegetables" at 10 per cent. ad valorem, under Schedule G of Act 1883, and are not entitled to free entry as "seeds." Sonn v. Magone (1895) 159 U. S. 417, 16 Sup. Ct. 67, 40 L. Ed. 203; Windmuller v. Robertson (C. C. 1885) 23 Fed. 652; Salomon v. Robertson (C. C. 1889) 41 Fed. 517.

Beans and lentils in a mature and dry state held dutiable, under Act 1883, under the description "vegetables," contained in paragraph 286, and not entitled to free entry as "seeds" under paragraph 760. Sonn v. Magone (1895) 16 Sup. Ct. 67, 69, 159 U. S. 417, 40 L. Ed. 203.

The question being whether white beans are "vegetables," within the meaning of the schedule of Act March 3, 1883, entitled "Provisions," or whether they are "seeds," under the head of "Free List—Sundries," evidence of the common designation of beans as an article of food should be admitted. Robertson v. Salomon (1888) 130 U. S. 412, 9 Sup. Ct. 559, 32 L. Ed. 995.

If the commercial designation of an article fails to determine its classification, then resort must be had to its common designation. Thus, the question being whether white beans are "vegetables," within Act 1883, entitled "provisions," or whether they are "seeds," under the head of "Free-List—Sundries," evidence of the common designation of beans as an article of food should be admitted. Id.

The word "beans," appearing in the tariff act of 1897, was continued in the act of 1909, and this continuance carries the presumption that the term was there employed in the sense affixed by judicial interpretation. U. S. v. De Boer & Dik (1915) 6 Ct. Cust. App. 30.

198. Beets of all kinds, 5 per centum ad valorem.

199. Beans, peas, prepared or preserved, or contained in tins, jars, bottles, or similar packages, including the weight of immediate coverings, 1 cent per pound; mushrooms and truffles, including the weight of immediate coverings, 2½ cents per pound.

Notes of Decisions

Beans prepared, etc.—Soya beans, cooked and salted, held not dutiable as beans prepared, etc. See paragraph 606.

Mushrooms.—An edible fungus held not dutiable as mushrooms. See paragraph 215.

Mushrooms, dried in order to preserve them and placed in hermetically sealed tins holding from 30 to 45 pounds, held within the provision in Act 1897 relating to mushrooms prepared or preserved in tins, jars, bottles, etc., rather than paragraph 257, relating to vegetables in their natural state. Choy Chong Woh & Co. v. U. S. (1907) 153 Fed. 879, 82 C. C. A. 608.

Mushrooms contained in tins, and inclosed in differing numbers of tins, and in wooden cases, may not be deemed mushrooms cut, sliced, or dried in undivided packages of a given weight and dutiable as such, but are plainly mushrooms contained in tins and are dutiable per pound, the weight of the immediate coverings included, under the first clause of paragraph 251 Act 1909. Choy Chong Woh & Co. v. U. S. (1911) 2 Ct. Cust. App. 274. See, also, U. S. v. Yamashita (1911) 1 Ct. Cust. App. 341.

—— **Evaporated mushrooms.**—The provision in paragraph 241, Act 1897, for mushrooms "prepared or preserved," held not to include mushrooms dried merely by evaporation, but they were dutiable under paragraph 257 as "vegetables in their natural state." Kraut v. U. S. (C. C. 1905) 139 Fed. 94.

Tare.—The merchandise is beans, peas, and mushrooms in tins. The collector included the weight of the water in the tins to determine the weight of the goods. The water was designedly placed in the tins as a preservative of the contents, and is common to the condition of importations of this kind. By paragraph 251, Act 1909, this method of packing was recognized, and the weight of the tins, with their contents, constitutes dutiable weight, and no allowance for tare can be made. Austin, Nichols & Co. v. U. S. (1914) 5 Ct. Cust. App. 167. See also, Shallus v. Same (1911) 1 Ct. Cust. App. 316.

Truffles.—Truffles in tins held dutiable as "mushrooms in tins," by similitude, under Act 1897, par. 241, and not as vegetables. Von Bremen, MacMonnies & Co. v. U. S. (1909) 168 Fed. 889, 94 C. C. A. 301.

Truffles held dutiable under Act 1890, par. 287, as "vegetables of all kinds, prepared or preserved, including pickles and sauces of all kinds, not specially provided for," and not under paragraph 271, as "mushrooms, prepared or preserved in tins, jars, bottles or otherwise." Park v. U. S. (C. C. 1894) 61 Fed. 398.

200. Vegetables, if cut, sliced or otherwise reduced in size, or if parched or roasted, or if pickled, or packed in salt, brine, oil, or prepared in any way; any of the foregoing not specially provided for in this section, and bean stick or bean cake, miso, and similar products, 25 per centum ad valorem.

Notes of Decisions

1. Vegetables in general.
2. Beans.
3. Cabbages partially dried, etc.
4. Capers.
5. Cucumbers and cauliflowers packed in salt.
6. Mushrooms.
7. Peppers and pimentos.
8. Pickled limes.
9. Sliced beets kiln-dried.
10. Sliced vegetables.
11. Soups in tablets.
12. Tomato paste.
13. Truffles.
14. Vegetables in tins.

1. Vegetables in general.—In Act 1897, par. 241, the term "vegetables" is used in accordance with the ordinary understanding, vegetables usually served at dinner. Von Bremen, MacMonnies & Co. v. U. S. (1909) 168 Fed. 889, 94 C. C. A. 301.

2. Beans.—Young, green beans, after being cut and shredded, are placed in barrels, and salt is put over them. The juices of the vegetable mixing with the salt form a brine, and this brine, by the record, acted as a preservative. This importation was of prepared vegetables, and they were dutiable as such. U. S. v. De Boer & Dik (1915) 6 Ct. Cust. App. 30. See, also, Sun Kwong On v. U. S. (1910) 1 Ct. Cust. App. 17.

3. Cabbages partially dried, etc.—Hanks and balls of dried and salted cabbage, the salting and manipulation of which were done as a preparation, fitting the cabbage for cooking purposes, and intended to be permanent, held dutiable as vegetables "prepared or preserved," under Act 1897, par. 241, and not as vegetables in their "natural state," under paragraph 257. Sun Kwong On v. U. S. (C. C. 1910) 177 Fed. 595; Id. (1910) 1 Ct. Cust. App. 17. See, also, U. S. v. Strohmeyer & Arpe Co. (1909) 167 Fed. 533, 93 C. C. A. 65.

4. Capers.—Capers held not dutiable as vegetables prepared. See paragraph 385.

5. Cucumbers and cauliflowers packed in salt.—Cauliflowers that have been trimmed, washed, and packed in brine for preservation during transportation, and to keep them in their natural state, and that when taken out of it and washed are still in their natural state, held dutiable under Act 1897, par. 257, as "vegetables in their natural state," rather than under paragraph 241, as "vegetables prepared or preserved." U. S. v. Strohmeyer & Arpe Co. (1909) 167 Fed. 533, 93 C. C. A. 65.

Cucumbers and cauliflower, packed in salt, held dutiable under Act 1890, par. 287, as "vegetables * * * prepared or preserved," and not under paragraph 288, as "vegetables in their natural state not specially provided for." Alart v. U. S. (C. C. 1894) 61 Fed. 500.

6. Mushrooms.—Mushrooms held not dutiable as vegetables. See paragraph 199.

7. Peppers and pimentos.—Though pleasantness in taste is essential to a vegetable, Spanish red peppers and pimentos morrones used both as a garnish and as food are vegetables as that term is commonly, ordinarily, and popularly understood, and were dutiable under paragraph 252, Act 1909. Austin, Nichols & Co. v. U. S. (1915) 6 Ct. Cust. App. 9.

8. Pickled limes.—Pickled limes held not vegetables. See paragraph 220.

9. Sliced beets kiln-dried.—Sliced beets, kiln-dried, held, under Act 1897, "vegetables prepared," rather than vegetables in their natural state, under

paragraph 257, or vegetable substances, crude or manufactured, under paragraph 617. Petry v. U. S. (C. C. 1900) 99 Fed. 261.

10. Sliced vegetables.—Sliced vegetables held dutiable as vegetables in their natural state. See paragraph 200.

The slicing of vegetables solely to facilitate the natural drying operation held not sufficient to remove them from their natural state; and mushrooms cleaned, sliced, and dried in the sun are dutiable as "vegetables in their natural state," under Act 1897, par. 257, rather than as "vegetables prepared or preserved," under paragraph 241. A. Zanmati & Co. v. U. S. (1907) 153 Fed. 880, 82 C. C. A. 626.

11. Soups in tablets.—The provisions of paragraph 252, Act 1909, were so enlarged as to include bean stick, bean cake, miso, and similar products, and, whether "vegetables prepared in any way" is broad enough to cover Maggi's desiccated soup tablets, it is clear that this product is so similar to bean stick and bean cake that it falls within the "similar products" of the paragraph. Anderson & Co. v. U. S. (1915) 6 Ct. Cust. App. 108.

That Maggi's soup tablets are vegetables prepared for soup does not take them out of the category of "vegetables, prepared," in paragraph 252, Act 1909. Hunter & Co. v. U. S. (1913) 5 Ct. Cust. App. 32.

12. Tomato paste.—Tomato paste held dutiable as a prepared vegetable under paragraph 252, Act 1909. Vitelli & Son v. U. S. (1913) 4 Ct. Cust. App. 75.

13. Truffles.—Truffles held dutiable as vegetables, etc. See paragraph 199.

14. Vegetables in tins.—Vegetables that have been packed in tin cans and subjected to heat to expel the air, then hermetically sealed and again heated for the purpose of sterilization, held not vegetables in the natural state, but prepared vegetables, and dutiable under paragraph 241, Act 1897. Vitelli v. U. S. (1911) 1 Ct. Cust. App. 237. See, also, U. S. v. Strohmeyer (1909) 167 Fed. 533, 93 C. C. A. 65.

201. Pickles, including pickled nuts, sauces of all kinds, not specially provided for in this section, and fish paste or sauce, 25 per centum ad valorem.

Notes of Decisions

In general.—Articles are not to be removed from a provision for pickles and sauces, and placed in a provision for drugs, simply because a medical or therapeutic property may be extracted from them. S. S. Pierce Co. v. U. S. (C. C. 1910) 176 Fed. 440.

Anchovy and bloater paste.—"Anchovy paste" and "bloater paste" held not dutiable as "sauces," but as "fish preserved or prepared," within Act 1883. Bogle v. Magone (1894) 14 Sup. Ct. 718, 720, 152 U. S. 623, 38 L. Ed. 574, reversing (C. C. 1889) 40 Fed. 226.

"Bloater paste," being a kind of herring ground into paste, and mixed with condiments and spices for use as a sauce, and also packed in small tin cans, held dutiable, under paragraph 295, Act 1890, as "fish in cans or packages made of tin," and not as a "sauce," under paragraph 287. In re Johnson (C. C. 1893) 56 Fed. 822.

Capers.—Capers held not dutiable as pickles. See paragraph 385.

Capers pickled in vinegar, which are used as a condiment and in flavoring sauces, held dutiable under Act 1897, par. 241, relating to "pickles and sauces of all kinds." S. S. Pierce Co. v. U. S. (C. C. 1910) 176 Fed. 440.

Capers, put up in vinegar, held dutiable as pickles. Austin, Nichols & Co. v. U. S. (1913) 4 Ct. Cust. App. 261.

There is no limitation on the word "pickles" as used in paragraph 253, Act 1909, and pickled capers are dutiable under it. Godillot & Co. v. U. S. (1912) 2 Ct. Cust. App. 408.

Pickled walnuts.—The provision for "pickles" in Act 1897, par. 241, covers only vegetables. So pickled walnuts are excluded, and are classifiable as unenumerated manufactures under section 6. U. S. v. Acker, Merrall & Condit Co. (1909) 171 Fed. 77, 96 C. C. A. 181.

Sauces.—Thick soy held not a sauce. See paragraph 385.

In Act 1897, par. 241, the provision for "sauces" means for a seasoning or dressing usually placed on the table to be used with prepared food. U. S v. Wo On & Co. (1909) 167 Fed. 314, 92 C. C. A. 626.

Seed pods packed in brine.—Seed pods of the papperios plant may not be deemed vegetables, but when packed in brine, in view of the marked change indicated by a comparison of the phraseology of paragraphs 252 and 253, Act 1909, and the old law, they must be taken to be pickles, and dutiable as such. Microutsicos v. U. S. (1911) 2 Ct. Cust. App. 342.

202. Cider, 2 cents per gallon.

203. Eggs frozen or otherwise prepared or preserved in tins or other packages, not specially provided for in this section, including

the weight of the immediate coverings or containers, 2 cents per pound; frozen or liquid egg albumen, 1 cent per pound.

Notes of Decisions

Eggs frozen in tins.—Hen's eggs, having their whites and yolks mixed in exact proportion, the white and the yolk of each egg being thrown into a common receptacle and the total contents being placed in hermetically sealed tin cans and frozen for shipment, held dutiable under paragraph 256, Act 1909, as eggs not specially provided for. Horsfield v. U. S. (1912) 3 Ct. Cust. App. 178; Id. (1911) 1 Ct. Cust. App. 138. See, also, Sun Kwong On v. U. S. (1906) 143 Fed. 115, 74 C. C. A. 309.

204. Eggs, dried, 10 cents per pound; eggs, yolk of, 10 per centum ad valorem.

Notes of Decisions

Dry egg yolk.—Dry egg yolk, not being enumerated in Act 1883, and assimilating to albumen and eggs, articles on the free list, in two or more only of these four particulars, held not free under that act by similitude, but is subject to duty as a nonenumerated manufactured article, under R. S. § 2513. Lazard v. Magone (C. C. 1889) 40 Fed. 662.

205. Hay, $2 per ton.

Notes of Decisions

Hay.—Hay is a raw or unmanufactured article, and subject to a duty of 10 per centum ad valorem, under R. S. § 2516. Frazee v. Moffitt (C. C. 1882) 18 Fed. 584.

206. Honey, 10 cents per gallon.

207. Hops, 16 cents per pound; hop extract and lupulin, 50 per centum ad valorem.

208. Garlic, 1 cent per pound; onions, 20 cents per bushel of 57 pounds.

209. Peas, green or dried, in bulk or in barrels, sacks, or similar packages, 10 cents per bushel of sixty pounds; split peas, 20 cents per bushel of sixty pounds; peas in cartons, papers, or other similar packages, including the weight of the immediate covering, ⅓ cent per pound.

Notes of Decisions

Native Indian chick pea.—The scientific or botanical name does not control as against an applicable common nomenclature. The "desi gram" of the importation is interchangeable in ordinary use with "chick pea," and the term "pea" as used in paragraph 209, Act 1913, includes every known kind of edible pea. U. S. v. Jones (1915) 6 Ct. Cust. App. 135.

210. Orchids, palms, azalea indica, and cut flowers, preserved or fresh, 25 per centum ad valorem; lily of the valley pips, tulips, narcissus, begonia, and gloxinia bulbs, $1 per thousand; hyacinth bulbs, astilbe, dielytra, and lily of the valley clumps, $2.50 per thousand; lily bulbs and calla bulbs or corms, $5 per thousand; herbaceous peony, Iris Kaempferri or Germanica, canna, dahlia, and amaryllis bulbs, $10 per thousand; all other bulbs, roots, root stocks, corms, and tubers, which are cultivated for their flowers or foliage, 50 cents per thousand: Provided, That all mature mother flowering bulbs imported exclusively for propagating purposes shall be admitted free of duty.

Notes of Decisions

1. Construction of paragraph in general.
2. Bleached wheat stems.
3. Bulbs.
4. —— Mature mother flowering bulbs.
5. Hyacinth clumps.
6. Lily buds.
7. Lily of the valley.
8. Palms preserved.
9. Roses.
10. Tulips.
11. Statice wreaths.

1. Construction of paragraph in general.—This paragraph as written is not ambiguous, and its application as written will lead to no absurdity, manifest contradiction of its apparent purpose, hardship, or injustice. There is, then, no occasion to invoke rules of construction; congress must be presumed to have intended to make the change it did

make; and this paragraph must be understood and applied according to the natural import of the language employed. Maltus & Ware v. U. S. (1916) 6 Ct. Cust. App. 525.

2. **Bleached wheat stems.**—Bleached wheat stems held not dutiable as natural flowers preserved or fresh. See paragraph 494.

3. **Bulbs.**—Bulbs not medicinal and not edible, but used for producing flowers, held not within the provision of the free list of act 1883, but dutiable under the provision for "bulbs and bulbous roots not medicinal, and not specially enumerated and provided for in this act." Rolker v. Erhardt (C. C. 1890) 42 Fed. 443.

Tulip bulbs are not dutiable as "tulips" under the second clause of paragraph 210, Act 1913, but as "all other bulbs" under the sixth. Maltus & Ware v. U. S. (1916) 6 Ct. Cust. App. 525.

There is nothing in the act or in its legislative history which would justify the conclusion that congress intended that the term "bulbs" should be given a strictly scientific or botanical meaning; on the contrary, the fact that congress applied the term to other plant growths, not true bulbs, enumerated in paragraph 210, conclusively establishes that such was not its intention. Maltus & Ware v. U. S. (1915) 6 Ct. Cust. App. 376.

4. —— **Mature mother flowering bulbs.**—Orchid plants, known as Cattleyas, which at the time of importation had already flowered and would never flower again, and were useful for propagating, and for no other commercial purpose, and which, although not true bulbs, were known to the trade as orchid bulbs, were assessed for duty at 25 per cent. ad valorem as orchids under paragraph 210, Act 1913. Held, that the same were entitled to free entry under the proviso to said paragraph as mature mother flowering bulbs imported exclusively for propagating purposes. Maltus & Ware v. U. S. (1915) 6 Ct. Cust. App. 376.

5. **Hyacinth clumps.**—The only assignable reason for the change of "hyacinths" in paragraph 251, Act 1897, to "hyacinth" in paragraph 263, Act 1909, is the word in the last case was employed as an adjective and not a noun, and "hyacinth" in the connection there used must accordingly take its grammatical construction as an adjective; and this more especially as there is nothing to indicate a contrary intent in framing that paragraph. Hyacinth clumps are clusters of roots or bulbs joined together, and are within the ordinary meaning of the word "clumps." A comparison between the former law and the later form of it seems to make it clear the importation was dutiable not as hyacinth, and so taking a higher duty, but as bulbs from which clumps are propagated, at a lesser rate of duty, under paragraph 261, Tariff Act 1909. Breck & Son v. U. S. (1911) 2 Ct. Cust. App. 26.

6. **Lily buds.**—Lily buds, imported in condition to open in full bloom immediately upon arrival at their destination in this country, held dutiable as "lilies," under Act 1897, par. 251, and not free of duty under paragraph 617, as "vegetable substances, crude or unmanufactured, not otherwise specially provided for." F. B. Vandegrift & Co. v. U. S. (C. C. 1901) 123 Fed. 1002.

7. **Lily of the valley.**—In construing the provision in Act 1894, par. 234½, for "lily of the valley * * * plants used for forcing," held that lily of the valley roots, sprouted, which are imported for forcing, held dutiable thereunder, being included within the term "plants," in a popular sense, though not technically. McAlister v. U. S. (C. C. 1896) 147 Fed. 773.

8. **Palms preserved.**—Palm leaves bleached and dyed held not dutiable as palms preserved. See paragraph 347.

Palm leaves subjected to a process of painting held not dutiable as palms preserved. See paragraph 347.

9. **Roses.**—Where merchandise comprised certain roses claimed as free under Act 1894, par. 587, as plants known as "nursery stock," they were properly assessed under paragraph 234½ of said act as plants used for forcing under glass as cut flowers. Cleary & Co. v. U. S. (C. C. 1899) 99 Fed. 432.

10. **Tulips.**—Congress must be presumed to have intended a change of meaning in changing the adjective "tulip," in Act 1909, to the noun "tulips," in paragraph 210, Act 1913. Maltus & Ware v. U. S. (1916) 6 Ct. Cust. App. 525.

11. **Statice wreaths.**—Statice wreaths, which have all the appearance of "natural flowers * * * preserved," held dutiable under the enumeration of such articles in Act 1897, par. 251. Bayersdorfer & Co. v. U. S. (C. C. 1909) 171 Fed. 286.

211. Stocks, cuttings, or seedlings of Myrobolan plum, Mahaleb or Mazzard cherry, Manetti multiflora and briar rose, Rosa Rugosa, three years old or less, $1 per thousand plants; stocks, cuttings, or seedlings of pear, apple, quince, and the Saint Julien plum, three years old or less, $1 per thousand plants; rose plants, budded, grafted, or grown on their own roots, 4 cents each; stocks, cut-

tings, and seedlings, of all fruit and ornamental trees, deciduous and evergreen shrubs and vines, and all trees, shrubs, plants, and vines commonly known as nursery or greenhouse stock, not specially provided for in this section, 15 per centum ad valorem.

Notes of Decisions

Cuttings of shrubs and plants.—Under Act 1897, par. 252, relating (1) to "rose plants" and (2) to "cuttings" of "shrubs" and of "plants," rooted rose cuttings that have been placed in sand to facilitate handling, but have never been in soil, fall within the latter provision as cuttings of shrubs or plants. U. S. v. American Express Co. (1908) 158 Fed. 808, 86 C. C. A. 68.

Evergreen seedlings.—In Act 1897, par. 252, the provision for "evergreen seedlings" held not restricted to such evergreen plants as the conifers and box, but extends to those that retain their verdure or greenness throughout the year; and seedlings of rhododendrons and laurels, that remain green constantly, were included in said provision. U. S. v. Ouwerkerk (1908) 166 Fed. 1022, 92 C. C. A. 668, affirming judgment (C. C. 1907) 153 Fed. 916.

Rose plants.—Rose plants and azaleas mollis held dutiable, under paragraph 234½, Act 1894, as plants used for forcing under glass for cut flowers or decorative purposes, and were not entitled to free entry, under paragraph 587, as nursery stock. Richard v. U. S. (C. C. 1897) 87 Fed. 192.

Only those briar roses that are three years old or less are entitled to admission at the rate of one dollar per thousand plants (paragraph 264, Act 1909), and the burden of proof was on the importers to show that the plants came within that description. Maltus & Ware v. U. S. (1912) 3 Ct. Cust. App. 354.

212. Seeds: Castor beans or seeds, 15 cents per bushel of fifty pounds; flaxseed or linseed and other oil seeds not specially provided for in this section, 20 cents per bushel of fifty-six pounds; poppy seed, 15 cents per bushel of forty-seven pounds; mushroom spawn, and spinach seed, 1 cent per pound; canary seed, ½ cent per pound; caraway seed, 1 cent per pound; anise seed, 2 cents per pound; beet (except sugar beet), carrot, corn salad, parsley, parsnip, radish, turnip, and rutabaga seed, 3 cents per pound; cabbage, collard, kale, and kohl-rabi seed, 6 cents per pound; egg plant and pepper seed, 10 cents per pound; seeds of all kinds not specially provided for in this section, 5 cents per pound: Provided, That no allowance shall be made for dirt or other impurities in seeds provided for in this paragraph.

Notes of Decisions

Beet and cabbage seed.—Beet and cabbage seed are "garden seed," and subject to a 20 per cent. ad valorem duty, under R. S. § 2502, and turnip and mangel-wurzel seed are field seed, and not garden seed, and are exempt from duty under the "free list" in R. S. § 2503. Ferry v. Livingston (1885) 115 U. S. 542, 6 Sup. Ct. 175, 29 L. Ed. 489.

Canary seed.—Canary seed, which is botanically a grass seed, but is used principally as a bird seed, and which is not known commercially as grass seed, held not free of duty under Act 1897, as "grass seeds," but dutiable as "seeds of all kinds not specially enumerated." Nordlinger v. U. S. (1904) 127 Fed. 683, 62 C. C. A. 409, affirming judgment U. S. v. Nordlinger (C. C. 1902) 119 Fed. 478.

Millet pulp.—Millet pulp, from which the hull has been removed, though adapted for use as food and not for agricultural purposes, and which will not germinate, held dutiable under paragraph 206½ of Act 1894, as seeds. Kaufmann v. U. S. (C. C. 1897) 78 Fed. 804, judgment reversed U. S. v. Kauffman (1898) 84 Fed. 446, 28 C. C. A. 150.

Millet seeds.—Hulled millet seeds held not dutiable as seeds. See paragraph 385.

Tare.—Under Act 1883 making flaxseed dutiable at "twenty cents per bushel of fifty-six pounds," less the tare, a deduction should be made for an ascertained percentage of dirt and other impurities contained in the seed. Seeberger v. Wright & Lawther Oil & Lead Mfg. Co. (1895) 15 Sup. Ct. 583, 585, 157 U. S. 183, 39 L. Ed. 665.

Without passing on the relevancy, as testimony here, of a certificate showing the results of an analysis made at the place of export, this certificate may be taken as in the nature of an admission against interest, and since it is made apparent that no allowance is commonly made as between seller and buyer of castor seeds, except in cases where the impurities exceed 3 per cent. and then

only for the excess over and above 3 per cent., the allowance here should have been, not for 5, but for the excess above 3, per cent., namely, 2 per cent. U. S. v. Baker Castor Oil Co. (1911) 2 Ct. Cust. App. 338.

213. Straw, 50 cents per ton.

214. Teazels, 15 per centum ad valorem.

215. Vegetables in their natural state, not specially provided for in this section, 15 per centum ad valorem.

Notes of Decisions

1. Beans and lentils.
2. Beets, sliced and kiln-dried.
3. Cucumbers and cauliflower packed in salt.
4. Fungus.
5. Melon seeds roasted.
6. Mushrooms.
7. Onions.
8. Tomatoes.
9. Yams.
10. Wai san.

1. Beans and lentils.—Beans and lentils held dutiable as vegetables. See paragraph 197.

2. Beets, sliced and kiln-dried.—Sliced beets, kiln-dried, held not dutiable as vegetables in their natural state. See paragraph 200.

3. Cucumbers and cauliflower, packed in salt.—Cucumbers and cauliflower packed in salt, held not dutiable as vegetables in their natural state. See paragraph 200.

4. Fungus.—An edible fungus, that grows on the bark of trees and has been merely dried and packed loose, bears a greater similitude to vegetables in their natural state, enumerated in Act 1897, par. 257, than to mushrooms prepared, enumerated in paragraph 241. Sun Kwong On v. U. S. (C. C. 1909) 170 Fed. 930.

5. Melon seeds roasted.—Melon seeds roasted held not dutiable as vegetables. See paragraph 385.

6. Mushrooms.—Evaporated mushrooms held dutiable as vegetables in their natural state. See paragraph 199.

7. Onions.—In passing Act 1897, par. 249, where onions are made dutiable "per bushel," congress must be assumed to have known the practice of the treasury department to consider 57 pounds as a bushel and to have intended to accept that as a standard. Hills Bros. Co. v. U. S. (1906) 151 Fed. 476, 81 C. C. A. 14, affirming judgment (C. C. 1906) 143 Fed. 695.

8. Tomatoes.—Tomatoes are "vegetables," rather than "fruits," in the common and popular acceptation of such words, and were not free of duty under the provision of the free list for "fruits, green, ripe, or dried," but dutiable under Act 1883, as "vegetables in their natural state." Nix v. Hedden (1893) 13 Sup. Ct. 881, 882, 149 U. S. 304, 37 L. Ed. 745, affirming (C. C. 1889) 39 Fed. 109.

9. Yams.—In Act 1897, Free List, par. 704, the provision for "yams" includes a vegetable (pueraria roots) which, though not scientifically known as a yam, has always been so called in the trade that deals in it, and was the only vegetable so known that was imported prior to the passage of the act. Kwong Yuen Shing v. U. S. (C. C. 1909) 175 Fed. 317.

A leguminous plant of the genus Pueraria, grown in China, though occasionally designated a "yam" in commerce, as such designation is not definite, uniform, and general, held not a yam, but dutiable under paragraph 257, Act 1897, as a vegetable in its natural state. U. S. v. Kwong Yuen Shing (1910) 1 Ct. Cust. App. 14.

10. Wai san.—Wai san, an edible root used by the Chinese as a vegetable, held because edible, removed from the provision for "drugs," in Act 1897, par. 20, and dutiable as "vegetables," under paragraph 257. Wing On Wo v. U. S. (C. C. 1909) 175 Fed. 891.

216. Fish, except shellfish, by whatever name known, packed in oil or in oil and other substances, in bottles, jars, kegs, tin boxes, or cans, 25 per centum ad valorem; all other fish, except shell fish, in tin packages, not specially provided for in this section, 15 per centum ad valorem; caviar and other preserved roe of fish, 30 per centum ad valorem; fish, skinned or boned, ¾ of 1 cent per pound.

Notes of Decisions

1. Bottles.
2. Fish in packages.
3. Fish boned.
4. Fish roe or caviar.
5. Fish skinned and boned.
6. Haddock.
7. Herring and sardines.
8. Mackerel.
9. Presence of oil.
10. Salt fish in tins.

1. Bottles.—Bottles filled with anchovies, etc., as dutiable, see paragraph 83.

2. Fish in packages.—For decisions under former acts as to the determination of duty in reference to size and contents of packages, see the following cases: Strohmeyer & Arpe Co. v. U. S. (1910) 178 Fed. 268, 101 C. C. A. 400

(affirming judgment [C. C. 1909] 172 Fed. 295); Loggie v. Same (1905) 137 Fed. 813, 70 C. C. A. 433; Wieland v. Collector of Port of San Francisco (1900) 104 Fed. 541, 44 C. C. A. 23; La Manna v. U. S. (1895) 67 Fed. 233, 14 C. C. A. 381; U. S. v. Yamashita (C. C. 1910) 175 Fed. 1018; L. Gandolfi & Co. v. U. S. (C. C. 1907) 152 Fed. 656; Harvey v. Same (C. C. 1905) 137 Fed. 816, judgment reversed U. S. v. Harvey & Outerbridge (1906) 142 Fed. 1039, 71 C. C. A. 685; Reiss v. U. S. (C. C. 1902) 113 Fed. 1001; Meyer & Lange v. Same (C. C. 1900) 124 Fed. 293; Leggett v. Same (C. C. 1900) 99 Fed. 426; In re Wieland (C. C. 1899) 98 Fed. 99; Meyer v. U. S. (C. C. 1898) 86 Fed. 120; Reiss v. Magone (C. C. 1889) 39 Fed. 105; U. S. v. Yamashita (1911) 1 Ct. Cust. App. 341.

3. **Fish boned.**—Salmon from which large part of backbone had been removed held not dutiable as fish boned. See paragraph 483.

The term "boned," according to its common signification, does not necessarily mean boneless, but substantially freed of bone. Whether or not an article is boned cannot be determined by the process employed. A process, for instance, which will render a flat fish like the halibut boned may not have the same result when applied to a fish of different anatomical construction, such as the salmon. Woodward & Son v. U. S. (1915) 6 Ct. Cust. App. 372.

4. **Fish roe or caviar.**—Fresh roe packed in tins after running through solution of brine held not dutiable as fish roe preserved for food purposes. See paragraph 478.

Fish roe, or caviar, in tin packages, held by virtue of the similitude clause of Act 1897 dutiable at the rate applicable to fish in tin packages, enumerated in paragraph 258, which article it resembles in quality, texture, and use, especially use, within the meaning of said section. Menzel & Co. v. U. S. (1906) 142 Fed. 1038, 71 C. C. A. 685, affirming judgment (C. C. 1904) 135 Fed. 918.

The constant presence and application of heat or cold as an arresting agency of decomposition does not constitute preservation. Moscahlades Bros. v. U. S. (1915) 6 Ct. Cust. App. 399.

Fish roe, salted sufficiently to preserve it during the winter, but not during the summer, in the climate of New York, is not "preserved" within the meaning of paragraph 216, Act 1913. Id.

When fish are dried, whether by means of the heat of the sun or otherwise, being thereby saved from decomposition for a substantial period of time, they are "preserved" within the common meaning of that term. U. S. v. Kagawa & Co. (1914) 5 Ct. Cust. App. 388.

The term "preserved" in paragraph 270, Act 1909, does not bear a restricted interpretation, and the provision there for "caviar, and other preserved roe of fish" was intended to classify all fish roe, which had been treated in any manner for preservation for food purposes, as preserved fish roe. Id.

An examination of the legislative record shows that the "situation as it existed" was known when the paragraph making caviar dutiable under Tariff Act 1909 was "pressed upon the attention of the legislative body"; and the words "other preserved" employed in that paragraph are not to be taken to defeat a manifest intention of the congress, and there being no evidence to show what process the caviar of the importation may have been subjected to, it was dutiable under paragraph 270, Act 1909. U. S. v. American Express Co. (1911) 2 Ct. Cust. App. 25. See, also, Kelly v. People (1890) 24 N. E. 56, 132 Ill. 363; U. S. v. Cohn (1899) 52 S. W. 38, 2 Ind. T. 474; Hubbard v. City of Taunton (1886) 5 N. E. 157, 140 Mass. 467.

5. **Fish skinned and boned.**—Herring in tins, which have been pickled, salted, skinned, or boned, held dutiable as "fish * * * in tin packages," under Act 1897, par. 258, rather than as "herrings, pickled or salted," or as "fish, skinned or boned," under paragraphs 260, 261. The fact of importation in tins controls over the other conditions set forth in the two latter paragraphs. Benson v. U. S. (1907) 159 Fed. 118, 86 C. C. A. 308.

So-called cream of codfish, consisting of codfish skinned and boned, and subjected to the further process of cutting or shredding, held dutiable as "fish, skinned or boned," under Act 1897, par. 261. H. B. Teed & Co. v. U. S. (C. C. 1903) 126 Fed. 447.

Act 1897, par. 259, providing that the duty on fresh-water fish, not specially provided for in the act, shall be a quarter of a cent a pound, does not apply to skinned fish, which are provided for in paragraph 261, relating to "fish, skinned or boned." Lake Ontario Fish Co. v. U. S. (C. C. 1900) 99 Fed. 551.

Boned or skinned fish, packed in tin packages, but not in oil or in oil and other substances, is dutiable as "all other fish * * * in tin packages," at 15 per cent. ad valorem under the second clause of paragraph 216, Act 1913, and not at three-fourths of 1 per cent. per pound as "fish, skinned or boned," under the last clause. Tokstad-Burger Co. v. U. S. (1915) 6 Ct. Cust. App. 441.

6. **Haddock.**—As to haddock and other material combined, fish being conceded to be the article of chief value in the compound, the mixed-material clause of paragraph 481, Tariff Act of 1909, applies. It must be taken to be

a manufacture in which fish constitutes the material of chief value and it is one not specially enumerated. It was dutiable as if wholly composed of fish and at the rate assessed by the board. Benson v. U. S. (1913) 4 Ct. Cust. App. 467. See, also, Murphy v. Arnson (1877) 96 U. S. 131, 24 L. Ed. 773; American Express Co. v. U. S. (1911) 2 Ct. Cust. App. 39.

7. Herring and sardines.—For decisions under former acts relating to herring and sardines, see the following cases: Benson v. U. S. (1907) 159 Fed. 118, 86 C. C. A. 308; U. S. v. Rosenstein (1899) 98 Fed. 420, 39 C. C. A. 122 (affirming judgment [C. C. 1898] 91 Fed. 637); Lincoln, Willey & Co. v. U. S. (C. C. 1910) 178 Fed. 599; Kauffmann Bros. v. Same (C. C. 1899) 99 Fed. 430; U. S. v. Rosenstein (C. C. 1898) 91 Fed. 637; Rosenstein v. U. S. (C. C. 1896) 71 Fed. 949; In re De Long (C. C. 1895) 70 Fed. 775, judgment affirmed De Long v. U. S. (1896) 76 Fed. 453, 22 C. C. A. 274; In re Johnson (C. C. 1893) 56 Fed. 822; Hansen v. Robertson (C. C. 1887) 29 Fed. 686; U. S. v. Miller & Tokstad (1914) 5 Ct. Cust. App. 256; Smith & Co. v. U. S. (1913) 5 Ct. Cust. App. 40; U. S. v. Haaker & Co. (1913) 4 Ct. Cust. App. 471; Ahlbrecht & Son v. U. S. (1912) 2 Ct. Cust. App. 471; U. S. v. Rosenstein (1911) 1 Ct. Cust. App. 304.

8. Mackerel.—Tariff acts are not drawn in the terms of science, but in those of commerce, presumptively the language in common use; and while the tunny fish may be a mackerel in the eye of science, it cannot be so classified for customs purposes, it not being popularly or commercially known as such. The fish being fish in tin packages were properly assessed under paragraph 270, Act 1909. Meyer & Lange v. U. S. (1915) 6 Ct. Cust. App. 181.

Merchandise not coming within the eo nomine designation of fresh mackerel in paragraph 273, Tariff Act 1909, was properly assessed as fish in packages of less than one-half barrel, dutiable at 30 per cent. ad valorem under paragraph 270, Act 1909. Strohmeyer & Arpe Co. v. U. S. (1914) 5 Ct. Cust. App. 331.

9. Presence of oil.—Chemical analysis showing 5.7 per cent. oil with fish in tins, it is immaterial how this oil became present. The additional duty provided in paragraph 216, Tariff Act 1913, was intended to reach any case in which oil is part of the substance in which the fish is found packed when offered for importation. Strohmeyer & Arpe Co. v. U. S. (1915) 5 Ct. Cust. App. 527.

10. Salt fish in tins.—Merchandise being fish, salted, and at the same time fish in tin packages, it was covered by both paragraphs 270 and 273, Tariff Act 1909. As to which of these apply the more specifically seems to have been determined by judicial interpretation, an interpretation that appears to have received legislative approval. Salt fish in tins was not subject to the duty imposed by paragraph 273 of that act, but was classifiable as "other fish (except shellfish) in tin packages" under paragraph 270. Chee Chong & Co. v. U. S. (1915) 5 Ct. Cust. App. 556.

217. Apples, peaches, quinces, cherries, plums, and pears, green or ripe, 10 cents per bushel of fifty pounds; berries, edible, in their natural condition, ½ cent per quart; cranberries, 10 per centum ad valorem; all edible fruits, including berries, when dried, desiccated, evaporated, or prepared in any manner, not specially provided for in this section, 1 cent per pound; comfits, sweetmeats, and fruits of all kinds preserved or packed in sugar, or having sugar added thereto or preserved or packed in molasses, spirits, or their own juices, if containing no alcohol, or containing not over 10 per centum of alcohol, 20 per centum ad valorem; if containing over 10 per centum of alcohol and not specially provided for in this section, 20 per centum ad valorem, and in addition $2.50 per proof gallon on the alcohol contained therein in excess of 10 per centum; jellies of all kinds, 20 per centum ad valorem; pineapples preserved in their own juice, 20 per centum ad valorem.

Notes of Decisions

1. Construction of paragraph in general.
2. —— Preserved or prepared.
3. Alcohol.
4. Berries.
5. Cherries.
6. Chestnuts.
7. Chutney.
8. Citron.
9. Crushed fruits.
10. Dried lychee.
11. Figs.
12. Pineapples.
13. Plums.
14. Prunes.
15. Sweetmeats.
16. Umeboshi.

1. Construction of paragraph in general.—The provision in Act 1897, par. 263, for "comfits, sweetmeats, and fruits preserved in sugar, molasses, spirits, or in their own juices," refers to a class of goods commer-

cially known as preserved fruits, and is intended to apply to fruits treated so as to become a preserve or comfit, and not to such as merely remain temporarily in their natural juice. Causse Mfg. Co. v. U. S. (1906) 151 Fed. 4, 80 C. C. A. 461.

The first part of paragraph 262, Act 1897, imposing a duty per bushel on cherries and other fruits, "green or ripe," applies to those fruits, ripe or unripe, when imported in their natural condition. Id.

The term "fruits preserved in sugar," as used in Act 1883, par. 302, held, under the evidence, not a trade term having a peculiar trade meaning as applied to preserved fruits. U. S. v. Nordlinger (1903) 121 Fed. 690, 58 C. C. A. 438, reversing judgment Nordlinger v. U. S. (C. C. 1902) 115 Fed. 828, and writ of certiorari denied Id. (1903) 24 Sup. Ct. 848, 191 U. S. 575, 48 L. Ed. 308.

The words "fruits preserved in sugar, molasses, spirits, or in their own juices," occurring in paragraph 263, Act 1897, were not there employed in a commercial or trade sense, but in the sense attaching to these words in common, ordinary usage. Acker v. U. S. (1911) 1 Ct. Cust. App. 328.

Fruits and berries that are put up in hermetically sealed containers in sirup composed of invert sugar, cane sugar, glucose, dextrose, and levulose in amounts varying from 43.39 to 67.56 per cent. of the sirup, constitute fruits preserved in sugar under paragraph 263, Act 1897. Austin v. U. S. (1911) 1 Ct. Cust. App. 287.

2. —— **Preserved or prepared.**—Fruit hermetically sealed in bottles, which is preserved by the sealing rather than by the sugar, etc., in the surrounding fluid, held dutiable as "fruits * * * prepared," under Act 1897, par. 262, rather than as "fruits preserved in sugar," etc., under paragraph 263. U. S. v. Reiss & Brady (1909) 166 Fed. 746, 92 C. C. A. 408, affirming judgment Reiss & Brady v. U. S. (C. C. 1908) 163 Fed. 65.

Under Act 1897, par. 262, relating to fruits "dried, desiccated, evaporated or prepared in any manner," the scope of the expression "prepared in any manner" is not, upon the rule of noscitur a sociis, to be so limited as to embrace only fruits prepared by a drying process. Causse Mfg. Co. v. U. S. (1906) 151 Fed. 4, 80 C. C. A. 461.

The process of hermetically sealing fruit in tin cans, thus preserving it from decay until the cans are opened, constitutes "preservation," rather than "preparation"; and fruit pulp that has been cooked and subjected to such sealing process held dutiable under Act 1897, par. 263, as fruit "preserved * * * in its own juices," rather than under paragraph 262, as fruit "prepared in any manner." Habicht, Braun & Co. v. U. S. (C. C. 1910) 175 Fed. 1009.

3. **Alcohol.**—Under Act 1897, par. 263, relating to fruits in spirits and imposing a duty "per proof gallon on the alcohol contained therein in excess of ten per centum," the duty is to be levied on all such excess, whether absorbed by the fruit or supernatant. Mihalovitch, Fletcher & Co. v. U. S. (C. C. 1908) 160 Fed. 988.

The president's proclamation of May 30, 1898, relating to reciprocity with France, and affecting the rate of duty on brandies and other spirits, does not apply to the excess of alcohol above 10 per centum used in preserving fruits, specially dutiable under paragraph 263, Act 1897. Rheinstrom v. U. S. (C. C. 1902) 118 Fed. 303.

Under paragraph 263, Act 1897, relating to fruits in spirits which imposes a duty of $2.50 "per proof gallon on the alcohol contained therein in excess of 10 per centum," the duty is to be computed on all such excess, whether absorbed by the fruit or supernatant. Id.

There is an acknowledged difficulty in determining the precise percentage of alcohol that is necessary to constitute a preservative of cherries in maraschino, when these are packed in hermetically sealed bottles or tins; but where alcohol in amounts from 3.10 per cent. to 5.45 per cent. appears to have been used, and the evidence showing that alcohol in such proportions retards fermentation when the fruit is exposed to air, it is held this amount serves a purpose in preserving the fruit for use, the fruit was so preserved in spirits, and was dutiable under paragraph 263, Act 1897. Godillot v. U. S. (1911) 1 Ct. Cust. App. 239. See, also, U. S. v. Reiss & Brady (1909) 166 Fed. 746, 92 C. C. A. 408.

4. **Berries.**—Held, that the expression, "berries, edible, in their natural condition," in paragraph 262, Act 1897, means berries which are in their natural condition as imported, and are edible either in that state or after cooking, and that foxberries imported in barrels filled with water are in their natural condition, and are included within said provision in paragraph 262, and not within paragraph 559, Free List, relating to "berries, green, ripe, or dried, * * * not specially provided for." Boak v. U. S. (1903) 125 Fed. 599, 60 C. C. A. 335.

As to foxberries in barrels, with water added to act as a cushion, so as to prevent crushing, held that, in assessing the duty "per quart," provided in paragraph 262, Act 1897, the dutiable quantity should be ascertained by the use of the dry quart and not the liquid quart. U. S. v. Boak Fish Co. (C. C. 1906) 146 Fed. 104.

5. **Cherries.**—Act 1897, par. 262, enumerates in the first part of the para-

graph "apples, peaches, quinces, cherries, plums, and pears, green or ripe," and in the latter part "apples, peaches, pears, and other edible fruits, including berries, * * * prepared." Held, that the inclusion of "cherries" in the first enumeration, and its omission from the second, should not be construed as excluding prepared cherries from the latter, and cherries, which have been washed, pitted, and packed in salt water to preserve them in transit, held not dutiable as "fruits preserved * * * in their own juices," under Act 1897, par. 263, but as "edible fruits * * * prepared in any manner," under paragraph 262. Causse Mfg. Co. v. U. S. (1906) 151 Fed. 4, 80 C. C. A. 461, modifying judgment A. L. Causse Mfg. Co. v. U. S. (C. C. 1906) 143 Fed. 690.

Cherries in maraschino held not dutiable under paragraph 218, Act 1894, as "fruits preserved in sirup," but under section 3 of said act, as unenumerated manufactured articles. U. S. v. Reiss & Brady (1906) 142 Fed. 1039, 73 C. C. A. 185, affirming judgment Reiss & Brady v. U. S. (C. C. 1904) 135 Fed. 248.

Certain cherries imported in casks, in a surrounding fluid containing alcohol added for the purpose of resisting fermentation and decay, the cherries being an inedible variety, intended to be used in the manufacture of cherry juice, are specially provided for in paragraph 263, Act 1897, as "fruits preserved in * * * spirits," and are not dutiable under paragraph 299, either as "cherry juice" or as an unenumerated article similar thereto, "either in material, quality, texture, or the use to which it may be applied," under section 7 of said act. Voight v. Mihalovitch (C. C. 1899) 125 Fed. 78.

Paragraph 571, Act 1909, admitted "fruits in brine" free of duty, but here the cherries would seem to have been actually preserved by a sulphur treatment and that the infusion of salt in the containing water was negligible. They were properly assessed under paragraph 274 of the act. Delapenha & Co. v. U. S. (1915) 6 Ct. Cust. App. 18.

The provision in paragraph 274, Act 1909, for cherries, green or ripe, and for edible fruits, dried, is more specific than the free-entry provision for all fruits green, ripe, or dried. The evidence, moreover, shows the importation to be ripe cherries, but clearly not dried, and they are accordingly dutiable under the paragraph named as ripe cherries. Levy & Levis Co. v. U. S. (1914) 5 Ct. Cust. App. 89.

Cherries put up in hermetically sealed bottles held dutiable under Act 1909 as fruits preserved, etc. U. S. v. Reiss & Brady (1912) 3 Ct. Cust. App. 230. See, also, Id. (1909) 166 Fed. 746, 92 C. C. A. 408.

6. **Chestnuts.**—The term "comfits" in paragraph 263, Act 1897, held practically synonymous with "confections," and to include boiled marrons (chestnuts) preserved in syrup, and they were not dutiable as nuts. Schall & Co. v. U. S. (1907) 154 Fed. 1005, 83 C. C. A. 329, affirming decree U. S. v. Schall & Co. (C. C. 1906) 147 Fed. 760.

7. **Chutney.**—The article commercially known as "chutney," which consists of various fruits preserved with sugar and spices, held dutiable as "fruits preserved," under Act 1897, par. 263, rather than as "edible fruits * * * prepared," under paragraph 262. Park & Tilford v. U. S. (C. C. 1908) 164 Fed. 910.

Chutney held dutiable under paragraph 263, Act 1897, and this regardless of whether it may or may not have been included within paragraph 262 of that act. Acker v. U. S. (1911) 1 Ct. Cust. App. 328.

8. **Citron.**—Leghorn citron held not dutiable as a comfit, sweetmeat or fruit preserved in sugar. See paragraph 488.

Leghorn citron, preserved by being cut in halves, boiled and soaked in salt water, freshened, and then covered with syrup and boiled down, and fresh sugar placed thereon, and the process repeated until the peel is thoroughly impregnated with the sugar and cured, held taxable as "fruits preserved in sugar," under Act 1883, par. 302, and not entitled to admission free under paragraph 704, as dried fruits not specifically enumerated. U. S. v. Nordlinger (1903) 121 Fed. 690, 58 C. C. A. 438, reversing judgment Nordlinger v. U. S. (C. C. 1902) 115 Fed. 828, and writ of certiorari denied Id. (1903) 24 Sup. Ct. 848, 191 U. S. 575, 48 L. Ed. 308.

Candied citron held dutiable under Act 1883, as "comfits, sweetmeats, or fruits preserved in sugar, spirits, syrup, or molasses, not otherwise specified or provided for in this act," and not exempt from duty under the provision in the free list for "fruits, green, ripe, or dried, not specially enumerated or provided for in this act." Hills v. Erhardt (C. C. 1893) 59 Fed. 768; Levy v. Robertson (C. C. 1889) 38 Fed. 714.

9. **Crushed fruits.**—Crushed prunes held dutiable as "fruit preserved in own juices" under paragraph 263, Act 1897, and paragraph 274, Act 1909. Meyer & Lange v. U. S. (1912) 3 Ct. Cust. App. 247.

Strawberries and apricots reduced to a pulp, cooked without sugar, and inclosed in hermetically sealed tins, held dutiable under paragraph 263, and not paragraph 262, Act 1897. Habicht v. U. S. (1910) 1 Ct. Cust. App. 10.

10. **Dried lychee.**—Dried lychee, which is Chinese fruit having, when dry, a thin shell inclosing an edible pulp, held dutiable under paragraph 262 of Act 1897, as an "edible fruit, dried," and not entitled to free entry under paragraph 559, as a fruit not specially provided for. U. S. v. Wing Wo Chong

(1899) 98 Fed. 602, 39 C. C. A. 172, reversing judgment Wing Wo Chung v. U. S. (C. C. 1899) 91 Fed. 637.

11. Figs.—Held, that the "fruits preserved in sugar, molasses, spirits, or in their own juices," enumerated in Act 1897, par. 263, are known commercially as a class by themselves, of which the use and form constitute the distinctive characteristics, and that figs preserved whole are within that provision, rather than the provision for "figs" in paragraph 264. U. S. v. Reiss & Brady (1905) 136 Fed. 741, 69 C. C. A. 393, reversing judgment Reiss & Brady v. U. S. (C. C. 1903) 126 Fed. 578.

Figs put up in hermetically sealed bottles held dutiable under Act 1909 as fruits preserved. U. S. v. Reiss & Brady (1912) 3 Ct. Cust. App. 230.

12. Pineapples.—The addition of from 2.28 to 8.82 per cent. of sugar to pineapples preserved in cans in their own juice does not remove the fruit from the provision for "pineapples preserved in their own juice," in Act 1897, par. 263, to the provision in the same paragraph for "fruits preserved in sugar." U. H. Dudley & Co. v. U. S. (1907) 153 Fed. 881, 82 C. C. A. 627, reversing judgment (C. C. 1906) 148 Fed. 333.

Pineapples preserved in cans in their own juice, with 3 per cent. of sugar added for flavoring, and not aiding substantially in the preservation, which is accomplished by the canning process, held dutiable as "pineapples preserved in their own juice," and not as fruit preserved in sugar, under Act 1897, par. 263. U. S. v. J. S. Johnson & Co. (1907) 152 Fed. 164, 81 C. C. A. 416, affirming judgment J. S. Johnson & Co. v. U. S. (C. C. 1905) 143 Fed. 915.

Act 1897, par. 263, provides for fruit preserved in sugar and for "pineapples preserved in their own juice." Held, as to pineapples in hermetically sealed cans, in their own juice, but with 7 to 20 per cent. of sugar added for flavoring only, that they were dutiable under the latter rather than the former provision. U. S. v. J. S. Johnson & Co. (C. C. 1908) 166 Fed. 1002.

In construing paragraph 263, Act 1897, providing a certain rate of duty on "fruits preserved in sugar, molasses, spirits, or in their own juice," and a lower rate on pineapples "preserved in their own juice," held, that it was not the intention of Congress to impose the added duty in the former provision on account of sugar added for preservation of the fruit, and that the latter provision applies to preserved pineapples, as distinguished from other fruits, without reference to whether sugar is used in their preparation. Held, also, that certain canned pineapples, containing an amount of sugar that is not sufficient to preserve the fruit from spoiling if exposed to the open air, but serves as a flavoring only, are dutiable under the latter provision. U. S. v. Boden (C. C. 1904) 133 Fed. 839.

Pineapples, peeled, sliced, and placed in cans filled with cold water, and hermetically sealed, their juice permeating the water, are "fruits preserved in their own juices," within Act 1890, par. 304, and cannot be classified, under paragraph 580, as "fruits, green, ripe, or dried." Johnson v. U. S. (C. C. 1895) 66 Fed. 725, judgment affirmed (1895) 79 Fed. 996, 25 C. C. A. 298.

13. Plums.—Plums preserved held not dutiable under Act 1909 as plums, prunes, or prunelles, but as fruits preserved. Meyer & Lange v. U. S. (1913) 4 Ct. Cust. App. 422.

14. Prunes.—Prunes boiled in water, and pressed through a colander, without the addition of sugar or any other material, which article held not a "jelly," in the common meaning of that term, nor commercially known as jelly, but dutiable under paragraph 219, Act 1894, as fruits preserved in their own juices. U. S. v. Rosenstein (C. C. 1898) 90 Fed. 801.

Crushed prunes held dutiable as fruits preserved in own juices, under paragraph 263, Act 1897, and paragraph 274, Act 1909. Meyer & Lange v. U. S. (1912) 3 Ct. Cust. App. 247.

15. Sweetmeats.—Marmalade and berry jam held not jellies, but sweetmeats, dutiable as such under paragraph 263, Act 1897. Bogle v. U. S. (C. C. 1909) 175 Fed. 889; Id. (1911) 1 Ct. Cust. App. 144.

Berry jams are dutiable under Act 1897, par. 263, as sweetmeats or preserved fruits, rather than as "jelly" under the same paragraph, or as "edible fruits prepared," under paragraph 262. Bogle v. U. S. (C. C. 1909) 175 Fed. 889.

Stem and cargo ginger held not to lose its character as a sweetmeat when imported in bulk in casks, but dutiable under paragraph 263, Act 1897. Delapenha v. U. S. (1910) 1 Ct. Cust. App. 113.

16. Umeboshi.—Umeboshi held not dutiable as fruit packed in its own juices. See paragraph 488.

218. Figs, 2 cents per pound; plums, prunes, and prunelles, 1 cent per pound; raisins and other dried grapes, 2 cents per pound; dates, 1 cent per pound; currants, Zante or other, 1½ cents per pound; olives, 15 cents per gallon.

Notes of Decisions

Currants.—Dried currants held not dutiable as dried grapes including Zante currants. See paragraph 488.

Imported currants, packed in casks, held dutiable under paragraph 264, Act 1897 which imposes a duty of two

cents per pound on currants, "Zante or other," without any deduction on account of the dirt or other impurities contained therein. U. S. v. Reid, Murdoch & Co. (1903) 120 Fed. 242, 56 C. C. A. 538, writ of certiorari denied Reid, Murdock & Co. v. U. S. (1903) 23 Sup. Ct. 855, 190 U. S. 560, 47 L. Ed. 1184.

"Zante currants," as used in paragraph 217, Act 1894, applies to the small, seedless raisins grown on the mainland of Greece, in the Archipelago, and other places in the Levant, and is not confined to currants raised only in the island of Zante. "Zante Currants" (C. C. 1896) 73 Fed. 183.

Merchandise consisting of the pulp and juice of the currant, preserved, presumably, in sirup or molasses, is not a jelly in fact, and while the board found it to be commercially known as jelly, there was no proof of commercial designation. The collector's assessment, in the absence from the record of evidence to controvert it, must be sustained. U. S. v. Sheldon & Co. (1914) 5 Ct. Cust. App. 371. See, also, Same v. Oberle (1911) 1 Ct. Cust. App. 527.

Figs.—Figs preserved whole held not dutiable as figs. See paragraph 217.

Olives.—Under Act 1897, par. 264, imposing a duty at various rates "per gallon," according to condition, the duty should be assessed on the basis of the wine or liquid gallon and not the dry gallon, regardless of whether the olives are imported dried or in brine. Ceballos v. U. S. (1906) 146 Fed. 380, 76 C. C. A. 652, affirming judgment J. M. Ceballos & Co. v. U. S. (C. C. 1904) 139 Fed. 705.

Olives which have been immersed in salt and water for the purpose of preserving them from decay in shipment, and which had been subjected to no preparation to fit them for eating, held not "olives prepared," within Act 1897, par. 264. U. S. v. Zucca & Co. (C. C. 1909) 175 Fed. 578.

Act 1897, par. 264, relates to olives "in bottles, jars, or similar packages," and "in casks or otherwise than in bottles, jars, or similar packages." Held, that this language does not import an intention to make a division between olives in retail packages and those in wholesale packages, and that olives in jars holding 10 gallons are therefore within the first of these provisions. U. S. v. Shing Shun & Co. (C. C. 1909) 173 Fed. 844.

Black or ripe olives in brine held dutiable under paragraph 275, Act 1909. Goussios & Co. v. U. S. (1911) 2 Ct. Cust. App. 317.

Plums.—Plums preserved held not dutiable under this paragraph. See paragraph 217.

Prunes.—Crushed prunes held dutiable as fruits preserved in own juices. See paragraph 217.

219. Grapes in barrels or other packages, 25 cents per cubic foot of the capacity of the barrels or packages.

Notes of Decisions

Allowance for packing.—Grapes imported in barrels, and packed in saw dust or cork dust, are dutiable under paragraph 299 of Act 1890, at the rate of 60 cents per barrel of three cubic feet, or fraction thereof, without allowance for the cork dust in which they are packed. U. S. v. Mayer (1896) 71 Fed. 501, 18 C. C. A. 221, reversing judgment (C. C. 1895) 66 Fed. 719.

220. Lemons, limes, oranges, grapefruit, shaddocks, and pomelos in packages of a capacity of one and one-fourth cubic feet or less, 18 cents per package; in packages of capacity exceeding one and one-fourth cubic feet and not exceeding two and one-half cubic feet, 35 cents per package; in packages exceeding two and one-half and not exceeding five cubic feet, 70 cents per package; in packages exceeding five cubic feet or in bulk, ½ of 1 cent per pound.

Notes of Decisions

Package.—Two boxes of oranges, each 7¾ by 10½ by 5½ inches, firmly tied together to facilitate marketing and safe transportation, this method of packing being an established custom of the trade, constitute one package under the first clause of paragraph 220, Tariff Act 1913. Bush & Co. v. U. S. (1915) 6 Ct. Cust. App. 401.

Pickled limes.—Limes in brine held not dutiable as limes. See paragraph 488.

Pickled limes, not being vegetables, held not dutiable under Act 1897, par. 241, providing for all vegetables, including pickles, nor exempt under section 2, free list, par. 559, providing for fruits, green, ripe, or dried, and fruits in brine, not specifically provided for, but dutiable under paragraph 266, providing for oranges, lemons, limes, grape fruit, shaddocks, or pomelos. Roche v. U. S. (C. C. 1902) 116 Fed. 911.

221. Orange peel or lemon peel, preserved, candied, or dried, 1 cent per pound; coconut meat or copra desiccated, shredded, cut, or similarly prepared, and citron or citron peel, preserved, candied, or dried, 2 cents per pound.

Notes of Decisions

Halved lemons in brine.—Halved lemons in brine held not lemon peel preserved. See paragraph 488.

Orange and lemon peel.—Orange and lemon peel immersed in brine for the purpose of protecting it from decay during transit, without affecting its properties or quality, held not "preserved," within Act 1897, par. 267, but free of duty as "not preserved, candied, or dried," under paragraph 627. Causse Mfg. Co. v. U. S. (C. C. 1906) 150 Fed. 419.

222. Pineapples, in barrels or other packages, 6 cents per cubic foot of the capacity of the barrels or packages; in bulk, $5 per thousand.

223. Almonds, not shelled, 3 cents per pound; almonds, shelled, 4 cents per pound; apricot and peach kernels, 3 cents per pound.

Notes of Decisions

Almonds shelled.—In ascertaining the dutiable weight of shelled nuts dutiable by the pound under Act 1897, pars. 269, 270, no allowance should be made for impurities in importations not shown to contain abnormal quantities of foreign matter, nor to vary from the ordinary wholesale condition. Spencer & Co. v. U. S. (1907) 151 Fed. 1022, 82 C. C. A. 656, affirming decree (C. C. 1906) 143 Fed. 916.

In Act 1897, par. 269, the provision for "clear" shelled almonds refers to nuts that are practically and substantially free from shells, dust, and dirt, and after being divested of their outer covering are fairly free from that covering. Heide v. U. S. (C. C. 1909) 175 Fed. 316.

Clear almonds, shelled, remain almonds, though they should contain a certain amount of broken kernels, dust, and shells, and they are not to be classified generally with "nuts of all kinds." They are dutiable as clear almonds, shelled, under paragraph 280, Tariff Act 1909. Paragraph 283 of that act forbids any allowance for the weight of the dust and shells. Spencer Importing & Trading Co. v. U. S. (1912) 2 Ct. Cust. App. 444; Heide v. Same (1912) 2 Ct. Cust. App. 399.

224. Filberts and walnuts of all kinds, not shelled, 2 cents per pound; shelled, 4 cents per pound.

Notes of Decisions

Walnuts shelled.—Walnut meat, broken in parts less than halves, are dutiable as "walnuts of all kinds," "shelled," under paragraph 281, Act 1909. Habicht, Braun & Co. v. U. S. (1912) 2 Ct. Cust. App. 457.

225. Peanuts or ground beans, unshelled, ⅜ of 1 cent per pound; shelled, ¾ of 1 cent per pound.

226. Nuts of all kinds, shelled or unshelled, not specially provided for in this section, 1 cent per pound; but no allowance shall be made for dirt or other impurities in nuts of any kind, shelled or unshelled.

Notes of Decisions

Apricot stones and kernels.—Apricot stones come within the common definition of "nuts," and apricot kernels held dutiable as "nuts * * * not specially provided for," under paragraph 272, Act 1897. U. S. v. Spencer & Co. (1907) 151 Fed. 1022, 81 C. C. A. 683, affirming decree Spencer & Co. v. U. S. (C. C. 1906) 146 Fed. 112.

Impurities.—Italian pine cones with the nuts attached thereto, held to be dutiable under the eo nomine provision for nuts in paragraph 283, Act 1909. The cones are not shell, nor "dirt or other impurities" in the nuts, and duty should be assessed upon the weight of the nuts alone. U. S. v. Amendola (1915) 5 Ct. Cust. App. 516.

Marrons.—Marrons (chestnuts) preserved in syrup held not dutiable as nuts. See paragraph 226.

227. Venison, and other game, 1½ cents per pound; game birds, dressed, 30 per centum ad valorem.

228. Extract of meat, not specially provided for in this section, 10 cents per pound; fluid extract of meat, 5 cents per pound, but

the dutiable weight of the extract of meat and of the fluid extract of meat shall not include the weight of the packages in which the same is imported.

Notes of Decisions

Bouillon.—Bouillon cubes held not dutiable as meat extract. See paragraph 385.

229. Poultry, live, 1 cent per pound; dead, or prepared in any manner, including the weight of the immediate coverings or containers, 2 cents per pound.

Notes of Decisions

Poultry.—Guinea fowl and turkeys, not shown to have been wild, are classifiable as "poultry," under Act 1897, par. 278, rather than as "birds and land * * * fowls," under free list, par. 494. Silz v. U. S. (C. C. 1909) 167 Fed. 686, judgment affirmed (1910) 178 Fed. 273, 101 C. C. A. 537.

The provision in paragraph 229, Act 1913, that relates to "poultry prepared in any manner," clearly appears to have been enacted in view of Kwong Yuen Shing v. U. S. (1910) 1 Ct. Cust. App. 16, and must be taken accordingly to enlarge the terms used so as to include dried ducks' feet and gizzards here as poultry prepared. Articles of food "prepared or preserved" do not necessarily retain their original form and separate identity. U. S. v. Weber (1915) 6 Ct. Cust. App. 234; Same v. Brown & Co. (1915) 6 Ct. Cust. App. 242.

230. Chicory root, raw, dried, or undried, but unground, 1 cent per pound; chicory root, burnt or roasted, ground or granulated, or in rolls, or otherwise prepared, and not specially provided for in this section, 2 cents per pound.

Notes of Decisions

Coffee substitute.—A coffee substitute containing chicory held not dutiable as chicory. See paragraph 233.

231. Unsweetened chocolate and cocoa, prepared or manufactured, not specially provided for in this section, 8 per centum ad valorem. Sweetened chocolate and cocoa, prepared or manufactured, not specially provided for in this section, valued at 20 cents per pound or less, 2 cents per pound; valued at more than 20 cents per pound, 25 per centum ad valorem. The weight and the value of the immediate coverings, other than the outer packing case or other covering, shall be included in the dutiable weight and the value of the merchandise.

Notes of Decisions

Chocolate.—Chocolate eo nomine held dutiable as such under Act 1864, and not as confectionery, though presented in a form in which it was ordinarily sold as such. Arthur v. Stephani (1877) 96 U. S. 125, 126, 24 L. Ed. 771.

The official statements of members of the conference committees on the tariff act of 1890 that by a clerical mistake paragraph 318 of Schedule G was made to read, "Chocolate, (other than chocolate confectionery, and chocolate commercially known as 'sweetened chocolate,') two cents per pound;" but that the parenthesis should have ended after "confectionery," although supported by the history of the bill, the attention of congress having been called to the mistake, and no action taken, do not authorize the courts to change the punctuation actually made. In re Schilling (1892) 53 F. 81, 3 C. C. A. 440, affirming decree (C. C. 1891) 48 Fed. 547.

Cocoa.—The article commercially known as "sweetened chocolate" held not dutiable as chocolate confectionery, under paragraph 239, Act 1890, nor as similar thereto, under the similitude section, nor under paragraph 318, but should be classed as "cocoa, manufactured, not specially provided for," under paragraph 319. In re Schilling (1892) 53 Fed. 81, 3 C. C. A. 440, affirming decree (C. C. 1891) 48 Fed. 547; In re Austin (C. C. 1891) 47 Fed. 873.

Coverings.—Under Act 1897, par. 281, providing for a duty on chocolate, and that "the weight and value of all coverings other than plain wooden, shall

be included in the dutiable weight and value" thereof, the dutiable value of chocolate packed in tin boxes should be arrived at by adding the number of pounds of the chocolate and the tin coverings, and the outside wooden boxes in which it is packed for transit should not be included, pursuant to the method of estimating the value prescribed by Customs Administrative Act June 10, 1890, c. 407, § 19, 26 Stat. 139, since the later statute plainly intends that the wooden coverings should be free from duty, and the interior coverings alone treated for duty purposes as if they were chocolate. U. S. v. Volkmann (1901) 107 Fed. 109, 46 C. C. A. 169, affirming judgment Volkman v. U. S. (C. C. 1900) 99 Fed. 264.

Certain coverings for chocolate, consisting of small boxes, some in the form of a trunk, having hinged tops fastened with a catch and hook, and lined with fancy paper, held "coverings, other than plain wooden," within paragraph 281, Act 1897, which provides that "the weight and value of all coverings other than plain wooden, shall be included in the suitable weight and value" of their contents, when containing chocolate and cocoa. Cure v. U. S. (C. C. 1901) 123 Fed. 994.

232. Cocoa butter or cocoa butterine, refined deodorized coconut oil, and all substitutes for cocoa butter, 3½ cents per pound.

Notes of Decisions

Cocoa butterine.—"Nucoa butter," made from cocoanut oil by pressing the oil in a solid state to eliminate the softer oils, then melting the remaining solid, and washing it with steam, held dutiable as "cocoa butterine," under paragraph 230 of Act 1894, and is neither exempt from duty as "cocoanut oil," under paragraph 568, nor dutiable as an unenumerated manufactured article, under section 3. Apgar v. U. S. (1896) 78 Fed. 332, 24 C. C. A. 113.

Cocoa butterine, as provided for in paragraph 282, Act 1897, consists of products made in imitation of cocoa butter, and adapted for use as a substitute therefor. U. S. v. Oriental Amer. Co. (C. C. 1904) 129 Fed. 249.

Cocoanut oil.—Cocoanut oil held not dutiable as cocoanut butter. See paragraph 561.

233. Dandelion root, and acorns prepared, and articles used as coffee, or as substitutes for coffee not specially provided for in this section, 2 cents per pound.

Notes of Decisions

Dandelion root.—Dandelion root not edible held not dutiable as dandelion root prepared, etc. See paragraph 477.

Substitutes for coffee.—Coffee essence which is used as coffee or as a substitute therefor, held not "coffee," within Act 1897, Free List, par. 529, but dutiable, either directly or by similitude, as "articles used as coffee, or as substitutes for coffee," under paragraph 283. E. C. Hazard & Co. v. U. S. (1909) 175 Fed. 967, 99 C. C. A. 357, reversing judgment (C. C. 1908) 164 Fed. 907.

An imported article styled on the wrapper in which the same is imported "Seelig's Kaffee" and "Seelig's Coffee," but invoiced as chicory, which is composed of more than 68 per cent. of its total weight, but of only about 43 per cent. of its total value, of chicory root, which possesses, as its predominating flavor, that of chicory root, and which is mixed with coffee for use, or is used alone like coffee, held not dutiable as chicory root in any of the conditions provided for in paragraph 317, Act 1890, but dutiable as an article used as coffee, or as a substitute for coffee, under paragraph 321. U. S. v. Rosenstein (1894) 60 Fed. 74, 8 C. C. A. 474; In re Rosenstein (C. C. 1893) 56 Fed. 824.

An article represented to be and sold as a substance not alone for coloring coffee, but as a substitute for a portion of each drawing of coffee, adding, it being claimed, to the quality, purity, and wholesomeness of the beverage as served, held dutiable under paragraph 283, Act 1897, as a substitute for coffee. Petru American Importing Co. v. U. S. (1910) 1 Ct. Cust. App. 106.

234. Starch, made from potatoes, 1 cent per pound; all other starch, including all preparations, from whatever substance produced, fit for use as starch, ½ cent per pound.

Notes of Decisions

In general.—The farina of the root of the plant of the genus manihot, whether known as root flour, cassava, or tapioca, having been expressly exempted from duty by congress (R. S. § 2505), is not included in R. S. § 2504, imposing a duty on starches, though it may be largely composed of starch granules and fit for

use as starch. Chung Yune v. Kelly (C. C. 1882) 14 Fed. 639.

Flour made from a farinaceous plant, for food, though largely composed of starch granules, is not, therefore, the "made" or manufactured starch of commerce, upon which R. S. § 2504, imposes a duty when brought from a foreign country; and it matters not that it may be in some measure used as starch. Id.

Bone size substitute.—Bone size substitute held not a preparation fit for use as starch. See paragraph 5.

Arrowroot.—Held, that the provision in Act 1897, Free List, par. 478, for "arrowroot in its natural state and not manufactured," relates to the tubers or root of the arrowroot plant, though no importations are ever made in that form, and does not include the article commercially known as arrowroot, consisting of starch made from arrowroot tubers, which is more properly classifiable as "starch," under paragraph 285. Middleton & Co. v. U. S. (1906) 151 Fed. 16, 80 C. C. A. 512; Leaycraft & Co. v. U. S. (1904) 130 Fed. 106, 64 C. C. A. 440, affirming judgment (C. C. 1903) 124 Fed. 999.

Potato starch.—Starch made from potatoes, and pulverized or ground so as to take the form of a fine flour or powder, and invoiced as "sifted farina," held not within the meaning of the term "farina," as used in paragraph 694, Act 1883, and consequently free of duty, but is to be classified as "potato starch," and subject to a duty of two cents per pound, under paragraph 269. Union Nat. Bank v. Seeberger (C. C. 1887) 30 Fed. 429.

"Preparations."—The general words "preparations * * * fit for use as starch," are insufficient to show that an article fit for such use, but which is specially named on the free list, is "otherwise specially provided for," so as to prevent its exemption from duty. Chew Hing Lung & Co. v. Wise (1900) 20 Sup. Ct. 320, 176 U. S. 156, 320, 44 L. Ed. 412, reversing judgment Wise v. Chew Hing Lung (1897) 83 Fed. 162, 27 C. C. A. 494.

Sago flour.—Sago flour held not dutiable as starch. See paragraph 590.

Tapioca flour.—Tapioca flour held not dutiable as a preparation fit only for starch. See paragraph 625.

235. Spices, unground: Cassia buds, cassia, and cassia vera; cinnamon and cinnamon chips; ginger root, unground and not preserved or candied; nutmegs; pepper, black or white; capsicum or red pepper, or cayenne pepper; and clove stems, 1 cent per pound; cloves, 2 cents per pound; pimento, ¾ of 1 cent per pound; sage, ½ cent per pound; mace, 8 cents per pound; Bombay or wild mace, 18 cents per pound; ground spices, in each case, the specific duty per pound enumerated in the foregoing part of this paragraph for unground spices, and in addition thereto a duty of 20 per centum ad valorem; mustard, ground or prepared, in bottles or otherwise, 6 cents per pound; all other spices not specially provided for in this section, including all herbs or herb leaves in glass or other small packages for culinary use, 20 per centum ad valorem.

Notes of Decisions

Ginger root.—The article known as spent ginger, which is a by-product from the treatment of ginger root in the manufacture of ginger extract, etc., and consists of a dried cake of ginger particles, is held to be "ginger root, unground," as enumerated in Act 1897, Free List, par. 667. Lewis German & Co. v. U. S. (1905) 137 Fed. 817, 70 C. C. A. 315.

A by-product in the process of extracting the essence of ginger root, which results from cracking the crude root in a machine and running it through a still, and consists of the residue of the process pressed into cakes, held not within Act 1897, Free List, par. 667, for "ginger root, unground." Cracking the root, so that it is reduced to small particles and pulverized, is a process of grinding. Lewis German & Co. v. U. S. (C. C. 1904) 128 Fed. 467.

Peppers.—Sierra Leone chillies, or bird peppers, held not dutiable as cayenne pepper unground. See paragraph 477.

The residuum in the process of decorticating pepper berries, consisting of the inner cuticle in the form of a powder, which, without further grinding, is mixed with ground pepper as an adulterant, held not within the provision in Act 1897, Free List, par. 667, for pepper "unground." Frame & Co. v. U. S. (1906) 149 Fed. 1022, 79 C. C. A. 532, affirming judgment (C. C. 1906) 143 Fed. 692.

Shells of pepper, which, when ground, make a low grade of black pepper, held within the provision for the entry free of duty of "pepper, white or black, * * * when unground," in Free List, par. 667, Act 1897. U. S. v. Leggett (C. C. 1899) 124 Fed. 1015.

236. Vinegar, 4 cents per proof gallon. The standard proof for vinegar shall be taken to be that strength which requires thirty-five grains of bicarbonate of potash to neutralize one ounce troy of vinegar.

SCHEDULE H.—SPIRITS, WINES, AND OTHER BEVERAGES

237. Brandy and other spirits manufactured or distilled from grain or other materials, and not specially provided for in this section, $2.60 per proof gallon.

238. Each and every gauge or wine gallon of measurement shall be counted as at least one proof gallon; and the standard for determining the proof of brandy and other spirits or liquors of any kind imported shall be the same as that which is defined in the laws relating to internal revenue: Provided, That it shall be lawful for the Secretary of the Treasury, in his discretion, to authorize the ascertainment of the proof of wines, cordials, or other liquors, by distillation or otherwise, in cases where it is impracticable to ascertain such proof by the means prescribed by existing law or regulations: And provided further, That any brandy or other spirituous or distilled liquors imported in any sized cask, bottle, jug, or other packages, of or from any country, dependency, or province under whose laws similar sized casks, bottles, jugs, or other packages of distilled spirits, wine, or other beverage put up or filled in the United States are denied entrance into such country, dependency, or province, shall be forfeited to the United States; and any brandy or other spirituous or distilled liquor imported in a cask of less capacity than ten gallons from any country shall be forfeited to the United States.

Notes of Decisions

Demijohns.—There is no law prohibiting the importation of liquors in demijohns, and so imported they would be classed among those "not otherwise provided for," and pay a duty of two dollars per proof gallon. U. S. v. Ninety Demijohns of Rum (C. C. 1880) 8 Fed. 485.

Standard of measurement.—All importations of liquids, including ale and porter, are to be estimated according to the standard of the wine gallon of commerce, containing 231 cubic inches of measurement. Nichols v. Beard (C. C. 1883) 15 Fed. 435, 437.

239. On all compounds or preparations of which distilled spirits are a component part of chief value there shall be levied a duty not less than that imposed upon distilled spirits.

No article containing alcohol was to be classified for duty under paragraphs 9, 11, 27, 31, or 46, of Schedule A of this section, by provisos annexed to said paragraphs, ante.

No article containing more than 10 per centum of alcohol was to be classified for duty under paragraph 29 of Schedule A of this section, by a proviso annexed to said paragraph, ante.

No article containing alcohol was to be admitted free of duty, under paragraph 477 of the Free List, post.

240. Cordials, liqueurs, arrack, absinthe, kirschwasser, ratafia, and other spirituous beverages or bitters of all kinds, containing spirits, and not specially provided for in this section, $2.60 per proof gallon.

Notes of Decisions

Angostura bitters.—"Angostura Bitters," used principally as a flavoring extract for mixed drinks, held dutiable as "spirituous liquors not otherwise enumerated," and not as a medicinal preparation. Dallet v. Smythe (C. C. 1869) Fed. Cas. No. 3,545.

Amer Picon.—The preparation known as "Amer Picon," which is prepared by Picon & Co. according to a private formula used by them, which contains from 30 to 40 per cent. of alcohol, and which is advertised as a specific against malaria, and also as a tonic, held duti-

able under Act 1883 as "bitters containing spirits," and not as a "proprietary preparation." Curiel v. Beard (C. C. 1890) 44 Fed. 551.

Arp's pepsin bitters.—Arp's pepsin bitters held not dutiable as bitters. See paragraph 16.

Benedictine.—The liqueur cordial known as "Benedictine," held dutiable under Act 1883, as a cordial containing spirits, and not as a proprietary preparation. In re Gourd (C. C. 1892) 49 Fed. 728.

Boonekamp bitters.—Boonekamp bitters held not dutiable as a cordial liqueur, etc. See paragraph 16.

Juniper cordial.—Juniper cordial, which contains sufficient saccharine matter to disguise 11 per cent. of alcohol, is a sweet cordial, within section 103, Customs Act 1799. U. S. v. Three Hundred Casks of Juniper Cordial (D. C. 1859) Fed. Cas. No. 16,511.

241. No lower rate or amount of duty shall be levied, collected, and paid on brandy, spirits, and other spirituous beverages than that fixed by law for the description of first proof; but it shall be increased in proportion for any greater strength than the strength of first proof, and all imitations of brandy or spirits or wines imported by any names whatever shall be subject to the highest rate of duty provided for the genuine articles respectively intended to be represented, and in no case less than $1.75 per gallon.

242. Bay rum or bay water, whether distilled or compounded, of first proof, and in proportion for any greater strength than first proof, $1.75 per gallon.

243. Champagne and all other sparkling wines, in bottles containing each not more than one quart and more than one pint, $9.60 per dozen; containing not more than one pint each and more than one-half pint, $4.80 per dozen; containing one-half pint each or less, $2.40 per dozen; in bottles or other vessels containing more than one quart each, in addition to $9.60 per dozen bottles, on the quantity in excess of one quart, at the rate of $3 per gallon; but no separate or additional duty shall be levied on the bottles.

Notes of Decisions

Bottles.—Under Act June 30, 1864, which lays a specific duty per gallon upon wines, and an ad valorem duty also, with a proviso that no champagne in bottles shall pay a less rate than $6 per dozen (quart) or two dozen (pint) bottles, the effect is that if the specific duty upon the gallon and the ad valorem duty exceed the sum of $6 per dozen (quart) or two dozen (pint), the rate thus estimated will be the duty imposed. It is only when the rate falls under the sum of $6 that no less sum is chargeable. Bollinger's Champagne (1865) 70 U. S. (3 Wall.) 560, 18 L. Ed. 78.

Bottles coming within the provisions of paragraph 88, Act 1894, held subject to separate duty thereunder, though imported filled with champagne, dutiable at a fixed rate per dozen, under paragraph 243. U. S. v. De Luze (1898) 95 Fed. 971, 37 C. C. A. 344, reversing judgment De Luze v. U. S. (C. C. 1897) 84 Fed. 156.

"Magnums" are only bottles of an especially large size and are as clearly embraced in the expression "bottles or jugs," in the second proviso of paragraph 296, as in the expression "other vessels," in paragraph 295, Act 1897. (1900) 23 Op. Atty. Gen. 48.

Rate of duty affected by packing.—In determining the rate of duty to be imposed on champagnes, wines, and other liquors under Act 1897, paragraph 295 of that act should be read in conjunction with paragraph 296. The former paragraph fixes the rate of duty to be imposed upon all wines included within the class therein named, when imported in legal packages; while the second proviso of the latter paragraph determines the rate of duty on all wines and other liquors when imported in other than legal packages. (1900) 23 Op. Atty. Gen. 48.

244. Still wines, including ginger wine or ginger cordial, vermuth, and rice wine or sake, and similar beverages not specially provided for in this section, in casks or packages other than bottles or jugs, if containing 14 per centum or less of absolute alcohol, 45 cents per gallon; if containing more than 14 per centum of absolute alcohol, 60 cents per gallon. In bottles or jugs, per case of one dozen bottles or jugs, containing each not more than one quart and more than one

pint, or twenty-four bottles or jugs containing each not more than one pint, $1.85 per case; and any excess beyond these quantities found in such bottles or jugs shall be subject to a duty of 6 cents per pint or fractional part thereof, but no separate or additional duty shall be assessed on the bottles or jugs: Provided, That any wines, ginger cordial, or vermuth imported containing more than 24 per centum of alcohol shall be classed as spirits and pay duty accordingly: And provided further, That there shall be no constructive or other allowance for breakage, leakage, or damage on wines, liquors, cordials, or distilled spirits, except that when it shall appear to the collector of customs from the gauger's return, verified by an affidavit by the importer to be filed within five days after the delivery of the merchandise, that a cask or package has been broken or otherwise injured in transit from a foreign port and as a result thereof a part of its contents amounting to 10 per centum or more of the total value of the contents of the said cask or package in its condition as exported, has been lost, allowance therefor may be made in the liquidation of the duties. Wines, cordials, brandy, and other spirituous liquors, including bitters of all kinds, and bay rum or bay water, imported in bottles or jugs, shall be packed in packages containing not less than one dozen bottles or jugs in each package, or duty shall be paid as if such package contained at least one dozen bottles or jugs, and in addition thereto, duty shall be collected on the bottles or jugs at the rates which would be chargeable thereon if imported empty. The percentage of alcohol in wines and fruit juices shall be determined in such manner as the Secretary of the Treasury shall by regulation prescribe.

Notes of Decisions

Allowance for leakage, breakage, etc. —The word "liquors," as used in the proviso of Schedule H of Act 1883, prohibiting any allowance for breakage, leakage, or damage in respect to "wines, liquors, cordials, or distilled spirits," is simply a misspelling of the word "liqueurs," and does not include beer. Hollender v. Magone (1893) 13 Sup. Ct. 932, 933, 149 U. S. 586, 37 L. Ed. 860, reversing (C. C. 1889) 38 Fed. 912.

Vermuth held not a "wine," "cordial," or "liqueur," within the meaning of Act 1897, par. 296, prohibiting an allowance for leakage. U. S. v. Julius Wile, Sons & Co. (1910) 178 Fed. 269, 101 C. C. A. 574, affirming judgment Julius Wile & Co. v. U. S. (C. C. 1909) 172 Fed. 164.

In construing the provision in Act 1897, par. 296, that "there shall be no constructive or other allowance for * * * leakage * * * on wines," etc., held, that there can be no allowance made for leakage of wine while in transit to this country. Duty must be assessed on the quantity shipped from abroad. U. S. v. A. D. Shaw & Co. (1906) 144 Fed. 329, 75 C. C. A. 291, reversing judgment Alexander D. Shaw & Co. v. U. S. (C. C. 1905) 141 Fed. 469, and writ of certiorari denied Shaw v. U. S. (1906) 27 S. Ct. 779, 203 U. S. 591, 51 L. Ed. 331.

In an importation of 3,660 gallons of wine there was a shortage of 12.17 gallons in excess of the normal leakage. Held, that no allowance for this shortage was permissible, under Act 1897. A. D. Shaw & Co. v. U. S. (C. C. 1907) 158 Fed. 648, appeal dismissed Shaw v. U. S. (1908) 29 S. Ct. 687, 212 U. S. 559, 53 L. Ed. 652.

Act 1897, and the reciprocal commercial agreement with Spain, suspending "the imposition and collection of the duties mentioned in" said act on wines, etc., has only the effect of reducing the duty on wines provided in paragraph 296 of said act, but does not supersede the further provision in said paragraph that there shall be no allowance for leakage of wines. Id.

On an importation of wine in casks having a wantage in excess of normal, the collector assessed duty without allowance for the excess, on the ground that it was due to leakage and was within the terms of paragraph 296, Act 1897, forbidding "constructive or other allowance for breakage, leakage or damage on wines." Held, that this was in violation of section 8, art. 1, Const. U. S., prescribing that "all duties * * * shall be uniform throughout the United States." Alexander D. Shaw & Co. v. U. S. (C. C. 1905) 141 Fed. 469, judgment reversed U. S. v. A. D. Shaw & Co. (1906) 144 Fed. 329, 75 C. C. A. 291, writ of certiorari denied Shaw v. U. S. (1906) 27 S. Ct. 779, 203 U. S. 591, 51 L. Ed. 331.

It appears there had been leakage in transitu from some of the tubs of this importation. But section 307, Act 1909, specifically provided that rice wine or sake should enjoy no construc-

tive or other allowance for breakage, leakage, or damage during transportation. S. Ban Co. v. U. S. (1914) 5 Ct. Cust. App. 380.

From the evidence it is concluded the cases containing the liquors were packed at exportation with not less than a dozen bottles each, conforming so to the legal requirements as to packing, and it is further concluded that the shortage appearing was attributable to theft before importation. No allowance may be made for breakage, leakage, or damage in bottle shipments, but this punitive provision of paragraph 296, Act 1897, is not to be enlarged beyond its express terms. Such losses as might be allowed for in bulk shipments would be allowable for in bottle shipments, and a shortage in bottles, as here, that was due to theft, was properly held to be nondutiable. U. S. v. Vignier (1912) 3 Ct. Cust. App. 120. See, also, De Bary v. Arthur (1876) 93 U. S. 420, 23 L. Ed. 936.

In the past there has been much contention over sake and the leakage of sake, but the Tariff Act of 1909 would seem, by providing in paragraph 307 for rice wine or sake expressly and forbidding any allowance should be made for breakage, leakage, or damage on wines, to have placed the question beyond doubt. Furuya & Co. v. U. S. (1911) 2 Ct. Cust. App. 371.

The proviso to paragraph 307, Act 1909. forbidding allowance to be made for breakage, leakage, etc., of merchandise therein described, must be strictly construed and cannot be made to apply to merchandise not within its terms; but the legality of that provision itself is now stare decisis. Cataldi Aurola v. U. S. (1911) 2 Ct. Cust. App. 340.

The provision of Act 1897 that no allowance should be made for leakage of wine could not be made to apply to an importation of sake dutiable as still wine only by similitude. Peacock & Co. v. U. S. (1911) 2 Ct. Cust. App. 305.

Bottles.—Bottles containing Chinese spirituous beverages assessable under paragraph 311 of the tariff act of 1883 are themselves subject to duty of three cents each, under paragraph 310, which provides that bottles containing spirituous liquors shall pay the said rate unless otherwise specially provided for. Kwong Chin Chong v. U. S. (C. C. 1902) 119 Fed. 383.

The glass bottles containing "Amer Picon," which is dutiable under Act 1883, Schedule H, as bitters containing spirits, held dutiable under said Schedule H as bottles containing spirituous liquors. Curiel v. Beard (C. C. 1890) 44 Fed. 551.

Forfeiture for illegal packing.—A violation of an act requiring that certain goods shall be packed in a certain way does not subject goods not so packed to forfeiture, in the absence of a statute declaring such forfeiture. U. S. v. Ninety Demijohns Aquadiente (D. C. 1879) Fed. Cas. No. 15,887.

Rate of duty affected by packing.—Wines imported in cases of 24 bottles, each bottle containing more than one pint and less than one quart, held dutiable at $1.60 per dozen bottles, under Act 1897, par. 296, providing that the duties shall be, "in bottles or jugs, per case of one dozen bottles or jugs, containing each not more than one quart and more than one pint, or 24 bottles or jugs containing each not more than one pint, $1.60 per case; and any excess beyond these quantities found in such bottles or jugs shall be subject to a duty of 5 cents per pint or fractional part thereof." U. S. v. Cerecedo Hermanos y Compañia (1908) 28 Sup. Ct. 532, 209 U. S. 337, 52 L. Ed. 821.

In determining the rate of duty to be imposed on champagne, wines and other liquors under Act 1897, paragraph 295 should be read in conjunction with paragraph 296. The former paragraph fixes the rate of duty to be imposed on all wines included with the class named when imported in legal packages while the second proviso of the latter paragraph determines the rate of duty on all wines and other liquors when imported in other than legal packages. (1900) 23 Op. Atty. Gen. 48.

—— **Champagne.**—The word "wines," as used in the second proviso to paragraph 296, Act 1897, being used without limitation, the provisions of that paragraph held applicable to champagnes, notwithstanding the special champagne provisions contained in paragraph 295 of that act. (1900) 23 Op. Atty. Gen. 48.

Bovrill wine.—Bovrill wine held not dutiable as a still wine. See paragraph 16.

Sake.—The Japanese beverage "sake" held properly classified under the similitude clause of Act 1897, as similar to still wine, in view of the uniform customs administrative construction. Komada & Co. v. U. S. (1910) 30 S. Ct. 136, 137, 215 U. S. 392, 54 L. Ed. 249; U. S. v. Komada & Co. (1908) 162 Fed. 465, 89 C. C. A. 385 (reversing judgment Stratton v. Komada & Co. [C. C. 1906] 148 Fed. 125).

Sake held dutiable as an unenumerated manufactured article, under section 6, Act 1897. U. S. v. Nishimiya (1905) 137 Fed. 396, 69 C. C. A. 588, affirming Nishimiya v. U. S. (C. C. 1904) 131 Fed. 650.

Vermuth.—Vermuth is not a "wine," "cordial," or "liqueur," within the meaning of Act 1897, par. 296, prohibiting an allowance for the leakage of those three articles. U. S. v. Julius Wile, Sons & Co. (1910) 178 Fed.

269, 101 C. C. A. 574, affirming judgment Julius Wile & Co. v. U. S. (C. C. 1909) 172 Fed. 164.

Act 1897, par. 296, provides that any excess over one pint or one quart found in bottles of vermuth "shall be subject to a duty of five cents per pint or fractional part thereof." Held, that such duty should be assessed on each bottle containing such excess, rather than on the basis of the total excess per case or per importation. James De Fremery & Co. v. U. S. (C. C. 1909) 171 Fed. 677.

245. Ale, porter, stout, and beer, in bottles or jugs, 45 cents per gallon, but no separate or additional duty shall be assessed on the bottles or jugs; otherwise than in bottles or jugs, 23 cents per gallon.

Notes of Decisions

Allowance for loss.—Allowance for leakage or loss of beer, see paragraph 244.

Bok ale.—"Bok ale" or barley brew base, which is an unfinished nonalcoholic beverage, but which is produced by processes and from materials similar to those employed in the manufacture of beer, held dutiable by similitude at the same rate of duty as beer, under Act 1897, par. 297. Wakem & McLaughlin v. U. S. (C. C. 1910) 180 Fed. 1021.

Bottles.—In addition to the duty of 35 cents per gallon imposed by R. S. § 2504, Schedule D, on ale, porter, and beer in bottles, the bottles were held subject to an ad valorem duty under Schedule B of the same section, imposing an ad valorem duty on glass bottles or jars filled with articles not otherwise provided for. Merritt v. Park (1883) 2 Sup. Ct. 310, 108 U. S. 109, 27 L. Ed. 669; Schmidt v. Badger (1883) 1 Sup. Ct. 530, 107 U. S. 85, 27 L. Ed. 328.

Dregs and lees of ale.—Dregs and lees in ale are not usable ale, but neither is a foreign impurity. They are dutiable as a part of the importation. U. S. v. Cummings (1912) 3 Ct. Cust. App. 291.

Standard of measurement.—All importations of liquids, including ale and porter, are to be estimated according to the standard of the wine gallon of commerce, containing 231 cubic inches of measurement. Nichols v. Beard (C. C. 1883) 15 Fed. 435.

Wantage.—The question of wantage and the proper allowance for it is essentially one of fact, and upon the evidence in this case a proper allowance is found to be 3 per cent. of the invoice or standard capacity of the several kinds of cases containing the ale. U. S. v. Cummings (1912) 3 Ct. Cust. App. 291.

There is no inhibition of allowance for a shortage in ale imports, and it was error on the part of the collector to ignore the actual shortage in the importation as reported by the gaugers. Id.

246. Malt extract, fluid, in casks, 23 cents per gallon; in bottles, or jugs, 45 cents per gallon; solid or condensed, 45 per centum ad valorem.

Notes of Decisions

Malt extract.—A fluid compound labeled, advertised, and sold in bottles as "malt extract" held dutiable as such, though it contains but 12 per cent. of malt extract, under paragraph 338, Act 1890, and not as a proprietary medicine. In re Eisner (C. C. 1893) 54 Fed. 671, distinguishing Ferguson v. Arthur (1886) 6 Sup. Ct. 861, 117 U. S. 482, 29 L. Ed. 979, and reversed U. S. v. Eisner & Mendelsohn Co. (1894) 59 Fed. 352, 8 C. C. A. 148.

Paragraph 309, Act 1909, imposes a duty of 45 per cent. ad valorem on malt extract when solid or condensed, without regard to coverings and in whatever form it may be packed for shipment. U. S. v. Conkey & Co. (1913) 4 Ct. Cust. App. 505.

247. Cherry juice and prune juice, or prune wine, and other fruit juices, and fruit sirup, not specially provided for in this section, containing no alcohol or not more than 18 per centum of alcohol, 70 cents per gallon; if containing more than 18 per centum of alcohol, 70 cents per gallon and in addition thereto $2.07 per proof gallon on the alcohol contained therein.

Notes of Decisions

Cherry juice.—Marasque water held not dutiable as cherry juice. See paragraph 48.

A preparation of cherry juice, made by subjecting the natural juice to heat in a vacuum to eliminate the watery parts, and adding 17 per cent. of alcohol, held a different article from the cherry juice known at the time of the passage of Act 1890, and subjected by section 2, p. 339, of that act to a duty of 60 cents per gallon, but dutiable, as an alcoholic compound, under section 2, par. 8, of that act. Smith v. Rheinstrom (1895)

65 Fed. 984, 13 C. C. A. 261, reversing In re Smith (C. C. 1894) 60 Fed. 599.

Concentrated fruit juice in general.—Concentrated fruit juice held dutiable, under Act 1897, par. 299, as fruit juice by similitude. U. S. v. Rich (1910) 176 Fed. 732, 100 C. C. A. 278, affirming judgment Rich v. U. S. (C. C. 1909) 172 Fed. 293.

Grenadine.—Grenadine held not dutiable as a fruit sirup. See paragraph 385.

It cannot be said that, because certain fruits contain citric acid and grenadine also contains citric acid, therefore grenadine is a fruit sirup; it appearing that citric acid not only exists in certain fruits, but is made synthetically. U. S. v. Wakem & McLaughlin (1915) 6 Ct. Cust. App. 385.

The fact that grenadine contains citric acid and that certain fruits also contain that substance is not sufficient to show such similarity of substance as would justify classifying grenadine by similitude to fruit sirups. Id.

Pineapple juice.—Crushed pineapple, to which has been added the juice of other pineapples, is not dutiable under paragraph 274, Act 1909, as "pineapples preserved in their own juice." It is a mixture of two articles, one of which is dutiable under paragraph 274 as "pineapples preserved in their own juice," and the other under paragraph 310 as "other fruit juices." There being no claim, however, of such a tariff status, and no showing as to how the relative quantities of the component parts may be ascertained, the board properly assessed it as "other fruit juices" under paragraph 310. Johnson Co. v. U. S. (1916) 6 Ct. Cust. App. 472.

Pineapple juice, containing no alcohol whatever, held dutiable, under paragraph 247, Act 1894, as "fruit juice * * * containing eighteen per centum or less of alcohol," and not under section 3, as a nonenumerated manufactured article. U. S. v. J. S. Johnson & Co. (C. C. 1898) 90 Fed. 805.

Strawberry and raspberry juice.—Strawberry and raspberry fruit juice, containing no alcohol held dutiable, under paragraph 247, Act 1894, as "other fruit juices, not specially provided for," containing 18 per cent. or less of alcohol. Park v. U. S. (C. C. 1897) 84 Fed. 159.

248. Ginger ale, ginger beer, lemonade, soda water, and other similar beverages containing no alcohol, in plain green or colored, molded or pressed, glass bottles, containing each not more than one-half pint, 12 cents per dozen; containing each more than one-half pint and not more than three-fourths of a pint, 18 cents per dozen; containing more than three-fourths of a pint each and not more than one and one-half pints, 28 cents per dozen; but no separate or additional duty shall be assessed on the bottles; if imported otherwise than in plain green or colored, molded or pressed, glass bottles, or in such bottles containing more than one and one-half pints each, 50 cents per gallon, and in addition thereto duty shall be collected on the bottles, or other coverings, at the rates which would be chargeable thereon if imported empty. Beverages not specially provided for containing not more than 2 per centum of alcohol shall be assessed for duty under this paragraph.

Notes of Decisions

Ginger ale.—In assessing duty on ginger ale in bottles under paragraph 248, Act 1894, the provision therein that "no separate or additional duty shall be assessed on the bottles" prevents the collector from adding the value of the bottles to the value of the ale, on the ground that they are coverings, under the administrative act of June 10, 1890 (§ 5599, post). U. S. v. Dickson (1896) 73 Fed. 195, 19 C. C. A. 428, affirming Dickson v. U. S. (C. C. 1895) 68 Fed. 534.

Ginger ale in bottles, imported when Act 1894 was in effect, was liable for duty, under paragraph 248 of the act, for 20 per cent. ad valorem, but was not liable for duty on the cost of corking, wiring, labeling, and capping, in accordance with Act June 10, 1890, § 19 (section 5599, post). West v. U. S. (C. C. 1902) 119 Fed. 495.

Under paragraph 248, Act 1894, which imposes on ginger ale or ginger beer a duty of 20 per cent. ad valorem, but provides that "no separate or additional duty shall be assessed on the bottles," the cost of corking and wiring is not to be deducted in ascertaining dutiable value, on the theory that this is a part of the cost of the bottles, and that the bottles are free; but, as ginger beer is always sold in bottles, corked and wired, the duty should be assessed on the whole value of the goods as thus bought and sold, in the place from which they were imported. U. S. v. Keane (C. C. 1897) 84 Fed. 330.

Bottles containing ginger ale held not liable to any duty under Act 1883, providing for a duty on "ginger ale or ginger beer, twenty per cent. ad valorem, but no separate or additional duty shall be collected on bottles or jugs containing the same." Lelar v. Hartranft (C. C. 1887) 33 Fed. 242.

Under the clause in Act 1883, providing a duty of 20 per cent. ad valorem on ginger ale or ginger beer, etc., no separate or additional duty is to be collected on the bottles or jugs containing the same. But where the ale or beer is bottled, the ad valorem duty should be levied upon the wholesale value thereof as bottled ale or beer in the general market of the country whence it is imported. (1886) 18 Op. Atty. Gen. 478.

Soda water.—In paragraph 88, Act 1894, providing for duties on glass bottles, the words, contained in the first clause, "whether filled or unfilled, and whether their contents be dutiable or free," apply only to the preceding enumerated articles, and not to vials, which are provided for in the following clause. Therefore vials holding from a quarter of a pint to a pint, and imported filled with soda water, were entitled to free entry, along with their contents, under paragraph 555; being the proper and necessary covering thereof. Ross v. U. S. (C. C. 1897) 84 Fed. 153, judgment affirmed U. S. v. Ross (1898) 91 Fed. 108, 33 C. C. A. 361.

249. All mineral waters and all imitations of natural mineral waters, and all artificial mineral waters not specially provided for in this section, in bottles or jugs containing not more than one-half pint, 10 cents per dozen bottles; if containing more than one-half pint and not more than one pint, 15 cents per dozen bottles; if containing more than one pint and not more than one quart, 20 cents per dozen bottles; if imported in bottles or in jugs containing more than one quart, 18 cents per gallon; if imported otherwise than in bottles or jugs, 8 cents per gallon; and in addition thereto, on all of the foregoing, duty shall be collected upon the bottles or other containers at one-third of the rates that would be charged thereon if imported empty or separately.

Notes of Decisions

Mineral water.—Under R. S. § 2504, Schedule B., which imposed a duty of 30 per cent. ad valorem "on glass bottles or jars filled with articles not otherwise provided for," such duty was chargeable on bottles filled with natural mineral water, though by section 2505 mineral water not artificial was declared exempt. Merritt v. Stephani (1883) 2 Sup. Ct. 308, 108 U. S. 106, 27 L. Ed. 668.

"Nigari" is not palatable, is not used as a drinking water, nor for medicinal purposes, but is used in the cooking of certain oriental dishes. This article is not to be taken as a mineral water as contemplated by paragraph 312, Act 1909. The record does not disclose with precision facts necessary in making a true classification of the merchandise. Iwakami & Co. v. U. S. (1914) 5 Ct. Cust. App. 244.

Apollinaris mineral water is regarded as an artificial mineral water, and dutiable as such. (1881) 17 Op. Atty. Gen. 176.

SCHEDULE I.—COTTON MANUFACTURES

250. Cotton thread and carded yarn, warps, or warp yarn, whether on beams or in bundles, skeins, or cops, or in any other form, not combed, bleached, dyed, mercerized, or colored, except spool thread of cotton, crochet, darning and embroidery cottons, hereinafter provided for, shall be subject to the following rates of duty:

Numbers up to and including number nine, 5 per centum ad valorem; exceeding number nine and not exceeding number nineteen, 7½ per centum ad valorem; exceeding number nineteen and not exceeding number thirty-nine, 10 per centum ad valorem; exceeding number thirty-nine and not exceeding number forty-nine, 15 per centum ad valorem; exceeding number forty-nine and not exceeding number fifty-nine, 17½ per centum ad valorem; exceeding number fifty-nine and not exceeding number seventy-nine, 20 per centum ad valorem; exceeding number seventy-nine and not exceeding number ninety-nine, 22½ per centum ad valorem; exceeding number ninety-nine, 25 per centum ad valorem. When combed, bleached, dyed, mercerized, or colored, they shall be subject to the following rates of duty: Numbers up to and including number nine, 7½ per centum ad valorem; exceeding number nine and not exceeding number nineteen, 10 per centum ad valorem; exceeding number nineteen and not exceeding number thirty-nine, 12½ per centum ad valorem; exceed-

ing number thirty-nine and not exceeding number forty-nine, 17½ per centum ad valorem; exceeding number forty-nine and not exceeding number fifty-nine, 20 per centum ad valorem; exceeding number fifty-nine and not exceeding number seventy-nine, 22½ per centum ad valorem; exceeding number seventy-nine and not exceeding number ninety-nine, 25 per centum ad valorem; exceeding number ninety-nine, 27½ per centum ad valorem. Cotton waste and flocks, manufactured or otherwise advanced in value, cotton card laps, roping, sliver, or roving, 5 per centum ad valorem.

Notes of Decisions

Cotton sliver.—Ramie sliver held not dutiable as an unenumerated manufactured article, under Act 1897, but as cotton sliver by similitude. F. B. Vandegrift & Co. v. U. S. (C. C. 1908) 164 Fed. 65, judgment affirmed (1909) 173 Fed. 609, 97 C. C. A. 469.

Rovings.—"Rovings" made of cotton, not commercially known as thread, but being in fact a cotton thread, held dutiable under paragraph 250, Act 1894, as "cotton thread in singles, not advanced beyond a condition of singles, by grouping or twisting two or more single yarns"; and not as manufactures of cotton not specially provided for, under paragraph 264. Dunham v. U. S. (C. C. 1898) 87 Fed. 800.

Yarn dyed and glazed.—Under Act 1897, par. 302, and Treasury Department Rule Sept. 8, 1897, for ascertaining the number of cotton yarns, which says to multiply the number of yarns by the number of strands, multiply the product by 8⅓, and divide the resulting product by the weight of the yarn in grains. Held that cotton yarns dyed, glazed, and finished, but not advanced beyond singles, though dyeing and glazing increases the weight and decreases the number of the yarn, and the weight used by the formula is that of, and by it the number is ascertained according to, the original conditions, when the number is so ascertained, the dutiable weight is ascertained by actual weighing. Downing v. U. S. (1901) 109 Fed. 885, 48 C. C. A. 703.

251. Spool thread of cotton, crochet, darning, and embroidery cottons, on spools, reels, or balls, or in skeins, cones, or tubes, or in any other form 15 per centum ad valorem.

Notes of Decisions

Darning cotton.—Under Act 1897, par. 303, providing for a duty on "spool thread of cotton, including crochet, darning, and embroidery cottons on spools or reels" by the 100 yards of thread; "if otherwise than on spools or reels, one-half of one cent for each hundred yards or fractional part thereof"—darning cotton of four strands, slightly twisted, in balls, held dutiable by the yards in length of darning cotton, and not the yards in length of the several strands of which it is composed. Calhoun, Robbins & Co. v. U. S. (C. C. 1900) 99 Fed. 424.

Embroidery cotton.—Because it appears that the expression "embroidery cottons," in Act 1897, par. 303, was a well-known commercial term when the act was passed, and there is nothing in the phraseology of the law to indicate that congress intended to make chief or individual use the test for classification rather than the commercial meaning of said expression, held, that the provision was not intended to include any article not commercially known as "embroidery cottons." Loeb & Schoenfeld v. U. S. (1906) 150 Fed. 327, 80 C. C. A. 211.

The provision in Act 1897, for "embroidery cottons," held not to include so-called "No. 60 5-ply" thread or yarn used in embroidering machines, which is shown not to be within the class commercially known as "embroidery cottons." Loeb & Schoenfeld v. U. S. (1906) 150 Fed. 327, 80 C. C. A. 211, reversing judgment (C. C. 1905) 143 Fed. 698.

252. Cotton cloth, not bleached, dyed, colored, stained, painted, printed, woven figured, or mercerized, containing yarns the average number of which does not exceed number nine, 7½ per centum ad valorem; exceeding number nine and not exceeding number nineteen, 10 per centum ad valorem; exceeding number nineteen and not exceeding number thirty-nine, 12½ per centum ad valorem; exceeding number thirty-nine and not exceeding number forty-nine, 17½ per centum ad valorem; exceeding number forty-nine and not exceeding number fifty-nine, 20 per centum ad valorem; exceeding number fifty-nine and not exceeding number seventy-nine, 22½ per centum ad valorem; exceeding number seventy-nine and not exceeding number

ninety-nine, 25 per centum ad valorem; exceeding number ninety-nine, 27½ per centum ad valorem. Cotton cloth when bleached, dyed, colored, stained, painted, printed, woven figured, or mercerized, containing yarn the average number of which does not exceed number nine, 10 per centum ad valorem; exceeding number nine and not exceeding number nineteen, 12½ per centum ad valorem; exceeding number nineteen and not exceeding number thirty-nine, 15 per centum ad valorem; exceeding number thirty-nine and not exceeding number forty-nine, 20 per centum ad valorem; exceeding number forty-nine and not exceeding number fifty-nine, 22½ per centum ad valorem; exceeding number fifty-nine and not exceeding number seventy-nine, 25 per centum ad valorem; exceeding number seventy-nine and not exceeding number ninety-nine, 27½ per centum ad valorem; exceeding number ninety-nine, 30 per centum ad valorem; plain gauze or leno woven cotton nets or nettings shall be classified for duty as cotton cloth.

Notes of Decisions

1. In general.
2. Bleached goods.
3. Embroidery canvas.
4. Figured woven cotton goods.
5. Madras mull.
6. Openwork fabrics.
7. Portières.
8. Scotch hollands.
9. Selvage as part of cloth.
10. Swiss muslins or dotted swisses.
11. Tamboured sash window curtains.
12. Woven figured goods.

1. In general.—See, also, notes under paragraph 253.

2. Bleached goods.—As to cotton cloth which is unbleached, except with respect to figures covering about one-eighth of the surface of the fabric, which are made of bleached threads, held, that these figures do not make the goods "bleached," within the meaning of the various provisions for bleached cotton cloth found in Act 1897. U. S. v. Beer (C. C. 1905) 143 Fed. 918.

Bleached cotton cloth, containing under 50 threads to the square inch, counting both warp and filling, though costing over 9 cents per square yard, held assessable at 1¼ cents per square yard, under Act 1894, par. 252, which enumerates "cotton cloth * * * not exceeding fifty threads to the square inch, counting the warp and filling, * * * bleached, one and one-fourth cents per square yard," and not at 25 per cent. ad valorem, under paragraph 253, which provides for the assessment of bleached cotton cloth "exceeding fifty, and not exceeding one hundred, threads to the square inch, counting the warp and filling," "provided, that in all cotton cloth, not exceeding one hundred threads to the square inch, counting the warp and filling, * * * bleached, valued at over nine cents per square yard, * * * there shall be levied, collected, and paid a duty of twenty-five per cent. ad valorem"; the proviso applying only to paragraph 253. In re Blankensteyn (C. C. 1902) 116 Fed. 776.

3. Embroidery canvas.—Embroidery canvas (called in trade "Penelope") made of cotton, and containing less than 100 threads to the square inch, held dutiable at 4½ cents per square yard, under the provision in Schedule 1, Tariff Act March 3, 1883, for "all cotton cloth, colored, not exceeding 100 threads to the square inch," and not at 35 per centum ad valorem under the provision in the same act and schedule for "all manufactures of cotton not specially enumerated or provided for." Ullmann v. Hedden (C. C. 1889) 38 Fed. 95.

4. Figured woven cotton goods.—"Cotton cloth woven figured in the piece" is more specific in describing the goods here than "manufactures of cotton, Jacquard figured." "Cotton cloth woven figured" exactly describes the merchandise, and this is "in the piece." The provisions for cotton cloth in paragraph 252, Tariff Act 1913, as defined in paragraph 253, control. U. S. v. Sherman & Sons Co. (1915) 6 Ct. Cust. App. 271.

5. Madras mull.—Madras mull, consisting of woven cotton cloth in which the groundwork is uniform, and the threads countable by the aid of a magnifying glass, held dutiable under the countable provisions pars. 319–321, Act 1883, and not as a "manufacture of cotton not specially enumerated," under paragraph 324, notwithstanding that it had upon it figures or patterns woven into the groundwork contemporaneously with the weaving thereof, the whole being afterwards run through a clipping machine, which cuts the weft threads so that they do not extend continuously from selvage to selvage. Hedden v. Robertson (1894) 14 Sup. Ct. 434, 436, 151 U. S. 520, 38 L. Ed. 257, reversing Robertson v. Hedden (C. C. 1889) 40 Fed. 322, applying Newman v. Arthur (1883) 3 Sup. Ct. 88, 109 U. S. 132, 27 L. Ed. 883.

6. Openwork fabrics.—The fact that substantial numbers of the warp threads and of the filling threads are absent in fancy fabrics of the openwork variety does not remove the goods

from the provision for "all cotton cloth not exceeding one hundred threads to the square inch counting the warp and filling," in Act 1897, par. 305. Wilfred Schade & Co. v. U. S. (C. C. 1906) 147 Fed. 893.

Held, that in order to come within the provision in Act 1897, par. 305, for "all cotton cloth not exceeding one hundred threads to the square inch counting the warp and filling," it is not necessary that the goods should be uniform or homogeneous throughout, and that the provision includes openwork fabrics which contain nowhere more than 100 threads to the square inch and of which substantial portions have no warp and other substantial portions no filling. Quaintance v. U. S. (C. C. 1905) 147 Fed. 753.

7. Portières.—Cotton portières and table covers, woven with a border and a selvage and cut to the size and form of the article as intended for sale and use, but needing to be trimmed, or hemmed and fringed, before they can be used, held dutiable as cotton cloth, and not as "manufactures of cotton not specially provided for," under paragraph 322, Act 1897. Stern v. U. S. (C. C. 1901) 123 Fed. 192.

8. Scotch hollands.—Cotton goods for window shades held dutiable as Scotch hollands, see paragraph 254.

9. Selvage as part of cloth.—There were mercerized threads in the selvage, but not in the body of the cloth. The selvage is a part of the fabric only in the sense of being attached to it; it has none of the uses or purposes of the textile to which it is woven. It is, accordingly, a distinct entity and cannot be taken to fix the classification of the textile itself. U. S. v. Auffmordt & Co. (1912) 3 Ct. Cust. App. 236.

Cotton cloth with selvage of silk, the selvage ordinary in kind and not designed to form a material and essential part of the goods as these might enter into consumption, was dutiable as cotton cloth under paragraph 306, Act 1897. U. S. v. Mandel (1911) 1 Ct. Cust. App. 223.

10. Swiss muslins or dotted swisses.—Dotted swisses held not dutiable under the countable clauses. See paragraph 358.

"Swiss muslins" or "dotted swisses," being cotton goods in which the threads can be counted independently of the dots, the dots being woven at the same time with the cloth, but consisting of threads distinct from both warp and filling, held dutiable under Act 1890, par. 346, and not under paragraph 355 as "manufactures of cotton not specially provided for." In re Haager (C. C. 1893) 57 Fed. 192; reversed in U. S. v. Albert (1894) 60 Fed. 1012, 9 C. C. A. 332, following Hedden v. Robertson (1894) 14 Sup. Ct. 434, 151 U. S. 520, 38 L. Ed. 257.

11. Tamboured sash window curtains.—Tamboured sash window curtains held not dutiable under the countable clause. See paragraph 265.

12. Woven figured goods.—Figured cotton cloth valued at over 11, 12, and 12½ cents per square yard held liable, in addition to the specific duty imposed by Act 1897, par. 313, to the ad valorem tax imposed by paragraphs 306, 307, upon similar plain cotton cloth above those values. U. S. v. George Riggs & Co. (1906) 27 Sup. Ct. 39, 203 U. S. 136, 51 L. Ed. 127, reversing decree (1905) 136 Fed. 583, 69 C. C. A. 357.

In Act 1897, par. 313, providing a duty on figured cotton cloth in addition to that "provided for other cotton cloth of the same description, or condition," the intent is to impose an extra duty in addition to that imposed on "other cotton cloth of the same * * * condition," etc., which has not been figured; and where it is colored, but coloring is given by threads used to form the figures, such extra duty should be added to that applicable to uncolored, rather than colored, cottons. U. S. v. Rusch & Co. (1909) 167 Fed. 523, 93 C. C. A. 159, affirming judgment (C. C. 1908) 160 Fed. 279, and writ of certiorari denied (1909) 29 Sup. Ct. 703, 214 U. S. 525, 53 L. Ed. 1068.

Act 1897, par. 313, imposing an additional duty on "cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," includes cotton cloth in which there is a separate and extra thread, not introduced for the purpose of ordinary manufacture, but with the sole object of forming the figure, and which does not in any way enter into the structural part of the goods, but is for ornamental purposes, and without which the fabric would have been a completed fabric. Mills v. U. S. (1902) 114 Fed. 257, 52 C. C. A. 92, affirming judgment (C. C. 1901) 109 Fed. 564.

Act 1897, par. 313, imposing an additional duty on "cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," applies to cotton goods, known as "Madras" or "damask" goods which are "ornamental, with spots or figures woven in by independent filling threads introduced for that purpose"; the threads not being an integral part of the fabric, and the portions not needed to make the figure being cut off after the weaving process is concluded. H. B. Clafin Co. v. U. S. (1902) 114 Fed. 259, 52 C. C. A. 94, affirming judgment (C. C. 1901) 109 Fed. 562.

In Act 1897, par. 313, relating to "cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form figure," the term "threads" is used in a sense including

the remnants thereof so introduced, clipped off where appearing at intervals on the back of the fabric. R. B. Maclea Co. v. U. S. (C. C. 1909) 167 Fed. 688.

The provision in Act 1897, par. 313, for "cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," includes goods having dots produced by warp threads which on the back of the fabric hang loosely between the dots, and which add no strength to the cloth, but may be removed without leaving a visible vacancy. Gitterman & Co. v. U. S. (C. C. 1907) 154 Fed. 169.

In the main part of paragraphs 306, 307, Act 1897, there is prescribed a scale of duties for cotton cloth, varying in rate according to certain physical conditions of the fabric, as whether bleached, dyed, colored, stained, painted, or printed, and whether of specified conditions of weight and thread count; and in a proviso to each of these paragraphs there is prescribed a different scale of duties, varying according to the same tests, except as to weight, but regulated by additional conditions as to the value of the cloth. Paragraph 313 of said act provides that such cloth shall, if subjected to certain figuring processes, pay a duty "in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads." Held, that the expression "same description, or condition," as thus used, has no reference to the condition concerning value prescribed in the provisos to paragraphs 306, 307, and that, when cotton cloth is of such character as to become liable to the additional duty prescribed in paragraph 313, such duty should be additional only to that provided in the main part of paragraph 306 or 307, and not to that prescribed in said provisos to those paragraphs, conditioned on the value of the fabric. George Riggs & Co. v. U. S. (C. C. 1904) 131 Fed. 568.

Where a cotton cloth has figures woven in it upon the loom at the same time with the fabric itself, the count must include the threads of the figure, as well as the threads of the groundwork. Robertson v. Hedden (C. C. 1889) 40 Fed. 322.

In appraising the value of figured cotton cloth, the threads added to constitute the figure are not to be omitted in the valuation, but these, together with the foundation threads, are to be taken into account in fixing ad valorem rates under paragraphs 305 and 306, Act 1897. Quaintance v. U. S. (1911) 2 Ct. Cust. App. 215.

253. The term cotton cloth, or cloth, wherever used in the paragraphs of this schedule, unless otherwise specially provided for, shall be held to include all woven fabrics of cotton, in the piece, whether figured, fancy, or plain, and shall not include any article, finished or unfinished, made from cotton cloth. In the ascertainment of the condition of the cloth or yarn upon which the duties imposed upon cotton cloth are made to depend, the entire fabric and all parts thereof shall be included. The average number of the yarn in cotton cloth herein provided for shall be obtained by taking the length of the thread or yarn to be equal to the distance covered by it in the cloth in the condition as imported, except that all clipped threads shall be measured as if continuous; in counting the threads all ply yarns shall be separated into singles and the count taken of the total singles; the weight shall be taken after any excessive sizing is removed by boiling or other suitable process.

Notes of Decisions

In general.—See, also, notes under paragraph 252.

Cotton cloth.—Fabric containing jute held not dutiable as cotton cloth. See paragraph 266.

In Act 1897, par. 310, the definition of "cotton cloth" as being "all woven fabrics of cotton" refers to goods composed entirely of cotton, or containing at most but a small percentage of some other fiber; and cloth which, though composed chiefly of cotton, yet contains a large minority of jute, is not within the definition. Lord & Taylor v. U. S. (1910) 178 Fed. 270, 101 C. C. A. 575, affirming judgment (C. C. 1909) 172 Fed. 282.

The provision in paragraph 257, Act 1894, that "cotton cloth," as used in the preceding paragraphs, shall include "all woven fabrics of cotton in the piece, whether figured, fancy, or plain," etc., does not apply to embroidered cotton cloth, which was not embroidered in the loom. U. S. v. Einstein (1897) 78 Fed. 797, 24 C. C. A. 346, certiorari denied Einstein v. U. S. (1897) 17 S. Ct. 993, 166 U. S. 722, 41 L. Ed. 1188.

Held, that the definition of cotton cloth in Act 1897, par. 310, as being "all woven fabrics of cotton in the piece or otherwise," includes cotton blankets with whipped or hemmed edges and in a finished condition. U. S. v. Bernhard (C. C. 1903) 150 Fed. 375.

A woven fabric made of cotton held dutiable under a provision for "cotton cloth," notwithstanding it is not known

among merchants and dealers as "cotton cloth." Ullmann v. Hedden (C. C. 1889) 38 Fed. 95.

The word "cloth" in the provision for "cotton cloth" in Act 1883, is used in its popular and common acceptation, and not in a commercial sense. Ullmann v. Hedden (C. C. 1899) 38 Fed. 95, following Maillard v. Lawrence (1853) 16 How. 251, 14 L. Ed. 925, and Greenleaf v. Goodrich (1879) 101 U. S. 278, 25 L. Ed. 845.

The words cotton cloth or cloth, wherever used in paragraph 320, Act 1909, have the same meaning the first clause of that paragraph declares they shall have when applied to other paragraphs, Schedule I of that act. Shallus v. U. S. (1911) 1 Ct. Cust. App. 556.

Fabrics.—Strips of cotton for bandages held not dutiable as woven fabrics in the piece or cut into lengths. See paragraph 266.

Partly finished articles made of cotton cloth are fabrics within the meaning of that term as used in paragraph 310, Act 1897, providing that all cotton cloth shall be held to include all woven fabrics in the piece or otherwise. Stern v. U. S. (C. C. 1901) 123 Fed. 192.

Madras shirting.—The merchandise was a cotton cloth, commonly called striped or madras shirting, so woven that ordinary warp threads are grouped together and covered with another longer warp thread on the face of the fabric and presenting a raised rounded appearance, forming thereby, in effect only, a co-called Russian cord. Irrespective of what it resembles, this cloth is not dutiable under paragraph 323, Act 1909, imposing a cumulative duty, but under paragraph 320 of that act, in connection with paragraph 318. U. S. v. McConnell (1910) 1 Ct. Cust. App. 73.

Method of counting.—Goods of such a fabric that the threads could not be counted except by unraveling the cloth are to be treated within the classification according to the number of threads to the square inch, however such number may be determined, and hence are not to be classed under the final clause as "all other manufactures of cotton not otherwise provided for," though it had been customary to ascertain the number of threads by the use of a glass, and though cloth of the character of that in question was not manufactured at the time of the passage of the act. There is no language in the statute which requires for its interpretation the aid of any extrinsic circumstances, and the law fixes duty by a classification based on the number of threads in a square inch without reference to the mode in which the count is to be made. Newman v. Arthur (1883) 3 Sup. Ct. 88, 91, 109 U. S. 132, 27 L. Ed. 883.

The provisions of Act 1883 for countable cottons, necessarily import that the cloth shall be homogeneous so that the number of threads per square inch will not differ in different parts of the fabric. Robertson v. Hedden (C. C. 1889) 40 Fed. 322.

Paragraph 320, Tariff Act 1909, makes provision for counting the threads in the fabrics of the importation, and the provision is to the effect that in ascertaining the count of threads per square inch the ordinary as well as the extraordinary threads are to be counted, and counted whether they are clipped or unclipped. Witcombe, McGeachin & Co. v. U. S. (1912) 3 Ct. Cust. App. 240.

The texture of the fabric is to be found by counting the threads in one repeat of the pattern and then dividing this result by the number of inches these threads occupy in the cloth. This is to determine the texture not according to the count in the most or the least compact part of the fabric, but according to the average count of the whole. Id.

254. Cloth composed of cotton or other vegetable fiber and silk, whether known as silk-striped sleeve linings, silk stripes, or otherwise, of which cotton or other vegetable fiber is the component material of chief value, and tracing cloth, 30 per centum ad valorem; cotton cloth filled or coated, all oilcloths (except silk oilcloths and oilcloths for floors), and cotton window hollands, 25 per centum ad valorem; waterproof cloth composed of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value or of cotton or other vegetable fiber and india rubber, 25 per centum ad valorem.

Notes of Decisions

Cotton cloth in general.—Colored cotton cloth with polka dots composed of goat hair held not dutiable as cotton cloth. See paragraph 288.

Cotton cloth filled.—The term "filled," as used in paragraph 311, Act 1897, fixing the duty on "cotton cloth, filled or coated," which is a manufacturing, rather than a commercial, term, is not confined in its meaning to such goods as have been weighted with a foreign substance—usually an inorganic material—to give them a factitious solidity, in which sense it was formerly used in England, but the filling may be starch alone. But, whatever substance is used, to constitute "cotton cloth, filled," within the meaning of that section, such

quantity must be used as to substantially close the interstices in the cloth, and make a plain surface. U. S. v. Pinney, Casse & Lackey Co. (1900) 105 Fed. 934, 45 C. C. A. 138.

The merchandise is a cotton cloth coated, and artificial silk constitutes its value in chief. In determining its proper classification the rule applies that an eo nomine provision is more specific than words of general description. The duty is not imposed upon the artificial silk as such, but upon a designated article, "cotton cloth, coated." Cotton cloth, coated, is dutiable under paragraph 321, Tariff Act 1909. Knauth, Nachod & Kuhne v. U. S. (1912) 2 Ct. Cust. App. 479. See, also, U. S. v. Zinn & Co. (1912) 2 Ct. Cust. App. 419.

Cotton window hollands.—Fabrics made from cotton hollands held dutiable as manufactures of cotton. See paragraph 266.

Cotton goods used for window shades, known as "Scotch hollands" or "King's hollands," stiffened with 20 per cent. of starch, held dutiable under paragraphs 306, 307, and 308, Act 1897, being the countable cotton clauses, and not under paragraph 311, as "cotton cloth, filled." U. S. v. Pinney, Casse & Lackey Co. (1900) 105 Fed. 934, 45 C. C. A. 138; Pinney, Casse & Lackey Co. v. U. S. (C. C. 1899) 99 Fed. 720.

It would appear that congress intended paragraph 321, Act 1909, re-enacting and enlarging paragraph 311, Act 1897, to take the construction theretofore given it so far as it applied to the same merchandise named in each paragraph and that certain window shades and filled cloths formerly held dutiable thereunder should so continue regardless of the fact that it is possible to count the number of warp and filling threads of the basic fabric, which might, but for the specific provisions of paragraph 321, render the merchandise dutiable under paragraph 315. Shallus v. U. S. (1911) 1 Ct. Cust. App. 556.

Imitation pongee silk.—Imitation pongee silk, in chief value of cotton, was dutiable under paragraph 311, Act 1897. Saito v. U. S. (1911) 1 Ct. Cust. App. 132.

Waterproof cloth.—Waterproof cloth in chief value of india rubber held not dutiable as waterproof cloth composed of cotton or other vegetable fiber. See paragraph 368.

The principle of ejusdem generis should not be applied to exclude waterproof woolen cloth from the provision for "waterproof cloth" in paragraph 369, Act 1890, because the subject of that schedule is flax, hemp, and jute. U. S. v. Brown & Eadie (1905) 136 Fed. 550, 69 C. C. A. 260.

Certain woolen goods known as "cravenette cloths," which have been subjected to a process intended to make them rain-repellent, which are chiefly used for outer garments to be worn in rainy weather, and which, for all ordinary purposes, are waterproof. held dutiable as "waterproof cloth," under paragraph 369, Act 1890, and not under paragraphs 392 and 395, Schedule K, of said act, relating respectively, to "woolen or worsted cloths" and "dress-goods * * * of wool, worsted," etc. U. S. v. Brown & Eadie (1905) 136 Fed. 550, 69 C. C. A. 260, affirming judgment Brown & Eadie v. U. S. (C. C. 1903) 126 Fed. 446.

The merchandise is not a velvet cloth, but a waterproof cloth resembling velvet on one side and a rubber-like fabric on the other. Cotton fiber is the component material of chief value. Paragraph 347, Act 1909, applies. U. S. v. Walker (1914) 5 Ct. Cust. App. 215.

In paragraph 347, Act 1909, the words "waterproof cloth composed ,of cotton or other vegetable fiber whether composed in part of india rubber or otherwise," must be taken to mean composed in part of india rubber or not. U. S. v. Vandegrift & Co. (1913) 4 Ct. Cust. App. 226.

255. Handkerchiefs or mufflers composed of cotton, not specially provided for in this section, whether finished or unfinished, not hemmed, 25 per centum ad valorem; hemmed, or hemstitched, 30 per centum ad valorem.

Notes of Decisions

Handkerchiefs.—Hemstitched cotton handkerchiefs, known as such in trade and commerce at the time of the passage of Act 1883, having a hem of one inch or more in breadth, with several threads drawn out from the material at the head of the hem, and the hem stitched down by an open stitch, are not "hemmed handkerchiefs," but dutiable as "manufactures of cotton not specially enumerated or provided for" at 35 per cent. ad valorem under the same schedule of said act (paragraph 324). In re H. B. Claflin Co. (1892) 52 Fed. 121, 2 C. C. A. 647; Id. (C. C. 1891) 47 Fed. 875.

Cotton hemstitched handkerchiefs, with an initial embroidered thereon, held dutiable under Act 1890, as "handkerchiefs composed of cotton or other vegetable fibre," under paragraph 349, and not as "embroidered and hemstitched handkerchiefs," under paragraph 373. U. S. v. Jonas (1897) 83 Fed. 167, 27 C. C. A. 500, approving U. S. v. Harden (1895) 68 Fed. 182, 15 C. C. A. 358, and certiorari denied in (1895) 16 Sup. Ct. 1207, 163 U. S. 709, 41 L. Ed. 312.

Imitation hemstitched cotton handkerchiefs held dutiable as "handkerchiefs composed of cotton," under para-

graph 349, Act 1890, and not as "embroidered and hemstitched handkerchiefs," under paragraph 373. Rice v. U. S. (1893) 53 Fed. 910, 4 C. C. A. 104.

Hemmed or hemstitched handkerchiefs, which are not also embroidered, held dutiable under paragraph 349 of Tariff Act 1890, as "handkerchiefs—composed of cotton or other vegetable fiber," and not under paragraph 373, as "hemstitched and embroidered handkerchiefs." Wilson v. U. S. (1893) 57 Fed. 199, 6 C. C. A. 310, following Rice v. U. S. (1893) 53 Fed. 910, 4 C. C. A. 104.

Handkerchiefs, composed of linen and cotton, imported under Act 1890, consisting, first, of handkerchiefs with a hemstitched border; second, of handkerchiefs embroidered or scalloped on the edge, and not hemstitched; and, third, of handkerchiefs with a hemstitched border, and embroidered either with initial letters or with figures worked by hand or machinery—held dutiable, the hemstitched handkerchiefs, under paragraph 349 of said act, at 50 per centum ad valorem, as "handkerchiefs"; those with embroidered edge as textile fabrics embroidered by hand or machinery, under the proviso in paragraph 373, at 60 per centum ad valorem; and only those handkerchiefs which are embroidered and also hemstitched are dutiable as such under paragraph 373 of said act. In re Gribbon (C. C. 1892) 53 Fed. 78, judgment affirmed (1893) 55 Fed. 874, 5 C. C. A. 287.

Mufflers.—Mufflers of cotton and silk held not dutiable as cotton mufflers. See paragraph 315.

Shawls.—Shawls worth 15 shillings and 6 pence, containing 1 shilling and 6 pence worth of silk, and the rest cotton, held subject to a duty of 35 per cent. only, as "shawls, cotton chief value," under R. S. § 2504, instead of 60 per cent., as "wearing apparel, silk chief value."—Leahy v. Spaulding (C. C. 1884) 19 Fed. 417.

256. Clothing, ready-made, and articles of wearing apparel of every description, composed of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, or of cotton or other vegetable fiber and india rubber, made up or manufactured, wholly or in part, by the tailor, seamstress, or manufacturer, and not otherwise specially provided for in this section, 30 per centum ad valorem; shirt collars and cuffs of cotton, not specially provided for in this section, 30 per centum ad valorem.

Notes of Decisions

Articles of wearing apparel.—A child's cap made of elastic braid with a view of preventing the ear from growing abnormally held not dutiable as an article of wearing apparel. See paragraph 262.

Fascinators made of cotton chenille held not dutiable as articles of wearing apparel. See paragraph 258.

Hemstitched lawns held not dutiable as partly made wearing apparel. See paragraph 266.

Hoods made of cotton chenille held not dutiable as articles of wearing apparel. See paragraph 258.

Tennis jackets in part of cotton held not dutiable as articles of wearing apparel of which cotton is the component material of chief value. See paragraph 291.

The words "neckwear" and "neckties" in paragraph 314, Act 1897, held not terms of commercial designation. Goldenberg Bros. & Co. v. U. S. (C. C. 1903) 124 Fed. 1003, judgment affirmed (1904) 130 Fed. 108, 64 C. C. A. 442, writ of certiorari denied Goldenburg Bros. & Co. v. Same (1904) 25 S. Ct. 791, 195 U. S. 634, 49 L. Ed. 354.

Dresses, composed of cotton or other vegetable fiber, in part embroidered and in part made of lace, being so far advanced in manufacture as to be unavailable for other purposes than for completion into light dresses, held dutiable under Act 1894, par. 258, as "articles of wearing apparel * * * made up or manufactured wholly or in part," and not under paragraph 276, covering "laces, * * * embroideries, * * * articles embroidered, * * * and articles made wholly or in part of lace." Meyer v. U. S. (C. C. 1901) 124 Fed. 296.

Corsets of which cotton is the component material of chief value, trimmed at the top with lace, held not articles made in any part of lace, though they are so trimmed, but dutiable under Act 1897, par. 314, as wearing apparel of "every description of which cotton is the component material of chief value." Altman Co. v. U. S. (C. C. 1900) 99 Fed. 263.

Cotton corsets, imported on April 30, 1891, held dutiable under Act 1890, par. 349, as cotton wearing apparel, and not under paragraph 324, of Act 1883, as corsets, nor under paragraph 355, of the said Act 1890, as "manufactures of cotton." In re Ottenheimer (C. C. 1892) 49 Fed. 222.

Certain shirt bosoms are precisely and more specifically described by the term "wearing apparel composed of cotton or of cotton in chief value made up or manufactured in part" (paragraph 256, Tariff Act 1913) than they are by the term "articles made up in part of

tuckings of whatever yarns, threads, or filaments composed" (paragraph 358 of that act). The required attributes of wearing apparel most closely describe and identify the goods, and they are dutiable as such under paragraph 256. U. S. v. Snow's U. S. Sample Express Co. (1915) 6 Ct. Cust. App. 120.

The merchandise consists of cotton wearing apparel upon which are sewn strips or bands of goods figured in different colors for ornamental purposes only. The articles are held to be cotton wearing apparel only, and not "appliquéd." U. S. v. Hamburger Levine Co. (1914) 5 Ct. Cust. App. 217.

Imitation horsehair hats are in material almost identical with, and in quality and texture they resemble, hats of cotton; the use of them, too, is similar. They were dutiable at the same rate with cotton wearing apparel under paragraph 314, Act 1897, at 50 per cent. ad valorem. U. S. v. Cochran & Co. (1912) 3 Ct. Cust. App. 57.

The merchandise consisted of slippers made of cotton and leather, the parts of the slippers composed of each of the two materials being made separately for use in producing the completed article. In determining the component of chief value in merchandise of this kind inquiry will be made in each case as it presents itself to discover at what stage the several parts were completed for use in being put together as a completed whole; that stage will be "its condition as found in the article." Here the expense of sewing the pieces of cotton cloth together, in preparation for uniting them with the leather parts, enters into the value of the cotton so employed. According to the evidence cotton was the component of chief value in these slippers and they are dutiable under paragraph 324, Tariff Act 1909. U. S. v. Meadows (1911) 2 Ct. Cust. App. 143. See, also, Seeberger v. Hardy (1893) 14 Sup. Ct. 170, 150 U. S. 420, 37 L. Ed. 1129.

Gloves made of yarn composed of cellulose filaments obtained from cotton waste by subjecting this to a chemical treatment are not articles of wearing apparel to be classed by similitude as silk, but are to be classed by similitude as wearing apparel, value in chief of cotton or other vegetable fiber, and were dutiable as such under paragraph 314, Act 1897. Thomass v. U. S. (1910) 1 Ct. Cust. App. 86.

Clothing, ready made.—Knit shirt and drawers ready to wear, held dutiable as "ready-made clothing" (Act 1832), unless known in trade as "hosiery." Hall v. Hoyt (C. C. 1840) Fed. Cas. No. 5,934.

257. Plushes, velvets, plush or velvet ribbons, velveteens, corduroys, and all pile fabrics, cut or uncut, whether or not the pile covers the entire surface; any of the foregoing composed wholly or in chief value of cotton or other vegetable fiber except flax, hemp, or ramie; and manufactures or articles in any form, including such as are commonly known as bias dress facings or skirt bindings, made or cut from plushes, velvets, velveteens, corduroys, or other pile fabrics composed of cotton or other vegetable fiber, except flax, hemp, or ramie, 40 per centum ad valorem.

Notes of Decisions

Pile fabrics.—See, also, notes under paragraphs 280, 305, and 309.

Flax plush held not dutiable as pile fabrics of cotton. See paragraph 280.

A pile fabric commercially known as "velvet cord," "ribbed velvet," or "corded velvet," held not "corduroy composed of cotton or other vegetable fiber," within Act 1897, par. 315, and is not assessable as such. Stewart, Howe & May Co. v. U. S. (1902) 113 Fed. 928, 51 C. C. A. 558, reversing decree (C. C. 1900) 107 Fed. 267.

Construing paragraphs 315 and 342, Act 1897, together, "plushes, velvets, velveteens, corduroys and all pile fabrics cut or uncut," composed of cotton or other vegetable fiber are dutiable under paragraph 315, except "pile fabrics of which flax is the component material of chief value." Stern v. U. S. (1899) 98 Fed. 417, 39 C. C. A. 119, affirming judgment U. S. v. Stern (C. C. 1899) 91 Fed. 521.

No rule exists in trade or commercial usage declaring that fabrics having a pile of 3.5 millimeters or less in length should be regarded as velvets, and of over 3.5 millimeters as plush. U. S. v. Silberstein, Castell & Co. (C. C. 1907) 153 Fed. 965.

Trimmings cut out of cotton velvet fabric, in various open and scroll work designs and colors, held dutiable as pile cotton fabrics, under the second proviso of paragraph 315, Act 1897, and not as cotton trimmings, under paragraph 339. Horstmann, Von Hein & Co. v. U. S. (C. C. 1903) 121 Fed. 147.

Held, that certain portières, made from pile fabrics composed in chief value of flax, are not included in the second proviso in paragraph 315, Act 1897, relating to "manufactures or articles in any form, * * * made or cut from * * * pile fabrics composed of cotton or other vegetable fiber." J. B. Ryer, Son & Co. v. U. S. (C. C. 1903) 126 Fed. 246.

Paragraph 315, Act 1897, contains a provision for certain rates of duty on "plushes, velvets, velveteens, corduroys,

and all pile fabrics, * * * composed of cotton or other vegetable fiber," to which is added a proviso that "manufactures or articles in any form, * * * made or cut from plushes, velvets, velveteens, corduroys, or other pile fabrics composed of cotton or other vegetable fiber, shall be subject to the foregoing rates of duty and in addition thereto ten per centum ad valorem." Held, that this proviso does not refer to any class of pile fabrics not included in the main provision. Id.

In paragraph 325, Act 1909, the words "plushes, velvets, velveteens, corduroys, and all pile fabrics, cut or uncut, whether or not the pile covers the entire surface," are broad enough to include any pile fabric as commonly understood. The phrase "cut or uncut" does not restrict the meaning; it merely makes the meaning clear, and the goods were properly assessed under the named paragraph. Knauth, Nachod & Kuhne v. U. S. (1915) 6 Ct. Cust. App. 128.

Velveteen dress facings.—"Velveteen dress facings" held dutiable as "manufactures of cotton not specially provided for," under paragraph 355, Act 1890, and not as "velveteens," nor as "cotton pile fabrics," under paragraph 350. In re Kursheedt Mfg. Co. (1893) 54 Fed. 159, 4 C. C. A. 262; Id. (C. C. 1892) 49 Fed. 633.

258. Curtains, table covers, and all articles manufactured of cotton chenille, or of which cotton chenille is the component material of chief value, tapestries, and other Jacquard figured upholstery goods, composed wholly or in chief value of cotton or other vegetable fiber; any of the foregoing, in the piece or otherwise, 35 per centum ad valorem; all other Jacquard figured manufactures of cotton or of which cotton is the component material of chief value, 30 per centum ad valorem.

Notes of Decisions

Cotton chenille.—Hoods made of cotton chenille held dutiable under paragraph 351, Act 1890, as goods manufactured of cotton chenille, and not under paragraph 349, as clothing ready made, composed of cotton, not specially provided for. Oppenheimer v. U. S. (1896) 71 Fed. 869, 18 C. C. A. 340, affirming (C. C. 1895) 66 Fed. 740.

"Fascinators," made of cotton chenille, held dutiable under Act 1890, par. 351, and not under paragraph 349, as "cotton wearing apparel." Oppenheimer v. U. S. (C. C. 1895) 66 Fed. 740, judgment affirmed (1896) 71 Fed. 869, 18 C. C. A. 340.

Jacquard figured goods.—Cotton cloth, woven figured in the piece, held not dutiable as Jacquard figured goods. See paragraph 252.

Madras muslin curtains and madras muslin curtain goods in the piece, both Jacquard figured, are within the lexicographic definition of upholstery, i. e., the interior decorations of an apartment, and dutiable as "Jacquard figured upholstery goods," under paragraph 258, Act 1913. U. S. v. Snow's U. S. Sample Express Co. (1916) 6 Ct. Cust. App. 477.

By the provision for "Jacquard figured upholstery goods, composed wholly or in chief value of cotton or other vegetable fiber, any of the foregoing in the piece or otherwise," in paragraph 258, Act 1913, Congress intended to make the use of this narrowly prescribed goods the test of classification, and to include therewithin all such goods for dutiable purposes, and to invade the other paragraphs of the tariff act, including within this provision for dutiable purposes all goods answering to this description. Downing & Co. v. U. S. (1915) 6 Ct. Cust. App. 447.

Jacquard figured manufactures of cotton may be either laces or figured goods of cotton, not lace at all, and accordingly the term is more comprehensive than a provision limited to a particular class of figured goods known as laces or lace articles. Wilson & Son v. U. S. (1915) 6 Ct. Cust. App. 255.

Merchandise consisted of nettings, all of which are jacquard figured, and the relevant paragraphs in Act 1913 are 258 and 358 "Jacquard figured upholstery goods," in paragraph 258, restricts the operation of the term to goods whose chief use is as upholstery goods, the precise character being there defined; and accordingly the description applies to articles that might otherwise be appropriately designated nets or nettings under paragraph 358. Carter & Son v. U. S. (1915) 6 Ct. Cust. App. 253.

Figured cotton panels of various sizes made on a Jacquard loom and designed to be affixed to screens are not manufactures of cotton cloth, but are more aptly described as Jacquard figured upholstery goods, and they are dutiable as such under paragraph 326, Act 1909. Bing & Co.'s Successors v. U. S. (1912) 3 Ct. Cust. App. 115.

259. Stockings, hose and half hose, made on knitting machines or frames, composed of cotton or other vegetable fiber, and not otherwise specially provided for in this section, 20 per centum ad valorem.

260. Stockings, hose and half hose, selvedged, fashioned, narrowed, or shaped wholly or in part by knitting machines or frames, or knit by hand, including such as are commercially known as seamless stockings, hose and half hose, and clocked stockings, hose and half hose, all of the above composed of cotton or other vegetable fiber, finished or unfinished; if valued at not more than 70 cents per dozen pairs, 30 per centum ad valorem; if valued at more than 70 cents, and not more than $1.20 per dozen pairs, 40 per centum ad valorem; if valued at more than $1.20 per dozen pairs, 50 per centum ad valorem. Gloves by whatever process made, composed wholly or in chief value of cotton, 35 per centum ad valorem.

Notes of Decisions

Embroidered gloves.—Gloves having two rows of single-cord embroidery, between three lines or points of the material, raised up and sewed through and through, are not dutiable, under paragraph 458 of Act 1890, as "embroidered gloves with more than three single strands or cords." Wertheimer v. U. S. (C. C. 1896) 77 Fed. 600.

Embroidered hosiery.—With respect to embroidered hosiery, the provision in paragraph 339, Act 1897, for "wearing apparel * * * embroidered in any manner by hand or machinery, * * * composed wholly or in chief value of flax, cotton, or other vegetable fiber, * * * and not elsewhere specially provided for," is less specific than the provision in paragraph 318, for "stockings, hose and half-hose * * * composed of cotton or other vegetable fiber." Carter, Webster & Co. v. U. S. (1906) 143 Fed. 256, 74 C. C. A. 394, affirming judgment (C. C. 1905) 137 Fed. 978, and writ of certiorari denied (1906) 26 S. Ct. 764, 202 U. S. 617, 50 L. Ed. 1173.

Gloves.—Articles commercially known as "plaited gloves" or "patent gloves," and not as "silk gloves," which are composed of silk and cotton, the preponderating material being cotton, are not dutiable at 60 per cent., under Act June 30, 1864, § 8, and not being included in such act are dutiable under Act March 2, 1861, § 22, and Act July 14, 1862, § 13. Arthur v. Unkart (1877) 96 U. S. 118, 24 L. Ed. 768.

The provision of paragraph 328, Act 1909, relating to knitted or woven gloves, is not limited in its application to gloves that are knitted, fashioned, and shaped wholly by a machine. Lehman Co. v. U. S. (1914) 5 Ct. Cust. App. 441, following Spielmann & Co. v. Same (1912) 3 Ct. Cust. App. 368.

The importation was of cotton gloves with a knitted fabric. The form of the glove was cut from the fabric, and in completing the glove this form was sewed together with thread. "Cotton gloves knitted or woven," appearing in paragraph 328, Act 1909, is there used in a comprehensive and inclusive sense and embraces gloves manufactured from material either woven or knitted, though not shaped by the weaving process. Spielmann & Co. v. U. S. (1912) 3 Ct. Cust. App. 368.

Hosiery.—"Hosiery," in Act 1832, held to have a more general meaning than "stockings," in Act 1816. Hall v. Hoyt (C. C. 1840) Fed. Cas. No. 5,934.

261. Shirts and drawers, pants, vests, union suits, combination suits, tights, sweaters, corset covers and all underwear and wearing apparel of every description, not specially provided for in this section, made wholly or in part on knitting machines or frames, or knit by hand, finished or unfinished, not including such as are trimmed with lace, imitation lace or crochet or as are embroidered and not including stockings, hose and half hose, composed of cotton or other vegetable fiber, 30 per centum ad valorem.

262. Bandings, belts, beltings, bindings, bone casings, cords, tassels, cords and tassels, garters, tire fabric or fabric suitable for use in pneumatic tires, suspenders and braces, and fabrics with fast edges not exceeding twelve inches in width, all of the foregoing made of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, or of cotton or other vegetable fiber and india rubber, and not embroidered by hand or machinery; spindle banding, woven, braided, or twisted lamp, stove, or candle wicking made of cotton or other vegetable fiber; loom harness, healds, or collets made of cotton or other vegetable fiber, or of

which cotton or other vegetable fiber is the component material of chief value; boot, shoe, and corset lacings made of cotton or other vegetable fiber; and labels for garments or other articles, composed of cotton or other vegetable fiber, 25 per centum ad valorem; belting for machinery made of cotton or other vegetable fiber and india rubber, or of which cotton or other vegetable fiber is the component material of chief value, 15 per centum ad valorem.

Notes of Decisions

Belting for machinery.—Belting of cotton and india rubber held directly within the terms of paragraph 330, Act 1909. Nairn Linoleum Co. v. U. S. (1913) 4 Ct. Cust. App. 394. See, also, Kenyon Co. v. U. S. (1913) 4 Ct. Cust. App. 344.

The word belting signified originally a flat and not a round article, but the term has taken on a more extended meaning and now covers belts that are round, square, and V-shaped as well as belts that are flat. The merchandise though round and corded in shape has its principal use as belting, and it is dutiable as belting for machinery, made of cotton, under paragraph 330, Act 1909. U. S. v. Pitt & Scott (1912) 3 Ct. Cust. App. 91.

A tapelike article made of cotton or other vegetable fiber and used as a belt running over the wheels of a cigarette-making machine held not dutiable under paragraph 349, Act 1909, but dutiable under paragraph 330 of that act. U. S. v. Horrax (1911) 1 Ct. Cust. App. 142. See, also, Morrison v. U. S. (1901) 107 Fed. 113, 46 C. C. A. 173.

Beltings.—"Beltings," as used in paragraph 320, Act 1897, denotes beltings as articles of dress. Robins v. U. S. (1911) 1 Ct. Cust. App. 252.

Bindings.—A narrow woven tape of cotton, used largely for covering the seams of underwear and waists, if a braid, within Act 1897, par. 339, is also a binding or tape, and therefore otherwise provided for by, and dutiable under, paragraph 320. A. Steinhardt & Bro. v. U. S. (C. C. 1903) 121 Fed. 442.

No commercial designation is shown. The plain surface of the fabric covers more than half of the fabric itself and the area of this plain surface makes it clear the merchandise is designed to be something more than a mere edge for the side that is ornamented. It cannot, therefore, be deemed a trimming, and the evidence, moreover, shows the use to be chiefly for binding. It was dutiable as binding under paragraph 320, Act 1897. Massce & Whitney v. U. S. (1912) 3 Ct. Cust. App. 470.

Braces.—Braces and suspenders, being specifically enumerated under Act March 2, 1861, § 22, and Act July 14, 1862, § 13, are not subject to the higher duty imposed by the general language of section 8 of the latter act. Arthur v. Davies (1877) 96 U. S. 135, 24 L. Ed. 810.

A child's cap made of elastic braid or straps, connected by narrow bands of cotton tape and designed to prevent the ear from growing abnormally and held in position when spread closely over the skull by being knotted under the chin, is not a bit of cotton wearing apparel and dutiable under paragraph 314, Act 1897, but a brace, dutiable under paragraph 320 of said act. Best v. U. S. (1910) 1 Ct. Cust. App. 49.

Braids.—Braids used in the manufacture of hats composed of 95 per cent. cotton and 5 per cent. of other materials, commercially known as "cotton braids," though bought and sold as "cotton hat braids," etc., held dutiable under Act 1890, par. 354. Zimmerman v. U. S. (C. C. 1894) 61 Fed. 938.

Cords.—Coronation cord not twisted in any way held not dutiable as cord. See paragraph 266.

Cords of cotton and India rubber, the rubber being of chief value, held dutiable as "cords * * * made of cotton or other vegetable fiber, and whether composed in part of India rubber or otherwise," under paragraph 263 of Act 1894, and not as a nonenumerated manufacture of which India rubber is the component material of chief value, under paragraph 352. Hague v. U. S. (C. C. 1896) 73 Fed. 810, judgment affirmed (1897) 89 Fed. 1017, 32 C. C. A. 468.

Labels.—Labels of cotton and silk, cotton the chief component, held not to be excluded from the provision in Act 1897, par. 320, for labels "composed of cotton," because not composed wholly of cotton. U. S. v. Herzog (1905) 145 Fed. 622, 76 C. C. A. 373.

In construing the provision in Act 1897, par. 320, for "labels for garments or other articles, composed of cotton," held that labels are not to be excluded therefrom because in the piece and requiring to be cut apart before used as labels. U. S. v. Herzog (1905) 145 Fed. 622, 76 C. C. A. 373, reversing decree Herzog v. U. S. (C. C. 1904) 135 Fed. 919.

Tapes.—Cotton ladder tape held not dutiable as tapes. See paragraph 266.

263. Cotton table damask, and manufactures of cotton table damask, or of which cotton table damask is the component material of chief value, not specially provided for in this section, 25 per centum ad valorem.

Notes of Decisions

Cotton table damask.—Cotton table damask made partly of flax held not dutiable as cotton table damask. See paragraph 266.

The expression "cotton table damask," in Act 1897, par. 321, was not used by Congress according to any trade meaning it might have, but according to its denominative, or common, popular sense, which includes completed articles as well as goods in the piece from which such articles are made; but it should be construed in the light of corresponding provisions of previous acts. In enacting the provision congress is presumed to have acted in reference to a decision of the secretary of the treasury, construing a provision for "cotton damask" in a previous tariff act. The provision in Act 1897 for "cotton table damask," is more specific than those in paragraphs 304 to 308 for cotton cloth of various specified numbers of threads to the square inch. James H. Dunham & Co. v. U. S. (1906) 150 Fed. 562, 80 C. C. A. 364.

Articles of cotton table damask, woven in the piece, are included within the expression "cotton table damask" in paragraph 321, Act 1897, and are dutiable under that paragraph rather than under the provisions of Schedule I for "cotton cloth" because it is more specific than such provisions. Wilson v. U. S. (1906) 146 Fed. 64, 76 C. C. A. 515, affirming judgment Thomas Wilson & Co. v. U. S. (C. C. 1905) 138 Fed. 1007.

The term "cotton table damask," in Act 1897, par. 321, is the trade-name for cotton damask in the piece, or cotton damask cloth, and does not include completed articles made out of such material, and advanced by manufacture beyond the condition of mere cloth. Douglass & Berry v. U. S. (C. C. 1901) 123 Fed. 993.

264. Towels, bath mats, quilts, blankets, polishing cloths, mop cloths, wash rags or cloths, sheets, pillowcases, and batting, any of the foregoing made of cotton or of which cotton is the component material of chief value, not embroidered nor in part of lace and not otherwise provided for, 25 per centum ad valorem.

265. Lace window curtains, pillow shams, and bed sets, finished or unfinished, made on the Nottingham lace-curtain machine, and composed of cotton or other vegetable fiber, when counting not more than six points or spaces between the warp threads to the inch, 35 per centum ad valorem; when counting more than six and not more than eight points or spaces to the inch, 40 per centum ad valorem; when counting nine or more points or spaces to the inch, 45 per centum ad valorem.

Notes of Decisions

Lace curtains.—Lace curtains, having cotton as the material of chief value, which were made on the Nottingham lace curtain machine, but which, in addition to having undergone the usual finishing process of bleaching, dressing, and starching, have been ornamented by a cord design sewed thereon by the use of a machine known as the "Cornelli machine," which largely increases their market value, held dutiable, under paragraph 339, Act 1897, as lace curtains not elsewhere provided for, and not under paragraph 340, covering curtains, "finished or unfinished," made on the Nottingham machine. Smith v. Read (1901) 111 Fed. 795, 49 C. C. A. 619, affirming decree In re Smith (C. C. 1901) 108 Fed. 800.

Tamboured sash window curtains, of cotton, in the piece, which require only cutting and hemming to make them technically window curtains, held dutiable, as similar articles to lace window curtains, under paragraph 373 of Act 1890, and not classifiable under the "countable clauses" of the cotton schedule (paragraphs 344–348), or as manufactures of cotton not specially provided for under paragraph 255. Lahey v. U. S. (1896) 71 Fed. 870, 18 C. C. A. 341, appeal dismissed U. S. v. Lahey (1897) 89 Fed. 1020, 32 C. C. A. 612.

266. All articles made from cotton cloth, whether finished or unfinished, and all manufactures of cotton or of which cotton is the component material of chief value, not specially provided for in this section, 30 per centum ad valorem.

Notes of Decisions

1. In general.
2. Artificial leaves.
3. Bandages.
4. Button forms.

5. Calf-hair goods.
6. Canvas embroidered.
7. Chinese shoes.
8. Cloth with goat hair polka dots.
9. Coat hangers.
10. Coronation cord.
11. Corsets.
12. Cotton ladder tape.
13. Cotton table damask.
14. Curtains, tidies, and shams.
15. Dotted swisses.
16. Drawn work.
17. Fabrics made from cotton hollands.
18. Hat bands.
19. Hemstitched lawns.
20. Labels.
21. Linen lusters.
22. Madras mull.
23. Neck ruffings.
24. Net.
25. Pulp.
26. Quilts of cotton and eiderdown.
27. Rovings.
28. Screens.
29. Shirtings.
30. Slippers.
31. Tamboured sash window curtains.
32. Union crash.
33. Velveteen dress facings.
34. White frilled muslins.

1. In general.—Where cotton, though being a component part, is not the component part of chief value, of an article, it is not dutiable under Act June 6, 1872, § 2 (17 Stat. 231), but under Act June 30, 1864, § 6 (13 Stat. 209), as a manufacture of cotton not otherwise provided for. Arthur v. Herman (1877) 96 U. S. 141, 24 L. Ed. 812.

A fabric containing 37 per cent. of jute held not within the definition of "cotton cloth," in Act 1897, par. 310, as including "all woven fabrics of cotton," but dutiable as manufactures of cotton not specially provided for. Lord & Taylor v. U. S. (1910) 178 Fed. 270, 101 C. C. A. 575, affirming judgment (C. C. 1909) 172 Fed. 282.

Bands of cotton cloth woven in widths from 1 to 2½ inches, and in pieces of various lengths, with perfectly straight or plain selvedged edges or borders, imported in the piece, held not subject to duty as "trimmings," under Act 1894, par. 276, but taxable under paragraph 264, as manufactures of cotton in the piece, not specially provided for. Walter H. Graef & Co. v. U. S. (C. C. 1903) 120 Fed. 1015, judgment reversed U. S. v. Walter H. Graef & Co. (1904) 127 Fed. 688, 62 C. C. A. 414.

Goods composed in part of wool, but in chief value of cotton, held more specifically enumerated in Act 1890, par. 355, as "manufactures of cotton" than in the provision in paragraph 392, for "manufactures of every description * * * in part of wool," and the provision as to higher rate in case of two applicable provisions has no application. Benoit v. U. S. (C. C. 1892) 150 Fed. 687.

2. Artificial leaves.—Artificial leaves, made from cotton cloth, held dutiable under Act 1890, par. 355, as "manufactures of cotton not specially provided for," and not as "artificial flowers or parts thereof," under paragraph 443. U. S. v. Zeimer (1901) 107 Fed. 912, 47 C. C. A. 60.

3. Bandages.—Narrow individual strips of cotton cloth about 5 yards in length, wrapped, labeled, and ready for use as bandages held not to be deemed woven fabrics of cotton in the piece or cut in lengths. They were manufactures of cotton not specially provided for, dutiable under paragraph 332, Act 1909. Surgical Supply Importing Co. v. U. S. (1912) 3 Ct. Cust. App. 112.

4. Button forms.—Strips of cotton not fit for buttons exclusively held dutiable as a manufacture of cotton under paragraph 332, Act 1909, and not as button forms under paragraph 426. Rothschild Bros. & Co. v. U. S. (1912) 3 Ct. Cust. App. 430.

5. Calf-hair goods.—"Calf-hair goods," manufactured of cotton and hair, the warp being cotton, and the woof being cattle hair, held not dutiable as a manufacture of hair, but as a manufacture of cotton. R. S. §§ 2499, 2504. Butterfield v. Arthur (C. C. 1879) Fed. Cas. No. 2,249.

6. Canvas embroidered.—Cotton canvas embroidered held not dutiable as manufacture of cotton. See paragraph 358.

Embroidery canvas held not dutiable as a manufacture of cotton not specially provided for. See paragraph 252.

7. Chinese shoes.—Chinese shoes, consisting of an upper part of cotton and a sole of felt and leather, held not taxable under Act 1883 as wearing apparel in part of wool, but dutiable as a manufacture of cotton. Swayne v. Hager (C. C. 1889) 37 Fed. 780, judgment reversed Hager v. Swayne (1893) 13 Sup. Ct. 841, 149 U. S. 242, 37 L. Ed. 719.

8. Cloth with goat hair polka dots.—Colored cotton cloth, with polka dots, composed of goat hair, held not dutiable as a manufacture of cotton. See paragraph 288.

9. Coat hangers.—The merchandise consists of running lengths of woven cotton strips with cross marks appearing at short intervals to indicate the points for cutting the strips into small pieces suitable for use as coat hangers. The uncontradicted testimony is to the effect that the merchandise has been for a number of years used exclusively for coat hangers and that there is no other use to which they are commercially applied. They were not dutiable as tapes but as manufactures of cotton not specially provided for under paragraph 332, Tariff Act 1909. U. S. v. Buss & Co. (1914) 5 Ct. Cust. App. 110.

10. Coronation cord.—Coronation cord, which has not been twisted in any way, does not come within the meaning of "cords," as that term is used in paragraph 349, Act 1909; but the goods were dutiable under paragraph

332 of that act, as a manufacture of cotton. Ulmann & Co. v. U. S. (1913) 4 Ct. Cust. App. 77.

11. Corsets.—Corsets held not dutiable as manufactures of cotton not specially provided for. See paragraph 256.

12. Cotton ladder tape.—Cotton ladder tape, an article produced by a loom, designed to hold slats and used in the manufacture and repair of Venetian blinds, held dutiable as a manufacture of cotton not specially provided for, under paragraph 332, Act 1909, and not as tape or webbing. U. S. v. Walter (1913) 4 Ct. Cust. App. 95; U. S. v. Burlington Venetian Blind Co. (1912) 3 Ct. Cust. App. 378.

13. Cotton table damask.—Cotton damask doilies, napkins, and table covers or cloths, in a completed condition, ready for use, held dutiable under Act 1897, par. 322, as "manufactures of cotton not specially provided for," and not under paragraph 321 of said act, as "cotton table damask." Douglass & Berry v. U. S. (C. C. 1901) 123 Fed. 993.

Cotton table damask is substantially wholly made of cotton. A substantial portion of the merchandise here is of flax, though of chief value of cotton. It was properly held dutiable as manufactures of which the component material of chief value is cotton under paragraph 332, Act 1909. Glass & Co. v. U. S. (1913) 4 Ct. Cust. App. 430.

14. Curtains, tidies, and shams.—Curtains, tidies, and shams made up from cotton laces, and known commercially by their respective names, held dutiable under paragraph 324, Act 1883, as manufactures of cotton not otherwise provided for, and not under paragraph 325, as cotton laces. Lesser v. U. S. (C. C. 1897) 89 Fed. 197.

15. Dotted swisses.—Swiss muslins or dotted swisses held not dutiable as manufactures of cotton not specially provided for. See paragraph 252.

16. Drawn work.—Drawn work held dutiable as manufacture of cotton not enumerated. See paragraph 358.

17. Fabrics made from cotton hollands.—An "article" made from the "fabric known as cotton hollands" held dutiable under paragraph 332, Act 1909. U. S. v. Anderson & Co. (1912) 3 Ct. Cust. App. 191.

18. Hat bands.—Cotton hat bands held not dutiable as manufacture of cotton. See paragraph 358.

19. Hemstitched lawns.—Hemstitched cotton lawns, made by subjecting cotton cloth to the processes of turning over the edges, drawing certain threads, and other manipulation, but not appropriated by these processes to any particular ultimate use, are held to have been advanced beyond the condition of "cotton cloth," and not to be dutiable as such under the "countable clauses" of Act 1894, but to be dutiable as "manufactures of cotton," under paragraph 264. Meyer v. U. S. (C. C. 1901) 124 Fed. 296.

Certain hemstitched lawns held to be dutiable as manufactures of cotton not otherwise provided for, under paragraph 355 of Act 1890, and not as "partly made cotton wearing apparel," under paragraph 349. U. S. v. Loeb (C. C. 1899) 91 Fed. 636.

Cotton hemstitched lawns, having a broad hem turned over and sewed down on one side of the fabric, the body of the goods being a homogeneous cotton cloth, but open-work patterns or figures made by drawing out threads appearing continuously upon certain parts of the goods, the merchandise being chiefly used for women's and girl's dresses, skirts, and aprons, the broad hem constituting a part of such garments when made up, but the material being also sold for sash curtains, held dutiable as manufactures of cotton under paragraph 355, of Act 1890, and not as "partly-made cotton wearing apparel," under paragraph 349. In re Mills (C. C. 1893) 56 Fed. 820.

20. Labels.—The provision in paragraph 320, Act 1897, for "labels for garments or other articles, composed of cotton," held not to include strips of cotton containing certain words woven therein in silk, which were intended, when properly cut, to be attached to the top of shoes, but such articles were dutiable as manufactures of cotton, under paragraph 322 of said act. Herzog v. U. S. (C. C. 1904) 135 Fed. 919, decree reversed U. S. v. Herzog (1905) 145 Fed. 622, 76 C. C. A. 373.

21. Linen lusters.—Linen lusters, camlet lusters, toile du nord and lusters composed of linen and cotton, held dutiable as manufactures of cotton not otherwise provided for (Act July 30, 1846), under the rule of construction provided by Act Aug. 30, 1842, § 20. Morlot v. Lawrence (C. C. 1850) Fed. Cas. No. 9,815.

22. Madras mull.—Madras mull held not dutiable as a manufacture of cotton not otherwise provided for. See paragraph 252.

23. Neck rufflings.—Neck rufflings held not dutiable as manufacture of cotton. See paragraph 358.

24. Net.—Cotton net held not dutiable as manufacture of cotton. See paragraph 358.

25. Pulp.—Previous to the present enactment the board had in several opinions construed "manufactures of cotton," and there is a strong presumption that that construction was adopted in the law as it is. Pulp made of cotton rags or linen rags by processes that do not destroy the integrity or strength of the fibers has undergone no such chemical change as would

make these goods dutiable by similitude; the pulp was rightly held dutiable, according to the material, as a manufacture of cotton under paragraph 332, or as a manufacture of flax under paragraph 358, Tariff Act 1909. Downing & Co. v. U. S. (1911) 2 Ct. Cust. App. 364.

26. **Quilts of cotton and eiderdown.**—Quilts composed of cotton and eiderdown, or silk and eiderdown, and the eiderdown in each case being the component material of chief value, are dutiable at 20 per cent. ad valorem, as manufactured articles not enumerated under Schedule I. Hartranft v. Sheppard (1888) 8 Sup. Ct. 920, 921, 125 U. S. 337, 31 L. Ed. 763.

27. **Rovings.**—Rovings held not dutiable as manufactures of cotton. See paragraph 250.

28. **Screens.**—Screens with panels of cotton held not dutiable as manufacture of cotton. See paragraph 358.

29. **Shirtings.**—Manufactured shirtings, not made up, composed of linen and cotton, the latter the material of chief value and largely predominating, held dutiable as manufactures of cotton under Act 1865. Fisk v. Arthur (1880) 103 U. S. 431, 432, 26 L. Ed. 520.

30. **Slippers.**—Ordinary slipper patterns, made of cotton canvas cut into strips of the size and shape for slippers, more or less embroidered with worsted and silk, held dutiable under Act 1864 as "manufactures of cotton not otherwise provided for." Kohlsaat v. Murphy (1877) 96 U. S. 153, 154, 24 L. Ed. 844.

31. **Tamboured sash window curtains.**—Tamboured sash window curtains held not dutiable as manufactures of cotton not specially provided for. See paragraph 265.

32. **Union crash.**—Merchandise known as "union crash," composed of flax, jute and cotton, of which the component material of chief value is cotton, held properly assessed for duty under Act 1897, par. 322. U. S. v. Churchill (C. C. 1900) 106 Fed. 672.

33. **Velveteen dress facings.**—Velveteen dress facings held dutiable as manufactures of cotton. See paragraph 257.

34. **White frilled muslins.**—White frilled muslins held not dutiable as manufactures of cotton. See paragraph 358.

SCHEDULE J.—FLAX, HEMP, AND JUTE, AND MANUFACTURES OF

267. Single yarns made of jute, not finer than five lea or number, 15 per centum ad valorem; if finer than five lea or number and yarns made of jute not otherwise specially provided for in this section, 20 per centum ad valorem.

268. Cables and cordage, composed of istle, Tampico fiber, manila, sisal grass or sunn, or a mixture of these or any of them, ½ cent per pound; cables and cordage made of hemp, tarred or untarred, 1 cent per pound.

269. Threads, twines, or cords, made from yarn not finer than five lea or number, composed of flax, hemp, or ramie, or of which these substances or any of them is the component material of chief value, 20 per centum ad valorem; if made from yarn finer than five lea or number, 25 per centum ad valorem.

Notes of Decisions

Thread.—A manufacture of flax, consisting of hanks of two strands of flax twisted together, held not dutiable under paragraph 347, Act 1897, covering manufactures of flax not specially provided for, but is "thread * * * made from yarn * * * composed of flax," and as such specifically provided for in paragraph 330. Klump v. Thomas (C. C. 1901) 108 Fed. 799.

Twine.—The fact that most of the importation of "gilling twine" is used for other purposes than the making of nets is not sufficient to warrant its being charged with duty as linen thread, instead of the specified duty levied on it under the name of gilling twine. American Net & Twine Co. v. Worthington (1891) 12 Sup. Ct. 55, 56, 141 U. S. 468, 35 L. Ed. 821, reversing (C. C. 1888) 33 Fed. 826.

An article manufactured, imported, and sold under the name "salmon net twine, 14 ply," mainly used for making seines and gilling nets, though it can be used for sewing sacks, shoes, etc., held taxable as "seines" and "seine or gilling twine," under Act 1883, rather than "flax or linen thread." Leeson v. Young (C. C. 1891) 45 Fed. 627.

Linen twine, which was composed of several yarns, loosely twisted together, and known to the trade as "gill twine," held dutiable under Act 1883, par. 347, as seine or gilling twine, and not as linen thread. McNab v. Seeberger (C. C. 1889) 39 Fed. 759.

270. Single yarns, made of flax, hemp, or ramie, or a mixture of any of them, not finer than eight lea or number, 12 per centum ad valorem; finer than eight lea or number and not finer than eighty lea or number, 20 per centum ad valorem; finer than eighty lea or number, 10 per centum ad valorem; ramie sliver or roving, 15 per centum ad valorem.

271. Gill nettings, nets, webs, and seines made of flax, hemp, or ramie, or a mixture of any of them, or of which any of them is the component material of chief value, 25 per centum ad valorem.

272. Floor mattings, plain, fancy, or figured, including mats and rugs, manufactured from straw, round or split, or other vegetable substances, not otherwise provided for in this section, and having a warp of cotton, hemp, or other vegetable substances, including what are commonly known as China, Japan, and India straw matting, 2½ cents per square yard.

Notes of Decisions

Straw mats.—Mats of straw having no warp of cotton held not dutiable under this paragraph. See paragraph 368.

273. Carpets, carpeting, mats and rugs made of flax, hemp, jute, or other vegetable fiber (except cotton), 30 per centum ad valorem.

Notes of Decisions

Hemp carpets.—If merchandise, such as "hemp carpet," is shown to be a manufacture of a material bearing another name than hemp, such as "jute," and the tariff act makes a clear and positive distinction between these materials by imposing thereon, eo nomine, different rates of duty, the court, in considering the tariff act, will make the same distinction, although the name of the second material is the name of the genus, and the name of the first is the name of a species thereof. Smith v. Schell (C. C. 1886) 27 Fed. 648.

"A manufacture of hemp" does not include "hemp carpeting" so called in the trade, which, in fact, contains no hemp. Baxter v. Maxwell (C. C. 1857) Fed. Cas. No. 1,126.

274. Hydraulic or flume hose, made in whole or in part of cotton, flax, hemp, ramie, or jute, 7 cents per pound.

275. Tapes composed wholly or in part of flax, woven with or without metal threads, on reels, spools, or otherwise, and designed expressly for use in the manufacture of measuring tapes, 20 per centum ad valorem.

Notes of Decisions

Tapes.—Measuring tapes of flax, in cases of leather and metal, flax being the component material of chief value, held dutiable under Act 1883 as manufactures of flax or of which flax is the component material of chief value, and are subject to the duty of 40 per cent. ad valorem imposed by paragraph 336 of the act, and not to the duty of 35 per cent. imposed by paragraph 334. Wiebusch v. U. S. (C. C. 1897) 78 Fed. 807, judgment reversed Wiebusch & Hilger v. U. S. (1898) 84 Fed. 451, 28 C. C. A. 154.

Act 1883 provides, in paragraph 334, for "brown and bleached linens, ducks, canvas, * * * handkerchiefs, lawns, or other manufactures of flax, jute, or hemp, * * * not specially enumerated or provided for." Paragraph 336 provides for "flax or linen thread, twine, and pack thread, and all manufactures of flax * * * not specially enumerated or provided for." Held, that these paragraphs were to be construed by the rule of "noscitur a sociis," so as to confine the concluding general descriptive terms to articles of like kind with those enumerated; that the former paragraph was therefore confined to woven fabrics capable of being measured by the square yard, and the latter to spun and twisted goods; and, hence, that the former covered measuring tapes mounted for use, which were woven with a warp and filling in complete widths, with selvages. Id.

276. Linoleum, plain, stamped, painted, or printed, including corticine and cork carpet, figured or plain, also linoleum known as granite and oak plank, 30 per centum ad valorem; inlaid linoleum, 35 per centum ad valorem; oilcloth for floors, plain, stamped, painted, or

printed, 20 per centum ad valorem; mats or rugs made of oilcloth, linoleum, corticine, or cork carpet shall be subject to the same rate of duty as herein provided for oilcloth, linoleum, corticine, or cork carpet.

Notes of Decisions

Cork carpeting.—Cork carpet or carpeting, used to cover floors, and composed of ground waste cork bark, linseed oil, gum, and a loosely woven jute fabric as a back, such cork bark, though greater in bulk than the bulk of its other component materials combined, being one-eleventh only of its entire value, held not dutiable as "cork bark, manufactured," under Act 1883, par. 422, but as assimilating to "oil cloth," under Schedule J, par. 507. Keveney v. Magone (C. C. 1890) 42 Fed. 491.

Linoleum.—Linoleum of colored material, mixed in making, and taking such form as the pressure of the rollers and resistance of the materials give them, held not dutiable as "inlaid linoleum," but as linoleum "figured or plain," under Act 1897, par. 337. U. S. v. Hunter & Whitcomb (1904) 127 Fed. 1022, 61 C. C. A. 270, affirming judgment Hunter & Whitcombe v. U. S. (C. C. 1903) 121 Fed. 207.

Plank linoleum, made by running upon the burlap foundation paste of two colors in stripes of equal width, a process differing from that employed in making inlaid linoleum, held under Act 1897, par. 337, dutiable as "linoleum * * * figured or plain," rather than as "inlaid linoleum." U. S. v. Scott & West (C. C. 1908) 164 Fed. 285.

A plastic material, composed of cork and linseed oil, when placed on a stencil over a burlap foundation and forced by pressure into separate and distinct bodies, in separate and distinct colors, in separate and distinct positions, and through to the base, constitutes inlaid linoleum and was dutiable as such under paragraph 337, Act 1897. Keveney v. U. S. (1910) 1 Ct. Cust. App. 101.

277. Shirt collars and cuffs, composed in whole or in part of linen, 30 per centum ad valorem.

278. Bands, bandings, belts, beltings, bindings, cords, ribbons, tapes, webs and webbings, all the foregoing composed wholly of flax, hemp, or ramie, or of flax, hemp, or ramie and india rubber, and not otherwise specially provided for in this section, 30 per centum ad valorem; wearing apparel composed wholly of flax, hemp, or ramie, or of flax, hemp, or ramie and india rubber, 40 per centum ad valorem.

Notes of Decisions

Cords.—A cord is a string or small rope composed of several strands twisted together. Ulmann & Co. v. U. S. (1913) 4 Ct. Cust. App. 77.

Tapes.—Woven cotton strips used for coat hangers held not dutiable as tapes. See paragraph 266.

279. Plain woven fabrics of single jute yarns, by whatever name known, bleached, dyed, colored, stained, painted, printed, or rendered noninflammable by any process, 10 per centum ad valorem.

Notes of Decisions

Canvas, burlap, etc.—Paddings, canvas, or burlaps, see paragraph 408.

280. All pile fabrics, whether or not the pile covers the entire surface, composed of flax, hemp, or ramie, or of which flax, hemp, or ramie is the component material of chief value and all articles and manufactures made from such fabrics, not specially provided for in this section, 40 per centum ad valorem.

Notes of Decisions

Pile fabrics.—No rule exists in trade or commercial usage declaring that fabrics having a pile of 3.5 millimeters or less in length should be regarded as velvets, and of over 3.5 millimeters as plush. U. S. v. Silberstein, Castell & Co. (C. C. 1907) 153 Fed. 965.

Flax plush held dutiable as a "pile fabric of which flax is the component material of chief value," under paragraph 342, Act 1897, and not as plush or pile fabric "of cotton or other vegetable fiber," under paragraph 315; the former paragraph being more specific than the latter. U. S. v. Stern (C. C. 1899) 91 Fed. 521.

281. Bags or sacks made from plain woven fabrics, of single jute yarns, not dyed, colored, stained, painted, printed, or bleached, 10 per centum ad valorem.

Notes of Decisions

Grain bags.—Empty grain bags, made of burlap, of foreign manufacture, were properly assessed at 2 cents per pound, under Act 1890, par. 365, since Act Feb. 8, 1875, § 7, under which such bags would have been admitted free of duty, was repealed by acts of 1883 and 1890. Kent. v. U. S. (C. C. 1895) 68 Fed. 536, judgment affirmed (1896) 73 Fed. 680, 19 C. C. A. 642.

282. Handkerchiefs composed of flax, hemp, or ramie, or of which these substances, or any of them, is the component material of chief value, whether in the piece or otherwise, and whether finished or unfinished, not hemmed or hemmed only, 35 per centum ad valorem; if hemstitched, or imitation hemstitched, or revered, or with drawn threads, but not embroidered, initialed, or in part of lace, 40 per centum ad valorem.

Notes of Decisions

Handkerchiefs.—The provision in paragraph 345, Act 1897, for "handkerchiefs * * * unfinished," held to include cloth cut into pieces which are in the shape of squares and other geometrical figures, and which in that shape are principally used in the manufacture of handkerchiefs. Meyer v. U. S. (C. C. 1905) 138 Fed. 974.

Handkerchiefs on which an initial is embroidered held dutiable, under paragraph 258, Act 1894, as "handkerchiefs," and not under paragraph 276, as "embroidered handkerchiefs." Robbins v. U. S. (C. C. 1898) 90 Fed. 805.

Linen pocket handkerchiefs, hemstitched or hemmed, held dutiable as "linens or a manufacture of flax," and not as "articles worn by men, women or children, made up wholly or in part by hand." Act Aug. 30, 1842. Richardson v. Lawrence (C. C. 1849) Fed. Cas. No. 11,785.

Cambric linen hankerchiefs, cut from the piece, and made abroad, held free of duty, under Act 1832, as linen cambric. Sheldon v. Swartwout (D. C. 1834) Fed. Cas. No. 12,749.

283. Plain woven fabrics, not including articles, finished or unfinished, of flax, hemp, or ramie, or of which these substances or any of them is the component material of chief value, including such as is known as shirting cloth, 30 per centum ad valorem.

Notes of Decisions

Woven fabrics.—Fabrics in chief value of flax, but in part of wool, held dutiable under Act 1897, par. 346, relating to goods "the component material of chief value" in which is flax, and not under Schedule K, par. 366, relating to cloths "in part of wool." U. S. v. Charles A. Johnson & Co. (C. C. 1907) 154 Fed. 752, judgment affirmed (1907) 157 Fed. 754, 85 C. C. A. 147; U. S. v. Walsh (C. C. 1907) 154 Fed. 749, judgment affirmed (1907) 154 Fed. 770, 83 C. C. A. 472.

In construing paragraph 346, Act 1897, providing for flax fabrics and articles at rates varying according to the count of threads per square inch, held, that it is not necessary, in order to be brought within this provision, that goods should be homogeneous, and that certain fabrics in which various ornamental effects have been produced by withdrawing a portion of the threads and adding others are not excluded from that paragraph by reason of such treatment. U. S. v. B. Ulmann & Co. (1905) 139 Fed. 3, 71 C. C. A. 415, affirming judgments J. R. Simon & Co. v. U. S. (C. C. 1904) 131 Fed. 649.

Act 1897, par. 346, imposing on "woven fabrics or articles of flax," weighing 4½ ounces or more per square yard, specified rates of duty, varying with the number of threads to the square inch, "provided that none of the foregoing articles * * * shall pay a less rate of duty than 50 per cent. ad valorem," and then imposing a duty on "woven fabrics of flax" weighing less than 4½ ounces per square yard, uses the words "fabrics" and "articles" interchangeably, so that the latter provision applies not only to piece goods, but to articles, like "doilies" and "tray cloths," weighing less than 4½ ounces per square yard. U. S. v. McBratney (1901) 105 Fed. 767, 45 C. C. A. 37, writ of certiorari denied (1901) 21 S. Ct. 924, 181 U. S. 621, 45 L. Ed. 1032.

In construing Act 1897, par. 346, which relates to "woven fabrics or articles" of flax, etc., with a proviso "that none of the foregoing articles in this paragraph shall pay a less rate of duty than fifty per centum ad valorem," held, that this proviso includes the foregoing "woven fabrics" as well as "articles." Schulemann v. U. S. (C. C. 1901) 123 Fed. 1002.

Linen doilies and tray cloths, under 4½ ounces to the square yard, and containing more than 100 threads to

the square inch, are woven fabrics of flax, dutiable under Act 1897, par. 346, last clause. McBratney v. U. S. (C. C. 1900) 99 Fed. 424.

The testimony fails to show that there was, prior to the enactment of the tariff law of 1913, any recognized class of goods in the trade known as "plain woven fabrics." U. S. v. Douglas & Berry (1915) 6 Ct. Cust. App. 100.

Where two weaves, each of which if alone employed would result in a plain woven fabric as an entirety, are in fact combined and contrasted in the same fabric, as here, the result must be a figured fabric and it is aptly designated "chain-bordered" crash to distinguish it from goods without such figure or design. U. S. v. White & Co. (1912) 3 Ct. Cust. App. 382.

Plain woven fabrics are to be distinguished by their not having twilled or figured effects produced in the process of weaving. White & Co. v. U. S. (1911) 2 Ct. Cust. App. 327.

284. All woven articles, finished or unfinished, and all manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances, or any of them, is the component material of chief value, not specially provided for in this section, 35 per centum ad valorem.

Notes of Decisions

1. Canvas, burlaps, or padding.
2. Flax in general.
3. Flax scarfing.
4. Linen damask.
5. Linen tapes.
6. Pulp.
7. Scalloped articles.
8. Tidies.
9. Torchons.
10. Woven articles in general.

1. Canvas, burlaps, or padding.—See notes under paragraph 408.

Canvas woven with double warp and single filling, each of single jute yarn, held not dutiable as a manufacture of vegetable fiber. See paragraph 279.

2. Flax in general.—A manufacture of flax, consisting of hanks of two strands of flax twisted together, held not dutiable as manufacture of flax. See paragraph 269.

3. Flax scarfing.—Flax scarfing, with a hem and hemstitching, is not an article finished or unfinished, but it has been advanced beyond condition as a plain woven fabric. By its weight it is excluded from the first part of paragraph 357, Act 1909, and by its condition it is excluded from the last part of that paragraph. It falls within paragraph 358 of that act. Lamb, Finlay & Co. v. U. S. (1915) 6 Ct. Cust. App. 115.

4. Linen damask.—Linen damask, not being a plain woven fabric, held to be dutiable under paragraph 358, Act 1909, as "all woven articles * * * and all manufactures of flax * * * not specially provided for." White & Co. v. U. S. (1911) 2 Ct. Cust. App. 327.

5. Linen tapes.—As linen tapes, composed wholly of flax, or of which flax is the component material of chief value, woven in a loom, and having a warp and weft; linen corset laces, a braided fabric; and linen "braids" or "bobbins,"—come within the description in both paragraphs 334 and 336, of Act 1883, viz., "manufactures of flax, or of which flax shall be the component material of chief value," they are dutiable under the highest rate provided in the two paragraphs mentioned, viz., 40 per cent. ad valorem under 336, according to R. S. § 2499, as amended by Act 1883, which provides that, when two or more rates are applicable, the articles shall be classified under the highest. Dieckerhoff v. Robertson (C. C. 1889) 40 Fed. 568.

6. Pulp.—Previous to the present enactment the board had in several opinions construed "manufactures of cotton," and there is a strong presumption that that construction was adopted in the law as it is. Pulp made of cotton rags or linen rags by processes that do not destroy the integrity or strength of the fibers has undergone no such chemical change as would make these goods dutiable by similitude; the pulp was rightly held dutiable, according to the material, as a manufacture of cotton under paragraph 332, or as a manufacture of flax under paragraph 358, Tariff Act 1909. Downing & Co. v. U. S. (1911) 2 Ct. Cust. App. 364.

7. Scalloped articles.—Something more than stitches, utilitarian in character, are needed to bring the scalloped articles of the importation within the term "embroidered articles." There should be stitches superimposed with the purpose of producing an ornamental effect. The articles themselves and the testimony here go to show they were dutiable under paragraph 346, Tariff Act 1897. Simpson v. U. S. (1912) 3 Ct. Cust. App. 263.

8. Tidies.—Renaissance lace tidies held not dutiable as manufactures of tidies. See paragraph 358.

9. Torchons.—Under Rev. St. § 2504, p. 462, laces made by machinery out of linen thread, and known as "torchons," were dutiable as "manufactures of flax," and could not be classed under Schedule C, p. 463, as "thread lace," which is always hand-made. Meyerheim v. Robertson (1892) 12 Sup. Ct. 754, 755, 144 U. S. 601, 36 L. Ed. 559.

10. Woven articles in general.—Certain goods were so woven as to produce a distinctly discernible border the whole length of the piece, and this border, whether in color or plain white, constitutes a figure. Irrespective of the particular machinery employed in producing this effect, the goods were figured and not plain woven. U. S. v. Douglas & Berry (1915) 6 Ct. Cust. App. 100.

285. Istle or tampico, when dressed, dyed, or combed, 20 per centum ad valorem.

Notes of Decisions

Bassine or palmyra fiber.—Bassine or palmyra fiber held not dutiable by similitude as istle or tampico dressed. See paragraph 385.

SCHEDULE K.—WOOL, AND MANUFACTURES OF

286. Combed wool or tops and roving or roping made wholly or in part of wool or camel's hair, and on other wool and hair which have been advanced in any manner or by any process of manufacture beyond the washed or scoured condition, not specially provided for in this section, 8 per centum ad valorem.

Notes of Decisions

In general.—See notes under paragraphs 650 and 651.

287. Yarns made wholly or in chief value of wool, 18 per centum ad valorem.

288. Cloths, knit fabrics, felts not woven, and all manufactures of every description made, by any process, wholly or in chief value of wool, not specially provided for in this section, 35 per centum ad valorem; cloths if made in chief value of cattle hair or horse hair, not specially provided for in this section, 25 per centum ad valorem; plushes, velvets, and all other pile fabrics, cut or uncut, woven or knit, whether or not the pile covers the entire surface, made wholly or in chief value of wool, and articles made wholly or in chief value of such plushes, velvets, or pile fabrics, 40 per centum ad valorem; stockings, hose and half hose, made on knitting machines or frames, composed wholly or in chief value of wool, not specially provided for in this section, 20 per centum ad valorem; stockings, hose and half hose, selvedged, fashioned, narrowed, or shaped wholly or in part by knitting machines or frames, or knit by hand, including such as are commercially known as seamless stockings, hose and half hose, and clocked stockings, hose and half hose, gloves and mittens, all of the above, composed wholly or in chief value of wool, if valued at not more than $1.20 per dozen pairs, 30 per centum ad valorem; if valued at more than $1.20 per dozen pairs, 40 per centum ad valorem; press cloth composed of camel's hair, not specially provided for in this section, 10 per centum ad valorem.

Notes of Decisions

1. Blankets for printing press.
2. Bombazine.
3. Camel's hair press cloth.
4. Cattle hair goods.
5. Cotton cloth with goat's hair superimposed.
6. Cotton quilts with fringe of wool.
7. Delaines.
8. Felt.
9. Gloves.
10. Knit goods.
11. Manufacturers of wool in general.
12. Rugs.
13. Slipper patterns.
14. Waterproof cloth.
15. Worsted coatings.
16. Worsted cravats.

1. Blankets for printing press.—Thick-woven, endless woolen belts or blankets, for paper or printing machines, held dutiable under Act 1890, par. 392, as a manufacture wholly or in part of wool, not specially provided for, and not under paragraph 393, as "blankets." Bredt v. U. S. (C. C. 1895) 65 Fed. 496.

2. Bombazine.—Bombazines, being goods of which wool is a component

part, held dutiable at 30 per cent. Act 1824, c. 136. U. S. v. Clarke (C. C. 1828) Fed. Cas. No. 14,813.

3. Camel's hair press cloth.—Camel's hair press cloth is dutiable as manufactures of "wool" under Act 1897 pars. 366, 383, rather than as "hair press cloth" under paragraph 431. Oberle & Henry v. U. S. (1908) 165 Fed. 53, 91 C. C. A. 139.

4. Cattle hair goods.—Cattle hair goods held dutiable by similitude as manufactures of "wool," under Act 1897, par. 366, being similar in quality, use, and texture. F. Rosenstern & Co. v. U. S. (1909) 171 Fed. 71, 96 C. C. A. 175.

5. Cotton cloth with goat's hair superimposed.—Colored cotton cloth, having polka dots about one-quarter inch in diameter, composed of goat hair and superimposed upon the fabric with a species of glue, and applied by a process of printing held assessable, under Act 1897, par. 366, as a "fabric made wholly or in part of wool," and not dutiable under paragraph 308, as "cotton cloth," nor under paragraph 322, as a "manufacture of cotton," nor under paragraph 339, as a "fabric appliquéed composed wholly or in chief value of cotton." Converse v. U. S. (C. C. 1902) 113 Fed. 817.

6. Cotton quilts with fringe of wool.—Cotton quilts having a fringe of wool held assessable under Act 1897, par. 366, as "manufactures made wholly or in part of wool," and not under paragraph 322, as "manufactures of cotton not specially provided for." U. S. v. Rouss (C. C. 1902) 113 Fed. 816.

7. Delaines.—In an action against a collector to recover a tax paid under protest on certain imported goods, it appeared that they were bought and sold as poil de chevres, reps, plaids, lustres, Saxony dress goods; that they were always woven in colors, the yarns being dyed before weaving; that they never existed in the uncolored (or gray) condition; that delaines differed from them principally in being printed or dyed in the piece; and that as early as 1857 delaines were known in the trade by names changing from time to time to suit the fancy of importers and purchasers. Held, that the jury were properly instructed that, in addition to the duty of 30 per cent. ad valorem imposed by 12 Stat. 192, 12 Stat. 553, "imposed a specific duty on all delaines, whether colored or uncolored, and all goods of similar description to delaines, whether colored or uncolored, if such delaines or goods of similar description do not exceed in value 40 cents a square yard." Greenleaf v. Goodrich (1879) 101 U. S. 278, 25 L. Ed. 845.

Under Act July 14, 1862, § 9, imposing a duty "on all delaines * * * and on all goods of similar description," goods which are similar to delaines in product, in adaptation to uses, and in uses, are dutiable as delaines, even though in commerce they may be classed as different articles. Schmieder v. Barney (1885) 5 Sup. Ct. 624, 113 U. S. 645, 28 L. Ed. 1130.

In the provision for "all delaines, cashmere delaines, muslin delaines, barege delaines, composed wholly or in part of worsted, wool, mohair, or goat's hair, and on all goods of similar description," contained in section 9 of Act 1862, the phrase "goods of similar description" held to mean completed fabrics, composed wholly or in part of worsted, wool, mohair, or goat's hair, and used for dress goods. White v. Barney (C. C. 1890) 43 Fed. 474, judgment affirmed Barney v. White (1895) 15 Sup. Ct. 1037, 159 U. S. 246, 40 L. Ed. 146.

8. Felt.—Felt carpeting held not dutiable as a manufacture of wool. See paragraph 302.

That the article here contains no wool must be assumed, but it appears certainly to be felt, and since its use is substantially the same with woolen felt, there being shown a similar, though not identical, use, it is dutiable under the similitude clause, Tariff Act 1909. Pittsburgh Plate Glass Co. v. U. S. (1912) 2 Ct. Cust. App. 389. See, also, U. S. v. Roessler & Hasslacher Chemical Co. (1905) 137 Fed. 770, 70 C. C. A. 346.

9. Gloves.—The wool in the lining of gloves, which enhances their value, adds to their comfort and warmth, aids in their sale, making thus of the wool a substantial and necessary part of the gloves, makes them dutiable under paragraph 382, Act 1909, as knitted articles composed in part of wool. U. S. v. Burne (1913) 4 Ct. Cust. App. 298.

10. Knit goods.—Knit woolen undershirts held not dutiable as knit fabrics made on frames. See paragraph 291.

While the expressions "knit goods" and "knit fabrics" are frequently used interchangeably, it would seem that the former more appropriately describes manufactured articles, while the latter refers more especially to manufactured material as piece goods, and this distinction is recognized in the trade. Arnold v. U. S. (1893) 13 Sup. Ct. 406, 408, 147 U. S. 494, 37 L. Ed. 253, affirming judgment In re Arnold (C. C. 1891) 46 Fed. 510.

Knit stockings, composed in part of wool, held dutiable as a manufacture of wool under Act 1867. Miller v. Vietor (1888) 8 Sup. Ct. 1225, 1226, 127 U. S. 572, 32 L. Ed. 201.

Stockings of worsted, or worsted and cotton, made on frames, worn by men, women, and children, imported after the Revised Statutes of 1874 went into effect, held dutiable as knit goods, under R. S. § 2504, and not as stockings, under Schedule M. Vietor v. Arthur (1881) 104 U. S. 498, 26 L. Ed. 633.

Articles made of wool, knit on frames, imported from Scotland, and used for a covering for the head, held dutiable under Act 1883, par. 363, which reads: "Flannels, blankets, hats of wool, knit goods, and all goods made on knitting frames," etc., and not under paragraph 400, which provides for duty on "bonnets, hats, and hoods for men, women, and children composed of chip, grass, palm leaf," etc., as the word "bonnet" in the statute is not so broad, nor coupled with such peculiar technical trade meaning, as to cover these goods. Toplitz v. Hedden (C. C. 1888) 33 Fed. 617, judgment affirmed (1892) 13 Sup. Ct. 70, 146 U. S. 252, 36 L. Ed. 961.

11. Manufactures of wool in general.—Fabrics of silk and wool held dutiable as silk goods. See paragraph 318.

The proviso in Act 1897, par. 391, that manufactures in which wool is a component shall be classified as manufactures of wool, is restricted at least to said schedule, and possibly to the paragraph in which it is found. Therefore the provision for furniture in another schedule is not subject to this proviso, though in part of wool. A. J. Woodruff & Co. v. U. S. (C. C. 1909) 168 Fed. 452, judgment affirmed U. S. v. A. J. Woodruff & Co. (1909) 175 Fed. 776, 99 C. C. A. 348.

In Act 1897, par. 391, the proviso that "all manufactures, of which wool is a component material, shall be classified and assessed for duty as manufactures of wool," is not limited to the goods containing silk which are the subject of said paragraph, but extends to all silk and wool goods; and dress goods in chief value of silk, but in part of wool, become by virtue of this proviso subject to the duty on wool goods, rather than that on silks. U. S. v. Scruggs, Vandervoort & Barney Dry Goods Co. (1907) 156 Fed. 940, 84 C. C. A. 440, reversing decree (C. C. 1906) 147 Fed. 888, and writ of certiorari denied Scruggs, Vandervoort & Barney Dry Goods Co. v. U. S. (1908) 28 Sup. Ct. 757, 209 U. S. 545, 52 L. Ed. 920.

The provision of Act 1883 for "all manufactures of wool of every description made wholly or in part of wool," covers all manufactures of wool whether they were made from wool by one step or by two, and covers all articles manufactured of wool which are not elsewhere provided for in the schedule. Bernheimer v. Robertson (C. C. 1889) 39 Fed. 190, judgment reversed (1891) 11 Sup. Ct. 1017, 140 U. S. 672, 35 L. Ed. 603.

Schedule K, § 2502, Act 1883, imposes a duty of 35 per centum ad valorem upon "all manufactures of wool of every description, made wholly or in part of wool, not specially enumerated or provided for" in the act. Schedule S. imposes a duty of 50 per centum ad valorem upon "all goods, wares, and merchandise made of silk, or of which silk is the component material of chief value." Held, that the two phrases must be construed together, and are to be read thus: All manufactures of wool of every description, not especially enumerated or provided for in this act, shall be subject to a duty of 35 per cent. ad valorem; but if silk is the component material of chief value, they shall be subject to a duty of 50 per cent. ad valorem. Myer v. Hartranft (C. C. 1886) 28 Fed. 358.

The phrase "manufactures of wool" in paragraph 297, Act 1894, held not to include articles of which wool is a component material, but of which it is not the material of chief value. (1894) 21 Op. Atty. Gen. 66.

12. Rugs.—Chinese goatskins used as a lap robe held not dutiable as a rug. See paragraph 300.

Hearth rugs held not dutiable as manufactures of wool. See paragraph 303.

Traveling rug held not dutiable as manufacture of wool not specially provided for. See paragraph 300.

Lap robes made in part of wool, but of which cotton is the component of chief value, held assessable under Act 1897, par. 366, as "manufactures made wholly or in part of wool," and not classifiable, under paragraph 322, as "manufactures of cotton not specially provided for. Vandegrift v. U. S. (C. C. 1902) 113 Fed. 816.

Wool traveling rugs, which are not "portions of carpets or carpeting," held not included in Act 1890, par. 408, as "rugs * * * and other portions of carpets or carpeting, made wholly or in part of wool," but dutiable under paragraph 392 as "all manufactures of every description made wholly or in part of wool." U. S. v. Haynes (C. C. 1901) 124 Fed. 295.

If certain lap robes or carriage robes, sometimes called railway or traveling rugs, were commercially known at the time of the passage of Act 1883 as mats or rugs, they should be classified under a clause of Schedule K of that act, providing for "carpets and carpetings of wool, etc., and mats, rugs," etc.; but if not so known, nor by any other designation provided for, they should be classified according to the component material. (1888) 19 Op. Atty. Gen. 104.

13. Slipper patterns.—Slipper patterns embroidered with worsted held not dutiable as manufacture of worsted. See paragraph 358.

14. Waterproof cloth.—In paragraph 347, Act 1909, the words "waterproof cloth composed of cotton or other vegetable fiber, whether composed in part of india rubber or otherwise," must be taken to mean composed in part of india rubber or not. The goods here, a waterproof cloth composed in chief

value of other material than cotton or vegetable fiber, do not fall within the provisions of that paragraph. Being made wholly or in part of wool, they were dutiable as such, not specially provided for under paragraph 378, Act 1909. U. S. v. Vandegrift & Co. (1913) 4 Ct. Cust. App. 226. See, also, Gartner, Sons & Co. v. U. S. (C. C. 1907) 154 Fed. 957.

Waterproof cloth held dutiable under paragraph 378, Act 1909, wherein provision is made for a duty on "all manufactures of every description made wholly or in part of wool," not as a manufacture with india rubber as the component of chief value. U. S. v. Vandergrift & Co. (1912) 3 Ct. Cust. App. 161. See, also, Hartranft v. Meyer (1890) 10 Sup. Ct. 751, 135 U. S. 237, 34 L. Ed. 110.

15. Worsted coatings.—Worsted cloths or coatings, known in the trade as "diagonals," "corkscrews," "fancy weaves," etc., manufactured entirely of yarn produced from wool of the sheep by carding, combing, and spinning, a process resulting in a product known in 1883 and prior thereto as "worsted yarns," held "manufactures of worsted," under paragraph 363, Act 1883. Ballin v. Magone (C. C. 1890) 41 Fed. 921, judgment reversed (1891) 11 Sup. Ct. 1015, 140 U. S. 670, 35 L. Ed. 602.

"Worsted coatings," or "cotton backed worsteds," being goods of which the face is of worsted and the back of cotton warp and shoddy filling, held dutiable as "manufactures of wool of every description composed wholly or in part of wool," under the provision therefor in Act 1883, par. 362, and not as manufactures of every description composed wholly or in part of worsted (except such as are composed in part of wool), under the succeeding provision of the same schedule. Bernheimer v. Robertson (C. C. 1889) 39 Fed. 190, judgment reversed (1891) 11 Sup. Ct. 1017, 140 U. S. 672, 35 L. Ed. 603.

16. Worsted cravats.—Worsted cravats woven on stocking frames, and known in commerce under the general class of "hoisery," held dutiable as such. Act 1832. Dorr v. Hoyt (C. C. 1840) Fed. Cas. No. 4,009.

289. Blankets and flannels, composed wholly or in chief value of wool, 25 per centum ad valorem; flannels composed wholly or in chief value of wool, valued at above 50 cents per pound, 30 per centum ad valorem.

Notes of Decisions

Blankets.—Blankets for paper or printing machines held not dutiable as blankets. See paragraph 288.

290. Women's and children's dress goods, coat linings, Italian cloths, bunting, and goods of similar description and character, composed wholly or in chief value of wool, and not specially provided for in this section, 35 per centum ad valorem.

Notes of Decisions

Dress goods.—Haircloth not dutiable as dress goods. See paragraph 353.

Women's dress goods, composed chiefly of wool, with from 1.99 to 4.47 per cent. of cotton introduced in the warp and selvedges thereof, for the purpose of changing the classification, in the form of a fiber, the warp being a compound thread of cotton, held not "goods made with threads of other materials," for the purpose of changing the classification, within the meaning of R. S. § 2502. Magone v. Luckemeyer (1891) 11 Sup. Ct. 651, 139 U. S. 612, 35 L. Ed. 298, affirming Luckemeyer v. Magone (C. C. 1889) 38 Fed. 30.

Women's and children's dress goods which contain no cotton except about 6 per cent., carded into the wool from which the warp is spun, held within the description of goods composed in part of wool, being of less value than 20 cents per square yard, under R. S. § 2502, and not "goods with selvedges, made wholly or in part of other materials, or with threads of other materials introduced for the purpose of changing the classification." Seeberger v. Farwell (1891) 11 Sup. Ct. 650, 139 U. S. 608, 35 L. Ed. 297, affirming Farwell v. Seeberger (C. C. 1889) 40 Fed. 529.

Embroidered woolen dress goods held dutiable as "dress goods * * * of wool, and not specially provided for," under paragraph 369, Act 1897, and not under paragraph 371 of said act, as "articles embroidered, * * * made of wool." Hall v. U. S. (1905) 136 Fed. 774, 69 C. C. A. 494, affirming judgment Hall & Bishop v. U. S. (C. C. 1904) 131 Fed. 648.

Wool "dress robes" or "dress patterns," consisting of women's dress goods of wool, embroidered with silk, imported in single patterns in separate lengths and pieces, each pattern comprising the material for the body and trimming of a dress, held "dress goods," under paragraph 369, Act 1897, for "women's * * * dress goods * * * composed wholly or in part of wool," which is limited by the expression "not specially provided for in this

act," and not under paragraph 371 of said act, as "articles embroidered, * * * made of wool," nor under paragraph 370 of said act, as "articles of wearing apparel of every description, * * * manufactured * * * in part, * * * composed wholly or in part of wool." Thomas v. Wanamaker (1904) 129 Fed. 92, 63 C. C. A. 594, affirming decree U. S. v. Wanamaker (C. C. 1903) 123 Fed. 193.

Gloria cloth, composed of silk and worsted, weighing less than 4 ounces to the square yard, and used for women's and children's dresses, held dutiable at 12 cents per square yard and 50 per cent. ad valorem, as "women's and children's dress goods," or "goods of similar description and character, composed wholly or in part of wool, worsted," etc., under paragraph 395, Act Oct. 1, 1890, and not at 50 per cent. ad valorem, as a "manufacture of silk, or of which silk is the component material of chief value," under paragraph 414. Bister v. U. S. (1894) 59 Fed. 452, 8 C. C. A. 175, distinguishing Hartranft v. Meyer (1890) 10 Sup. Ct. 751, 135 U. S. 237, 34 L. Ed. 110, and affirming judgment In re Bister (C. C. 1893) 54 Fed. 158.

Woolen dress patterns, embroidered with silk, or silk and metal, held not dutiable as woolen "embroideries," under paragraph 398, Act 1890, but at 44 cents per pound and 50 per cent. ad valorem, under paragraph 395, as woolen dress goods. In re Crowley (1893) 55 Fed. 283, 5 C. C. A. 109, following In re Schefer (1893) 53 Fed. 1011, 4 C. C. A. 153, affirming In re Crowley (C. C. 1892) 50 Fed. 465.

Construing Act 1897, par. 356, providing an increased duty on wool "changed in its character or condition for the purpose of evading the duty," held, that it is not necessary that there should be any mechanical or chemical change, disguising the quality or character of the wool; and that, where white and black Iceland wools, which had always been dealt in and imported separately in different bales, were imported mixed together in the same bale for the purpose of securing a lower rate of duty on the white wool, the wool had been changed in condition within the meaning of the law. Stone & Downer Co. v. U. S. (C. C. 1906) 147 Fed. 603.

Under Act 1894, "worsted dress goods" held dutiable at 50 per cent. ad valorem, under paragraph 283, and not at 12 cents per square yard and 50 per cent. Murphy v. U. S. (C. C. 1895) 68 Fed. 908, judgment reversed U. S. v. Klumpp (1898) 18 Sup. Ct. 311, 169 U. S. 209, 42 L. Ed. 720.

The proviso as to goods weighing over four ounces per square yard, at the end of the paragraph relating to women's and children's dress goods composed wholly or in part of wool or worsted, in Schedule K, Act 1883, relates only to such goods as are composed wholly of wool or worsted. Sullivan v. Robertson (C. C. 1889) 37 Fed. 778, following Ellison v. Hartranft (C. C. 1885) 24 Fed. 136.

Articles known as "Thybet" cloths or coatings, made of cotton warp and worsted filling, which are commercially known as "dress goods," or are of like description to dress goods, as known in trade and commerce, held properly dutiable under the provision for women's and children's dress goods in Act 1883, and not at 35 cents per pound and 40 per cent. ad valorem, under the provision in the same schedule for "all manufactures of every description composed wholly or in part of worsted, valued at above 80 cents per pound." Id.

Goods of like description.—The phrase "goods of like description" in the provision of Act 1883, for "women's and children's dress goods, coat linings, Italian cloths, and goods of like description," etc., is not restricted in its application to Italian cloths, but relates also to "women's and children's dress goods." Sullivan v. Robertson (C. C. 1889) 37 Fed. 778.

291. Clothing, ready-made, and articles of wearing apparel of every description, including shawls whether knitted or woven, and knitted articles of every description made up or manufactured wholly or in part, and not specially provided for in this section, composed wholly or in chief value of wool, 35 per centum ad valorem.

Notes of Decisions

Wearing apparel in general.—Fabrics in chief value of flax held not dutiable as cloths in part of wool. See paragraph 283.

Wool dress robes held not dutiable as articles of wearing apparel. See paragraph 290.

As used in tariff legislation, the words "clothing and articles of wearing apparel" are more specific than "cloths and knit fabrics," since out of cloths and knit fabrics clothing and wearing apparel are made; the latter being included in the former, while the former are not included in the latter. Arnold v. U. S. (1893) 13 Sup. Ct. 406, 407, 147 U. S. 494, 37 L. Ed. 253, affirming judgment In re Arnold (C. C. 1891) 46 Fed. 510.

The purpose, adaptation, and use of the article, and not its commercial designation, is the test of its dutiable description by the words "wearing apparel." Act July 30, 1846. Maillard v. Lawrence (C. C. 1849) Fed. Cas. No. 8,971.

This merchandise—boys' suits—consisting of a blouse, flannel neckpiece,

and trousers, were properly assessed under paragraph 382, Act 1909. There was no purpose on the part of the congress to limit that paragraph to woolen wearing apparel not otherwise provided for. Hecht & Co. v. U. S. (1914) 5 Ct. Cust. App. 261.

Cloaks lined with fur.—Cloaks of woolen cloth, lined and trimmed with fur, and not reversible, held dutiable at 4½ times the duty on unwashed wool of the first class, and 60 per cent. ad valorem, under Act 1890, par. 397. In re Certain Merchandise (C. C. 1894) 64 Fed. 577.

Hair rolls or "rats".—"Wearing apparel of every description" includes hair rolls or "rats" composed of cotton, wool, and metal, metal being the component material of chief value, and as such these were dutiable under paragraph 370, Act 1897. Guthman v. U. S. (1911) 1 Ct. Cust. App. 170.

Knit hats.—"Wool knit hats," invoiced as "red fez caps," held dutiable as wearing apparel. Wanamaker v. Cooper (C. C. 1895) 69 Fed. 465.

Shawls.—Under Act 1832, imposing a specific duty on enumerated articles, and providing for a duty of 50 per cent. ad valorem on merino shawls made of wool, all other manufactures of wool, or of which wool is a component part, and on ready made clothing, worsted shawls with cotton borders and worsted suspenders with cotton straps or ends are not subject to the ad valorem duty. Elliott v. Swartwout (1836) 10 Pet. 137, 151, 9 L. Ed. 373.

Worsted shawls embroidered with silk, and worth over 40 cents per pound, held dutiable at 44 cents per pound and 50 per cent. ad valorem, as worsted shawls, under paragraph 392, Act Oct. 1, 1890, and not at 60 cents per pound and 60 per cent. ad valorem, as embroideries made of worsted, under paragraph 398 and the proviso of paragraph 373 of said act. In re Schefer (1893) 53 Fed. 1011, 4 C. C. A. 153; Id. (C. C. 1892) 49 Fed. 826.

Shawls or scarfs manufactured on looms in strips or pieces, but separated before importation, held dutiable as "wearing apparel." Act July 30, 1846. Maillard v. Lawrence (C. C. 1849) Fed. Cas. No. 8,971.

Shawls, in part woolen, held dutiable at 50 per cent., under Act 1832, § 2, art. 2. Hughes v. Hoyt (C. C. 1839) Fed. Cas. No. 6,846. See, also, Albers v. Frick (D. C.) Fed. Cas. No. 136.

Tennis jackets.—Tennis jackets of material composed chiefly of cotton, with a small percentage of wool, cotton being the material of chief value, held dutiable under paragraph 370, Act 1897, as "articles of wearing apparel * * * composed wholly or in part of wool," and not under paragraph 314, which covers wearing apparel of which cotton is the component material of chief value, "not otherwise provided for." Stone v. Heineman (C. C. 1900) 100 Fed. 940.

Underclothing.—Under Act 1890, knit woolen undershirts, drawers, and hosiery held dutiable as "woolen wearing apparel," under section 1, par. 396, and not as "knit fabrics made on frames," under paragraph 392. In re Arnold (C. C. 1891) 46 Fed. 510, judgment affirmed Arnold, Constable & Co. v. U. S. (1893) 13 Sup. Ct. 406, 147 U. S. 494, 37 L. Ed. 253.

Underclothing, composed in part of wool and in part of cotton, and known commercially as merino goods, held dutiable under Act 1882 (22 Stat. 301), in amendment of R. S. § 2504, irrespective of the proportions in which the wool and cotton are combined, or the comparative value of the wool in the fabric. Greenleaf v. Worthington (C. C. 1885) 26 Fed. 303.

292. Webbings, suspenders, braces, bandings, belts, beltings, bindings, cords, cords and tassels, and ribbons; any of the foregoing made of wool or of which wool or wool and india rubber are the component materials of chief value, and not specially provided for in this section, 35 per centum ad valorem.

Notes of Decisions

Bands.—Woolen bands intended for the use of veterinary surgeons, to be applied to lame legs, held properly assessed under Act 1897, par. 366, as manufactures of wool, and not under paragraph 447, which provides for "harness, saddles, and saddlery." Veil v. U. S. (C. C. 1902) 113 Fed. 856.

Bindings.—Under Tariff Act 1832, § 2, subd. 2, worsted carpet bindings are not chargeable with the duty of 25 per cent. Chester v. Curtis (C. C. 1849) Fed. Cas. No. 2,661.

Tariff Act 1832, c. 227, § 2, cl. 25, includes all bindings, whether they are worsted or woolen. Whiting v. Bancroft (C. C. 1841) Fed. Cas. No. 17,575.

Webbing.—Webbing in part of India rubber held not dutiable as wool webbing. See paragraph 368.

Elastic goods used to insert in the upper part of shoes or gaiters could not be classified as "fabrics in part India rubber, not otherwise provided for," dutiable at 30 per cent., under Schedule N, but, when composed of cotton, silk, and India rubber, were dutiable at 35 per cent. as "webbing, composed of cotton, flax, or other material," under Schedule N, and, when composed of worsted and India rubber,

were dutiable either under Schedule N, or under Schedule K (at 30 cents per pound and 50 per cent. ad valorem in addition), as "webbing, gorings," etc., made of wool, worsted, etc.; the classification depending upon whether the goods were known to the trade simply as "webbing," or as both "webbing" and "goring"; and, in an action to recover duties paid, this question was one for the jury, and not for the court. Robertson v. Salomon (1892) 12 Sup. Ct. 752, 754, 144 U. S. 603, 36 L. Ed. 560.

The question whether goods are known to the trade simply as "webbing," or as both "webbing" and "goring," in an action to recover duties paid, is a question for the jury, and not for the court. Id.

Under R. S. § 2504, webbing made of India rubber, wool, and cotton, and known as "wool elastic webbing," to distinguish it from "union elastic webbing," and "cotton elastic webbing," which is used in the manufacture of congress boots, and which would not be adapted to that use without the rubber, is dutiable as "webbing * * * composed wholly or in part of India rubber, not otherwise provided for," at 35 per cent. ad valorem (Schedule M), and not as "webbing * * * made of wool, * * * or of which wool * * * is a component material," at 50 cents per pound and 50 per cent. ad valorem (Schedule L). Beard v. Nichols (1887) 120 U. S. 260, 7 Sup. Ct. 548, 30 L. Ed. 652, affirming (C. C. 1881) 7 Fed. 579.

293. Aubusson, Axminster, moquette, and chenille carpets, figured or plain, and all carpets or carpeting of like character or description, 35 per centum ad valorem.

294. Saxony, Wilton, and Tournay velvet carpets, figured or plain, and all carpets or carpeting of like character or description, 30 per centum ad valorem.

Notes of Decisions

Tournay velvet carpets.—Tournay velvet carpets being specifically made subject, by Act 1894, par. 288, to a certain duty, they cannot be treated as "manufactures of wool," within the meaning of paragraph 297, which provided that the rates of duties fixed by the act for manufactures of wool should take effect January 1, 1895. U. S. v. Field (1896) 71 Fed. 513, 18 C. C. A. 225.

295. Brussels carpets, figured or plain, and all carpets or carpeting of like character or description, 25 per centum ad valorem.

296. Velvet and tapestry velvet carpets, figured or plain, printed on the warp or otherwise, and all carpets or carpeting of like character or description, 30 per centum ad valorem.

297. Tapestry Brussels carpets, figured or plain, and all carpets or carpeting of like character or description, printed on the warp or otherwise, 20 per centum ad valorem.

298. Treble ingrain, three-ply, and all-chain Venetian carpets, 20 per centum ad valorem.

299. Wool Dutch and two-ply ingrain carpets, 20 per centum ad valorem.

300. Carpets of every description, woven whole for rooms, and Oriental, Berlin, Aubusson, Axminster, and similar rugs, 50 per centum ad valorem.

Notes of Decisions

Chinese goatskins.—"Chinese goatskins," tanned with the hair on, and sewed together in pieces 18 inches wide and from 36 to 48 inches long, and used as rugs, sleigh and carriage robes, or cut up for lap-robe and overcoat trimmings, held not dutiable as "rugs," under Act 1883. Seeberger v. Schlesinger (1894) 14 Sup. Ct. 729, 730, 152 U. S. 581, 38 L. Ed. 560, affirming in part Schlesinger v. Seeberger (C. C. 1889) 40 Fed. 872.

Oriental rugs.—In assessing the duty "per square foot" provided for rugs in paragraph 379, Act 1897, held, as to certain oriental rugs having a pile and a selvage, that the entire area of the rug, including the selvage, should be measured, in ascertaining the number of square feet. Fritz & La Rue v. U. S. (C. C. 1904) 135 Fed. 916.

Traveling rugs.—Traveling rugs imported during the year 1888 held dutiable as rugs, under paragraph 378, Act 1883, and not as manufactures of wool not specially enumerated, under paragraph 362. Ingersoll v. Magone (C. C. 1891) 48 Fed. 159, reversed (1893) 53 Fed. 1008, 4 C. C. A. 150.

301. Druggets and bockings, printed, colored, or otherwise, 20 per centum ad valorem.

302. Carpets and carpeting of wool or cotton, or composed in part of either of them, not specially provided for in this section, and on mats, matting, and rugs of cotton, 20 per centum ad valorem.

Notes of Decisions

Felt carpeting.—Felt carpeting though not woven, held a carpeting of wool, dutiable under Act 1897, par. 381, and not under paragraph 370. U. S. v. Bouttell (C. C. 1900) 99 Fed. 260.

303. Mats, rugs for floors, screens, covers, hassocks, bed sides, art squares, and other portions of carpets or carpeting, composed wholly or in part of wool, and not specially provided for in this section, shall be subjected to the rate of duty herein imposed on carpets or carpeting of like character or description.

Notes of Decisions

Brussels and Wilton rugs.—Brussels and Wilton rugs, composed wholly of linen and worsted, held not dutiable as carpets or carpeting, or as manufactures of wool. Act 1832. Hadden v. Hoyt (C. C. 1840) Fed. Cas. No. 5,890.

Daghestan rugs.—Daghestan rugs and Dag. Dag. rugs of like character or description to Tournay velvet carpets, though not, or not made from, portions of such carpets, are, under Act 1883, dutiable at the rate of duty imposed upon Tournay velvet carpets. Beuttell v. Magone (C. C. 1890) 48 Fed. 157.

Hearth rugs.—Hearth rugs, made of worsted, held not dutiable as manufactures of wool. Act July 14, 1832. Riggs v. Frick (C. C. 1840) Fed. Cas. No. 11,825.

Rugs in general.—Traveling rugs held not dutiable as rugs and other portions of carpet. See paragraph 288.

Under Act 1883, rugs, made as rugs, and clearly distinguishable as such by reason of their process of manufacture, size, shape, pattern, etc., held dutiable at 40 per cent. ad valorem; but rugs made from pieces of carpets or carpeting were subject to the same rate imposed upon the kind of carpets or carpeting from which they were made. Beuttell v. Magone (1895) 15 Sup. Ct. 566, 567, 157 U. S. 154, 39 L. Ed. 654, reversing (C. C. 1890) 48 Fed. 157.

"Chinese goatskins," tanned with the hair on, and sewed together in pieces 18 inches wide and from 36 to 48 inches long, and used as rugs, sleigh and carriage robes, or cut up for lap robe and overcoat trimmings, were not dutiable as "rugs," under Schedule K, Act March 3, 1883. Seeberger v. Schlesinger (1894) 152 U. S. 581, 14 Sup. Ct. 729, 38 L. Ed. 560, affirming (C. C. 1889) 40 Fed. 872.

Screens.—Paper screens held not dutiable as screens. See paragraph 332.

304. Whenever in this section the word "wool" is used in connection with a manufactured article of which it is a component material, it shall be held to include wool or hair of the sheep, camel or other like animals, whether manufactured by the woolen, worsted, felt, or any other process.

Notes of Decisions

Wool.—Act May 9, 1890 (26 Stat. 105), declaring that "the secretary of the treasury be, and he hereby is, * * * directed to classify as woolen cloths all imports of worsted cloths," does not require that the secretary in person shall make the classification, but only that it shall be done by the customs department, of which the secretary is the head. U. S. v. Ballin (1892) 12 Sup. Ct. 507, 144 U. S. 1, 36 L. Ed. 321.

Diagonal cloths, used mainly for the manufacture of men's wearing apparel, and known to the trade as "worsteds," being composed mainly of worsted, mixed with about 10 per cent. of shoddy, made from wool and cotton, held subject to duty as "manufactures of worsted," under Act 1883, "Wool and Woolens," par. 363, fixing the rate on all manufactures "composed wholly or in part of worsted," and not subject to duty as "manufactures of wool" under paragraph 362. Seeberger v. Cahn (1890) 11 Sup. Ct. 28, 29, 137 U. S. 95, 34 L. Ed. 599.

Act May 9, 1890, known as the "Dingley Act," which required the secretary of the treasury to classify all worsted cloths as woolens, was not a mere administrative regulation, but an amendment to the existing tariff law (Act 1883), changing the duty on worsteds (United States v. Ballin [1892] 12 Sup. Ct. 507, 144 U. S. 1, 36 L. Ed. 321), and hence was superseded by the McKinley Act Oct. 1, 1890, which covered the entire field of wool and worsted manufactures. U. S. v. Murphy (1896) 72 Fed. 1008, 19 C. C A. 343, affirming judgment Murphy v. U. S. (C. C. 1895) 68 Fed. 908, judgment reversed U. S. v. Klumpp (1898)

18 Sup. Ct. 311, 169 U. S. 209, 42 L. Ed. 720.

Act 1883 itself recognizes a difference between woolen and worsted articles; and the words "woolen cloths," used in paragraph 362, are to be taken as including only those woolen cloths which are not worsted, or composed of worsted, within the meaning of those terms as used in the tariff act. Ballin v. Magone (C. C. 1890) 41 Fed. 921, judgment reversed (1891) 11 Sup. Ct. 1015, 140 U. S. 670, 35 L. Ed. 602.

"Wool," within dictionary definitions, includes the hair of the alpaca and of the angora goat, but never is used to include all goat's hair, nor yet camel's hair, cow hair, or horse hair; but as used in paragraph 297, Act 1894, refers to hair of the sheep only, and the new duties upon articles made of the hair of other animals went immediately into effect upon the passage of the act. (1894) 21 Op. Atty. Gen. 66.

305. Hair of the Angora goat, alpaca, and other like animals, and all hair on the skin of such animals, 15 per centum ad valorem.

Notes of Decisions

Hair of the Angora goat.—Uncleaned and unmanufactured goats' hair held entitled to entry duty free, under Act March 2, 1861, § 23. In re Fifty-One Bales of Goats' Hair (D. C. 1868) Fed. Cas. No. 4,781.

306. Tops made from the hair of the Angora goat, alpaca, and other like animals, 20 per centum ad valorem.

307. Yarns made of the hair of the Angora goat, alpaca, and other like animals, 25 per centum ad valorem.

Notes of Decisions

Mohair yarn.—Goods made of mohair yarn, which is made from the hair of the Angora goat, imported on August 28, 1894, are subject to duty under the Tariff Act Aug. 27, 1894. Such articles cannot be considered as manufactures of wool, on which the reduction of duties made by such act were postponed, though the material is known commercially as "ice wool," in view of the fact that it has been separately provided for in several tariff acts. Oppenheimer v. U. S. (C. C. 1898) 90 Fed. 796.

308. Cloth and all manufactures of every description made by any process, wholly or in chief value of the hair of the Angora goat, alpaca, and other like animals, not specially provided for in this section, 40 per centum ad valorem.

Notes of Decisions

Astrachans. — Astrachan trimmings held not dutiable as manufacture of animal hair. See paragraph 309.

"Astrachans," being a woven material consisting of a cotton foundation or weft, and a rough and more or less curled pile warp composed of goat hair, in which, in some of the samples, the loops of the pile were cut and in others remained uncut, the goat hair being the material of chief value, held dutiable as a manufacture in whole or in part of goat hair, under paragraph 392, Act 1890, and not as "pile fabrics," under paragraph 396. In re Herrman (C. C. 1892) 52 Fed. 941; Id. (1893) 56 Fed. 477, 5 C. C. A. 582.

Chinese shoes.—Chinese shoes, composed of felt, leather, and cotton, should be classified under the twelfth clause of Schedule K, Act 1883 which provides generally for "all goods * * * and manufactures of every description, composed wholly or in part of worsted, the hair of the alpaca, goat or other animals * * * not specially enumerated or provided for." (1889) 19 Op. Atty. Gen. 273.

Goat hair.—In Schedule K, Act March 3, 1883, the words in class 2, "combing wools," apply only to the first part of the clause, which enumerates wools, and not to the latter part, reading, "and also all hair of the alpaca, goat, and other like animals"; and such hairs, whether fit for combing or not, are dutiable at a uniform rate of 10 cents a pound. Common goat hair is therefore included in this specification, and is not comprehended in the clause (paragraph 717) relating to hair "not specially provided for in this act." Cooper v. Dobson (1895) 157 U. S. 148, 15 Sup. Ct. 568, 39 L. Ed. 652, reversing (D. C. 1891) 46 Fed. 184, and approving U. S. v. Hopewell (1892) 51 Fed. 798, 2 C. C. A. 510, 5 U. S. App. 137.

Manufactures of hair.—Goods composed of 80 per cent. goat's hair and 20 per cent. cotton, such as brilliantines, lustrines, alpacas, and mohairs, which prior to 1870 had not come to be specifically known in this country as women's dress goods, are assessable under Act July 14, 1870, § 21, as amended by Act 1871 (16 Stat. 592), providing for duties on hair cloth known as "crinoline cloth," and "on all other manufactures of hair not otherwise

herein provided for," and not under Act March 2, 1867 (14 Stat. 561), relating to women's dress goods composed wholly or in part of wool, worsted, hair of the alpaca, goat, or other like animal. Arthur's Ex'rs v. Butterfield (1888) 8 Sup. Ct. 714, 715, 125 U. S. 70, 31 L. Ed. 643.

Women's and children's dress goods manufactured of hair imported between April 30, 1874, and June 24, 1874, held dutiable under Act 1870, § 21, as amended January 30, 1871, prescribing the duty on "haircloth known as crinoline cloth, and all other manufactures of hair not otherwise herein provided for." Falconer v. Miller (1899) 93 Fed. 655, 35 C. C. A. 528.

Importations of bindings, braids, and buttons made between the 6th day of February and the 15th day of June, 1874, all made of mohair, should have been classified for duty under Act July 14, 1870, § 21, as corrected by joint resolution of January 30, 1871, providing that the duty "on hair-cloth known as crinoline cloth, and on all other manufactures of hair not otherwise herein provided for, 30 per cent. ad valorem," and not under Act March 2, 1867. Dieckerhoff v. Miller (1899) 93 Fed. 651, 35 C. C. A. 525.

Cloakings made of calf hair and cotton, imported in 1881, were dutiable at 30 per cent., under the provisions of Schedule M, § 2504, R. S., for "all other manufactures of hair not otherwise provided for;" and, being thus enumerated, could not be held dutiable under the provision of section 2499, R. S., that "on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which any of its component parts may be chargeable." Herman v. Robertson (C. C. 1889) 41 Fed. 881, writ of error dismissed Robertson v. Herrman (1891) 11 Sup. Ct. 1027, 140 U. S. 695, 35 L. Ed. 603, judgment affirmed Herrman v. Robertson (1894) 14 Sup. Ct. 686, 152 U. S. 521, 38 L. Ed. 538.

Mohair braids.—Mohair braids made of the hair of the Angora goat held not woolen goods, within Act 1894, par. 297, suspending till January 1, 1895, reduction of duties on such goods. Wolff v. U. S. (C. C. 1902) 113 Fed. 1001.

309. Plushes, velvets, and all other pile fabrics, cut or uncut, woven or knit, whether or not the pile covers the entire surface, made wholly or partly of the hair of the Angora goat, alpaca, or other like animals, and articles made wholly or in chief value of such plushes, velvets, or pile fabrics, 45 per centum ad valorem.

Notes of Decisions

Astrachan trimmings. — Astrachans held not dutiable as pile fabrics. See paragraph 308.

"Astrachan trimmings," formed by weaving a fabric with alternate astrachan and plain strips, which is cut into single widths, and the plain portion turned under and stitched, held dutiable under Act 1890, par. 398, and not under paragraph 392, as manufactures of animal hair not specially provided for. Lowenthal v. U. S. (1896) 71 Fed. 692, 18 C. C. A. 299, affirming (C. C. 1895) 65 Fed. 420.

Fabrics, known in trade as "Astrachan trimmings," being a woven material consisting of a cotton foundation and a raised, curled pile, composed of goat's hair,—the latter being the component material of chief value,—cut into narrow strips, and the edges roughly basted down by hand, held dutiable at 49½ cents per pound, and, in addition thereto, 60 per cent. ad valorem, as "pile fabrics," under paragraph 396 of the same schedule and act. In re Downing (C. C. 1893) 56 Fed. 815.

Plushes.—No rule exists in trade or commercial usage declaring that fabrics having a pile of 3.5 millimeters or less in length should be regarded as velvets and of over 3.5 millimeters as plush. U. S. v. Silberstein, Castell & Co. (C. C. 1907) 153 Fed. 965.

Goats' hair plush or mohair plush, composed partly of cotton, held dutiable as a manufacture of "goats' hair or mohair," under Act Aug. 30, 1842. Thorp v. Lawrence (C. C. 1848) Fed. Cas. No. 14,005.

310. The provisions of this schedule (K) shall be effective on and after the first day of January, nineteen hundred and fourteen, until which date the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect.

Notes of Decisions

Construction of former acts.—See U. S. v. Klumpp (1898) 18 Sup. Ct. 311, 312, 169 U. S. 209, 42 L. Ed. 720; Same v. Murphy (1896) 72 Fed. 1008, 19 C. C. A. 343 (affirming Murphy v. U. S. [C. C. 1895] 68 Fed. 908, and judgment reversed Robinson v. U. S. (C. C. 1905) 143 Fed. 919; Lesher, Whitman & Co. v. U. S. (C. C. 1899) 94 Fed. 641.

SCHEDULE L.—SILKS AND SILK GOODS

311. Silk partially manufactured from cocoons or from waste silk and not further advanced or manufactured than carded or combed silk, and silk noils exceeding two inches in length, 20 cents per pound.

Notes of Decisions

Combed silk.—Combed silk that has fallen from or been caught in the machines in which it was undergoing further operations held dutiable under paragraph 384, Act 1897, as silk not further manufactured than combed, and is not subject to the provision for silk waste in paragraph 661, Free List. Fawcett v. U. S. (1907) 154 Fed. 1003, 83 C. C. A. 197, affirming judgment (C. C. 1906) 146 Fed. 83.

Silk on tubes.—In construing the provision in Act 1897, par. 660, for "silk, raw, or as reeled from the cocoon, but not * * * advanced in manufacture in any way," held: (1) That the provision does not cover any form of raw silk advanced beyond the condition of skeins; (2) that silk known as "singles" or "silk on tubes," which has been wound from the skeins onto tubes, the effect of this process being to advance the silk a stage in preparation for its ultimate use, has been "advanced in manufacture"; and (3) that silk in this form is not free of duty under this provision, but dutiable under paragraph 384 as "silk * * * not further advanced or manufactured than carded or combed silk." Klots v. U. S. (1905) 139 Fed. 606, 71 C. C. A. 590, affirming judgment U. S. v. Klotz (C. C. 1904) 133 Fed. 808.

Raw tussah silk.—Raw tussah silk held not dutiable as silk partially manufactured. See paragraph 600.

312. Spun silk or schappe silk yarn, 35 per centum ad valorem.

Notes of Decisions

Artificial silk yarn.—Artificial silk yarn held not dutiable as silk yarn. See paragraph 250.

Schappe silk yarn.—The testimony shows such a general trade adoption of and acquiescence in the conditioning rule for finding the number to be assigned schappe silk yarns according to the metric system, that the reference to this system in paragraph 397, Act 1909, may be fairly held to indicate this conditioning rule as a proper guide. This conditioning rule having been complied with in the case here, there is no error in the appraisement. U. S. v. Bouchsein (1911) 2 Ct. Cust. App. 227.

Spun silk on beams.—The merchandise is spun silk on beams, dutiable under that title at a specific rate (paragraph 397, Act 1909). The beams were separately assessed with duty as manufactures of wood. Held, that the beams should be admitted without separate assessment as parts of the entirety "spun silk on beams." Stirn v. U. S. (1914) 5 Ct. Cust. App. 47.

313. Thrown silk not more advanced than singles, tram, or organzine, sewing silk, twist, floss, and silk threads or yarns of every description made from raw silk, 15 per centum ad valorem.

Notes of Decisions

Chenilles.—Chenilles held not dutiable as thrown silk. See paragraph 318.

Organzine.—Silk organzine, damaged in dyeing, held not by reason of the damage removed from the provision for "organzine," in Act 1897, par. 385, but classifiable as such, rather than as "silk waste," under paragraph 661. Cohen v. U. S. (C. C. 1910) 180 Fed. 634.

Thread.—A manufacture formed of two or more strands or threads of silks, with short cross threads interlaced, so as to make a kind of fringed thread or embroidery yarn known as "silk arrasene," held to be dutiable at 30 per cent. ad valorem, as silk thread, under Schedule L, Act March 3, 1883. Mandel v. Spalding (C. C. 1885) 26 Fed. 609.

Twist.—"Twist," composed of goat or mohair and silk, or entirely of silk, if not known as "sewing silk" in commerce, held not dutiable as such. Act March 2, 1833. Dorr v. Hoyt (C. C.) Fed. Cas. Nos. 4,007, 4,008.

314. Velvets, plushes, chenilles, velvet or plush ribbons, or other pile fabrics, composed of silk or of which silk is the component material of chief value, 50 per centum ad valorem.

Notes of Decisions

Panne velvet.—So-called "panne velvet" held dutiable as "plush," and not as "velvets," under Act 1897, par. 386. U. S. v. Passavant & Co. (C. C. 1908) 164 Fed. 912.

Under Act 1897, par. 386, enumerat-

ing "plush" and "velvets" as subject to different rates of duty, panne velvets are subject to the former classification. U. S. v. Silberstein, Castell & Co. (C. C. 1907) 153 Fed. 965.

Plushes.—Goods imported by a manufacturer of women's hats held dutiable as silk plush and not as plush for making men's hats. Comey & Johnson Co. v. U. S. (1912) 2 Ct. Cust. App. 532.

Velvet ribbons.—Velvet ribbons held dutiable as "manufactures of silk," under paragraph 414, Act 1890, and not as "velvets, plushes," etc., under paragraph 411. U. S. v. Jaffray (1897) 77 Fed. 868, 23 C. C. A. 497; Jaffray v. U. S. (C. C. 1896) 71 Fed. 953.

Silk and cotton velvet ribbons, silk constituting the chief value, held dutiable at 60 per cent. under section 8 Act June 30, 1864. Lane v. Russell (C. C. 1870) Fed. Cas. No. 8,053.

Velvets.—Woven fabrics commonly known as figured "velvets," or "velours," composed wholly or in chief value of silk, the face of the fabric, having substantially a pile surface, held dutiable under paragraph 399, Act 1909, according to their weight per square yard, as "velvets * * * and other pile fabrics." U. S. v. Schumacher & Co. (1912) 3 Ct. Cust. App. 301. See, also, McGibbon v. U. S. (C. C. 1900) 107 Fed. 265.

Silk and cotton velvets imported subsequent to October 6, 1890, held dutiable on the weight of the goods, including the selvedges, under paragraph 411, Tariff Act Oct. 1, 1890. In re Megroz (C. C. 1892) 53 Fed. 244.

Tapestries.—Tapestries held not dutiable as pile fabrics. See paragraph 318.

315. Handkerchiefs or mufflers composed wholly or in chief value of silk, finished or unfinished; if cut, not hemmed or hemmed only, 40 per centum ad valorem; if hemstitched or imitation hemstitched, or revered, or having drawn threads, but not embroidered in any manner with an initial letter, monogram, or otherwise, 50 per centum ad valorem.

Notes of Decisions

Mufflers.—Goods held not mufflers. See paragraph 317.

Paragraph 400, Act 1909, held not restricted in its operation to mufflers that are handkerchiefs or that are similar to handkerchiefs, but embraces both knit and woven mufflers, "finished or unfinished, if cut, not hemmed or hemmed only." Hensel, Bruckmann & Lorbacher v. U. S. (1913) 4 Ct. Cust. App. 486; Kaskel & Kaskel v. Same (1913) 4 Ct. Cust. App. 38.

Mufflers composed of cotton and silk held dutiable under Act 1897, par. 388, covering "handkerchiefs or mufflers composed wholly or in part of silk," and not under paragraph 312, covering "handkerchiefs or mufflers composed of cotton," though the cotton is the component material of chief value of the mufflers in question. Guiterman v. U. S. (C. C. 1902) 113 Fed. 994.

With these mufflers the threads are in all cases introduced to perfect and hold in place the overwhelmed and overlapped edges and are necessary as well for ornamentation. Being necessary to complete the hemming process or its equivalent, this cannot be said to be a process beyond hemming; and the threads holding the individual pieces together being cut, the merchandise was brought within the provisions of paragraph 400, Act 1909. U. S. v. Lines & Warne (1915) 5 Ct. Cust. App. 552.

316. Ribbons, bandings, including hatbands, belts, beltings, bindings, all of the foregoing not exceeding twelve inches in width and if with fast edges, bone casings, braces, cords, cords and tassels, garters, suspenders, tubings, and webs and webbings; all the foregoing made of silk or of which silk or silk and india rubber are the component materials of chief value, if not embroidered in any manner, and not specially provided for in this section, 45 per centum ad valorem.

Notes of Decisions

Elastic cords and braids.—Ornaments composed chiefly of silk cord held not dutiable as cords. See paragraph 358.

The word "fabric," as used in the Tariff Act of 1883, making "india rubber fabrics" dutiable, includes elastic cords and braids made of silk and india rubber. In re Mills (C. C. 1891) 49 Fed. 726.

Ribbons.—Ribbons composed chiefly of silk, but in part of cotton, held not "ribbons * * * of cotton, * * * whether composed in part of india rubber or otherwise," under Act 1897, par. 320, for the word "otherwise" is there used with the meaning of "not," and not as relating to other materials than india rubber, such ribbons are properly assessed as manufactures of silk, under paragraph 391 of Schedule L. Gartner, Sons & Co. v. U. S. (1908) 158 Fed. 1019, 85 C. C. A. 509,

affirming judgment (C. C. 1907) 154 Fed. 957.

Under Act June 30, 1864, § 8, "ribbons" does not include cotton ribbons. Chapon v. Smythe (C. C. 1873) Fed. Cas. No. 2,611.

317. Clothing, ready-made, and articles of wearing apparel of every description, including knit goods, made up or manufactured in whole or in part by the tailor, seamstress, or manufacturer; all the foregoing composed of silk or of which silk or silk and india rubber are the component materials of chief value, not specially provided for in this section, 50 per centum ad valorem.

Notes of Decisions

In general.—Act July 30, 1864, § 8, providing "that on all manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for, 50 per cent. ad valorem" shall be charged, construed to have no reference to the acts of May 2, 1861, and July 14, 1862, which imposed a duty of but 35 per cent. on "articles worn by men, women, or children, of whatever material made," the words, "not otherwise provided for," meaning not otherwise provided for by previous parts of the section of which they make the closing words. Smythe v. Fiske (1874) 90 U. S. (23 Wall.) 374, 23 L. Ed. 47.

Gloves.—Gloves commercially known as "silk-plated gloves" or "patent gloves" made on frames of silk and cotton, the latter being the chief component, held not dutiable as silk gloves under Act 1864, but otherwise as gloves made on frames. Arthur v. Unkart (1877) 96 U. S. 118, 120, 24 L. Ed. 768.

Taffeta gloves containing over 50 per cent. in value of silk and over 25 per cent. of cotton held subject to a duty of 50 per cent. ad valorem under the last paragraph of Schedule H, R. S. § 2504, and Act Feb. 1, 1875, § 1. Wilson v. Spaulding (C. C. 1884) 19 Fed. 413.

French silk gloves held free under Act 1833, c. 54, § 4. Adams v. Bancroft (C. C. 1838) Fed. Cas. No. 44.

Wearing apparel.—Gloves made of yarn composed of cellulose filaments obtained from cotton waste held not dutiable by similitude as silk wearing apparel. See paragraph 256.

Shawls of silk and cotton held not dutiable as wearing apparel, silk chief value. See paragraph 256.

Shawls of which silk is a component part are "wearing apparel," within Act 1846, and therefore subject to a duty of 30 per cent. Maillard v. Lawrence (1853) 57 U. S. (16 How.) 251, 14 L. Ed. 925, affirming (C. C. 1849) Fed. Cas. No. 8,971.

In applying the provision in Act 1897, par. 432, for "hats * * * trimmed, * * * composed wholly or in chief value of fur," the composition of the hats should be determined by reference to the whole hat, including the trimming so that where hats, the bodies of which are fur, are so trimmed that the silk trimming is the component of chief value in the hats, they are dutiable under paragraph 390, as "wearing apparel in chief value of silk." Leon Rheims Co. v. U. S. (1908) 160 Fed. 925, 88 C. C. A. 107, affirming judgment (C. C. 1907) 154 Fed. 969.

Silk veils or veilings in the piece, with borders, and clearly defined lines between the borders, indicating where they were to be cut off, held dutiable as "wearing apparel," under paragraph 413 of Act 1890, and not under paragraph 414, as "manufactures of silks not specially provided for." Oppenheimer v. U. S. (1895) 66 Fed. 52, 13 C. C. A. 327, affirming (C. C. 1894) 61 Fed. 283.

Artificial silk hats are dutiable under Act 1897, par. 390, by similitude to silk wearing apparel. Wanamaker v. U. S. (C. C. 1909) 169 Fed. 664, decree reversed U. S. v. Wanamaker (1910) 175 Fed. 900, 99 C. C. A. 390.

Dress shields, which are articles for women's wear, intended to be worn under the arms to protect the dress from perspiration, held "wearing apparel," within the meaning of paragraph 413, Act 1890. Darlington, Runk & Co. v. U. S. (C. C. 1905) 136 Fed. 716.

Garters held included within the term "wearing apparel" in Act 1890. U. S. v. A. Steinhardt & Bro. (C. C. 1892) 141 Fed. 494, affirming judgment In re Steinhardt (1893) 4 C. C. A. 679.

Silk neckties held dutiable as "wearing apparel," under the acts of 1861 and 1862. Fiske v. Smythe (C. C. 1872) Fed. Cas. No. 4,833.

Under the evidence, trimmed straw hats held dutiable as silk wearing apparel. Schmitt v. U. S. (1914) 5 Ct. Cust. App. 312.

"Muffler," as commonly understood, refers to something worn round the neck or throat, and, perhaps, mainly for warmth. The merchandise of the importation, as appears from the evidence, is usually worn about the shoulders, rather than about the neck or throat. The collector's classification is not shown to be incorrect. They are not mufflers, and were properly assessed as silk wearing apparel under paragraph 402, Tariff Act 1909. Vantine & Co. v. U. S. (1913) 4 Ct. Cust. App. 3.

Garments designed to be worn about

the shoulders by women, if made in network or openwork design and of silk cord and braid, taking a shape like that of bolero jackets, held dutiable as articles of wearing apparel wholly or in chief value of silk, under paragraph 390, Act 1897. Taxis v. U. S. (1910) 1 Ct. Cust. App. 92.

318. Woven fabrics, in the piece or otherwise, of which silk is the component material of chief value, and all manufactures of silk, or of which silk or silk and india rubber are the component materials of chief value, not specially provided for in this section, 45 per centum ad valorem.

Notes of Decisions

1. Bolting cloth.
2. Chenilles.
3. "Chief" value.
4. Chiffon.
5. Chinese shoes.
6. Cigar ribbons.
7. Crape veils.
8. Crapes.
9. Drapery net.
10. Elastic cords and braids.
11. Fans.
12. Fabrics in general.
13. Garnitures and hussar sets.
14. Gloria cloth.
15. Hat bands.
16. Imitation sealskin.
17. India rubber.
18. Insertions.
19. Jacquard figured goods.
20. Laces.
21. Lamp shades.
22. Manufacture of silk in general.
23. Mousselines.
24. Parasol covers.
25. Powder made from raw silk.
26. Remanit.
27. Ribbons.
28. Screens.
29. Shirtings.
30. Silk-covered wire.
31. Silk in the gum.
32. Strings for musical instruments.
33. Tapestries.
34. Veilings.
35. Vest chains.

1. Bolting cloth.—Bolting cloth of silk and cotton held not dutiable as manufacture of silk. See paragraph 422.

2. Chenilles.—Chenilles, used only for working into embroideries, held dutiable under Heyl's Revenue Laws, cl. 383, as articles not specially enumerated, "made of silk, or of which silk is the component material of chief value," and not, under clause 381, as "thrown silk in gum." Walker v. Seeberger (D. C. 1889) 38 Fed. 724, judgment reversed (1893) 13 Sup. Ct. 981, 149 U. S. 541, 37 L. Ed. 839.

3. "Chief" value.—The word "chief," as used in section 1, Act Feb. 8, 1875, imposing a duty of 60 per cent. ad valorem on all goods, wares, and merchandise made of silk or of which silk is a component material of chief value, etc., means greater than either of the other materials, not greater than their aggregate. (1882) 17 Op. Atty. Gen. 337.

4. Chiffon.—Chiffon held not dutiable as manufacture of silk. See paragraph 358.

5. Chinese shoes.—Chinese shoes in which silk is the component material of chief value should be classified under the fourth clause of Schedule L of Act 1883. (1889) 19 Op. Atty. Gen. 273.

6. Cigar ribbons.—Cigar ribbons, galloons, and braids, made substantially of silk, although cotton forms a part thereof, were subject to a duty of 60 per cent. ad valorem, under 13 Stat. 181. Swan v. Arthur (1880) 103 U. S. 597, 26 L. Ed. 525.

7. Crape veils.—Veils which are manufactured of silk, but not commonly called "silk veils," and known commercially as "crape veils" and not otherwise, held not dutiable under Act 1864 as "silk veils," but as "manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for." Arthur v. Morrison (1877) 96 U. S. 108, 109, 24 L. Ed. 764.

8. Crapes.—Mourning crapes held not dutiable as woven fabrics in the piece. See paragraph 358.

Silk crapes held dutiable as "manufactures of silk not otherwise provided for," and not as "piece silks." Act 1864. Lottimer v. Smythe (C. C. 1871) Fed. Cas. No. 8,523.

9. Drapery net.—Drapery net, consisting of a silk fabric having a foundation of plain net with embroidered figures, held dutiable as manufactures of silk, or of which silk is the component material of chief value, not specially provided for, under paragraph 414, Act 1890. U. S. v. McAlpin (C. C. 1896) 76 Fed. 451.

10. Elastic cords and braids.—Elastic cords and braids, manufactured of silk and india rubber, silk being the component material of chief value, held dutiable under Schedule L, Act 1883, and not under the provision for india rubber fabrics, etc., in Schedule N. In re Mills (C. C. 1891) 49 Fed. 726.

11. Fans.—Fans of silk and bone bearing artistic paintings held not dutiable as manufactures of silk. See paragraph 652.

12. Fabrics in general.—Fabrics of silk and wool held dutiable as wool goods. See paragraph 288.

13. Garnitures and hussar sets.—Garnitures and hussar sets in designs

of silk cord and braid, held not dutiable as silk trimmings, under Act 1897, par. 390, but as manufactures of silk not specially provided for, under paragraph 391. U. S. v. Garrison, Wright & Co. (1904) 127 Fed. 1022, 61 C. C. A. 10, affirming judgment Garrison, Wright & Co. v. U. S. (C. C. 1903) 121 Fed. 149.

14. Gloria cloth.—Gloria cloth held not dutiable as a manufacture of silk. See paragraph 290.

15. Hat bands.—Hat bands held not dutiable as manufacture of silk. See paragraph 358.

16. Imitation seal skin.—Imitation seal skin cloakings made of silk, or of which silk is the component material of chief value, are dutiable under Act 1883, § 383, as articles composed wholly or in part of silk, and not under R. S. § 2499, as articles not enumerated bearing similitude to one enumerated for duty. Hermann v. Robertson (C. C. 1888) 33 Fed. 654.

17. India rubber.—In construing Act 1897, par. 390, relating to articles of silk, or in chief value of silk, with a proviso that "the articles provided for in this paragraph, * * * when composed in part of india rubber, shall be subject to the same duty," held, that the proviso does not cover articles not in chief value of silk. Simpson-Crawford Co. v. U. S. (C. C. 1909) 172 Fed. 301, judgment affirmed U. S. v. Simpson-Crawford Co. (1910) 178 Fed. 1006, 101 C. C. A. 665.

18. Insertions.—"Insertions" or "inserting," of silk, held dutiable under Act 1894, par. 302, as "manufactures of silk, or of which silk is the component material of chief value," and not as "articles made wholly or in part of lace," under paragraph 301. Kleeberg v. U. S. (C. C. 1896) 72 Fed. 252.

19. Jacquard figured goods.—In regard to a fabric of two colors, one of which is produced by threads introduced by the swivel process to form figures, and not extending across the cloth from selvage to selvage, held, that the swivel threads are not a part of the filling, and that the goods are not within the provision in Act 1897, par. 391, for Jacquard figured silks containing two or more colors "in the filling." A. Wimpfheimer & Co. v. U. S. (1906) 149 Fed. 1022, 79 C. C. A. 532, affirming judgment Wimpfheimer v. U. S. (C. C. 1905) 142 Fed. 849.

Silk goods woven on Jacquard looms, with broad and narrow stripes, the body between having a watered effect, held within Act 1897, par. 391, for "Jacquard figured goods" of silk. U. S. v. Johnson & Faulkner (1906) 142 Fed. 1039, 71 C. C. A. 686, affirming judgment (C. C. 1905) 139 Fed. 55.

Goods which have been made on a Jacquard loom and contain two or more colors in the filling held dutiable under Act 1897, par. 391, for "all Jacquard figured goods in the piece, made on looms * * * and containing two or more colors in the filling," irrespective of the fact that they are not such goods as are customarily made upon the Jacquard loom nor are its characteristic and usual product. Bassett, McNab & Co. v. U. S. (C. C. 1907) 154 Fed. 681.

Jacquard figured goods, in the piece, made of silk and cotton, silk being the component of chief value, two colors in the filling and the fabric dyed in the yarn, held dutiable under paragraph 391, Act 1897. Knauth v. U. S. (1911) 1 Ct. Cust. App. 178.

20. Laces.—Under section 8, Act 1864, imposing a duty of 60 per cent. on "silk laces," and a duty of 50 per cent. on "all manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for," an article of silk and cotton, bought and sold as "spotted or dotted net," but which was a lace, in which silk was the component material of chief value, was a "silk lace," and subject to a duty of 60 per cent. Drew v. Grinnell (1885) 6 Sup. Ct. 117, 115 U. S. 477, 29 L. Ed. 453.

Silk goods, which, although made in the manner of laces, and having the substantial characteristics of laces, are not commercially known as "laces," but as "silk nets," "veilings," and "drapery nets," held dutiable under Act 1890 as a manufacture of silk not otherwise provided for, and not as silk laces. Appeal of Field (C. C. 1892) 50 Fed. 908, affirmed U. S. v. Field (1893) 54 Fed. 367, 4 C. C. A. 371.

21. Lamp shades.—Lamp shades held not dutiable as a manufacture in chief value of silk. See paragraph 358.

22. Manufacture of silk in general.—Cloth, of which silk is the component material of chief value, held dutiable under Act 1883, as goods made of silk, though it is made partly of wool. Hartranft v. Meyer (1890) 10 Sup. Ct. 751, 135 U. S. 237, 34 L. Ed. 110, affirming Myer v. Hartranft (C. C. 1886) 28 Fed. 358.

Goods in which the warp is of cotton and the filling partly silk, and in which silk is the component material of chief value, held dutiable under Act 1864 as manufacture of silk not otherwise provided for. Solomon v. Arthur (1880) 102 U. S. 208, 211, 26 L. Ed. 147.

The provision in the silk schedule in Act 1897, par. 391, "that all manufactures, of which wool is a component material, shall be classified and assessed for duty as manufactures of wool," is limited to goods of which silk is a component, and does not include flax-wool fabrics. U. S. v. Charles A. Johnson & Co. (1907) 157 Fed. 754, 85 C. C. A. 147, affirming judgment (C. C. 1907) 154 Fed. 752.

In construing Act 1897, relating to "all manufactures * * * of which

silk is the component material of chief value," and containing a proviso that "all manufactures of which wool is a component material shall be classified and assessed for duty as manufactures of wool," held, that the ordinary rule should be applied that a proviso at the close of an independent paragraph like this should be construed as limiting only what precedes it, and that the words "all manufactures" in the proviso have no broader relation than the same words in the beginning of the paragraph. U. S. v. Walsh (1907) 154 Fed. 770, 83 C. C. A. 472, affirming judgment (C. C. 1907) 154 Fed. 749.

To authorize the classification of an article as a manufacture of silk, under a tariff law providing separately for manufactures of which silk is the component of chief value, such article must be entirely or substantially made of silk; and an article of silk and cotton, of which the cotton constitutes more than 25 per cent. in value, cannot be so classified, in the absence of any commercial designation requiring it. Robertson v. Edelhoff (1899) 91 Fed. 642, 34 C. C. A. 34.

The proviso in the silk provisions in Act 1897, par. 391, which prescribes that "all manufactures, of which wool is a component material, shall be classified and assessed for duty as manufactures of wool," relates only to goods composed of wool and silk, and not to fabrics of wool and flax. U. S. v. Walsh (C. C. 1907) 154 Fed. 749, judgment affirmed (1907) 154 Fed. 770, 83 C. C. A. 472.

In approving woolen fabrics containing silk for duty under Act 1897, which requires the ascertainment of the number of ounces in weight per square yard, the percentage of silk therein, and other conditions relating to dyeing, etc., under the statutes and regulations the goods may appropriately be sent to an examiner, rather than to a weigher, whose duty is confined to weighing articles in bulk; and it is within the examiner's duty to make return of the weight, as well as the other requisite facts. U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, judgment affirmed Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

Goods woven wholly from silk from 4 to 12 inches wide, and used directly in these widths for trimming women's hats, etc., are not assessable as trimmings, under paragraph 390, Act 1897, not being trimmings until made into designs to be applied as trimmings, or into trimmings as they are applied to articles being trimmed, but are assessable as manufactures of silk, under paragraph 391. Robinson v. U. S. (C. C. 1903) 121 Fed. 204.

Merchandise composed of silk and wool, silk being the component material of chief value, cannot be classified under Act 1890, as a "manufacture of silk or of which silk is the component material of chief value," being within the proviso of that paragraph declaring that "all such manufactures of which wool * * * is a component material shall be classified as manufactures of wool." Arnold v. U. S. (C. C. 1902) 113 Fed. 1004.

Fabrics composed in chief value of silk woven 22 inches wide, and used for making waists or skirts for women's and children's dresses, and also for sleeves and trimming of dresses, and which were known commercially as silks, held to be dutiable under paragraph 302, Act 1894, as manufactures of silk, "or of which silk is the component material of chief value," and not under paragraph 283. McCreery v. U. S. (C. C. 1897) 87 Fed. 191, judgment affirmed U. S. v. McCreery (1898) 91 Fed. 115, 33 C. C. A. 398.

A light woven fabric, used for the lining of coats, of which one-sixth of the material is silk and the rest cotton, and in which one proportion in bulk of silk is worth as much as seven proportions of cotton, held properly assessed for duty, under Act 1883, as manufacture of silk and cotton, of which silk is the component material of chief value. Lesher v. Seeberger (C. C. 1889) 40 Fed. 61.

23. Mousselines.—Light-weight woven silk fabrics, 6, 8, and 10 inches, respectively, in width, and generally known as "chiffon," "gauze," or "mousseline bands," held not articles made of chiffon, but are the material, chiffon, from which something can be made. The fabrics are dutiable as manufactures of silk under paragraph 403, Act 1909. U. S. v. Ceasar & Co. (1912) 3 Ct. Cust. App. 214.

Mousselines held dutiable, not as woven fabrics in the piece, but as manufactures of silk, under paragraph 403, Act 1909. U. S. v. Wertheimer Bros. (1912) 2 Ct. Cust. App. 515. See, also, Robinson v. U. S. (C. C. 1903) 121 Fed. 204.

24. Parasol covers.—Parasol covers of silk, with an overwork finish of netting and figured silk, were dutiable as "manufactures of silk," under paragraph 414, Act 1890, and not as "laces," under paragraph 413. U. S. v. Stern (C. C. 1896) 72 Fed. 44.

25. Powder made from raw silk.—A powder made from raw silk, which is used in the manufacture of wall paper and artificial flowers, held dutiable under paragraph 391, Act 1897, as manufactures of silk, or at least so dutiable by similitude. W. W. Thomas & Co. v. U. S. (1906) 145 Fed. 1023, 74 C. C. A. 682, affirming judgment (C. C. 1905) 140 Fed. 93.

26. Remanit.—So-called remanit, in the form of ropes, braids, and mats, which has been manufactured from silk

produced by carbonizing rags containing silk, held to be a manufacture of silk, within the meaning of Act 1897, par. 391. Frank v. U. S. (1906) 149 Fed. 1023, 79 C. C. A. 360, affirming judgment (C. C. 1906) 143 Fed. 702.

27. **Ribbons.**—Ribbons of silk used in trimming hats held not dutiable as silk merchandise. See paragraph 358.

Silk ribbons, of which some were, and others were not, in the nature of trimmings, but which, whenever used for trimmings, are required to be further fashioned for such use, and which are not in fact or commercially within the class of goods known as "trimmings," held not dutiable as silk trimmings, under paragraph 300, Act 1897, but as manufactures of silk, not specially provided for, under paragraph 391. Gartner & Friedenheit v. U. S. (C. C. 1904) 131 Fed. 574.

28. **Screens.** — Embroidered silk screens with wooden framework held dutiable as articles in chief value of silk. See paragraph 358.

29. **Shirtings.**—Silk and cotton shirtings, invoiced as "mixed shirtings," consisting of cotton warp threads, some white and some colored, and silk weft threads, the cotton constituting 63.27 per cent. in weight of the fabric, and the silk 36.73 per cent. in weight, the silk being largely the component material of chief value, held dutiable at 50 per cent. ad valorem, under paragraph 414, Act 1890, and not at 10 cents per square yard, and 35 per cent. ad valorem, under paragraph 348. In re Quaintance (C. C. 1892) 49 Fed. 829.

30. **Silk-covered wire.**—Collar supporters, made of a thin steel silk-covered wire bent into a series of open loops, with the ends of the wire bent back and soldered so as to form a closed loop at each end of the article, held dutiable under Act 1909 as manufactures of silk not specially provided for. Schloss Co. v. U. S. (1912) 3 Ct. Cust. App. 459. See, also, Strouse, Adler & Co. v. Same (1912) 3 Ct. Cust. App. 184.

31. **Silk in the gum.**—Decisions on the computation of duties by weight, and as to silk in the gum, and silk boiled off, see H. Mendelson & Co. v. U. S. (1907) 154 Fed. 33, 83 C. C. A. 145 (reversing decision [C. C. 1906] 146 Fed. 78); U. S. v. H. B. Claflin Co. (1899) 92 Fed. 914, 35 C. C. A. 80; Rice v. U. S. (C. C. 1901) 123 Fed. 848; Mendelson v. Same (1911) 1 Ct. Cust. App. 346.

32. **Strings for musical instruments.**—Strings for musical instruments, composed of catgut wound with silk, silk being the component material of chief value, are dutiable under paragraph 318, Act 1913, as a manufacture of which silk is the component material of chief value, not specially provided for, and not under paragraph 373, as parts of musical instruments. Fischer v. U. S. (1915) 6 Ct. Cust. App. 443.

33. **Tapestries.** — Articles known as "tapestries," and not commercially known as "pile fabrics," though a portion thereof has a pile surface, held improperly assessed for duty as "pile fabrics," under Act 1894, par. 299, but within the provisions of paragraph 302. U. S. v. McGibbon (1902) 113 Fed. 1021, 51 C. C. A. 625, affirming judgment McGibbon v. U. S. (C. C. 1900) 107 Fed. 265.

34. **Veilings.**—Silk veilings held not dutiable as manufactures of silk. See paragraph 317.

35. **Vest chains.**—Silk vest chains, in which silk is the component of chief value, held dutiable at 50 per cent. ad valorem, under Act 1883, par. 383. Zimmern v. U. S. (C. C. 1895) 69 Fed. 467.

319. Yarns, threads, filaments of artificial or imitation silk, or of artificial or imitation horsehair, by whatever name known, and by whatever process made, 35 per centum ad valorem; beltings, cords, tassels, ribbons, or other articles or fabrics composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial or imitation silk or of artificial or imitation horsehair, or of yarns, threads, filaments or fibers of artificial or imitation silk, or of artificial or imitation horsehair and india rubber, by whatever name known, and by whatever process made, 60 per centum ad valorem.

Notes of Decisions

Artificial horsehair.—Imitation horsehair produced from cotton waste by a chemical process, being like cotton yarn as to material and use, is dutiable under the similitude clause of Act 1897, at the rate levied by paragraph 302, on cotton yarn, and not under section 6, as a nonenumerated manufactured article. U. S. v. Eckstein (1911) 32 Sup. Ct. 65, 222 U. S. 130, 56 L. Ed. 125, affirming judgment Eckstein v. U. S. (1909) 167 Fed. 802, 93 C. C. A. 192.

On reliquidation the collector disregarded the mandate of the board. The board had made an attempt by its order to segregate the cases in which the artificial horsehair covered by its decision was contained, and it is clear it was

intended to decide that the cases named contained artificial horsehair. U. S. v. Eckstein (1914) 5 Ct. Cust. App. 315.

Viscelline, which is cotton thread coated with viscose material, held dutiable under paragraph 405, Act 1909, artificial or imitation horsehair, by whatever name known and by whatever process made. U. S. v. Eckstein (1912) 3 Ct. Cust. App. 75.

Artificial silk.—The proper rate of duty in this case is such an ad valorem rate as, upon a computation based upon the value per pound of the artificial silk fabric, it is found such fabric would pay under the compound rates provided for in paragraph 405. So the intention of the law, that the artificial silk fabric shall not escape the duty imposed thereon under paragraph 405, is attained, the beads and other materials entering into the fringe pay a rate of duty not less than the 60 per cent. ad valorem imposed thereon under paragraph 421, and at the same time such beads and other materials are not charged with the extreme penalty it is contended should be charged on them, they being found associated with the artificial silk fabric. U. S. v. Ewing & Clancy (1912) 3 Ct. Cust. App. 333. See, also, Stein & Co. v. U. S. (1912) 2 Ct. Cust. App. 519; U. S. v. Vietor (1911) 1 Ct. Cust. App. 297.

The merchandise is the crudest form of artificial silk known to the throwster's trade. It corresponds precisely to the natural silk single as this is made up from the cocoon. It was properly held to be in the form of singles and not tram, and, the form being the determining fact for consideration, it was dutiable as singles under paragraph 405, Tariff Act 1909. U. S. v. Straus & Co. (1912) 2 Ct. Cust. App. 395.

Imitation yarn.—Imitation silk yarn, which is made from cotton waste subjected to a chemical process, whereby it loses its identity as cotton, and which resembles silk yarn in quality, texture, and use, held, by virtue of the similitude clause in section 7, Act 1897, to be dutiable at the rate applicable to silk yarn, under paragraph 385. Von Bernuth v. U. S. (C. C. 1904) 133 Fed. 800, judgment reversed Hardt Von Bernuth & Co. v. Same (1906) 146 Fed. 61, 76 C. C. A. 638.

SCHEDULE M.—PULP, PAPERS, AND BOOKS

320. Sheathing paper, pulpboard in rolls, not laminated, roofing felt, common paper-box board, not coated, lined, embossed, printed or decorated in any manner, nor cut into shapes for boxes or other articles, 5 per centum ad valorem.

321. Filter masse or filter stock, composed wholly or in part of wood pulp, wood flour, cotton or other vegetable fiber, 20 per centum ad valorem.

322. Printing paper (other than paper commercially known as handmade or machine handmade paper, japan paper, and imitation japan paper by whatever name known), unsized, sized, or glued, suitable for the printing of books and newspapers, but not for covers or bindings, not specially provided for in this section, valued above 5 cents per pound, twelve per centum ad valorem: Provided, however, That if any country, dependency, province, or other subdivision of government shall impose any export duty, export license fee, or other charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise) upon printing paper, wood pulp, or wood for use in the manufacture of wood pulp, there shall be imposed upon printing paper, values above 5 cents per pound, when imported either directly or indirectly from such country, dependency, province, or other subdivision of government, an additional duty equal to the amount of the highest export duty or other export charge imposed by such country, dependency, province, or other subdivision of government, upon either printing paper, or upon an amount of wood pulp, or wood for use in the manufacture of wood pulp necessary to manufacture such printing paper.

This paragraph was amended by Act Sept. 8, 1916, c. 463, § 600, 39 Stat., to read as set forth above. Said amendment consisted in changing the figures in the sixth line from 2½ to 5, and in changing the figures in the twelfth line from 2½ to 5.

Notes of Decisions

Canadian reciprocity act.—Section 2 of the Canadian reciprocity act, relating to entry of wood pulp, etc., held not affected by the operation of section 1

of such act. Cliff Paper Co. v. U. S. (1913) 4 Ct. Cust. App. 186.

Countervailing duty.—In the form of a license fee for the privilege of cutting pulp wood on public lands in the province of Quebec, a certain sum is collected on what is consumed in manufacture within Canada and a greater sum on what is exported. Held, that in its essential nature this is the imposition of an export duty equal to the difference between the two sums, and is therefore within the purview of Act 1897, par. 393. Heckendorn v. U. S. (1908) 162 Fed. 141, 89 C. C. A. 165, writ of certiorari denied (1909) 29 Sup. Ct. 696, 214 U. S. 514, 53 L. Ed. 1063.

In regard to pulp imported from Canada, made from wood of which a part is subject to a Canadian export duty, held that the countervailing duty equal to such export duty, which is imposed under Act 1897, should be assessed on the basis of the percentage used therein of wood subject to the export duty, when such percentage is established by satisfactory evidence. The action of the province of Quebec in imposing a license fee for cutting wood on public lands, which is reduced when the wood is manufactured into pulp in Canada, is in effect the imposition of an "export duty on pulp wood exported to the United States." Pulp produced in Canada from wood cut on public lands in Quebec is subject to the countervailing duty, irrespective of whether it is manufactured into pulp in that province or not. The British North America Act (St. 30–31 Vict. c. 3, §§ 91, 92) gives the Dominion of Canada exclusive power to impose export and import duties, but distributes among the provinces of Canada certain legislative powers, including that of taxation by way of license; and under this authority the province of Quebec imposes what is in point of fact and in effect an export duty. Held, that such duty is imposed by a "country or dependency." [U. S. Comp. St. 1901, p. 1671]. F. W. Myers & Co. v. U. S. (1906) 144 Fed. 1021, 73 C. C. A. 596.

The question is whether there was by a Canadian rule or regulation any prohibition or restriction of exportation, either by contractual relation or otherwise, directly or indirectly, applicable to this merchandise—whether Act July 26, 1911, controls. Section 13 of the Canadian woods and forest regulations did contain such a prohibition, and, so far as the record discloses, it remained in force until December 31, 1912, when, by an order in council, the prohibition was not to be enforced and provision was made that the prohibition was to be deemed inoperative from May 1, 1911. The merchandise here, as the record shows, was cut from the lands described in that order, and was manufactured, in part at least, prior to December 31, 1912. Our statute has its own field of operation, and this operation is not to be defeated by another authority. Under our statute and under the facts shown here this wood pulp and news print paper were not entitled to free entry. U. S. v. Laurentide Paper Co. (1915) 5 Ct. Cust. App. 519.

The expression in section 2, Act July 26, 1911, "being the products of Canada," describes and refers to wood pulp manufactured in Canada from pulp wood, without regard to the place or country where the wood grew or was cut. The condition of free entry here was that the wood from which it was made must be entitled to free and unrestricted export and there was no intention to declare that the country of manufacture must also be the country of origin of the raw material. Under the favored nation clause this German wood pulp made of wood cut in Russia was entitled to free entry. U. S. v. Castle, Gottheil & Overton (1914) 5 Ct. Cust. App. 366. See, also, Balfour v. Sullivan (C. C. 1884) 19 Fed. 578.

The question for determination is whether the written contracts between the appellee here and the province of Ontario, Canada, impose any restrictions upon appellee's right to export wood pulp manufactured from pulp wood cut upon crown lands. Held, that the contracts impose certain conditions, some new, some old, to be complied with by the appellee as a continuing consideration for the abrogation of the pre-existing contractual prohibition of export of such pulp wood and the enjoyment of the grant of the right to export the same; that these conditions, whether precedent or subsequent, impose burdens upon and result in a restriction of the export of the pulp wood from which the importations were manufactured; and therefore that free entry cannot be had under the provisions of section 2 of an act of Congress entitled "An act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes," approved July 26, 1911. U. S. v. Spanish River Pulp & Paper Mills (Ltd.) (1914) 5 Ct. Cust. App. 235.

Printing paper.—Imitation parchment paper held not dutiable as printing paper. See paragraph 332.

Paper for printing covers for pamphlets held not dutiable as printing paper suitable for books, etc. See paragraph 332.

Handmade paper suitable for printing books and newspapers held dutiable as "printing paper * * * suitable for books and newspapers," under Act 1897, par. 396, rather than as "handmade * * * paper." U. S. v. Miller, Sloan & Wright (1904) 135 Fed. 349, 68 C. C. A. 131 (affirming judgment Miller, Sloane & Wright v. U. S. [C. C. 1904] 128 Fed. 469); Davies, Turner & Co. v. U. S. (C. C. 1909) 172 Fed. 298 (judgment reversed U. S. v. Davies, Turner & Co. [1910] 177 Fed. 371, 101 C. C. A. 425).

In Act 1897, par. 396, the provision

for " 'printing paper' suitable for books and newspapers" prescribes an exceptionally low duty on such material on account of the educational value of books and newspapers, and only such paper as comes within the true spirit of the law should be assessed thereunder. A thin, flimsy, colored paper, said to be used for "printing circulars and printing of all kinds," but not shown to be used for books or newspapers, is not within the scope of the provision. Gallenkamp v. Wyman (C. C. 1906) 178 Fed. 460.

"Suitable."—In the tariff law "suitable" means actually, practically, and commercially fit. Kahlen v. U. S. (1911) 2 Ct. Cust. App. 206.

323. Papers commonly known as copying paper, stereotype paper, bibulous paper, tissue paper, pottery paper, letter-copying books, wholly or partly manufactured, crêpe paper and filtering paper, and articles manufactured from any of the foregoing papers or of which such paper is the component material of chief value, 30 per centum ad valorem.

Notes of Decisions

Copying paper.—A paper manufactured of natural barks or reeds having an inherent color that persists through all processes to which it may be subjected and remains a characteristic of the finished product held a colored paper; and copying paper made of it is colored copying paper, dutiable under paragraph 397, Tariff Act 1897. Davison v. U. S. (1911) 2 Ct. Cust. App. 78.

Crepe paper.—The provision for "crepe paper" in Act 1897, was intended to apply to paper subjected to a creping process; and a paper made by that process and resembling crepe paper generally, but somewhat heavier, and treated with sizing for waterproofing purposes, is dutiable thereunder. Fiegel v. U. S. (1909) 167 Fed. 537, 93 C. C. A. 215, affirming judgment (C. C. 1908) 160 Fed. 285.

"Crepe tissue paper" or "crepe tissue," which had acquired no designation in commerce prior to Act 1890, being a crinkled paper, much heavier than tissue paper, made of tougher and stronger stock, is not dutiable as "tissue paper," under paragraph 419, but under paragraph 422, as "all other paper not specially provided for." Dennison Mfg. Co. v. U. S. (1896) 72 Fed. 258, 18 C. C. A. 543, reversing (C. C. 1895) 66 Fed. 728.

Filtering paper.—Filtering paper that has been cut into disks and made ready for use in filtering held not by this treatment removed from the provision in paragraph 419, Act 1890, for "papers commercially known as * * * 'filtering paper,' * * * made up in copying books, reams, or in any other form." Alexander Murphy & Co. v. U. S. (C. C. 1895) 148 Fed. 336.

Tissue paper.—An absorbent paper used by dentists held not dutiable as tissue paper. See paragraph 332.

Tissue paper for making letterpress copies of written matter held within the clause imposing a duty of 35 per centum ad valorem "on all other paper not otherwise provided for," and not within the clause providing for "paper, * * * printing, unsized, used for books and newspapers exclusively, 20 per centum ad valorem." Lawrence v. Merritt (1888) 8 Sup. Ct. 1099, 127 U. S. 113, 32 L. Ed. 91.

Tissue paper having colors, printed or stamped thereon, and not of one uniform color, held dutiable under Act 1890, par. 419, as "tissue paper, white or colored," and not under paragraph 423, as "printed matter, not specially provided for." Kraft v. U. S. (C. C. 1894) 61 Fed. 398.

Thin, unsized paper, of fine, soft texture, silky to the touch, translucent, and to a limited extent transparent, used for wrapping articles, especially those which the manufacturer does not wish to tarnish, commonly known to the trade as tissue paper, weighing 10¼ to 10½ pounds per ream of 480 sheets measuring 20 by 30 inches, is properly classified as tissue paper, notwithstanding the fact that its weight is much greater than that of the ordinary tissue paper. Such paper is more specifically classified as "tissue paper," under paragraph 323, Act 1913, than as "wrapping paper," under paragraph 328, or "papers * * * not specially provided for," under paragraph 332. Germania Importing Co. v. U. S. (1915) 6 Ct. Cust. App. 467.

The proviso to paragraph 410, Act 1909, covers all articles composed of tissue paper, and by providing that such articles shall pay no less rate of duty than that imposed upon the component paper of chief value of which any such article is made, the classification of tissue paper fans was fixed as proper under that paragraph. U. S. v. Mason Bros. & Co. (1911) 2 Ct. Cust. App. 236. See, also, R. F. Downing v. U. S. (C. C. 1905) 141 Fed. 490.

324. Papers wholly or partly covered with metal leaf or with gelatin or flock, papers with white coated surface or surfaces, calender plate finished, hand dipped marbleized paper, parchment pa-

per, and lithographic transfer paper not printed, 25 per centum ad valorem; papers with coated surface or surfaces suitable for covering boxes, not specially provided for, whether or not embossed or printed except by lithographic process, 40 per centum ad valorem; all other paper with coated surface or surfaces not specially provided for in this section; uncoated papers, gummed, or with the surface or surfaces wholly or partly decorated or covered with a design, fancy effect, pattern, or character, whether produced in the pulp or otherwise except by lithographic process, cloth-lined or reenforced papers, and grease-proof and imitation parchment papers which have been supercalendered and rendered transparent or partially so, by whatever name known, all other grease-proof and imitation parchment papers, not specially provided for in this section, by whatever name known, bags, envelopes, and all other articles composed wholly or in chief value of any of the foregoing papers, not specially provided for in this section, and all boxes of paper or papier mâche or wood covered with any of the foregoing papers or covered or lined with cotton or other vegetable fiber, 35 per centum ad valorem; albuminized or sensitized paper or paper otherwise surface-coated for photographic purposes, 25 per centum ad valorem; plain basic papers for albuminizing, sensitizing, baryta coating, or for photographic or solar printing processes, 15 per centum ad valorem.

Notes of Decisions

Imitation parchment paper.—Imitation parchment paper. See paragraph 332.

Paper with surface decorated or covered with a design.—Box tops made of surface-coated paper and having designs printed by the lithographic process held dutiable as "surface-coated papers * * * printed," under paragraph 398, Act 1897, rather than as lithographic prints under paragraph 400. Devoy v. U. S. (C. C. 1906) 147 Fed. 765.

The paper of the importation has an embossed surface design and is intended for use as covers for books and pamphlets. The proviso to paragraph 415, Act 1909, relating to embossed paper is limited to such embossed paper as appears in the form of designs and shapes like those there specified. The proviso does not apply to this importation. Steinman v. U. S. (1913) 4 Ct. Cust. App. 240.

Paper subjected to processes by which, after a finished design in colors had been imprinted on it, it was saturated with linseed oil and no varnish or other substance was applied to produce an added surface, held not a surface-coated paper. It is dutiable as a "paper with the surface decorated or covered with a design, fancy effect, pattern, or character, * * * but not by lithographic process," under paragraph 411, Act 1909. Knauth, Nachod & Kuhne v. U. S. (1913) 4 Ct. Cust. App. 11.

Paper intended for use as book covers, having impressed on it a surface figure or design which makes of the paper something more than plain paper embossed, held dutiable under paragraph 411, Act 1909. Steinman v. U. S. (1912) 3 Ct. Cust. App. 392.

To bring a wrapping paper with a decorated surface within the pertinent provision of paragraph 411, Act 1909, it is unnecessary to show the decoration was placed on the paper by a separate and independent decorative process; the language of the statute is "whether produced in the pulp or otherwise," and it appears here the decorated effect was produced by the intentional use for that purpose of a particular kind of felt or felt blanket. It was dutiable under paragraph 411 of the act. Dunn v. U. S. (1911) 2 Ct. Cust. App. 65.

Papier maché.—Merchandise invoiced and known as "papier maché" held dutiable as such, though every constituent of that article may not be present in the composition of which the merchandise is made. Wanamaker v. Cooper (C. C. 1895) 69 Fed. 465.

Separate provision is made by paragraph 418, Act 1909, for boxes made wholly or in chief value of paper or papier maché, if covered with surface-coated paper; but such an eo nomine designation cannot be taken to exclude the article so designated from an applicable part of the customs law enacted to simplify administration and to minimize frauds on the revenue. Spielman v. U. S. (1911) 2 Ct. Cust. App. 61.

Parchment paper.—Paper made from wood pulp subjected to the single process of immersion in an alkaline solution, while sometimes included, in commercial language, in the general class of parchment paper, is usually designated commercially as "imitation parch-

ment," "parchment No. 2," or "greaseproof wrapping paper," and was not dutiable as parchment paper, under paragraph 308 of Act 1894. U. S. v. Stone (1900) 101 Fed. 713, 41 C. C. A. 624.

Parchment paper is made from vegetable fiber, not from wood pulp, is unsized, and is treated with dilute sulphuric acid. It is dull in finish, dense, hard, and hornlike. It is greaseproof, waterproof, translucent, and is much more tenacious than the original material. White glace wrapping paper held dutiable under Act 1909 as "imitation parchment papers which have been supercalendered and rendered transparent or partly so by whatever name known." Germania Importing Co. v. U. S. (1913) 4 Ct. Cust. App. 29.

An importation known as parchment cloth, made of parchment paper and cotton cloth, the parchment paper being the component of chief value, its use not appearing by proof, but its apparent characteristics indicating an article differing from either paper or cotton cloth taken alone, and with distinguishing characteristics of its own, was properly classified by the collector as a manufacture of parchment paper and cotton cloth, dutiable under paragraph 411, Act 1909. Stursberg, Schell & Co. v. U. S. (1912) 3 Ct. Cust. App. 370.

Prints not lithographed on surface-coated paper.—Illustrations were imported for use as pages of a magazine, but came in separately from the text of the magazine. Paragraph 634, Act 1909, granted free entry to "periodicals," but this provision does not extend to parts of periodicals imported alone. They were properly assessed as "prints not lithographed on surface-coated paper," under paragraph 411, Act 1909. Kraemer & Co. v. U. S. (1914) 5 Ct. Cust. App. 66.

Surface-coated paper.—Handmade surface-coated paper held not dutiable as surface-coated paper not specially provided for. See paragraph 326.

Paragraph 415, Act 1909, applies only to papers, plain or printed, but not lithographed. Embossed paper ornaments composed in chief value of metal-coated paper held clearly subject to the terms of paragraph 411 of that act. U. S. v. Wyman & Co. (1913) 4 Ct. Cust. App. 411. See, also, Same v. Fuld (1913) 4 Ct. Cust. App. 234; Knauth v. U. S. (1912) 3 Ct. Cust. App. 183.

By the deliberate change made and appearing in paragraph 411, Act 1909, making it read "paper with coated surface or surfaces, not specially provided for," it cannot be doubted a change of meaning was intended; and transfer papers that have a coated surface or surfaces held dutiable under that paragraph. American Express Co. v. U. S. (1912) 2 Ct. Cust. App. 459.

Reviewing the history of the relevant clause in Tariff Act 1909 and the construction given to the previous acts, paper, whether plain or surfaced to be coated, metal coated, is found to be dutiable under paragraph 411 of that act as "papers with coated surface or surfaces * * * if wholly or partly covered with metal or its substitutes" at 5 cents per pound and 20 per cent. ad valorem. Kupfer Bros. v. U. S. (1911) 2 Ct. Cust. App. 302.

Paper boxes covered with embossed surface-coated paper held dutiable under paragraph 411, Act 1909. Woolworth v. U. S. (1910) 1 Ct. Cust. App. 120.

325. Pictures, calendars, cards, booklets, labels, flaps, cigar bands, placards, and other articles composed wholly or in chief value of paper lithographically printed in whole or in part from stone, gelatin, metal, or other material (except boxes, views of American scenery or objects, and music, and illustrations when forming a part of a periodical or newspaper or of bound or unbound books, accompanying the same, not specially provided for in this section) shall pay duty at the following rates: Labels and flaps printed in less than eight colors (bronze printing to be counted as two colors), but not printed in whole or in part of metal leaf, 15 cents per pound; cigar bands of the same number of colors and printings, 20 cents per pound; labels and flaps printed in eight or more colors (bronze printing to be counted as two colors), but not printed in whole or in part of metal leaf, 20 cents per pound; cigar bands of the same number of colors and printings, 25 cents per pound; labels and flaps printed in whole or in part of metal leaf, 35 cents per pound; cigar bands printed in whole or in part of metal leaf, 40 cents per pound; booklets, 7 cents per pound; all other articles not exceeding eight one-thousandths of an inch in thickness, 15 cents per pound; exceeding eight one-thousandths of an inch and not exceeding twenty one-thousandths of an inch in thickness and less than thirty-five square inches cutting size in dimension, 5 cents per pound; exceeding eight and not

exceeding twenty one-thousandths of an inch in thickness and thirty-five square inches and over cutting size in dimension, 7 cents per pound; exceeding twenty one-thousandths of an inch in thickness, 5 cents per pound, providing that in the case of articles hereinbefore specified the thickness which shall determine the rate of duty to be imposed shall be that of the thinnest lithographed material found in the article, but for the purpose of this paragraph the thickness of lithographs mounted or pasted upon paper, cardboard, or other material shall be the combined thickness of the lithograph and the foundation upon which it is mounted or pasted; books of paper or other material for children's use, lithographically printed in whole or in part, not exceeding in weight twenty-four ounces each, 4 cents per pound; fashion magazines or periodicals printed in whole or in part by lithographic process or decorated by hand, 6 cents per pound; booklets, wholly or in chief value of paper, decorated in whole or in part by hand or by spraying, whether or not lithographed, 10 cents per pound; decalcomanias in ceramic colors, weighing not over one hundred pounds per thousand sheets, on a basis of twenty by thirty inches in dimensions, 60 cents per pound; all other decalcomanias, except toy decalcomanias, 15 cents per pound.

Notes of Decisions

Booklets decorated by hand.—Hand-decorated booklets with pyroxylin covers and paper inserts, value in chief of pyroxylin, held dutiable under paragraph 412, Tariff Act 1909, as "booklets, decorated in whole or in part by hand, * * * whether or not lithographed," and not as manufactures of pyroxylin under paragraph 17. U. S. v. Hagelberg (1912) 3 Ct. Cust. App. 341.

Books for children's use.—Books for children's use, containing illuminated lithographic prints, the books being in the German language, held taxable under Act 1897, par. 400, providing for "books of paper or other material for children's use, containing illuminated lithographic prints, not exceeding in weight 24 ounces each," as the provision is more specific than that in paragraph 502, for "books * * * printed exclusively in languages other than English." P. H. Petry & Co. v. U. S. (1903) 127 Fed. 115, 62 C. C. A. 115, affirming judgment F. H. Petry & Co. v. U. S. (C. C. 1903) 121 Fed. 207.

Decalcomanias.—Decalcomania books held not dutiable as lithographic prints. See paragraph 342.

Chromolithographs printed from oilstones upon paper, commonly known as "decalcomania pictures," are subject to an import duty of 20 per cent. ad valorem, under R. S. § 2504. Arthur v. Moller (1878) 97 U. S. 365, 24 L. Ed. 1046.

Decalcomania paper held not dutiable, under Act 1897, pars. 400, 403, as lithographic prints or printed matter, being commercially a distinct article from either, but falls under the provision for "surface-coated papers * * * printed" under paragraph 398. U. S. v. O. G. Hempstead & Son (C. C. 1908) 159 Fed. 290.

Decalcomanias not in ceramic colors backed with metal leaf fall appropriately under the classification "all other decalcomanias" in paragraph 412, Act 1909. U. S. v. Palm, Fechteler & Co. (1913) 4 Ct. Cust. App. 1.

Decalcomanias for ceramic decoration, the decorating to be done by transferring the figures and designs from the paper to pottery and fixing them on the pottery by burning or baking, held lithographic prints, and dutiable as such within the meaning of paragraph 400, Act 1897. U. S. v. Borgfeldt & Co. (1911) 2 Ct. Cust. App. 197.

Cigar bands.—Lithographic cigar labels, printed in various colors, including bronze, held dutiable at 20 cents per pound, under paragraph 308, Act 1894, if, reckoning the bronze as two colors, the labels would have less than ten colors, the bronze not being of chief value, nor predominant. U. S. v. Wagner (C. C. 1897) 84 Fed. 161.

Estimating thickness.—In construing Act 1897, par. 400, held, as to lithographic prints in the form of folding pictures, of which substantial parts are of one thickness, and relatively smaller parts, consisting of little figures of an ornamental and incidental character, of a less thickness, that they should be classified according to the thickness of the substantial portions. Fuld & Co. v. U. S. (C. C. 1905) 138 Fed. 973.

The narrow strips of hinges to which the lithographic prints are united to make up the folding pictures appear as serving simply to join one with the other and not as a formation or base upon which the print is mounted or pasted. The first part of the proviso to paragraph 412, Act 1909, alone ap-

plies. Hensel, Bruckmann & Lorbacher v. U. S. (1913) 4 Ct. Cust. App. 94.

Fashion plates.—Colored fashion plates held not liable to duty, under R. S. § 2504. Blood v. Merritt (C. C. 1882) 11 Fed. 289.

Labels.—The Christmas seals of the importation are used during the Christmas holidays by attaching them indiscriminately to all kinds of packages, regardless of the contents of these. They are not properly labels, and are not dutiable as such under paragraph 412, Act 1909. Gibson Art Co. v. U. S. (1914) 5 Ct. Cust. App. 385.

Lithographic prints.—Articles composed of cardboard on which lithographic prints have been pasted held not dutiable as lithographic prints. See paragraph 332.

Box tops made of surface-coated paper and having designs printed by the lithographic process held not dutiable as lithographic prints. See paragraph 324.

Lithographic prints, pasted on sheets of paper and embossed so as to form frames, held dutiable as "articles produced in part by lithographic process," under Act 1890, par. 420. U. S. v. Weiller (1895) 65 Fed. 418, 12 C. C. A. 668.

Calendars composed of lithographic sheets with a metal strip at each end, and having a calendar pad composed of lithographic sheets attached thereto, the lithographic prints being the most important feature of the importation, held dutiable as lithographic prints bound, under Act 1897, par. 400, rather than as printed matter (paragraph 403), or as manufactures of paper (paragraph 407). Luyties Bros. v. U. S. (C. C. 1910) 180 Fed. 1022.

Under Act 1897, par. 400, relating respectively to "lithographic prints" and to "booklets," articles consisting of several post cards folded together and ready to be detached, with a paper cover pasted thereon, are covered by the former rather than the latter term. Downing & Co. v. U. S. (C. C. 1909) 172 Fed. 447.

The expression "lithographic prints," in Act 1897, par. 400, had no such definite, general, and uniform meaning in the wholesale trade and commerce of the United States at the time of the passage of that act as to control its construction. Knauth, Nachod & Kuhne v. U. S. (C. C. 1907) 155 Fed. 144.

A book having no lithographic prints, except one on the front cover, held not to be within the provision for "books * * * containing illuminated lithographic prints," in Act 1897, par. 400. E. P. Dutton & Co. v. U. S. (C. C. 1907) 154 Fed. 214.

The provision in paragraph 412, Act 1909, beginning "all other articles than those hereinbefore specifically provided," relates only to such goods as are lithographically printed and not to such as those in one of these appeals, admittedly not lithographed. U. S. v. Fuld & Co. (1913) 4 Ct. Cust. App. 234.

The merchandise consisted of sheets of paper lithographically printed with colored designs, and not exceeding eight one-thousandths of an inch in thickness. Paragraph 412, Act 1909, contains unmistakable evidence that congress intended to name the exceptions to its application, and that apart from those exceptions it was meant to cover, as is there expressly declared, articles composed wholly or in chief value of paper lithographically printed, in whole or in part, whether such articles are or are not ejusdem generis with those first designated. The merchandise is dutiable under that paragraph. Overton & Co. v. U. S. (1912) 2 Ct. Cust. App. 422.

Thin, flat pieces of surface-coated paper, with pictures or designs lithographically printed thereon, and of such dimensions as to admit on proper manipulation of being made into box covers and designed for that use, held classifiable either as surface-coated papers printed under paragraph 398, or as lithographic prints under paragraph 400, Act 1897. Conformably, however, to section 7 of that act requiring the higher rate to be imposed, they are dutiable under paragraph 400 as lithographic prints. U. S. v. Tate (1911) 1 Ct. Cust. App. 434. See, also, Devoy v. U. S. (C. C. 1906) 147 Fed. 765.

Gelatin prints produced by the lichtdrück process were not dutiable under paragraph 403, Act 1897, but under paragraph 400 of that act. Rotograph Co. v. U. S. (1910) 1 Ct. Cust. App. 82.

Views and post cards.—The "cutting size" of post cards, imported in a folded, undetached condition, should be ascertained, under Act 1897, par. 400, by measuring each card by itself, rather than taking the whole series as the unit of measurement. Downing & Co. v. U. S. (C. C. 1909) 172 Fed. 447.

Views covered by paragraph 412, Act 1909, are such as present actual places, buildings, landscapes, or scenes within the United States. And pictures that imaginatively portray events in the life of Washington held not views of American scenery or objects, but dutiable as cards lithographically printed under paragraph 412, Act 1909. Raphael Tuck & Sons Co. v. U. S. (1913) 3 Ct. Cust. App. 501.

Embossing implies a perceptibly raised surface and a raised surface that is perceptibly a form, figure, or design, but the surface of such a form, figure, or design needs, in order to be embossed, to be raised only above the surface immediately surrounding it and

not necessarily above the general surface of the article. Post cards ornamented by a printing in gold on a gelatin surface and impressed with an indented design, producing thereby an effect in relief, are dutiable as cards, "either die cut or embossed," under paragraph 412, Act 1909; and this whether the embossed effect was or was not intended to be produced. Stiner & Son and Bischoff & Co. v. U. S. (1911) 2 Ct. Cust. App. 347.

326. Writing, letter, note, drawing, handmade paper and paper commercially known as handmade paper and machine handmade paper, japan paper and imitation japan paper by whatever name known, and ledger, bond, record, tablet, typewriter, and onionskin and imitation onionskin papers calendered or uncalendered, whether or not any such paper is ruled, bordered, embossed, printed, lined, or decorated in any manner, 25 per centum ad valorem.

Notes of Decisions

Handmade papers.—Handmade printing paper held not dutiable as handmade paper. See paragraph 322.

The provision in Act 1897, par. 401, for handmade paper held not restricted to paper ejusdem generis with the writing, letter, and other papers enumerated in that paragraph; and handmade surface-coated paper is more specifically provided for thereunder than under the provision in paragraph 398, for surface-coated paper "not specially provided for." U. S. v. Seyd (1907) 158 Fed. 408, 85 C. C. A. 518, reversing judgment Seyd v. U. S. (C. C. 1907) 152 Fed. 657.

The handmade papers covered by Act 1897, par. 401, enumerating "writing, letter, handmade, drawing, * * * and typewriter paper," held not only those used as writing papers, but also that suitable for other uses, as handmade India transfer paper used for making lithographic transfers and in printing. Edward Benneche & Bro. v. U. S. (1907) 153 Fed. 861, 83 C. C. A. 43.

The term "handmade" as applied to paper is precise, explicit, specific, and controlling, and since the handmade paper of the importation weighed 10 pounds to the ream, it was dutiable under paragraph 401, Act 1897. American Trading Co. v. U. S. (1911) 2 Ct. Cust. App. 237.

Onionskin paper.—The rare and exceptional use of onionskin paper for printing purposes does not constitute it printing paper and it was dutiable as paper not specially provided for under paragraph 402, Act 1897. Kahlen v. U. S. (1911) 2 Ct. Cust. App. 206.

327. Paper envelopes, folded or flat, not specially provided for in this section, 15 per centum ad valorem.

Notes of Decisions

Envelopes.—Paper cut into pieces adapted to be folded into envelopes held not dutiable as paper envelopes. See paragraph 332.

Paper cut into particular shapes and sizes, ready to be folded and gummed, so as to constitute envelopes, and found to have been commercially known as "flat envelopes" at the time of the passage of the act, held dutiable as "paper envelopes, plain" under Act 1897, par. 399. Hunter v. U. S. (C. C. 1906) 143 Fed. 914.

328. Jacquard designs on ruled paper, or cut on Jacquard cards, and parts of such designs, cardboard and bristol board, press boards or press paper, paper hangings with paper back or composed wholly or in chief value of paper, and wrapping paper not specially provided for in this section, 25 per centum ad valorem.

Notes of Decisions

Cardboard.—Plain cardboard that has been embossed to give it an appearance of grain leather by passing it between a smooth and an indented roller remains cardboard; and it is not dutiable as paper, but as cardboard, under paragraph 415, Act 1909. U. S. v. Meyerson (1911) 2 Ct. Cust. App. 225.

Wall paper.—The evidence does not show that the paper of the importation is either commercially or commonly known as printing paper, distinguishable as such from wall paper. It was not brought in to be used in printing books, and the testimony is conflicting as to whether it is suitable for such a purpose. Thomas & Co. v. U. S. (1912) 2 Ct. Cust. App. 397.

Wrapping paper.—Material having the ordinary thickness of wrapping paper, with the appearance of wrapping paper and used as such, must be deemed not

wood pulp, but wrapping paper, and was dutiable under paragraph 402, Act 1897, as paper not specially provided for. Germania Importing Co. v. U. S. (1911) 2 Ct. Cust. App. 55.

329. Books of all kinds, bound or unbound including blank books, slate books and pamphlets, engravings, photographs, etchings, maps, charts, music in books or sheets, and printed matter, all the foregoing, and not specially provided for in this section, 15 per centum ad valorem. Views of any landscape, scene, building, place or locality in the United States, on cardboard or paper, not thinner than eight one-thousandths of one inch, by whatever process printed or produced, including those wholly or in part produced by either lithographic or photogelatin process (except show cards), bound or unbound, or in any other form, 20 cents per pound; thinner than eight one-thousandths of an inch, $2 per thousand.

Notes of Decisions

Books in general.—Books held not "manufactures of paper" within the meaning of this section, providing for a reduction of duties on such manufactures among other articles enumerated. Pott v. Arthur (1881) 104 U. S. 735, 26 L. Ed. 909.

German novels translated into English, printed at stated intervals, and imported in pamphlet form, could not be classed as "periodicals," under Act 1890, par. 657, but were dutiable, under paragraph 423, as books, etc. Eichler v. U. S. (C. C. 1896) 71 Fed. 956.

Volumes of a series planned to embrace 1,000 titles, being reprints of the world's classical literature, held dutiable under paragraph 329, Act 1913, at 15 per cent. ad valorem, and not admissible free as text-books under paragraph 426. Dutton & Co. v. U. S. (1915) 6 Ct. Cust. App. 460.

Unbound photomechanic reproductions of paintings, having descriptive titles appearing severally in the German, French, and English languages, accompanied by an index, but intended to be completed before being bound or published by the addition of a preface in English, which would constitute English the predominant language, held not so far a completed entity as to warrant their introduction as books published chiefly in a foreign language. These productions are held dutiable as assessed under paragraph 416 of Act 1909. Petry Co. v. U. S. (1915) 5 Ct. Cust. App. 524. See, also, Macmillan Co. v. Sarne (C. C. 1902) 116 Fed. 1018.

Charts.—The meaning of the word "chart" has been broadened since the first use of the term in tariff legislation and that the term was employed in the present law with this accepted broader meaning. "Charts" in paragraph 416, Act 1899, eo nomine describes an importation of articles of paper lithographically printed which exhibit in a pictorial manner the mechanical features of a locomotive or an automobile. Sheldon & Co. v. U. S. (1913) 4 Ct. Cust. App. 42.

Engravings.—Under Act 1857, colored engravings held dutiable as "engravings," and not as "nonenumerated articles." Knoedler v. Schell (C. C. 1860) Fed. Cas. No. 7,890.

Printed matter—In general.—Iron advertising cards held not dutiable as printed matter. See paragraph 167.

Paper bags with advertising matter held not dutiable as printed matter. See paragraph 332.

Perforated cardboards with printed mottoes held not dutiable as printed matter. See paragraph 332.

Pictures printed from lithograph stones in color made and used for ornament held dutiable as "printed matter." Arthur v. Moller (1877) 97 U. S. 365, 368, 24 L. Ed. 1046.

Paper used for box tops and similar purposes, printed with trade-marks and business names and addresses, and in some instances with floral or other decorative designs, held dutiable as "printed matter," under Act 1897, par. 403. Hamilton v. U. S. (1909) 167 Fed. 796, 93 C. C. A. 186.

So-called lace paper, which is used in decoratively packing confectionery, etc., held not brought within the provision for printed matter in Act 1897, par. 403, by reason of having names and addresses of merchants printed thereon. Said provision did not cover matter on which the printing is but a subordinate feature. U. S. v. Hensel, Bruckmann & Lorbacher (C. C. 1907) 152 Fed. 578.

Pattern books consisting of sheets of paper stitched or folded together, upon which designs or patterns are printed in colors, held dutiable as printed matter. Weihenmyer v. Arthur (C. C. 1876) Fed. Cas. No. 17,-360.

German lottery tickets printed in full abroad, so as to require no additions in writing, held dutiable under R. S. § 2504, as "all printed matter," or under section 2516, as nonenumerated articles. U. S. v. Kaub (D. C. 1877) Fed. Cas. No. 15,507.

—— **Illustrated supplements.**—An edition of illustrated supplements printed

in Germany for an American German paper held free of duty as a periodical. See paragraph 329.

—— **Japanese napkins.**—The provision for "printed matter" in Act 1897, par. 403, held not to include Japanese napkins made of crinkled paper and ornamented with designs in colors, stenciled, stamped, or printed thereon. Morimura Bros. v. U. S. (C. C. 1908) 172 Fed. 248.

—— **Photographic mounts.**—Enameled cards called "photographic mounts," which have passed through a printing press, and have printed thereon the name and address of the photographer for whom they are intended, held dutiable under Act 1883, as "printed matter not specially enumerated or provided for." Bonte v. Seeberger (C. C. 1887) 31 Fed. 884.

—— **Post cards.**—The provision in Act 1897, par. 403, for "printed matter," includes post cards of paper combined with such materials as celluloid, silk, and wood, the latter the components of chief value; one side bearing floral and decorative effects produced by spraying and embossing, and the other being printed with the words "Post Card" in various languages. U. S. v. Deutsch (1910) 178 Fed. 272, 101 C. C. A. 116, affirming judgment Deutsch v. U. S. (C. C. 1909) 172 Fed. 290.

Imported post cards bore on the face words printed in different languages and on the back printed pictorial representations, and were ornamented with feathers; the feathers being the element of chief value. Held, that the printing, and not the feathers, constituted the chief feature of the cards, and that therefore the cards were "printed matter," within Act 1897. A. H. Ringk & Co. v. U. S. (C. C. 1908) 164 Fed. 1021.

—— **Samples.**—These samples that show coloring results are designed for the use of salesmen who place dyes on the market; they are not samples of the dyes themselves. The regulations provide that samples to be entitled to free entry must be such as "are obviously intended for use merely as samples of merchandise to sell the class of goods which they represent." These goods were properly assessed as printed matter under paragraph 416, Act 1909. Badische Co. v. U. S. (1913) 4 Ct. Cust. App. 374.

330. Photograph, autograph, scrap, post-card, and postage-stamp albums, wholly or partly manufactured, 25 per centum ad valorem.

Notes of Decisions

Photograph albums.—Photograph albums, composed of paper, leather, and metal clasps, the paper being the material of chief value, held dutiable as articles not specially enumerated, of which paper is a component material. Liebenroth v. Robertson (1892) 12 Sup. Ct. 607, 144 U. S. 35, 36 L. Ed. 336, reversing (C. C. 1888) 33 Fed. 457.

Postal card albums.—Albums intended for holding collections of postal cards, a use to which scrapbooks are not applied, held dutiable as "scrapbooks," because such articles were commercially known as scrapbooks at the time of the enactment of the tariff. American News Co. v. U. S. (1906) 149 Fed. 1022, 79 C. C. A. 531, affirming judgment (C. C. 1906) 142 Fed. 786, and (C. C. A. 1906) 148 Fed. 1017.

331. Playing cards, 60 per centum ad valorem.

332. Papers or cardboard, cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, or other forms, and all post cards, not including American views, plain, decorated, embossed, or printed, except by lithographic process, and all papers and manufactures of paper or of which paper is the component material of chief value, not specially provided for in this section, 25 per centum ad valorem.

Notes of Decisions

1. Absorbent paper.
2. Imitation parchment paper.
3. Lace paper.
4. Manufactures of paper.
5. Millboards.
6. Paper boxes.
7. Paper for printing covers of pamphlets.
8. Paper printed and die cut.
9. Paper umbrellas.
10. Screens.
11. Slate books.
12. Transfer paper.
13. Velvet paper.
14. What constitutes paper.

1. Absorbent paper.—A very light paper, soft, semi-transparent, long-fibered, and dull-finished, which is highly absorbent, and therefore much used by dentists, and which is also used for making paper napkins, held to have been dutiable, under paragraph 422 of Act 1890, as "paper not specially provided for," and not to have been "tissue paper," so as to be dutiable under paragraph 419. U. S. v. Moses (1897) 84 Fed. 329, 28 C. C. A. 425.

2. Imitation parchment paper.—An imitation parchment paper, known as grease-proof paper, which, though it can be printed on, is not suitable for

printing purposes, but is used almost altogether as wrapping paper, held not dutiable as printing paper, under Act 1897, par. 396, but as paper not specially provided for, under paragraph 402. Germania Importing Co. v. U. S. (C. C. 1905) 142 Fed. 215.

3. **Lace paper.**—Plain paper was stamped by a single operation into shapes with lacelike effects, which are known as tops or doilies, and are used for placing on the tops of packages of candy, fruit, etc., or under finger bowls. Plain paper might have been used for the same purpose, except that it would not have been so pleasing. Held that, as the improvement of the original material had not interfered with its distinguishing characteristics, it was dutiable as "paper," rather than as "manufactures of paper," under Act 1897, pars. 403, 407. Hamilton v. U. S. (1909) 167 Fed. 796, 93 C. C. A. 186.

Lace paper doilies, covers, tops, etc., used in packing confectionery, etc., which are composed of paper perforated with ornamental designs and printed with the names and addresses of merchants, held not dutiable as paper, under Act 1897, par. 402, but as manufactures of paper, under paragraph 407. U. S. v. Hensel, Bruckmann & Lorbacher (C. C. 1907) 152 Fed. 578.

4. **Manufactures of paper.**—Books held not manufactures of paper. See paragraph 329.

Calendars composed of lithographic sheets held not dutiable as manufactures of paper not otherwise provided for. See paragraph 325.

Cigarette papers held not dutiable as manufactures of paper. See paragraph 381.

Crepe tissue paper held not dutiable as all other paper not specially provided for. See paragraph 323.

"Hanssegen," or wall mottoes, consisting of pasteboard cards, held not dutiable as manufacture of paper. See paragraph 358.

Paper having an embossed surface design not cut into shapes held not dutiable under the terms of this section. See paragraph 324.

Paper lamp shades, with rings of wire, held not dutiable as manufactures of paper. See paragraph 167.

Pieces of paper which have been cut into shapes and sizes adapting them to be folded so as to constitute envelopes, but which are not shown to have been commercially known as envelopes at and prior to the time of the passage of Act 1897, are not dutiable as "paper envelopes," under paragraph 399, but as manufactures of paper, under paragraph 407. Hunter v. U. S. (1904) 134 Fed. 361, 67 C. C. A. 343, affirming judgment (C. C. 1903) 126 Fed. 894.

Artificial leaves, if made from paper, held dutiable, under Act 1890, as "manufactures of paper not specially provided for," under paragraph 425, and not as "artificial flowers or parts thereof," under paragraph 443. U. S. v. Zeimer (1901) 107 Fed. 912, 47 C. C. A. 60.

Articles composed of cardboard on which lithographic prints have been pasted, and which is cut into forms adapted to be folded into pockets to hang on walls, some of them having pincushions or calendars attached, held not dutiable as "lithographic prints," under Act 1897, par. 400, but as manufactures of paper, under paragraph 407. Knauth, Nachod & Kuhne v. U. S. (C. C. 1907) 155 Fed. 144.

Perforated cardboard, on which are printed sentences or mottoes to be filled in with embroidery, held manufactures of paper, and not printed matter. Weihenmyer v. Arthur (C. C. 1876) Fed. Cas. No. 17,360.

Cardboard, on which is imprinted in colors an ornamental design or pattern for the purpose of showing the method of embroidering the pattern upon canvas, is a manufacture of paper. Id.

Flat cardboards, of different sizes and shapes, upon which lithographic prints have been mounted, and that have been imported in a "knocked-down" condition, but complete in themselves and ready to be assembled and used as wall pockets, are not to be deemed lithographic prints and dutiable as such. They have a new name and new use and were dutiable under paragraph 407, Act 1897, as manufactures of paper. Knauth v. U. S. (1911) 1 Ct. Cust. App. 422.

Fireworks, called night shells, were held to be made of paper, or that paper is the component material of chief value. There is, however, no evidence of record as to what is the component material of chief value in these night shells. On the record they could not properly be held dutiable under paragraph 420, Act 1909. U. S. v. Schade & Co. (1915) 6 Ct. Cust. App. 188.

A review of the judicial, legislative, and administrative interpretations shows cardboard made of a single layer, if not provided for eo nomine, is within the designation "paper," and that articles made of two or more layers of such cardboard are within the designation "manufactures of paper." These goods were properly held dutiable as such under paragraph 420, Act 1909. U. S. v. Overton & Co. (1915) 6 Ct. Cust. App. 248.

5. **Millboards.**—Millboards made of refuse paper and bent or curved in form for use in ceiling cars held not dutiable under paragraph 402, Act 1897, but dutiable as manufactures of paper under paragraph 407. The Pantasote Co. v. U. S. (1910) 1 Ct. Cust. App. 47.

6. **Paper boxes.**—Paper bags elaborately printed with advertising matter relating to the goods intended to be packed and sold within them held not "printed matter" within paragraph 403,

Act 1897, but dutiable as manufactures of paper not specially provided for, under paragraph 407. Kraut v. U. S. (C. C. 1904) 134 Fed. 701; Id. (C. C. 1903) 130 Fed. 392, judgment affirmed (1905) 142 Fed. 1037, 71 C. C. A. 684.

7. Paper for printing covers of pamphlets.—The provision in Act 1897, par. 396, for "printing paper * * * suitable for books and newspapers," held not limited to such paper as is suitable for printing both books and newspapers, and that certain paper used for printing covers of booklets, pamphlets, and the like but not suitable for printing newspapers, was properly classifiable for duty under said provision, rather than under paragraph 402 of said act. Hensel, Bruckmann & Lorbacher v. U. S. (C. C. 1903) 126 Fed. 576.

8. Paper printed and die cut.—The proviso to paragraph 415, Act 1909, would appear to have been enacted in view of the decision in Hamilton v. United States, T. D. 29519, and so designed to impose an increased rate of duty over and above the duty on paper, upon paper both printed and die cut with designs. Knauth, Nachod & Kuhne v. U. S. (1912) 3 Ct. Cust. App. 183.

9. Paper umbrellas.—"Giant umbrellas," being many-colored, fantastically decorated articles, of huge size, covered with paper, in the form of umbrellas, but not used or intended for use as such, held dutiable under paragraph 425 of Act 1890, as manufactures of paper, and not under paragraph 470, as umbrellas. U. S. v. China & Japan Trading Co. (1896) 71 Fed. 864, 18 C. C. A. 335, modifying judgment China & Japan Trading Co. v. U. S. (C. C. 1895) 66 Fed. 733.

10. Screens.—Screens, which were composed of paper, as their component material of chief value, and of wood and metal, which were used on the floors of dwelling houses, or other places, to intercept heat, light, or moving air, or to conceal portions of rooms or objects, and which were then known in trade and commerce of this country as "paper screens," held not dutiable as screens, under the provision for "all other mats not exclusively of vegetable material, screens, hassocks, and rugs," contained in paragraph 378, of Act 1883, but dutiable under the provision for "paper, manufactures of, or of which paper is a component material, not specially enumerated or provided for in this act," contained in paragraph 388. Magone v. American Trading Co. (1892) 57 Fed. 394. 6 C. C. A. 407.

11. Slate books.—"Slate books," of which paper is a component material, of various sizes, and "parchment slates," composed of paper, in one or more folds, and covered with a white composition, to be written on with lead pencil, held dutiable under Act 1883, as "paper, manufactures of, or of which paper is a component material, not specially enumerated or provided for," and not as "card cases, pocketbooks, shell boxes, and all similar articles, of whatever material composed, and by whatever name known, not specially enumerated or provided for in this act, thirty-five per centum ad valorem." Keary v. Magone (C. C. 1890) 40 Fed. 873.

12. Transfer paper.—So-called duplex lithographic transfer paper, which is used in transferring decalcomania designs to pottery, and is produced by pasting together two sheets of paper, one coated with a gummy substance and the other uncoated, is "paper," rather than "manufactures of paper," under Act 1897, pars. 403, 407. B. F. Drakenfeld & Co. v. U. S. (1909) 167 Fed. 798, 93 C. C. A. 188.

13. Velvet paper.—Paper coated, colored, and embossed to imitate leather, or coated with flock to imitate velvet, and known to the trade at the time of the passage of Act March 3, 1883, as "fancy papers," held dutiable as paper not specially enumerated or provided for, and not as a manufacture of paper. Dejonge v. Magone (1895) 16 Sup. Ct. 119, 121, 159 U. S. 562, 40 L. Ed. 260.

Certain fancy papers known as "velvet paper" and "embossed paper," used in the manufacture of boxes, to cover trunks, and for similar uses, held to be dutiable, under Act 1883, par. 392, as "all other paper not specially enumerated or provided for," and not as "manufactures of paper." Dejonge v. Magone (C. C. 1890) 41 Fed. 432.

14. What constitutes paper.—To constitute a material paper, it is not necessary that the machine used in its manufacture should be known as a paper-making machine, nor that the material should contain glue, alum, and clay; the product determines its classification. Germania Importing Co. v. U. S. (1911) 2 Ct. Cust. App. 55.

SCHEDULE N.—SUNDRIES

333. Beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or strung loosely on thread for facility in transportation only, 35 per centum ad valorem; curtains, and other articles not embroidered nor appliquéd and not specially provided for in this section, composed wholly or in chief value of

beads or spangles made of glass or paste, gelatin, metal, or other material, 50 per centum ad valorem.

Notes of Decisions

1. Bead fringes and trimmings.
2. Beads on strands to be used as embroidery.
3. Bracelets.
4. Curtains.
5. Galloons of glass beads.
6. Gelatin spangles.
7. Glass beads.
8. Not threaded or strung.
9. Imitation pearl beads.
10. Rosaries.
11. Spangled horsehair braids.
12. Slipper cases.

1. Bead fringes and trimmings.—Bead fringes, which consist of beads strung on a cord or webbing and are used to decorate lamps as trimmings and shades, held not removed by the doctrine of ejusdem generis from the provision for "ornaments, trimmings, and other articles * * * in part of beads," in Act 1897, par. 408. Holcomb & Co. v. U. S. (C. C. 1910) 180 Fed. 795.

Tunics, motifs, garnitures, and gimps of beads are in chief value of beads and paragraph 333, Act 1913, relative to "beads and spangles and other articles not appliquéd, but composed in chief value of beads," applies more specifically to the goods here than paragraph 358 of that act providing for, amongst other articles, "ornaments" and "trimmings." Loewenthal & Co. v. U. S. (1915) 6 Ct. Cust. App. 209.

The proper rate of duty in this case is such an ad valorem rate as upon a computation based upon the value per pound of the artificial silk fabric it is found such fabric would pay under the compound rates provided for in paragraph 405. So, the intention of the law, that the artificial silk fabric shall not escape the duty imposed thereon under paragraph 405, is attained, the beads and other materials entering into the fringe pay a rate of duty not less than the 60 per cent. ad valorem imposed thereon under paragraph 421, and at the same time such beads and other materials are not charged with the extreme penalty it is contended should be charged on them, they being found associated with the artificial silk fabric. U. S. v. Ewing & Clancey (1912) 3 Ct. Cust. App. 333. See, also, Stein & Co. v. U. S. (1912) 2 Ct. Cust. App. 519; U. S. v. Vietor (1911) 1 Ct. Cust. App. 297.

2. Beads on strands to be used as embroidery.—The phraseology of paragraph 421, Act 1909, relative to beads and spangles, discloses a substantial change from the language in the former law relating to the same subject-matter, and it appearing the importation is of beads on strands of a permanent kind designed for use as embroidery just as imported, they will be deemed dutiable conformably to the requirements of that paragraph. Littauer v. U. S. (1911) 2 Ct. Cust. App. 314.

3. Bracelets.—These bead bracelets are cheap in material and construction, but they are intended for use by children as articles of personal adornment and are so used. They are not used in the sport or play of children, and so are not toys, but dutiable as beaded articles for adornment. U. S. v. Bernard, Judae & Co. (1914) 5 Ct. Cust. App. 202. See, also, Illfelder v. U. S. (1910) 1 Ct. Cust. App. 109.

4. Curtains.—Curtains whose chief value is rice paste formed into regular shaped particles held dutiable under Act 1897, par. 408, relating to "articles * * * in part of beads," not being excluded by the doctrine of ejusdem generis, though the paragraph also enumerates laces, wearing apparel, ornaments, etc. Morimura Bros. v. U. S. (1909) 169 Fed. 279, 94 C. C. A. 555.

5. Galloons of glass beads.—Galloons of glass beads held not dutiable as bead ornaments. See paragraph 358.

6. Gelatin spangles.—The provision in Act 1897, par. 408, for "articles * * * composed * * * in part of * * * spangles made of * * * gelatin," being more specific than that in paragraph 450, for "manufactures of gelatin." Hat crowns composed chiefly of gelatin spangles held dutiable under the former provision. Louis Metzger & Co. v. U. S. (1906) 146 Fed. 132, 76 C. C. A. 558, affirming judgment (C. C. 1905) 141 Fed. 381.

Gelatin spangles strung on cord, and used in making trimmings or ornaments for wearing apparel, are ejusdem generis with the articles enumerated in Act 1897, par. 408, providing for "ornaments, trimmings and other articles" composed of gelatin spangles, and are dutiable under that provision rather than under paragraph 450, relating to "manufactures of * * * gelatin." Hirsch v. U. S. (1906) 145 Fed. 1022, 74 C. C. A. 681, affirming judgment G. Hirsch's Sons v. U. S. (1905) 141 Fed. 380.

7. Glass beads.—Glass beads without holes for stringing held not dutiable as glass beads, loose or unstrung. See paragraph 95.

Hollow glass spheres used on Christmas trees held not dutiable as beads. See paragraph 342.

Pierced opal balls held not dutiable as beads. See paragraph 357.

Strung beads of glass and metal held not dutiable as manufactures of glass. See paragraph 167.

Glass beads, bars, and ornaments, drilled, and unfit for use in the manufacture of jewelry, held dutiable as beads

under paragraph 421, Act 1909. U. S. v. American Bead Co. (1913) 3 Ct. Cust. App. 509.

8. Not threaded or strung.—Beads are not to be included within the provision in Act 1897, par. 408, for beads "not threaded or strung," because they are strung only temporarily. Henry E. Frankenberg Co. v. U. S. (1906) 146 Fed. 63, 76 C. C. A. 514, affirming judgment (C. C. 1905) 144 Fed. 704, and judgment affirmed (1907) 27 S. Ct. 628, 206 U. S. 324, 51 L. Ed. 1034.

The provision in paragraph 408, Act 1897, for "beads of all kinds not threaded or strung," was intended to exclude only beads permanently threaded or strung, as in the manufacture of fabrics and other articles, and is held to include metal beads intended for the manufacture of purses, threaded or strung temporarily for the purposes of transportation and sale only, on cheap, weak cotton threads, and arranged in bunches. U. S. v. Buettner (1904) 133 Fed. 163, 66 C. C. A. 289.

9. Imitation pearl beads.—Pierced imitation pearls held dutiable under Act 1897, par. 408, relating to "beads of all kinds, not threaded or strung," rather than under paragraph 435, as imitations of precious stones. U. S. v. Weinberg (C. C. 1905) 139 Fed. 1006.

The provision in Act 1909 for imitation pearl beads is more specific than that for imitation pearls, and the several provisions taken together indicate a legislative purpose to include within paragraph 449 of that act only such imitation pearls for use in the manufacture of jewelry as are not also imitation pearl beads. Cohn & Rosenberger v. U. S. (1914) 5 Ct. Cust. App. 339.

The testimony here is convincing that in trade and commerce, as well as in common speech, the articles of the importation are, while often called imitation pearls, equally well known as imitation pearl beads. They come accordingly within the precise terms of paragraph 421, Act 1909. Lorsch & Co. v. U. S. (1914) 5 Ct. Cust. App. 93.

10. Rosaries.—Rosaries are not an enumerated article in the tariff act, and under section 2499 they are liable to the duty of 50 per cent. ad valorem imposed by this section on "beads and bead ornaments." Benziger v. Robertson (1887) 7 Sup. Ct. 1169, 1171, 122 U. S. 211, 30 L. Ed. 1149.

In Act 1897, par. 408, rosaries held not subject to duty as "articles * * * in part of beads," because not ejusdem generis with the other goods (ornaments, trimmings, etc.) there enumerated. Benziger Bros. v. U. S. (C. C. 1909) 172 Fed. 280, judgment affirmed U. S. v. Benziger Bros. (1910) 178 Fed. 1006, 101 C. C. A. 664.

11. Spangled horsehair braids.—Spangled horsehair braids held not assessable as "manufactures of wool ornaments with beads or spangles of whatever material composed," under paragraph 371, Act 1897, but as articles "composed wholly or in part of beads or spangles, * * * but not composed in part of wool," under paragraph 408. Veit Son & Co. v. U. S. (C. C. 1903) 121 Fed. 205.

12. Slipper cases.—Slipper cases embroidered with beads held not dutiable as bead ornaments. See paragraph 358.

334. Ramie hat braids, 40 per centum ad valorem; manufactures of ramie hat braids, 50 per centum ad valorem.

Notes of Decisions

Ramie braids.—Held that, as to braids of ramie, the provision in paragraph 339, Act 1897, for "braids * * * of * * * vegetable fiber," is more specific than that in paragraph 347, for "all manufactures of * * * ramie" and other vegetable fibers; the latter provision being intended to embrace any manufactures of vegetable fiber that have been omitted elsewhere in the tariff. U. S. v. Rosenberg (1906) 145 Fed. 343, 76 C. C. A. 217.

335. Braids, plaits, laces, and willow sheets or squares, composed wholly or in chief value of straw, chip, grass, palm leaf, willow, osier, rattan, real horsehair, cuba bark, or manila hemp, suitable for making or ornamenting hats, bonnets, or hoods, not bleached, dyed, colored, or stained, 15 per centum ad valorem; if bleached, dyed, colored, or stained, 20 per centum ad valorem; hats, bonnets, and hoods composed wholly or in chief value of straw, chip, grass, palm leaf, willow, osier, rattan, cuba bark, or manila hemp, whether wholly or partly manufactured, but not blocked or trimmed, 25 per centum ad valorem; if blocked or trimmed, and in chief value of such materials, 40 per centum ad valorem. But the terms

"grass" and "straw" shall be understood to mean these substances in their natural form and structure, and not the separated fiber thereof.

Notes of Decisions

1. Braids or plaits of straw.
2. Chinas and marcelines.
3. Feather-stitched braids.
4. Hats composed of horsehair.
5. Hats made of palmetto leaf.
6. Hats trimmed.
7. Horsehair braids.
8. Not otherwise provided for.
9. Plateaux or flats.
10. Straw laces.
11. Untrimmed hats of imitation horsehair.
12. Wool knit goods.

1. Braids or plaits of straw.—Gold straw braids and silver straw braids held not dutiable under the terms of this paragraph. See paragraph 167.

A small amount of cotton thread in straw braids will not remove such articles from the provision in Act 1897, par. 409, for braids composed "wholly" of straw, where the thread is only used for temporarily tying the ends of the braids to prevent them from unraveling. U. S. v. Samuel Schiff & Co. (1906) 145 Fed. 1023, 74 C. C. A. 682, affirming judgment Samuel Schiff & Co. v. U. S. (C. C. 1905) 140 Fed. 63.

Merchandise, consisting of wide braids or plaits of straw, fastened together so as to form rectangular strips measuring about 18 by 36 inches, held not dutiable as hats partly manufactured, under Act 1897, par. 409, but as straw braids or plaits, "suitable for making or ornamenting hats," etc., under the same paragraph. U. S. v. Samuel Schiff & Co. (1906) 145 Fed. 1023, 74 C. C. A. 682.

Braids composed in chief value, but not wholly of straw, were "braids * * * composed of straw," within Act 1890. U. S. v. Rheims (C. C. 1894) 154 Fed. 865, judgment affirmed (1894) 89 Fed. 1020, 33 C. C. A. 687.

2. Chinas and marcelines.—The clause of Act 1883, providing for braids, plaits, flats, laces, trimmings, tissues, willow sheets and squares, used for making or ornamenting hats, etc., includes goods known, respectively, as "chinas" and "marcelines," and principally used for lining hats, if such goods are trimmings, and are chiefly used for making or ornamenting hats, bonnets, and hoods. Meyer v. Cadwalader (C. C. 1891) 49 Fed. 19.

3. Feather-stitched braids.—So-called "feather-stitched braids," being an article from one quarter to one third of an inch in breadth, woven on a loom, and ornamented with certain patterns, "herring bone" and others, held dutiable as cotton braids, under Schedule I, par. 354, of Act 1890, and not as cotton trimmings, under Schedule J, par. 373, of said act. In re Dieckerhoff (C. C. 1893) 54 Fed. 161.

The interpretation acquiesced in hitherto by the Department of Justice that "feather-stitched braids" are dutiable as braids under paragraph 354, Act 1890, should also be applied to the term "braids" as used in paragraph 324 of Act March 3, 1883. (1893) 20 Op. Atty. Gen. 621.

4. Hats composed of horsehair.—By virtue of the similitude clause horsehair hats are dutiable at the rate provided for "hats of straw * * * not trimmed," by Act 1897, par. 409. Wanamaker v. U. S. (C. C. 1909) 169 Fed. 664, decree reversed U. S. v. Wanamaker (1910) 175 Fed. 900, 99 C. C. A. 390.

Trimmed and untrimmed hats, and braids, composed of horsehair, are respectively dutiable by similitude as straw hats, trimmed and untrimmed, and straw braids, suitable for hats, under Act 1897, par. 409. Rheims Co. v. U. S. (C. C. 1909) 169 Fed. 662, judgment affirmed U. S. v. Rheims Co. (1909) 175 Fed. 778, 99 C. C. A. 350.

5. Hats made of palmetto leaf.—Hats made of palmetto leaf are not hats made of straw, chip, or grass, within Act May 22, 1824, c. 136. U. S. v. Goodwin (C. C. 1825) Fed. Cas. No. 15,229.

6. Hats trimmed.—Straw hats trimmed with silk held not dutiable as trimmed straw hats. See paragraph 317.

Paragraph 335, Act 1913, in so far as it relates to straw hats, clearly appears to have been framed to make of the trimmed hat an entity for determining whether it, when trimmed, is still composed in chief value of the materials therein named. The goods were dutiable as assessed under that paragraph. Aitken, Son & Co. v. U. S. (1915) 6 Ct. Cust. App. 232.

On some of these hats the silk trimming is worth more, on others less, than the straw body to which it is attached. Paragraph 422, Act 1909, imposes a certain rate of duty on hats composed wholly or in chief value of straw, whether wholly or partly manufactured, but not trimmed, and another and higher rate of duty on the same hat if trimmed. The hats are here the subject of the duty imposed, and not the trimming on the hats. U. S. v. Lord & Taylor (1913) 4 Ct. Cust. App. 322.

7. Horsehair braids. — Horsehair braids held dutiable under Act 1897, par. 390, as "silk braids" by similitude. John A. Paterson & Co. v. U. S. (C. C. 1907) 159 Fed. 320, judgment reversed (1908) 166 Fed. 733, 92 C. C. A. 524.

8. Not otherwise provided for.—The words "not specially enumerated or provided for in this act," used in Act 1883, in the clauses fixing a duty upon

"bonnets, hats, and hoods for men, women, children, composed of chip grass," etc., apply to articles of the description mentioned, and not to the material out of which such articles are made. (1884) 17 Op. Atty. Gen. 672.

9. Plateaux or flats.—"Plateaux," which are braids or plaits of straw sewed or woven together into an oval form, and are used for making women's hats, but have to be manipulated into the form desired, and pressed or wired so as to retain that form, and are then trimmed, held properly classified, not under Act 1890, par. 460, § 1, "as manufactures of * * * straw, * * * not specially provided for in this act," but under paragraph 518, § 2, exempting from duty "braids, plaits, laces, and similar manufactures composed of straw * * * suitable for making or ornamenting hats, bonnets, and hoods." U. S. v. Bacharach (1899) 92 Fed. 990, 35 C. C. A. 139.

"Plateaux" or "flats," manufactured from plaits of straw, held free of duty, under paragraph 518, Act 1890, as "plaits, and similar manufactures, composed of straw, suitable for making or ornamenting hats," and not dutiable as "manufactures of straw not specially provided for," under paragraph 460 of the same act. Worthington v. U. S. (C. C. 1898) 86 Fed. 118.

The importation was of articles circular in form, slightly convex, but nearly flat in shape, with the appearance of plain round mats of braided straw, but without a crown and untrimmed. Held, since the evidence shows the material to be so constructed as to permit of being blocked into hats, without adding any new material, and that it is so blocked, being practically useless for any other purpose, it was dutiable under paragraph 409, Act 1897, as hats composed of straw partly manufactured and untrimmed. It was so dutiable, though more than one piece of goods was sometimes employed in the making of one hat. Schiff v. U. S. (1911) 2 Ct. Cust. App. 89.

10. Straw laces.—Straw laces sewn with cotton thread are not within the provision in Act 1897, par. 409, for laces "composed wholly" of straw. Schmitz v. U. S. (1906) 146 Fed. 127, 76 C. C. A. 553, affirming judgment Kurtz, Stuboeck & Co. v. U. S. (C. C. 1904) 136 Fed. 268.

Twisted straw, used for making straw laces, not known in commerce at the time of the passage of the tariff act, held not dutiable as straw manufactures, but as articles not otherwise specially provided for. Rheimer v. Maxwell (C. C. 1853) Fed. Cas. No. 11,738.

11. Untrimmed hats of imitation horsehair.—Untrimmed hats of imitation horsehair, which is a material of vegetable origin, resemble untrimmed hats of straw more than silk wearing apparel, and are accordingly dutiable at the rate provided for the former, under Act 1897, par. 409. R. L. Cochran & Co. v. U. S. (C. C. A. 1910) 180 Fed. 955.

12. Wool knit goods.—Wool knit goods held dutiable as bonnets, hats, etc., composed of chip grass, etc., and "other material." See paragraph 354.

336. Brooms, made of broom corn, straw, wooden fibre, or twigs, 15 per centum ad valorem; brushes and feather dusters of all kinds, and hair pencils in quills or otherwise, 35 per centum ad valorem.

Notes of Decisions

Feather dusters.—Sticks with ends cut so as to resemble a feather duster held not dutiable as brushes. See paragraph 176.

Small feather dusters fall within the terms of paragraph 423, Act 1909, as "feather dusters of all kinds"; and as it does not appear they are adapted to use by children any more than by grown people on gala days, and further, there being no proof of a commercial designation of toys, the importers must be taken to have failed in showing the collector's classification was erroneous. U. S. v. Scheuer & Co. (1913) 4 Ct. Cust. App. 37. See, also, Illfelder v. U. S. (1910) 1 Ct. Cust. App. 109.

Powder puffs.—In Act 1897, par. 410, the provision for "brushes" does not include so-called powder puffs, which are composed of flat circular pieces of woolen cloth with a fuzzy surface and are useful in applying toilet powder, and which, though resembling brushes in use, do not resemble them in construction. U. S. v. George Borgfeldt & Co. (C. C. 1907) 153 Fed. 480.

Whisk brooms.—Evidence held to show that articles invoiced as "whisks" were whisk brooms. U. S. v. Swedish Produce Co. (1913) 4 Ct. Cust. App. 331.

337. Bristles, sorted, bunched, or prepared, 7 cents per pound.

Notes of Decisions

Bristles.—In Act 1897, par. 411, relating to "bristles sorted, bunched, or prepared," and in paragraph 509, relating to "bristles, crude, not sorted, bunched, or prepared," the distinction made is between absolute crudeness and advancement one or more steps in preparation for the arts; and bristles that

have been tied in separate bundles, with their butt ends together, in preparation for brushmakers, are subject to duty under the former provision. The imported bristles to which this appeal relates had been tied up in small bunches, and had been found, both by the board of general appraisers and the circuit court, to have been "bunched or prepared" in accordance with paragraph 411, Act 1897, and it appeared that the word "bunched" had no special commercial use in this connection, there is no previous legislation which gave any peculiar force to it, and it is plain that the question involved is purely one of fact, depending largely, if not entirely, on personal inspection. Held, that the rule as to the effect to be given to the concurrent decisions of two tribunals applied, and that the classification made by the Circuit Court should be affirmed. J. C. Pushee & Sons v. U. S. (1908) 158 Fed. 968, 86 C. C. A. 172, affirming judgment (C. C. 1907) 155 Fed. 265.

Bristles, being separately classified, are not included in the general words "the hair of an animal." Von Stade v. Arthur (C. C. 1876) Fed. Cas. No. 16,-998.

338. Button forms of lastings, mohair or silk cloth, or other manufactures of cloth, woven or made in patterns of such size, shape, or form as to be fit for buttons exclusively, and not exceeding eight inches in any one dimension, 10 per centum ad valorem.

Notes of Decisions

Button forms.—Strips of cotton not fit for buttons exclusively held not dutiable as button forms. See paragraph 266.

339. Buttons of vegetable ivory in sizes thirty-six lines and larger, 35 per centum ad valorem; below thirty-six lines, 45 per centum ad valorem; buttons of shell and pearl in sizes twenty-six lines and larger, 25 per centum ad valorem; below twenty-six lines, 45 per centum ad valorem; agate buttons and shoe buttons, 15 per centum ad valorem; parts of buttons and button molds or blanks, finished or unfinished, and all collar and cuff buttons and studs composed wholly of bone, mother-of-pearl, ivory, or agate, all the foregoing and buttons not specially provided for in this section, 40 per centum ad valorem.

Notes of Decisions

Button shanks.—The provision in Act 1897, par. 414, for "button molds," includes articles commercially known as button shanks, consisting of pairs of metal disks so constructed that when a piece of cloth is placed on top of one of the disks, and they are subjected to pressure, a cloth-covered button is produced. Hormann, Schutte & Co. v. U. S. (1907) 153 Fed. 868, 83 C. C. A. 50.

Buttons in general.—There was no evidence tending to show that the merchandise, buttons of glass and fish scales, was commercially known as buttons of glass, and the evidence did not establish the fact that they were buttons composed of glass in chief value. The present case is no exception to the general rule that merchandise made, composed, or manufactured of a specified article is classified with reference to the component material of chief value, and there is here nothing to show that glass is the predominant material. Blumenthal & Co. v. U. S. (1914) 5 Ct. Cust. App. 327.

There has been a legislative recognition that for tariff purposes there is a difference between paste and glass. The buttons here are manufactures of paste, but they are not classifiable as manufactures in view of the more specific and applicable language appearing in paragraph 427, Tariff Act 1909, and they were properly dutiable under that paragraph. U. S. v. Veith (1914) 5 Ct. Cust. App. 304.

Crochet yokes.—So-called "crochet yokes," made by knitting or crocheting, and used in the yoke of women's vests, held not trimmings or lace within the meaning of Act 1897, par. 339. Julius Loewenthal & Co. v. U. S. (C. C. 1906) 147 Fed. 774.

Metal button molds.—Act 1897, par. 414, provides that "buttons * * * and button molds * * * shall pay duty at the following rates," and the schedule of rates then prescribed mentions only "buttons." Held, that this provision for "buttons" should be construed as though reading "buttons and button molds," and that metal button molds should pay the rate assigned to metal buttons. Hormann, Schutte & Co. v. U. S. (1907) 153 Fed. 868, 83 C. C. A. 50, reversing order (C. C. 1906) 144 Fed. 707.

Parts of buttons.—In construing Act 1897, par. 414, which enumerates "buttons or parts of buttons" as being subject to "the following rates," and provides for "buttons" certain rates of duty and "in addition thereto, on all

the foregoing articles in this paragraph," a further rate of duty. Held, that parts of buttons are not subject to the rules provided for "buttons," that they are not liable to the additional rate on "all the foregoing articles," and that, no definite rate being attached to them, they are dutiable as manufactures of the component material of chief value. Hormann, Schutte & Co. v. U. S. (C. C. 1906) 144 Fed. 707, order reversed (1907) 153 Fed. 868, 83 C. C. A. 50.

Pearl buttons.—Mother of pearl buttons held not dutiable as pearl buttons. See paragraph 369.

Articles composed of mother of pearl, which are known in trade and commerce by the specific name of "pearl collar buttons," and sold at a stipulated price per line button measure, held not dutiable as manufactures of mother of pearl, under paragraph 462 of Act 1890, but dutiable as pearl buttons under paragraph 429. In re Rosenthal (C. C. 1893) 56 Fed. 1015.

Rhinestone buttons.—So-called rhinestone buttons, composed of paste, held not embraced within the provision in Act 1897, par. 414, for buttons of "glass," because, though paste is a kind of glass, it is distinguished from glass elsewhere in the tariff under its own peculiar name. B. Blumenthal & Co. v. U. S. (1905) 144 Fed. 384. 75 C. C. A. 322, affirming judgment (C. C. 1904) 135 Fed. 254.

340. Cork bark, cut into squares, cubes, or quarters, 4 cents per pound; manufactured cork stoppers, over three-fourths of an inch in diameter, measured at the larger end, and manufactured cork disks, wafers, or washers, over three-sixteenths of an inch in thickness, 12 cents per pound; manufactured cork stoppers, three-fourths of an inch or less in diameter, measured at the larger end, and manufactured cork disks, wafers, or washers, three-sixteenths of an inch or less in thickness, 15 cents per pound; cork, artificial, or cork substitutes manufactured from cork waste, or granulated corks, and not otherwise provided for in this section, 3 cents per pound; cork insulation, wholly or in chief value of granulated cork, in slabs, boards, planks, or molded forms, ¼ cent per pound; cork paper, 35 per centum ad valorem; manufactures wholly or in chief value of cork or of cork bark, or of artificial cork or bark substitutes, granulated or ground cork, not specially provided for in this section, 30 per centum ad valorem.

Notes of Decisions

Cork floats.—Small, oval-shaped pieces of cork, tapering at one or both ends and with holes lengthwise through them, would seem on examination not to be, and they appear by the uncontradicted testimony not to be, either fishing floats or cork floats for use in fishing. They are not commercially known as fishing tackle or parts thereof, nor are they in fact, as it appears, used as such. They are manufactures of cork, and dutiable as such under paragraph 429, Act 1909. Fenton v. U. S. (1911) 1 Ct. Cust. App. 529.

Manufactures of cork.—Small pieces of cork for use in making linoleum held not dutiable as manufacture of cork. See paragraph 384.

341. Dice, dominoes, draughts, chessmen, chess balls, and billiard, pool, bagatelle balls, and poker chips, of ivory, bone, or other materials, 50 per centum ad valorem.

342. Dolls, and parts of dolls, doll heads, toy marbles of whatever materials composed, and all other toys, and parts of toys, not composed of china, porcelain, parian, bisque, earthen or stone ware, and not specially provided for in this section, 35 per centum ad valorem.

Notes of Decisions

1. Dolls—Bath babies and position babies.
2. Toys—In general.
3. —— Artificial shamrocks.
4. —— Bracelets.
5. —— Brownie albums or decalcomanie books.
6. —— Celluloid toys.
7. —— Cigar fans.
8. —— Decorated plates and mugs.
9. —— Kindergarten embroidery sets.
10. —— Magic lanterns and slides therefor.
11. —— Mirror puzzles.
12. —— Mouth organs, harmonicas, or metallophones.
13. —— Music boxes.
14. —— Paper articles.
15. —— Papier-maché rabbits.
16. —— Parasols.
17. —— Parts of toys.
18. —— Ping-pong balls.
19. —— Silk flags.
20. —— Small knives.

21. —— Sparklers.
22. —— Stuffed skins of chicks and ducklings.
23. —— Teddy bears.
24. —— Tinsel articles for Christmas tree.

1. Dolls—Bath babies and position babies.—Bath babies and position babies held "dolls," within Act 1897, par. 418, and dutiable as such, rather than as china toys, under Schedule B, par. 95. U. S. v. Butler Bros. (C. C. 1910) 180 Fed. 1005.

2. Toys—In general.—Articles to be worn by children held not dutiable as toys. See paragraph 356.

Artificial shamrocks held not dutiable as toys. See paragraph 347.

Imitation roses of celluloid held not dutiable as toys. See paragraph 347.

India rubber bags held not dutiable as toys. See paragraph 368.

Metal figures of animals held not dutiable as toys. See paragraph 167.

Toys of china and porcelain ware. See paragraph 80.

The word "toys," in Act 1883, is to be taken in its commercial meaning at that date (there being nothing in the act to show a contrary intent), if shown to have any trade meaning different from the popular use. Cadwalader v. Zeh (1894) 14 Sup. Ct. 288, 290, 151 U. S. 171, 38 L. Ed. 115, affirming Zeh v. Cadwalader (C. C. 1889) 42 Fed. 525.

Articles do not become dutiable as toys because of the mere fact that they are imported and generally sold by toy dealers, nor because they may be used chiefly by children. Hamburger & Co. v. U. S. (C. C. 1910) 180 Fed. 632.

An article is not necessarily a toy simply because children can or do play with it. In order to fall within that designation its intended and principal use must be for the amusement of children; or, if capable of other uses, it must nevertheless be commercially known as a "toy." Thanhauser v. U. S. (C. C. 1908) 159 Fed. 228.

To warrant a finding that imports, otherwise not toys, are commercially known as such, there must be proof of a usage, definite, uniform, and general, and not partial, local, or personal; and testimony of employés of an importing retail house, whose knowledge is confined to what has been known or done by such house, is not enough. Woolworth v. U. S. (C. C. 1902) 113 Fed. 1007.

It cannot be accepted that an article, confessedly a toy within the ordinary or commercial meaning of that term, must always be assessed under a paragraph other than the toy paragraph, because that paragraph describes the merchandise by a name that for some purposes might be applicable. Pacific Mail Steamship Co. v. U. S. (1912) 3 Ct. Cust. App. 102. See, also, R. F. Downing v. U. S. (C. C. 1905) 141 Fed. 490; Borgfeldt v. U. S. (C. C. 1900) 124 Fed. 473; U. S. v. Borgfeldt (1911) 1 Ct. Cust. App. 370.

3. —— Artificial shamrocks.—Toys are playthings to amuse children, used throughout the year, or in different seasons; and artificial shamrocks, used by Irish of all ages as a national emblem and not commercially known as "toys," are not toys, though usually obtainable in toy shops, not everything in which is a toy. U. S. v. Cattus (1909) 167 Fed. 532, 93 C. C. A. 64.

4. —— Bracelets.—Beaded bracelets held not dutiable as toys. See paragraph 333.

5. —— Brownie albums or decalcomanie books.—"Brownie albums," or decalcomanie books, containing lithographic prints so prepared that they may be transferred to articles by what is known as the "decalcomanie process," were dutiable, under paragraph 436, Act 1890, as toys not otherwise provided for, and not, under paragraph 308, Act 1894, as lithographic prints. U. S. v. Borgfeldt (1898) 86 Fed. 899, 30 C. C. A. 454.

6. —— Celluloid toys.—Toys made of celluloid, a compound of pyroxylin, are less specifically designated in paragraph 17, Act 1897, for "all compounds of pyroxylin, * * * and articles of which * * * any compound of pyroxylin is the component material of chief value," than in that in paragraph 418, for "toys * * * not specially provided for." U. S. v. Schwarz (C. C. 1905) 140 Fed. 302, decree affirmed Thomas v. Same (1906) 140 Fed. 989, 71 C. C. A. 401, which is affirmed U. S. v. Knauth, Nachod & Kuhne (1906) 150 Fed. 610.

7. —— Cigar fans.—The provision in Act 1897, par. 427, for "fans of all kinds," was, notwithstanding its broad language, not intended to include everything which might be called a fan, and to an exceedingly limited extent used as a fan; and so-called cigar fans and firecracker fans, consisting of small folding fans closing into cases representing cigars, etc., are not dutiable under said provision, but under paragraph 418, as "toys." Morimura Bros. v. U. S. (C. C. 1909) 175 Fed. 887.

8. —— Decorated plates and mugs.—Decorated plates and mugs held not toys. See paragraph 79.

9. —— Kindergarten embroidery sets.—These embroidery sets that are used in kindergarten work are essentially toys, useful only for the amusement of children, whether with or without accompanying instruction. U. S. v. Meier & Frank Co. (1914) 5 Ct. Cust. App. 208.

10. —— Magic lanterns and slides therefor.—Certain slightly made magic lanterns, not sufficiently substantial to be used by mature persons, but rather

by children as toys, held dutiable as "toys," under paragraph 321, Act 1894, and not as "optical instruments," under paragraph 98. Borgfeldt v. U. S. (C. C. 1900) 124 Fed. 457.

Slides designed for use in magic lanterns, for the amusement of children, held dutiable as toys, under Act 1890, par. 436. In re Borgefeldt (C. C. 1894) 65 Fed. 791.

Glass slides for use with toy magic lanterns held not dutiable under paragraph 107, Act 1909, as glass slides for magic lanterns, but dutiable under paragraph 431, as parts of toys. U. S. v. Borgfeldt (1911) 1 Ct. Cust. App. 370.

11. —— **Mirror puzzles.**—The importation, invoiced as mirror puzzles, was classified by the collector as toys under paragraph 342, Act 1913. A sample of the goods was the only evidence introduced by protestants before the board. Held insufficient to warrant reversal of the collector's decision. U. S. v. Sears, Roebuck & Co. (1915) 6 Ct. Cust. App. 376.

12. —— **Mouth organs, harmonicas, or metallophones.**—Certain metallophones and mouth organs or harmonicas, having at least one full octave, and capable of playing a musical air, but not so finished as to musical qualities that they would be used by musicians, being fitted rather for the amusement of children, held dutiable as "toys," under paragraph 418, Act 1897, and not as "musical instruments," under paragraph 453. Borgfeldt v. U. S. (C. C. 1900) 124 Fed. 473.

Harmonicas made of wood and metal, and harmonica cases of celluloid, imported on the same vessel, but in different boxes and under different invoices, held to have been dutiable as "toys," under paragraph 436, Act 1890, and not under paragraphs 215 and 221, respectively, according to the materials of which they were composed. Blumenthal v. U. S. (C. C. 1896) 72 Fed. 48.

13. —— **Music boxes.**—Small, cheap music boxes, inferior in quality, and easily operated by a child, held dutiable as toys, under Act 1890, par. 436. Jacot v. U. S. (1895) 65 Fed. 415, 12 C. C. A. 666.

14. —— **Paper articles.**—Cheap, nondurable paper articles, made for the amusement of children, to resemble other and really useful articles, are toys, though they might nominally fall within the provisions of some paragraph other than the toy paragraph of the statute. Davies, Turner & Co. v. U. S. (1912) 3 Ct. Cust. App. 110. See, also, U. S. v. Borgfeldt (1911) 1 Ct. Cust. App. 370.

15. —— **Papier-maché rabbits.**—Hollow papier-maché rabbits for holding candy, not shown to be universally known in commerce as "toys," but chiefly used for the amusement of children, held dutiable as toys, and not as manufactures of papier-maché. U. S. v. Schwartz (C. C. 1896) 76 Fed. 452, judgment affirmed (1897) 89 Fed. 1020, 32 C. C. A. 495.

16. —— **Parasols.**—Parasols held not dutiable as toys. See paragraph 383.

In this case the board found that the evidence failed to establish that the importation of parasols are commercially known as toys; the burden was on the importer to show this, or that they were toys in fact, and, failing in it, the collector's classification should be affirmed. Pacific Mail Steamship Co. v. U. S. (1912) 3 Ct. Cust. App. 102.

17. —— **Parts of toys.**—The merchandise consists of cotton cloths in patterns ready to be cut and sewed to make single garments, these to be worn by young children. The decision is limited to the articles, samples of which were produced. These cotton goods can hardly have any utility beyond that of a mere plaything, and they are sufficiently advanced in manufacture to be treated as parts of toys. U. S. v. Wyman & Co. (1915) 5 Ct. Cust. App. 483.

That a specific designation in one paragraph ordinarily controls as against a general description in another paragraph, is true; but where such a phrase as "parts of toys" appears for the first time in a paragraph of a tariff act, effect will be given to what seems to have been a plain intention of the congress to embody in the new paragraph, for dutiable purposes, all toys and parts of toys, except certain described kinds there enumerated. U. S. v. Borgfeldt (1911) 1 Ct. Cust. App. 370.

18. —— **Ping-pong balls.**—Ping-pong balls held not toys. See paragraph 25.

19. —— **Silk flags.**—The provision for "toys" in Act 1897, par. 418, held not to include small silk flags mounted on slender wooden staffs about 4½ inches long. Tuska v. U. S. (C. C. 1908) 162 Fed. 814.

20. —— **Small knives.**—Whether an article is a toy depends on whether it is a plaything; and small knives, with odd-shaped handles, which could not be effectively used for most of the ordinary purposes of a pocketknife, not in fact used as playthings, are less properly classed as "toys," under Act 1897, par. 418, than as "penknives," under par. 153. A. Kastor & Bros. v. U. S. (C. C. 1909) 167 Fed. 993.

21. —— **Sparklers.** — Sparklers or sparklets held not dutiable as toys. See paragraph 167.

22. —— **Stuffed skins of chicks and ducklings.**—Stuffed chicks and ducklings

held not dutiable as toys. See paragraph 347.

In regard to stuffed skins of domestic chicks and ducklings, used by confectioners and dealers in Easter goods and novelties, held, that they are not "toys" within Act 1897, par. 418, but "birds, stuffed," under paragraph 493, § 2, Free List. Morimura Bros. v. U. S. (C. C. 1905) 141 Fed. 383.

23. —— **Teddy bears.**—"Teddy bears" have the shape of dolls with heads representing bears. The testimony shows they are sold to and handled by toy dealers almost exclusively; they are not reasonably fit for any use except to amuse children; they are toys and are dutiable as such under paragraph 431, Act 1909. Carson, Pirie, Scott & Co. v. U. S. (1911) 2 Ct. Cust. App. 386. See, also, Illfelder v. Same (1910) 1 Ct. Cust. App. 109.

24. —— **Tinsel articles for Christmas tree.**—The provision for "toys" in Act 1897, par. 418, held not to include fragile, flimsy articles of tinsel, in the shape of rings, stars, etc., which, while they may amuse or entertain children when hung on a Christmas tree, are not suitable to be played with, and, besides being used as Christmas tree ornaments, are employed in shop decorations. Thanhauser v. U. S. (C. C. 1908) 159 Fed. 228.

Hollow glass spheres, three-fourths of an inch in diameter (and too large to be described as beads), covered with tinsel and strung for hanging on Christmas trees, etc., held dutiable as toys under paragraph 321, Act 1894, and not under paragraph 99, as "glass beads" strung. Shevill v. U. S. (C. C. 1897) 87 Fed. 192.

Metal thread, known as "tinsel," "tinsel thread," and "lametta," but never as a toy, held not dutiable as a toy, under Act 1890, merely because it was used almost exclusively for decorating Christmas trees. Wanamaker v. Cooper (C. C. 1895) 69 Fed. 465.

343. Emery grains and emery, manufactured, ground, pulverized, or refined, 1 cent per pound; emery wheels, emery files, emery paper, and manufactures of which emery or corundum is the component material of chief value, 20 per centum ad valorem.

Notes of Decisions

Ground corundum ore.—Corundum and emery being used for the same purposes, and emery being merely an impure grade of corundum, ground corundum ore is similar to emery and dutiable by similitude under Act 1897, par. 419, relating to "emery, * * * ground," etc. F. W. Myers & Co. v. U. S. (1908) 163 Fed. 53, 89 C. C. A. 284, affirming judgment (C. C. 1907) 155 Fed. 502; F. W. Myers & Co. v. U. S. (C. C. 1910) 178 Fed. 462; Myers v. U. S. (1911) 1 Ct. Cust. App. 506. See, also, Hartranft v. Wiegman (1887) 7 Sup. Ct. 1240, 121 U. S. 609, 30 L. Ed. 1012.

344. Firecrackers of all kinds, 6 cents per pound; bombs, rockets, Roman candles, and fireworks of all descriptions, not specially provided for in this section, 10 cents per pound; the weight on all the foregoing to include all coverings, wrappings, and packing material.

345. Matches, friction or lucifer, of all descriptions, per gross of one hundred and forty-four boxes, containing not more than one hundred matches per box, 3 cents per gross; when imported otherwise than in boxes containing not more than one hundred matches each, ⅜ of 1 cent per one thousand matches; wax matches, fusees, wind matches, and all matches in books or folders or having a stained, dyed, or colored stick or stem, and tapers consisting of a wick coated with an inflammable substance, and night lights, 25 per centum ad valorem: Provided, That in accordance with section ten of "An Act to provide for a tax upon white phosphorus matches, and for other purposes," approved April ninth, nineteen hundred and twelve, white phosphorus matches manufactured wholly or in part in any foreign country shall not be entitled to enter at any of the ports of the United States, and the importation thereof is hereby prohibited: Provided further, That nothing in this Act contained shall be held to repeal or modify said Act to provide for a tax upon white phosphorus matches, and for other purposes, approved April ninth, nineteen hundred and twelve.

Notes of Decisions

Fancy matches.—The matches of the importation called "wind flamers" come within the definition of "fancy" matches as fixed by this court. The friction

safety matches of the importation are not "fancy" matches. U. S. v. Masson (1914) 5 Ct. Cust. App. 77.

"Fancy" is the antonym of "plain," "common," "ordinary," "staple," and to say that a thing is "fancy" implies that it has a value or has characteristics not found in the article of simpler type. United Cigar Stores v. U. S. (1913) 4 Ct. Cust. App. 66.

Night lights.—In construction and in use "night lights" partake more of the characteristic features of oil lamps than of tapers, and neither in material nor in the use to which they are commonly applied are they similar to tapers. They are dutiable as unenumerated manufactured articles under paragraph 480, Act 1909. U. S. v. Godillot & Co. (1912) 3 Ct. Cust. App. 128.

Safety matches.—No commercial designation is shown. The goods have no quality which is not found in the ordinary safety match of trade, and they have the same common use. The duty imposed on fancy matches was intended to fall on matches that served some purpose not answered by the ordinary article. The importation is dutiable at three-fourths of 1 cent per thousand under paragraph 436, Tariff Act 1909. United Cigar Stores v. U. S. (1913) 4 Ct. Cust. App. 66.

346. Percussion caps, cartridges, and cartridge shells empty, 15 per centum ad valorem; blasting caps, $1 per thousand; mining, blasting, or safety fuses of all kinds, 15 per centum ad valorem.

347. Feathers and downs, on the skin or otherwise, crude or not dressed, colored, or otherwise advanced or manufactured in any manner, not specially provided for in this section, 20 per centum ad valorem; when dressed, colored, or otherwise advanced or manufactured in any manner, and not suitable for use as millinery ornaments, including quilts of down and manufactures of down, 40 per centum ad valorem; artificial or ornamental feathers suitable for use as millinery ornaments, artificial and ornamental fruits, grains, leaves, flowers, and stems or parts thereof, of whatever material composed, not specially provided for in this section, 60 per centum ad valorem; boas, boutonnieres, wreaths, and all articles not specially provided for in this section, composed wholly or in chief value of any of the feathers, flowers, leaves, or other material herein mentioned, 60 per centum ad valorem: Provided, That the importation of aigrettes, egret plumes or so-called osprey plumes, and the feathers, quills, heads, wings, tails, skins, or parts of skins, of wild birds, either raw or manufactured, and not for scientific or educational purposes, is hereby prohibited; but this provision shall not apply to the feathers or plumes of ostriches, or to the feathers or plumes of domestic fowls of any kind.

Notes of Decisions

1. Artificial flowers in general.
2. Artificial leaves.
3. Artificial fruits.
4. Artificial shamrocks.
5. Bird of paradise feathers.
6. Bleached or dyed grasses.
7. Dyed flowers.
8. Downs on the skin, dressed.
9. Eagle and condor quills.
10. Feather boas.
11. Feathers in general.
12. Goose skins.
13. Grass piquets.
14. Imitation roses.
15. Ornamental leaves and grasses.
16. Ostrich feathers.
17. Palm leaves.
18. Parts of artificial flowers.
19. Peacock feathers.
20. Quills and plumage.
21. Quilts.
22. "Whatever material composed."

1. Artificial flowers in general.—Certain grasses held not dutiable as artificial grains, leaves or flowers. See paragraph 368.

Artificial flowers, being specifically enumerated in Act 1864, are dutiable thereunder, and not under Act 1872, § 2, as a manufacture of which cotton is the component part of chief value. Arthur v. Rheims (1877) 96 U. S. 143, 24 L. Ed. 813.

The tariff act contains no specific duty upon artificial flowers as such; but section 2499 provides that "there shall be levied and collected on each and every nonenumerated article which bears similarity either in material, quality, texture, or the use to which it may be applied, to any article enumerated, * * * the same rate of duty which is levied and charged on the enumerated article which it most resembles," etc. A specific duty is imposed on "artificial flowers and parts thereof, of whatever material, for millinery use, and not specially enumerated." Held, that artificial flowers, stuck into a little stand or box, and salable as ornaments, and not good enough

for millinery uses, but resembling flowers so used more than any other article, are dutiable under the last clause quoted. Walker v. Seeberger (D. C. 1889) 38 Fed. 724, judgment reversed (1893) 13 S. Ct. 981, 149 U. S. 541, 37 L. Ed. 839.

2. **Artificial leaves.**—Artificial leaves made from paper held not dutiable as artificial flowers. See paragraph 332.

Artificial leaves of cotton held not dutiable as artificial flowers. See paragraph 266.

Wreaths made of cotton and wire held not dutiable as leaves, flowers, etc. See paragraph 167.

Artificial leaves, made to resemble leaves of oak, ivy, currant, etc., and manufactured of colored cotton cloth, metal, and wax, cotton being the component material of chief value, cannot be classified as "artificial flowers or parts thereof," under Act 1890, par. 443, and Act 1883, par. 429, but must be assessed under Act 1890, pars. 355, 425, and Act 1883, par. 388, Schedule M, and par. 324, Schedule I, as manufactures of cotton and paper. In re Zeimer (C. C. 1895) 66 Fed. 740.

3. **Artificial fruits.**—Artificial fruits used in trimming hats held dutiable as trimmings. See paragraph 358.

4. **Artificial shamrocks.**—Artificial shamrocks held not "toys," within Act 1897, par. 418, but dutiable as "artificial leaves," under paragraph 425. U. S. v. Cattus (1909) 167 Fed. 532, 93 C. C. A. 64; Tuska, Son & Co. v. U. S. (1911) 2 Ct. Cust. App. 325.

5. **Bird of paradise feathers.**—An importation of bird of paradise feathers, being composed of natural feathers which are neither dressed, colored, nor manufactured, is not within paragraph 328 of Act 1894. (1897) 21 Op. Atty. Gen. 541.

6. **Bleached or dyed grasses.**—Bleached or dyed grasses that are intended for ornamental or decorative purposes held dutiable as "ornamental * * * leaves * * * not specially provided for," under Act 1897, par. 425, rather than under paragraph 449, as "manufactures" of grass, or under section 2, Free List, par. 566, relating to "grasses * * * not dressed or manufactured." U. S. v. H. Bayersdorfer & Co. (1909) 175 Fed. 959, 99 C. C. A. 449.

7. **Dyed flowers.**—The dyeing process to which these flowers were subjected was designed to beautify them with new and sometimes brilliant colorings, thereby improving and advancing rather than preserving their condition. They are not preserved cut flowers, but are ornamental flowers within the meaning of paragraph 438, Act 1909. International Forwarding Co. v. U. S. (1913) 4 Ct. Cust. App. 455. See, also, Bayersdorfer & Co. v. Same (1913) 4 Ct. Cust. App. 446.

8. **Downs on the skin, dressed.**—The goods are the skins of ducklings or chicks, which skins have been dried and stuffed with cotton medicated with some preservative. There is not sufficient evidence in the record to support the contention that they are toys; nor is there sufficient evidence to warrant a reversal of the finding below that they were dutiable under paragraph 347, Act 1913, as downs on the skin, dressed, not suitable for use as millinery ornaments. Morimura Bros. v. U. S. (1915) 6 Ct. Cust. App. 183.

9. **Eagle and condor quills.**—Held, that certain eagle and condor quills, which are ornamental feathers, but are in a crude state, and require further treatment before becoming suitable for ornamental purposes, are dutiable as crude feathers, and not as ornamental feathers, under paragraph 425, Act 1897. Brodie v. U. S. (C. C. 1904) 135 Fed. 914.

10. **Feather boas.**—Boas, made by stringing dressed feathers on a cord, held dutiable as "feathers * * * dressed," etc., under Act 1897, par. 425, by virtue of section 7, describing that unenumerated articles "shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material of chief value." Legg v. U. S. (1908) 163 Fed. 1006, 90 C. C. A. 176, affirming judgment (C. C. 1907) 154 Fed. 858.

Boas made of feathers strung together upon cotton cords differ, of course, from the constituent parts of the boas so made, but avoiding a manifest incongruity if the law were otherwise construed, they must be taken to be like feathers in materials, quality, texture, and the use to which they may be applied, and they were properly held dutiable in similitude as feathers under section 7, Act 1897. American Express Co. v. U. S. (1911) 2 Ct. Cust. App. 39.

11. **Feathers in general.**—Feathers containing a small quantity of wire and used as millinery ornaments held not dutiable as feathers advanced or manufactured. See paragraph 167.

12. **Goose skins.**—Paragraph 425, Act 1897, making feathers and downs when dressed, colored, or otherwise advanced or manufactured in any manner dutiable at 50 per cent. does not extend to or include goose skins adapted to and employed for other purposes than those for which down is used. Gross v. U. S. (1911) 1 Ct. Cust. App. 321.

13. **Grass piquets.**—Grass piquets, used for millinery purposes, consisting of stalks of oats and wheat, cut in the milk, and grasses, some of which are mixed with palm leaf and artificial leaves, bound together in bunches about

15 inches long, and all dyed to imitate the natural color of the plants, held dutiable under paragraph 425, Act 1897, for "artificial or ornamental * * * fruits, grains, leaves, flowers, and stems or parts thereof, of whatever material composed," and not under paragraph 449 of said act, as manufactures of grass. Herman & Guinzburg v. U. S. (1904) 128 Fed. 420, 63 C. C. A. 162, affirming judgment Herman & Guinzeberg v. U. S. (C. C. 1903) 121 Fed. 201.

14. Imitation roses.—Imitation roses of celluloid and metal, which are worn as boutonnières, chiefly by children on occasions of frolic and fun, and are also used as gifts in prize packages, held not "toys" within Act 1897, par. 418, but dutiable as "artificial * * * flowers," under paragraph 425. Hamburger & Co. v. U. S. (C. C. 1910) 180 Fed. 632.

The certainty required in a commercial designation is not here shown, and it appearing that the small imitation flowers of the importation are made of celluloid and attached to metal pins, designed to be worn as boutonnières, and that they are so worn by adults, they cannot be taken to be "toys"; they were dutiable as artificial flowers under paragraph 425, Act 1897. Hamburger v. U. S. (1911) 2 Ct. Cust. App. 234.

15. Ornamental leaves and grasses.—Florists' ornamental supplies, consisting of leaves of various plants arranged in the form of wreaths, crosses, etc., held dutiable as "ornamental leaves" under Act 1897, par. 425. U. S. v. H. Bayersdorfer & Co. (1909) 175 Fed. 959, 99 C. C. A. 449; Bayersdorfer & Co. v. U. S. (C. C. 1909) 171 Fed. 286.

Act 1897, par. 425, relating to artificial or ornamental leaves, held to include leaves elaborately prepared so as to restore their natural appearance and prevent decomposition; also to include them when made up into wreaths and attached to wire frames. Kreshower v. U. S. (C. C. 1907) 152 Fed. 485.

There is no evidence that this merchandise has been embossed and die cut, but even if there were such evidence, these leaves, simulating natural leaves as they do and being ornamental, are more specifically described in paragraph 438, Act 1909, and they were dutiable thereunder. Hirshbach & Smith v. U. S. (1914) 5 Ct. Cust. App. 124.

These ornamental grasses serve the same purposes as the ornamental grains and leaves enumerated in paragraph 481, and they are dutiable thereunder by similitude. Lang v. U. S. (1914) 5 Ct. Cust. App. 85.

16. Ostrich feathers.—Crude ostrich feathers, which in that condition are never used for ornamental purposes, but need to be dressed and otherwise manufactured before becoming suitable for such use, are dutiable as "feathers * * * crude," and not as "ornamental feathers," under paragraph 425, Act 1897. Brodie v. U. S. (C. C. 1904) 135 Fed. 914; Spero v. Same (1904) Id. 915.

17. Palm leaves.—Palm leaves that have been subjected to a process of painting, etc., to give them their natural appearance and to prevent decomposition, held dutiable as "ornamental * * * leaves * * * not specially provided for," under Act 1897, par. 425, rather than as "palms, preserved, * * * suitable for decorative purposes," under paragraph 251. U. S. v. H. Bayersdorfer & Co. (1909) 175 Fed. 959, 99 C. C. A. 449.

As to palm leaves which have been subjected to processes that restore their natural appearance and prevent decay, and some of which have been arranged in wreaths on wire frames, held that, as there had been no advance in manufacture that destroyed the original articles or made them useful for other purposes or altered their trade designation, they still remained dutiable as "leaves," under Act 1897, par. 425, rather than as "manufactures" of palm leaf, provided for in paragraph 450. Kreshower v. U. S. (C. C. 1907) 152 Fed. 485.

The legislative history of paragraph 251, Act 1897, and paragraph 263, Act 1909, shows there was no intention to make the term "palms" cover palm leaves, preserved. These articles of the importation are ornamental leaves within the meaning of paragraph 438, and therefore dutiable as assessed. Lang v. U. S. (1914) 5 Ct. Cust. App. 85.

18. Parts of artificial flowers.—Tubing of india rubber held not dutiable as parts of artificial flowers. See paragraph 368.

19. Peacock feathers.—Peacock feathers in a crude condition, used in that state for ornamental purposes, held dutiable under paragraph 425, Act 1897, for "ornamental feathers," and not under that in the same paragraph for "feathers * * * crude." George Silva & Co. v. U. S. (C. C. 1903) 127 Fed. 781.

20. Quills and plumage.—The wings and tails of birds held properly dutiable as feathers. The importation consisted of feathers, technically distinguished as quills and plumage, and they were manufactured as trimmings for women's hats. They might be appropriately described as either quills or feathers. It must, however, be presumed that paragraph 438, Act 1909, was enacted in view of the construction that had been theretofore placed on a like clause in a previous tariff act, and articles such as make up the importation will accordingly be held to be included by intention as feathers under that paragraph and to be dutiable as such; and this the more cer-

tainly since the articles enumerated along with quills in paragraph 463 of the law do not point to their probable use in making up women's hats or bonnets. Goodman v. U. S. (1911) 2 Ct. Cust. App. 112, 290.

21. **Quilts.**—Quilts of cotton and eider down held dutiable as manufactures of cotton. See paragraph 266.

Under Act March 3, 1883, placing eider down on the free list, and levying a duty of 20 per cent. ad valorem on all manufactured articles not enumerated or provided for in the act, quilts composed of cotton and eider down, or silk and eider down, the eider down in each case being the component material of chief value, are dutiable, at 20 per cent. ad valorem, as manufactured articles not enumerated. Hartranft v. Sheppard (1888) 8 Sup. Ct. 920, 921, 125 U. S. 337, 31 L. Ed. 763.

22. **"Whatever material composed."**—Some effect must be given to the words "of whatever material composed" in paragraph 438, Act 1909. The effect of that phrase modifying the phrase "ornamental * * * flowers not specially provided for," extends this to include articles composed in any part of a material not common to the natural or cut flower; and the dye or coloring matter here used is not common to cut flowers. Bayersdorfer & Co. v. U. S. (1913) 4 Ct. Cust. App. 446. See, also, U. S. v. Bayersdorfer (1909) 175 Fed. 959, 99 C. C. A. 449.

348. Furs dressed on the skin, not advanced further than dyeing, 30 per centum ad valorem; plates and mats of dog and goat skins, 10 per centum ad valorem; manufactures of furs, further advanced than dressing and dyeing, when prepared for use as material, joined or sewed together, including plates, linings, and crosses, except plates and mats of dog and goat skins, and articles manufactured from fur not specially provided for in this section, 40 per centum ad valorem; articles of wearing apparel of every description partly or wholly manufactured, composed of or of which hides or skins of cattle of the bovine species, or of the dog or goat are the component material of chief value, 15 per centum ad valorem; articles of wearing apparel of every description partly or wholly manufactured, composed of or of which fur is the component material of chief value, not specially provided for in this section, 50 per centum ad valorem; furs not on the skin, prepared for hatters' use, including fur skins carroted, 15 per centum ad valorem.

Notes of Decisions

1. Beaver strips.
2. Coney skins.
3. Imitation silver for skin.
4. Dogskin mats.
5. Dressed fur on the skin in general.
6. Furs prepared for material.
7. Goose skins.
8. Hares' combings.
9. Plates, linings and crosses.
10. Pony skins.
11. Sealskins.
12. Sheepskin rugs.

1. **Beaver strips.**—Held, that so-called beaver strips, in the form of rectangular pieces of felted material measuring 15 to 24 inches wide and 36 to 48 inches long, used in the manufacture of hats and composed in part of wool, but chiefly of rabbit fur, are not within the provision in paragraph 370, Act 1897, for articles of wearing apparel in part of wool, nor within that in paragraph 432, for hats or forms for hats, but are dutiable as manufactures in chief value of fur, under paragraph 450. Herrmann v. U. S. (C. C. 1905) 141 Fed. 486; Id. (C. C. 1906) 145 Fed. 843, decree affirmed U. S. v. Herrmann (1907) 154 Fed. 196, 83 C. C. A. 179.

2. **Coney skins.**—Pulled or plucked coney skins held not dutiable as dressed furs or skins. See paragraph 491.

3. **Imitation silver fox skin.**—Alaska fox skins that have been dressed and dyed and pointed by the insertion in the fur at intervals of white hairs from the badger, these white hairs being glued to the skin and making them an imitation silver fox skin, since a new article is thereby made, with a new name, character, and use, constitute a manufacture, but not a manufacture of furs prepared for use as material, and the skins were dutiable at 20 per cent. ad valorem, whether taken by similitude as furs dressed on the skin or as nonenumerated manufactured articles. U. S. v. Hartwig (1911) 2 Ct. Cust. App. 267.

4. **Dogskin mats.**—These dogskin mats have been given a form other than that of the natural skin and have in trade a characteristic name. They are furs, ready to be applied, after incidental cleaning or dyeing to their final use as furs. They are dutiable under paragraph 439, Act 1909. Allum v. U. S. (1913) 4 Ct. Cust. App. 332. See, also, U. S. v. Richter (1911) 2 Ct. Cust. App. 167.

5. **Dressed fur on the skin in general.**—Thibet furs, dressed on the skin, which had been made up into coats, and afterwards separated into parts for use

as furs dressed on the skin, and not as coats, for wearing apparel, were dutiable as furs dressed on the skin, but not made up into articles, under paragraph 444 of Act 1890, and not as manufactures of fur not specially provided for, under paragraph 461. Mavtner v. U. S. (C. C. 1897) 84 Fed. 155, judgment affirmed U. S. v. E. L. Goodsell Co. (1899) 91 Fed. 519, 33 C. C. A. 661.

Pieces of fur sewn together continuously for convenience or safety, but not intended to be used as articles in that shape, held not "articles made of" fur under Act 1883, § 2502, but dutiable as "dressed furs on the skin," under the same schedule. Fleet v. U. S. (C. C. 1892) 148 Fed. 335.

6. Furs prepared for material.—The fur motifs are not made in imitation of feathers, but are intended to be used as ornaments for ladies' hats and were classifiable as furs prepared for use as material under paragraph 439 of that act. Judkins & McCormick Co. v. U. S. (1915) 6 Ct. Cust. App. 112.

7. Goose skins.—The provision in Act 1897, par. 426, for "furs dressed on the skin," does not include dressed goose skins with the down on. Such articles are dutiable as "bird skins, * * * dressed * * * or manufactured in any manner," under paragraph 425 (U. S. Comp. St. 1901, p. 1675). Herskovitz & Roth v. U. S. (C. C. 1910) 180 Fed. 631.

The evidence showing that the use to which goose skins such as were here imported are ordinarily put is similar to the use of fur and not to that of down, they were dutiable by similitude under paragraph 426 of that act and according thus with a long-continued practice of the Treasury Department. Gross v. U. S. (1911) 1 Ct. Cust. App. 321.

8. Hares' combings. — Hares' combings or fur waste held not dutiable as furs, prepared for hatter's use. See paragraph 384.

9. Plates, linings and crosses.—It was the evident purpose of the Congress by paragraph 439, Act 1909, to distinguish between the completed article and the several grades of materials entering into its composition, and to impose on materials prepared for the use of furriers and other manufacturers of fur an intervening rate of duty, higher than the rate upon dressed skins that had theretofore been construed by the board as proper and applicable, and at the same time lower than the rate provided for manufactures made from such materials. The words "plates, linings, and crosses" are employed in that paragraph as words of extension rather than specification and the furriers' articles of the importation, whether dressed or dyed or not, were properly assessed at 35 per cent. ad valorem under that paragraph. Carlowitz v. U. S. (1911) 2 Ct. Cust. App. 172.

10. Pony skins.—Pony skins are not "furs" or "fur skins" in the common, ordinary meaning of those words, but the evidence seems to make it clear that for several years before the enactment of the Act 1909 pony skins had been dealt in commercially precisely as true fur skins and employed as such in manufacture; they are dutiable as dressed fur skins under paragraph 439, Act 1909. Revillon Freres v. U. S. (1911) 2 Ct. Cust. App. 209. See, also, U. S. v. Bennett (1895) 66 Fed. 299, 13 C. C. A. 446.

11. Sealskins.—Sealskins that have been "repaired" cannot be taken for dutiable purposes to come within the first clause of paragraph 439, Act 1909, and though "repaired" this will not constitute them manufactures of furs designated by the second clause of that paragraph; there is no eo nomine provision applicable and the importation is dutiable under paragraph 480 of the act as an unenumerated article, manufactured in whole or in part. U. S. v. Burkhardt (1911) 2 Ct. Cust. App. 177.

12. Sheepskin rugs.—According to the evidence, the importation was of pieces of dressed natural sheepskin sewed into rugs and known to the trade as rugs. It appears they are used as material for making finer rugs or other articles of fur. They are further advanced than dressing and dyeing and were properly dutiable as manufactures of furs further advanced than dressing and dyeing under paragraph 439, Act 1909. U. S. v. Richter (1911) 2 Ct. Cust. App. 167.

349. Fans of all kinds, except common palm-leaf fans, 50 per centum ad valorem.

Notes of Decisions

Cigar fans.—Cigar fans held not dutiable as fans. See paragraph 342.

Embroidered fans.—Embroidered fans are subject only to the provision in Act 1897, par. 427, for "fans of all kinds," not being within the scope of the proviso in paragraph 339, imposing the embroidery rate on "embroidered wearing apparel or other article or textile fabric." U. S. v. Quong Lee & Co. (C. C. 1909) 173 Fed. 819.

Paper fans.—The provision in Act 1897, par. 427, for "fans of all kinds," does not include so-called fans consisting of unsubstantial paper novelties in the shape of fans, which range from four feet in diameter down to very small sizes, and which are not com-

mercially known nor dealt in as fans, nor adapted to practical use as such, but are intended solely for decorative purposes. R. F. Downing & Co. v. U. S. (C. C. 1905) 141 Fed. 490.

Silk fans.—Fans composed of silk and wood and embroidered with silk held dutiable as fans of all kinds. U. S. v. Harper (1911) 2 Ct. Cust. App. 101.

350. Gun wads of all descriptions, 10 per centum ad valorem.

351. Human hair, raw, 10 per centum ad valorem; if cleaned or commercially known as drawn, but not manufactured, 20 per centum ad valorem; manufactures of human hair, including nets and nettings, or of which human hair is the component material of chief value, not specially provided for in this section, 35 per centum ad valorem.

352. Hair, curled, suitable for beds or mattresses, 10 per centum ad valorem.

353. Haircloth, known as "crinoline" cloth, 6 cents per square yard; haircloth, known as "hair seating," and hair press cloth, 15 cents per square yard.

Notes of Decisions

Hair press cloth.—Goods composed of 80 per cent. goat's hair and 20 per cent. cotton, such as brilliantines, lustrines, alpacas, and mohairs, which, prior to 1870, had not come to be specifically known in this country as women's dress goods, are assessable under Act 1870, § 21, as amended by Act 1871, providing for duties on haircloth known as "crinoline cloth," and "on all other manufactures of hair not otherwise herein provided for," and not under Act 1867, relating to women's dress goods composed wholly or in part of wool, worsted, hair of the alpaca, goat, or other like animal. Arthur's Ex'rs v. Butterfield (1888) 125 U. S. 70, 8 Sup. Ct. 714, 31 L. Ed. 643.

The provision in paragraph 431, Act 1897, for "hair press cloth" is not limited to fabrics composed of the same material (horsehair) as the other articles enumerated in said paragraph. E. & W. H. Caldwell v. U. S. (C. C. 1905) 141 Fed. 487.

Manufactures of hair.—Manufactures of hair in general. See paragraph 308.

354. Hats, bonnets, or hoods, for men's, women's, boys', or children's wear, trimmed or untrimmed, including bodies, hoods, plateaux, forms or shapes, for hats or bonnets, composed wholly or in chief value of fur of the rabbit, beaver, or other animals, 45 per centum ad valorem.

Notes of Decisions

Bonnets for men.—Articles made of wool, made on frames imported from Scotland and used for a covering for the head, held not dutiable as bonnets, hats and hoods for men, women, and children. See paragraph 288.

In an action to recover duties paid under protest the inquiry was whether the goods were dutiable under Schedule K of Act March 3, 1883, as "knit goods, made on knitting frames," as assessed by the collector, or under Schedule N, as "bonnets, hats, and hoods for men, women, and children," etc., as claimed by the importers. Held, that it was proper to admit evidence that the commercial designation of the article in question at the date of the act was "Scotch caps," and not "bonnets for men," for, if no such term as "bonnets" was applicable to head coverings for men, congress could not have intended to apply the term to goods which were elsewhere specifically described as "goods made on knitting frames." Toplitz v. Hedden (1892) 13 Sup. Ct. 70, 71, 146 U. S. 252, 36 L. Ed. 961, affirming judgment (C. C. 1888) 33 Fed. 617.

Composed wholly.—The changes made in this paragraph, from the wording of similar paragraphs in previous tariff acts, particularly the insertion of the word "wholly" after the word "compose," requires the words "compose wholly" to be given their ordinary and natural meaning, and hat materials composed at all of anything besides the enumerated articles are excluded from the paragraph. Schmitz v. U. S. (1906) 146 Fed. 127, 76 C. C. A. 553.

Forms for hats.—Beaver strips held not dutiable as forms for hats. See paragraph 348.

Goods used in ornamenting hats.—Though goods are used chiefly or solely in the manufacture and ornamenting of hats, bonnets, etc., if they are bead ornaments, or are composed of silk or of metal, they are dutiable under the specific clauses relating to such articles. Walker v. Seeberger (D. C. 1889) 38 Fed. 724, judgment reversed (1893) 13 Sup. Ct. 981, 149 U. S. 541, 37 L. Ed. 839.

Hats trimmed in chief value of fur.—In applying the provision in Act 1897, par. 432, for "hats * * * trimmed, * * * composed wholly or in chief value of fur," the composition of the hats should be determined by reference to the whole hat, including the trimming, rather than by reference to the body of the hat alone, so that where hats, the bodies of which are fur, are so trimmed that the silk trimming is the chief component of the value of the hats, they are dutiable under Schedule L, paragraph 390. Leon Rheims Co. v. U. S. (C. C. 1907) 154 Fed. 969, judgment affirmed (1908) 160 Fed. 925, 88 C. C. A. 107.

Wool knit hoods.—Wool knit hoods held to be dutiable at 30 per cent. ad valorem, under Act March 3, 1883, enumerating "bonnets, hats, and hoods for men, women, and children, composed of chip, grass, palm leaf, willow, straw, and other material. Stodder v. Spalding (C. C. 1885) 24 Fed. 89, judgment affirmed Spalding v. Stodder (1891) 12 S. Ct. 988, 145 U. S. 654, 36 L. Ed. 847.

355. Indurated fiber ware and manufactures of pulp, not specially provided for in this section, 25 per centum ad valorem.

356. Jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces, 60 per centum ad valorem; rope, curb, cable, and fancy patterns of chain not exceeding one-half inch in diameter, width, or thickness, valued above 30 cents per yard; and articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, card cases, chains, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, match boxes, mesh bags and purses, millinery, military, and hair ornaments, pins, powder cases, stamp cases, vanity cases, and like articles; all the foregoing and parts thereof, finished or partly finished, composed of metal, whether or not enameled, washed, covered, or plated, including rolled gold plate, and whether or not set with precious or semiprecious stones, pearls, cameos, coral, or amber, or with imitation precious stones or imitation pearls, 60 per centum ad valorem. Stampings, galleries, mesh and other materials of metal, whether or not set with glass or paste, finished or partly finished, separate or in strips or sheets, suitable for use in the manufacture of any of the foregoing articles in this paragraph, 50 per centum ad valorem.

Notes of Decisions

1. Construction of paragraph in general.
2. Articles designed to be worn on the person.
3. Barettes.
4. Brooches.
5. Buckles.
6. Buttons.
7. Chatelaine purses.
8. Composed of silver.
9. Coral.
10. Gold-plated lace pins.
11. Jewelry in general.
12. Metal neck chain.
13. Millinery ornaments.
14. Miniature frames.
15. Pencils.
16. Pins in general.
17. Rhinestones.
18. Silver hand bags.
19. Sterling silver necklets.
20. Watch guards and chains.

1. Construction of paragraph in general.—Paragraph 356, Act 1913, as reported to the House by the committee, was deliberately amended in the House by the insertion of the words "60 per centum ad valorem" in the first clause. No interpretation will give due effect to this amendment except that the jewelry clause was thereby segregated from the three following clauses of the paragraph and converted into a complete and independent provision. It follows that the words "parts thereof" and "composed of metal" in the fourth clause do not refer to "jewelry" in the first. Mamluck & Co. v. U. S. (1916) 6 Ct. Cust. App. 556.

2. Articles designed to be worn on the person.—Small compasses held not dutiable as jewelry or as articles designed to be worn about the person. See paragraph 167.

By paragraph 356, Act 1913, a duty is imposed, amongst other articles, upon articles of a certain value composed of metal and designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, card cases, etc. If the assessed articles are similar to the named exemplars in respect to the manner in which they are worn or carried, then the resemblance meets the terms of the provision. Gallagher & Ascher v. U. S. (1915) 6 Ct. Cust. App. 105.

3. Barettes.—Barettes made of base metal and set with imitation jet held

not dutiable as jewelry. See paragraph 95.

4. **Brooches.**—Brooches of brass set with stones are commonly and commercially known as jewelry. They might be classified under two different provisions of paragraph 448, Act 1909, but they come more precisely under the clause that relates to "all articles commonly or commercially known as jewelry," and they are dutiable as such. Cohn & Rosenberger v. U. S. (1912) 3 Ct. Cust. App. 288. See, also, U. S. v. Goldberg's Sons (1912) 3 Ct. Cust. App. 282; Same v. Cohn & Rosenberger (1912) 3 Ct. Cust. App. 273.

Brooches, though falling descriptively within the language of paragraph 448, Act 1909, "all other articles of every description * * * composed wholly or in chief value of * * * brass * * * and designed to be worn on apparel or carried on or about or attached to the person," held dutiable as jewelry under that paragraph. Guthman, Solomons & Co. v. U. S. (1912) 3 Ct. Cust. App. 286. See, also, U. S. v. Goldberg's Sons (1912) 3 Ct. Cust. App. 282; Same v. Vandegrift (1912) 3 Ct. Cust. App. 161.

Reviewing the legislative history of paragraph 448, Act 1909, and its interpretations, brooches that are stipulated to be both commonly and commercially known as jewelry must be taken to come directly under the provisions of that paragraph and to be dutiable under it. They are not dutiable as manufactures of metal. U. S. v. Guthman, Solomons & Co. (1912) 3 Ct. Cust. App. 276. See, also, Hensel v. U. S. (1912) 3 Ct. Cust. App. 117.

5. **Buckles.**—Ornamented steel buckles held not dutiable as jewelry. See paragraph 167.

6. **Buttons.**—Buttons made of brass, plated, and studded with imitation precious stones, held dutiable under paragraph 448, Act 1909. Lent v. U. S. (1911) 1 Ct. Cust. App. 542.

7. **Chatelaine purses.**—Chatelaine purses of metal, gilded or plated in imitation of gold and silver, and set with imitation precious stones, which range in value from 34 marks per gross to 30 marks per dozen, held not within paragraph 434, Act 1897, for "articles commonly known as jewelry." A. Steinhardt & Co. v. U. S. (C. C. 1903) 148 Fed. 512.

8. **Composed of silver.**—The words "composed of silver" in paragraph 448, Act 1909, are not to be construed as relating back and modifying "bags, purses, and other articles" in the paragraph; they relate solely to the words "metal mesh," immediately preceding. To hold otherwise would result in absurdity. The importation is dutiable as made in chief value of metal mesh composed of silver. Hensel v. U. S. (1912) 3 Ct. Cust. App. 117. See, also, Cauvigny Brush Co. v. U. S. (1910) 1 Ct. Cust. App. 118.

9. **Coral.**—Coral cut into form of a cameo, but not set. Act 1846, amended 1857. Bailey v. Schell (C. C. 1863) Fed. Cas. No. 745.

10. **Gold-plated lace pins.**—Gold-plated lace pins designed to be worn on the person because of their ornamental character are jewelry within the common understanding of the term and dutiable under paragraph 448, Act 1909. U. S. v. Strauss & Co. (1913) 4 Ct. Cust. App. 386; Same v. Flory & Co. (1913) 4 Ct. Cust. App. 87. See, also, Bader v. U. S. (C. C. 1902) 116 Fed. 541; Robbins v. Robertson (C. C. 1888) 33 Fed. 709.

These lace pins or shawl pins, with fancy heads and steel shafts, gold plated, according to the testimony, are not known as jewelry and are not used for purposes of adornment. On the authority of cases cited the goods are held not to be jewelry. Altman & Co. v. U. S. (1914) 5 Ct. Cust. App. 296.

11. **Jewelry in general.** — Steel rods tipped with diamond chips and used in an engraving machine held not dutiable as jewelry. See paragraph 167.

Necklace clasps composed of base metal set with imitation precious stones and metal and glass watch-chain compasses, metal being chief value, both articles being conceded to be "parts of jewelry," are dutiable under the last clause of paragraph 356, Act 1913, as "materials of metal, * * * finished or partly finished, * * * suitable for use in the manufacture of any of the foregoing articles in this paragraph," viz., "jewelry, * * * valued above 20 cents per dozen pieces," in the first clause thereof. Mamluck & Co. v. U. S. (1916) 6 Ct. Cust. App. 556.

Shoe buckles, galleleth belts, and combs held dutiable under Act 1909 as jewelry, and not as manufactures of metal. U. S. v. Altman & Co. (1915) 6 Ct. Cust. App. 131.

"All articles commonly or commercially known as jewelry, or parts thereof, finished or unfinished," paragraph 448, Act 1909, is more specific in its application than the provision with the proviso in that paragraph, and that this is so is now stare decisis. U. S. v. International Forwarding Co. (1915) 6 Ct. Cust. App. 25.

The contention made here that no article that possesses any degree of utility can be regarded as jewelry cannot be upheld. Jewelry is often an article of utility. Id.

There is nothing in the record to show that the goods of the importation are designed for use as playthings. They are of a size and appearance that leads to the inference they were made to be worn by children as articles of adornment. A commercial designation as toys was not proved. The articles are properly classifiable as jewelry. U.

S. v. Kraemer & Co. (1914) 5 Ct. Cust. App. 294.

Where the importation consists of merchandise in a variety of forms, necklaces, chains, hatpins, etc., made of a variety of materials and some complete, some incomplete, without attempting a comprehensive definition of jewelry or of articles commonly known as jewelry, the appeal here being limited to merchandise represented by enumerated samples, and there being no evidence to controvert the conclusion drawn by the board, the board's decision must be affirmed; the goods were properly assessed, being commonly known as jewelry, under paragraph 434, Act 1897. Wolff v. U. S. (1911) 2 Ct. Cust. App. 11.

12. Metal neck chain.—The testimony showed that these long chains, some ornamented and some unornamented, are commonly and commercially known as jewelry. That incidentally, when worn, they serve a useful purpose does not preclude a proper classification as jewelry under paragraph 448, Act 1909. U. S. v. American Express Co. (1915) 6 Ct. Cust. App. 97.

Jewelry requires work in metal and a metal neck chain with a clasp constitutes jewelry or parts of jewelry. Metal appears here in the clasps designed to constitute the article a necklace when completed. They are sold to jewelers, and are apparently as susceptible of use on necklaces of metal as of beads. Kraemer & Co. v. U. S. (1914) 5 Ct. Cust. App. 470.

A commercial designation may not be judicially known and none is here shown. It is, however, within judicial cognizance that a metal neck chain with a clasp constitutes jewelry. Paragraph 448, Act 1909, relating to jewelry is, as to this importation, more specific in its application than paragraph 199, and the goods are dutiable accordingly under paragraph 448. U. S. v. Goldberg's Sons (1912) 3 Ct. Cust. App. 282. See also, Same v. Guthman, Solomons & Co. (1912) 3 Ct. Cust. App. 276.

13. Millinery ornaments.—Black hat ornaments of metal and black glass held not dutiable as jewelry. See paragraphs 95, 167.

In construing paragraph 434, Act 1897, for "articles commonly known as jewelry," held, that it does not include so-called "millinery ornaments," used in trimming hats, which are flimsy articles, intended for ephemeral use, are not made by jewelers, and contain no gems or precious metals, but are made of base metal either wholly or in combination with imitation jet or imitation precious stones. U. S. v. S. Schiff & Co. (1905) 139 Fed. 549, 71 C. C. A. 533.

14. Miniature frames. — Miniature frames set with precious stones held not dutiable as articles of jewelry. See paragraph 167.

15. Pencils. — Prorepel fancy metal pencils are composed in chief value of metal with a substantial minor value of other material, the metal value distinctly preponderating. They fall within the terms of paragraph 356, Act 1913. Hensel, Bruckmann & Lorbacher v. U. S. (1915) 6 Ct. Cust. App. 162; Gallagher & Ascher v. U. S. (1915) Id. 105.

16. Pins in general.—Findings of the board of general appraisers that hat pins, hair pins, breast pins, buckles, and other similar ornaments adapted for personal adornment, and composed of base metal, in imitation of precious metals and otherwise, some being set with imitation precious stones, were "articles commonly known as jewelry," and as such dutiable under paragraph 434, Act 1897, affirmed. A. Bader & Co. v. U. S. (C. C. 1902) 116 Fed. 541.

17. Rhinestones. — Rhinestones composed in chief value of paste held not dutiable as jewelry. See paragraph 95.

18. Silver hand bags.—Women's silver hand bags or purses, used for holding money, articles of wearing apparel, etc., held not within the provision in Act 1897, par. 434, for "articles commonly known as jewelry," but dutiable as articles of silver under paragraph 193. Tiffany v. U. S. (C. C. 1904) 131 Fed. 398.

19. Sterling silver necklets.—The articles are hand-wrought sterling silver necklets, set with pearls and marquisettes. The words "gold or platinum" in paragraph 448, Act 1909, refer to and qualify the immediately preceding classification only, "chain, mesh, and mesh bags and purses," and not to all articles commonly or commercially known as jewelry. The goods are dutiable at 60 per cent. under that paragraph. U. S. v. Cohn & Rosenberger (1912) 3 Ct. Cust. App. 273.

20. Watch guards and chains.—Leather watch guard held not dutiable as article known as jewelry. See paragraph 360.

Rope chain, not more than one-half of 1 inch in diameter, breadth, or thickness, made of rolled gold plate, valued at 30 cents per yard and imported in long lengths, for use in manufacturing watch chains, is properly classifiable as parts of jewelry under the final clause of paragraph 448, Act 1909, which, by the language "articles commonly known as jewelry or parts thereof * * * including chain, * * *" fixes the classification of such chain as parts of jewelry. U. S. v. Massce & Co. (1915) 6 Ct. Cust. App. 395.

357. Diamonds and other precious stones, rough or uncut, and not advanced in condition or value from their natural state by cleaving, splitting, cutting, or other process, whether in their nat-

ural form or broken, and bort; any of the foregoing not set, and diamond dust, 10 per centum ad valorem; pearls and parts thereof, drilled or undrilled, but not set or strung; diamonds, coral, rubies, cameos, and other precious stones and semiprecious stones, cut but not set, and suitable for use in the manufacture of jewelry, 20 per centum ad valorem; imitation precious stones, including pearls and parts thereof, for use in the manufacture of jewelry, doublets, artificial, or so-called synthetic or reconstructed pearls and parts thereof, rubies, or other precious stones, 20 per centum ad valorem.

Notes of Decisions

1. Agate penholders.
2. Agate settings.
3. Bort.
4. Diamonds.
5. Imitation precious stones in general.
6. "Including."
7. Jade.
8. Loose pearls.
9. Mineralogical specimens.
10. Opals.
11. Paste cameos.
12. Paste pearls.
13. Pearls.
14. Precious stones used as bearings.
15. Rock crystal articles.
16. "Set."

1. Agate penholders.—Agate penholder handles held not dutiable as precious stones. See paragraph 98.

2. Agate settings.—Small pieces of agate, garnet, etc., advanced from their natural state by cutting process, for the purpose of fitting them for use as settings for jewelry, and known commercially as agates, garnets, etc., are more specifically provided for as "precious stones advanced," under Act 1897, par. 435, than as "manufactures of agate, garnet, etc.," under par. 115. U. S. v. Albert Lorsch & Co. (C. C. 1909) 172 Fed. 277.

3. Bort.—Industrial diamonds of the description known as bort, which have been pierced by a process of drilling or cutting, are not dutiable as diamonds advanced by cutting or other process, under Act 1897, par. 435, but are free of duty as "bort," under paragraph 545. U. S. v. American Express Co. (C. C. 1905) 140 Fed. 967.

On the trial for forfeiture of certain diamonds of an inferior quality, and of the variety commonly called "bort," which had been advanced in condition by being drilled, the disposition of the case turned on whether the articles were free of duty under Act 1897, par. 435, relating to "diamonds * * * not advanced in condition," etc., "including * * * bort." Held, that the terms of limitation following the provision for diamonds do not relate to the provision for bort, and that the merchandise was accordingly free of duty. U. S. v. Fifteen Drilled Diamonds (D. C. 1904) 127 Fed. 753.

4. Diamonds.—Diamonds, cut but not set, held dutiable under Act 1894, par. 338, as "precious stones of all kinds, cut but not set," and not free of duty, under paragraph 467. U. S. v. Frankel (C. C. 1895) 68 Fed. 186, judgment affirmed Wertheimer v. U. S. (1896) 73 Fed. 296, 19 C. C. A. 504.

5. Imitation precious stones in general.—Glass beads strung together and colored in imitation of precious stones held not dutiable as imitations of precious stones. See paragraph 95.

Imitations of pearls, consisting of hollow glass beads, held not dutiable as imitations of precious stones composed of paste and glass. See paragraph 95.

Pierced imitation pearls held not dutiable as imitations of precious stones. See paragraph 333.

The provision in Act 1897, par. 435, for imitation precious stones not exceeding an inch in "dimensions" does not exclude stones exceeding an inch in a single dimension. To be excluded they must exceed an inch in more than one direction. Albert Lorsch & Co. v. U. S. (1906) 146 Fed. 379, 76 C. C. A. 651, modifying judgment (C. C. 1904) 135 Fed. 214.

In construing the provision in paragraph 435, Act 1897, for imitation precious stones not "ornamented or decorated," held, as to stones which have been incrusted, but in which the incrustations are a part of the imitation, that they are not ornamented or decorated within the meaning of said provision. U. S. v. R. F. Downing & Co. (C. C. 1905) 139 Fed. 155, judgment affirmed (1906) 144 Fed. 1022, 73 C. C. A. 42.

Glass beads strung, of two kinds, one consisting of small brown beads, which were a poor imitation of the precious stone known as "cat's eye," and the other of larger size, and also an imitation of precious stones, held to have been dutiable as "imitations of precious stones composed of paste or glass, not exceeding one inch in dimensions, not set," under paragraph 454 of Act 1890, and not as manufactures of glass not specially provided for, under paragraph 108. Morrison v. U. S. (1898) 84 Fed. 444, 28 C. C. A. 456.

The provision in Act 1909 for imitation pearl beads is more specific than that for imitation pearls and the several provisions taken together indicate a legislative purpose to include within paragraph 449 of that act only such

imitation pearls for use in the manufacture of jewelry as are not also imitation pearl beads. Cohn & Rosenberger v. U. S. (1914) 5 Ct. Cust. App. 339. See, also, Lorsch & Co. v. Same (1914) 5 Ct. Cust. App. 93.

Imitation precious stones, oval, heart-shaped, etc., having a small shoulder pierced through in the process of molding, imitation cameos with two holes pierced in the sides, and other articles not in the form of beads, all suitable for use in the manufacture of jewelry, held dutiable as "imitation precious stones" under paragraph 449, Act 1909. Imitation precious stones in the form of hearts, having a hole in the upper extremity in which is inserted a diminutive brass screw ring, are parts of jewelry and are dutiable as such under the last part of paragraph 448. Imitation precious stones with foil backs, either pierced or not pierced, are dutiable not as beads, but as imitation precious stones under paragraph 449. U. S. v. American Bead Co. (1913) 3 Ct. Cust. App. 509. See, also, Cohn v. Same (1912) 3 Ct. Cust. App. 288.

6. **"Including."**—In "diamonds * * * not advanced, * * * including miners' diamonds," in Act 1897, Free List, par. 545, "including" is used as a word of addition, rather than of specification. Sullivan Machinery Co. v. U. S. (C. C. 1909) 168 Fed. 561.

7. **Jade.**—Tableware, etc., made from Jade held not dutiable as precious stones. See paragraph 81.

8. **Loose pearls.**—Loose pearls, unassorted, and of various sizes, colors, and quality, drilled, but not set or strung, held not within the terms of paragraph 434 of Act 1897, covering jewelry * * * including * * * pearls set or strung," nor of paragraph 436, covering "pearls in their natural state, not strung or set," but, by virtue of the similitude provision of section 7 (30 Stat. 205 [U. S. Comp. St. 1901, p. 1693]), they are dutiable under the latter paragraph. Tiffany v. U. S. (1901) 112 Fed. 672, 50 C. C. A. 419.

9. **Mineralogical specimens.** — Mineralogical specimens of agates held not dutiable as precious stones. See paragraph 390.

10. **Opals.**—In construing the provisions in Act 1897, pars. 408, 435, for "beads of all kinds," and "precious stones," respectively, held, that pierced opal balls about one-fourth of an inch in diameter and pierced rock crystal rondelles, or small, flat, faceted disks, are dutiable under the latter provision rather than the former; these articles not being commercially known as beads. U. S. v. American Gem & Pearl Co. (C. C. 1905) 142 Fed. 283.

A single antique opal produced at a period prior to 1700 held not entitled to free entry, under Act 1890, par. 524, as a "collection of antiquities," but dutiable under paragraph 452. Tiffany v. U. S. (C. C. 1895) 66 Fed. 729.

11. **Paste cameos.**—Paste cameos, in imitation of shell cameos, which imitate certain descriptions of precious stones, held dutiable as imitation precious stones under paragraph 435, Act 1897. U. S. v. Goldberg (C. C. 1904) 139 Fed. 706.

12. **Paste pearls.** — Imitations of pearls, made of paste or glass, and mounted on wires, used for jewelry or ornamental purposes, held dutiable at 10 per cent. ad valorem, under paragraph 454 of Act 1890 and paragraph 338 of Act 1894 as "imitations of precious stones not set," and not under paragraph 108 of Act 1890 as "manufactures of glass, not specially provided for," or under paragraph 351 of Act 1894 as "manufactures of paste not specially provided for." Lorsch v. U. S. (C. C. 1902) 119 Fed. 476.

13. **Pearls.**—Pearls which, though they had been tentatively worn as a necklace abroad, were imported loose and were increased by the addition of others after importation for completion into a necklace, held not dutiable as "jewelry" under Act 1897, par. 434, but as "pearls in their natural state," by similitude, under paragraph 436. Citroen v. U. S. (1909) 166 Fed. 693, 92 C. C. A. 365, judgment affirmed U. S. v. Citroen (1912) 32 Sup. Ct. 259, 223 U. S. 407, 56 L. Ed. 486.

Certain drilled pearls of exceptionally large size and fine quality were imported together, arranged in collections according to size, the largest in the center. It appeared that these collections had not been selected for a special piece of jewelry, but that the pearls were to be sold separately on their individual merits, and that they had not been advanced to a special value beyond the aggregate amount of their individual values by an assortment and selection that fitted them for immediate transformation into a necklace or string of pearls. Held that, under the similitude clause section 7, Act 1897, they bear a closer resemblance to "pearls in their natural state not strung or set" than to "pearls set or strung," which are enumerated in paragraphs 436 and 434, respectively, of said act. Neresheimer & Co. v. U. S. (1904) 136 Fed. 86, 68 C. C. A. 654, reversing judgment Neresheimer v. U. S. (C. C. 1903) 131 Fed. 977.

Drilled pearls, which had been assembled and matched abroad and were ordered to be made into a necklace in New York, but had never been strung as a necklace, except temporarily, for purposes of display, held not "jewelry" under Act 1897, par. 434, but dutiable either directly or by similitude as "pearls in their natural state," under paragraph 436. U. S. v. Tiffany & Co.

(C. C. 1909) 172 Fed. 800, judgment affirmed (1910) 178 Fed. 1006, 101 C. C. A. 665.

The provision in Act 1897, par. 435, for imitations of precious stones, held to cover imitation whole and half pearls, including such as have been strung on wire for purposes of manufacture. U. S. v. Weinberg (C. C. 1905) 139 Fed. 1006.

Under section 7, Act 1897, providing that any unenumerated article "shall pay the same rate of duty which is levied on the enumerated article which it most resembles," held that so-called "half pearls," consisting of the better part of the true pearl, from which the flaws or blemishes have been removed by sawing or splitting, and which are not adapted for stringing, but are chiefly useful for jewelry settings, and require labor and expense in completion, held dutiable at the same rate as "pearls in their natural state," under paragraph 436 of said Act which they resemble more than the "pearls, set or strung," enumerated in paragraph 434 of said act. Hahn v. U. S. (C. C. 1903) 131 Fed. 1000, judgment affirmed U. S. v. Hahn (1904) 135 Fed. 349, 68 C. C. A. 130.

Pearls which have been drilled or pierced, but have not been strung, held not to fall within paragraph 434, Act 1897. Tiffany v. U. S. (C. C. 1900) 103 Fed. 619.

14. Precious stones used as bearings.—Sapphires intended for bearings for electrical instruments held dutiable as precious stones, under Act 1897, par. 435, rather than as articles composed of mineral substances under paragraph 97. U. S. v. American Express Co. (C. C. 1904) 147 Fed. 894.

Small pieces of Ceylon sapphire used as bearings for electrical meters, etc., held not dutiable as precious stone cut, but not set. U. S. v. General Electric Co. (1913) 4 Ct. Cust. App. 287.

15. Rock crystal articles.—Rock crystal intaglios, produced in an expensive manner by engraving, and then painted, held within Act 1897, par. 435, for "precious stones advanced in condition or value * * * by * * * cutting or other process," regardless of their advancement in value by painting. U. S. v. Benedict & Warner (1906) 145 Fed. 914, 76 C. C. A. 446, affirming judgment Benedict & Warner v. U. S. (C. C. 1904) 135 Fed. 242.

Rock crystal articles are dutiable under paragraph 435, Act 1897, rather than as manufactures of rock crystal under paragraph 110. U. S. v. American Gem and Pearl Co. (C. C. 1905) 142 Fed. 283.

16. "Set."—In construing the provision in Act 1897, par. 435, for "diamonds and other precious stones advanced in condition or value from their natural state by cleaving, splitting, cutting, or other process, and not set," held, that "set" has a well-known and well-defined trade meaning in connection with precious stones, which would not include the insertion of an agate bearing in a scale, and that the paragraph was intended to cover only precious stones intended for jewelry purposes, and would not cover such as are fitted for use as bearings. Smith v. Computing Scale Co. (C. C. 1906) 147 Fed. 890.

358. Laces, lace window curtains not specially provided for in this section, coach, carriage, and automobile laces, and all lace articles of whatever yarns, threads, or filaments composed; handkerchiefs, napkins, wearing apparel, and all other articles or fabrics made wholly or in part of lace or of imitation lace of any kind; embroideries, wearing apparel, handkerchiefs, and all articles or fabrics embroidered in any manner by hand or machinery, whether with a plain or fancy initial, monogram, or otherwise, or tamboured, appliquéd, or scalloped by hand or machinery, any of the foregoing by whatever name known; edgings, insertings, galloons, nets, nettings, veils, veilings, neck rufflings, ruchings, tuckings, flouncings, flutings, quillings, ornaments; braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine, and not specially provided for; trimmings not specially provided for; woven fabrics or articles from which threads have been omitted, drawn, punched, or cut, and with threads introduced after weaving, forming figures or designs, not including straight hemstitching; and articles made in whole or in part of any of the foregoing fabrics or articles; all of the foregoing of whatever yarns, threads, or filaments composed, 60 per centum ad valorem.

Notes of Decisions

1. Appliquéd articles.
2. "Article."
3. Beaded net lace.
4. Braids.
5. Chiffon.
6. Chinese shoes or slippers embroidered.
7. Cord.
8. Corsets with lace trimmings.

9. Dotted swisses.
10. Drawnwork.
11. Embroideries in general.
12. Featherstitch braids.
13. Galloons.
14. Handkerchiefs.
15. Haussegen or wall mottoes.
16. Laces in general.
17. —— Cotton laces.
18. —— Silk laces.
19. —— Thread laces.
20. Military ornaments.
21. Neck ruffings.
22. Net.
23. —— Cotton net.
24. —— Silk spot net.
25. Proviso under former acts that embroidered, etc., articles shall not be dutiable at a less amount than the material plain.
26. "Scalloped by hand or machinery."
27. Screens.
28. Tamboured articles.
29. "Trimmings."
30. Veils.
31. White frilled muslins.

1. **Appliquéd articles.**—Colored cotton cloth with polka dots composed of goat hair held not dutiable as a fabric appliquéd composed of cotton. See paragraph 288.

Cotton wearing apparel upon which are sewn strips or bands of goods held not dutiable as appliquéd. See paragraph 256.

There is no definition of "appliqué" in trade and commerce different from the dictionary definition of it as "any ornament laid out and applied on another surface, such as cloth"; and goods within this definition held dutiable under Act 1897, par. 390. Further, it is not necessary that the design should be regular, conventional, or highly ornamental; and the provision includes a fabric to which a gilt cord has been applied in irregular loops of a crude design, being in this form fairly durable, permanent, and salable. U. S. v. A. A. Vantine & Co. (1908) 166 Fed. 735, 92 C. C. A. 397, affirming judgment A. A. Vantine & Co. v. U. S. (C. C. 1907) 155 Fed. 149.

A collector of customs excluded goods which had been cheaply appliquéd from a tariff provision for "appliquéd" articles, on the ground that the appliqué feature was added to secure a lower rate of duty than would be applicable if they were imported plain. Held, that as the greater portion of the goods were sold in the condition in which imported, and the appliqué work was not done solely as a subterfuge to obtain the lower duty, they should have been classified as "appliquéd." A. A. Vantine & Co. v. U. S. (C. C. 1907) 155 Fed. 149, judgment affirmed U. S. v. A. A. Vantine & Co. (1908) 166 Fed. 735, 92 C. C. A. 397.

An article is appliquéd within the tariff sense when it is ornamented with a pattern or design independently fabricated. These goods are not appliquéd. Loewenthal & Co. v. U. S. (1915) 6 Ct. Cust. App. 209. See, also, U. S. v. Hamburger Levine Co. (1914) 5 Ct. Cust. App. 217.

Articles composed of silk or mainly of silk or of silk and metal, and appliquéd, are not dutiable under paragraph 399, Act 1909, but are dutiable under paragraph 402 of that act. U. S. v. Vietor (1911) 1 Ct. Cust. App. 297.

Appliquéd collarettes, whether in chief value of silk or of cotton, held dutiable, silk collarettes at 60 per cent. ad valorem under paragraph 390, Act 1897, and cotton collarettes at the same rate under paragraph 339 of that act. Krusi v. U. S. (1911) 1 Ct. Cust. App. 168.

Whether collarettes designed to be sewn on women's dresses and intended for wear about the necks of women have been in fact appliquéd or not may be determined by actual inspection, and the court will take judicial notice of the facts in common knowledge and experience that show these articles to have been appliquéd. Id.

2. **"Article."**—The ordinary use of the word "articles" in tariff acts is a broad one; and there is nothing in Act 1897, par. 390, which would require the restriction of that term to completed articles. It may include woven fabrics in 25-yard pieces. U. S. v. A. A. Vantine & Co. (1908) 166 Fed. 735, 92 C. C. A. 397.

3. **Beaded net lace.**—Beaded net lace, made of silk, held subject to customs duty under Act 1894, par. 354, as manufactures known commercially as "bead, beaded, or jet trimmings or ornaments," at 35 per cent. ad valorem, and not under paragraph 301, at 50 per cent. ad valorem. Morrison v. U. S. (1901) 107 Fed. 113, 46 C. C. A. 173.

4. **Braids.**—Articles commonly known as "hat braids," composed of cotton, being specifically enumerated in Act March 2, 1861, as amended July 14, 1862, are subject to the duty therein provided rather than the higher duty provided by Act June 30, 1864, § 6, in which they are embraced in general terms. Arthur v. Zimmerman (1877) 96 U. S. 124, 24 L. Ed. 770.

Cotton braids, intended to be manufactured into shoe laces, though not trimmings, held within Act 1897, par. 339, imposing a duty on certain cotton manufactures, among which are "embroideries, and all trimmings, including braids, edgings, insertings, flouncings, galloons, gorings, and bands"; the intention that the word "including" was used not by way of specification, but by way of addition, being shown by a comparison of the acts of 1897 and 1894, indicating that braids were intentionally taken out of the 45 per cent. paragraph, where they appeared in the act of 1894, and put into the 60 per cent. paragraph of the act of 1897, irrespective of the use to which they may be applied. Hiller v. U. S. (1901) 106 Fed. 73, 45 C. C. A. 229, writ of certiorari denied (1901)

21 Sup. Ct. 921, 180 U. S. 639, 45 L. Ed. 711.

Braids of cotton and india rubber, cotton the more valuable component, held dutiable under the provision in paragraph 339, Act 1897, for "braids * * * composed wholly or in chief value of flax, cotton, or other vegetable fiber, and not elsewhere specially provided for * * * whether composed in part of india-rubber or otherwise." Calhoun v. U. S. (C. C. 1901) 122 Fed. 894.

The language "braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine," in paragraph 358, Act 1913, is not intended to narrow the lexicographic definition of the word "braid." It is comprehensive and sufficiently broad to cover the material which was used in the manufacture of the lamp shades at bar, and which appellants' witness stated may be called a braid or tape. Morimura Bros. v. U. S. (1916) 6 Ct. Cust. App. 475.

These lamp shades, made in part of braids, are more specifically classified under paragraph 358, Act 1913, as articles made wholly or in part of braids, "of whatever yarns, threads, or filaments composed," than under paragraph 318, as a manufacture in chief value of silk, notwithstanding that silk is their component material of chief value. By the words "of whatever yarns, threads, or filaments composed," in paragraph 358, Congress has excluded the element of component material in determining the dutiability of articles which answer the description of the paragraph. Morimura Bros. v. U. S. (1916) 6 Ct. Cust. App. 475. See, also, U. S. v. Snow's United States' Sample Exp. Co. (1915) 6 Ct. Cust. App. 120.

The imitation horsehair braids of the importation were not shown to resemble pyroxylin or its compounds, or any article of which pyroxylin is the component material of chief value. On the contrary, in texture, quality, and use they resemble braids of cotton, and since they were dutiable by similitude, they were dutiable as cotton braids. Isler & Guye v. U. S. (1914) 5 Ct. Cust. App. 229.

After the elimination of the "wool" theory, horsehair braids and hats were always assessed under Act 1897 by similitude with silk braids and hats, except for an interval when this practice was inhibited by an erroneous rule of construction that was subsequently expressly disapproved by this court Zimmermann & Meyer v. U. S. (1914) 5 Ct. Cust. App. 104.

The article which the importation most resembles in material, quality, texture, and use furnishes the basis for comparison in determining a duty by similitude. Here it seems clear that in the respects named artificial horsehair braids more nearly resemble cotton braids than straw braids. Plummer & Co. v. U. S. (1912) 3 Ct. Cust. App. 229. See, also, U. S. v. Cochran (1912) 3 Ct. Cust. App. 57; U. S. v. Buss & Warner (1912) 3 Ct. Cust. App. 87; U. S. v. Eckstein (1914) 5 Ct. Cust. App. 315.

5. **Chiffon.**—The thin silk fabric known as "chiffon," which is suitable for veils, and is also much used for ruching, neckware, and dress trimmings, when imported in widths of 14 inches, with a border on each side, generally known in the trade as "chiffon veiling," held dutiable under Act 1894 as "veilings," under paragraph 301, and not as manufactures of silk, under paragraph 302. U. S. v. Lahey (1897) 83 Fed. 691, 28 C. C. A. 379.

6. **Chinese shoes or slippers embroidered.**—Chinese shoes or slippers, embroidered either by hand or machinery held dutiable under paragraph 390, Act 1897, and not under paragraph 438 of said act. Lai Ming v. U. S. (1910) 1 Ct. Cust. App. 5.

7. **Cord.**—In view of former decisions, taken together with subsequent practice and legislation as well, it will be assumed the Congress used the word "cord" in paragraph 349, Act 1909, with the same meaning that had been attached to it by cited adjudications and the executive practice conforming thereto. Ulmann & Co. v. U. S. (1914) 5 Ct. Cust. App. 357.

8. **Corsets with lace trimmings.**—Corsets trimmed with lace held not dutiable as articles in part of lace. See paragraph 256.

Women's corsets made of cotton, as the material of chief value, trimmed around the upper border with cotton lace edging, held dutiable under paragraph 339 of Act 1897, as wearing apparel "made wholly or in part of lace," notwithstanding the small relative value of the lace. Wanamaker v. U. S. (1903) 120 Fed. 16, 57 C. C. A. 36.

Women's corsets made of cotton and other materials, trimmed around the upper border with cotton-lace edgings, whose relative value to the corsets is from 1 to 2 per cent., should be regarded as "wearing apparel * * * made wholly or in part of lace, or in imitation of lace," within Act 1897, par. 339. U. S. v. Altman (1901) 107 Fed. 15, 46 C. C. A. 116.

These goods were cotton corsets trimmed with lace. Since Lever lace was not the component material of chief value, the merchandise was excluded from the provisions of paragraph 350, Act 1909, and they did not fall within the terms of the provisos to paragraph 349. They were properly held dutiable under the principal provision of paragraph 349. U. S. v. Vandiver (1915) 6 Ct. Cust. App. 149.

9. **Dotted swisses.**—"Dotted swisses," being white, bleached, woven, cotton

fabrics in the piece, embroidered after leaving the loom by an additional process of manufacture, though not known in commerce as "embroideries," held dutiable as articles embroidered, under paragraph 276, Act 1894, and not under the countable clauses of the cotton schedule. U. S. v. Einstein (1897) 78 Fed. 797, 24 C. C. A. 346, certiorari denied Einstein v. U. S. (1897) 17 Sup. Ct. 993, 166 U. S. 722, 41 L. Ed. 1188.

10. Drawnwork.—Without proof it will not be held that certain conventional ornaments added to drawn-work articles are covered by the term "embroidered," in Act 1897, par. 339. U. S. v. J. R. Simon & Co. (1909) 169 Fed. 106, 95 C. C. A. 434, writ of certiorari denied (1910) 30 Sup. Ct. 411, 215 U. S. 610, 54 L. Ed. 348.

Held, that certain woven flax articles, in portions of which ornamental effects have been produced by drawing out certain of the threads and interjecting different, independent threads, producing openwork effects, are not "articles * * * in imitation of lace," as enumerated in paragraph 339, Act 1897. U. S. v. B. Ulmann & Co. (1905) 139 Fed. 3, 71 C. C. A. 415.

The provision for articles "embroidered," in Act 1897, par. 339, held to include so-called "drawnwork" goods, consisting of fabrics in which an openwork effect has been produced by drawing out certain of the threads and interjecting different and independent threads, and which have ornamental work and figures in various portions of the goods. Beach v. Sharpe (C. C. 1907) 154 Fed. 543.

Held, that articles of so-called "drawnwork," composed of flax, made by drawing some of the threads and tying and looping them with other threads to form figures, are not dutiable as articles made in imitation of lace, under Act 1897, par. 339, but as fabrics of flax under paragraph 346 of said act. J. R. Simon & Co. v. U. S. (C. C. 1904) 131 Fed. 649, judgment affirmed U. S. v. B. Ulmann & Co. (1905) 139 Fed. 3, 71 C. C. A. 415.

Cotton bureau covers, and other like articles, ornamented by fancy work, or effects produced in part by drawing out threads of the fabric, and in part by binding the remaining threads into groups, so as to form open spaces,—such work being known as "drawnwork,"—held not embroidered, but dutiable under paragraph 355 of Act 1890, as manufactures of cotton not enumerated, and not under paragraph 373, as manufactures of cotton embroidered. Meyer v. U. S. (C. C. 1898) 90 Fed. 803.

The figures on these goods are outlined exclusively by threads introduced after weaving and they are not produced by combining these threads with threads of the fabric. The goods were properly assessed under paragraph 358, tariff Act 1913. Takayama v. U. S. (1915) 6 Ct. Cust. App. 151.

On a review of the judicial decisions affecting the classification of articles similar to those of the importation, and of the legislative action following upon those decisions, it is clear that paragraph 349, Act 1909, was intended to subject ornamental openwork to the same duty imposed by that act on laces, embroideries, and the like. Frank & Co. v. U. S. (1914) 5 Ct. Cust. App. 273.

Linen doilies, tray cloths, tidies, and table centers held dutiable under paragraph 349, Act 1909. Frank & Co. v. U. S. (1912) 3 Ct. Cust. App. 216.

11. Embroideries in general.—Dresses in part embroidered and in part made of lace held not dutiable as embroideries or articles made in part of lace. See paragraph 256.

Embroidered fans held not dutiable as embroidered wearing apparel. See paragraph 349.

Embroidered woolen dress goods held not dutiable as articles embroidered. See paragraph 290.

Wool dress robes held not dutiable as articles embroidered. See paragraph 290.

Woolen dress patterns held not dutiable as articles embroidered. See paragraph 290.

Slipper cases consisting of cotton canvas embroidered with beads are dutiable as embroidered manufactures of cotton, and not as bead ornaments. Kohlsaat v. Murphy (1877) 96 U. S. 153, 24 L. Ed. 844; Weihenmyer v. Arthur (C. C. 1876) Fed. Cas. No. 17,-360.

The rate of duty on embroidered goods, as fixed by Act March 2, 1861, § 22, is not reconsidered in Act June 30, 1864, § 22, but remains as provided in the former act. Arthur v. Homer (1877) 96 U. S. 137, 24 L. Ed. 811.

The provision in Act 1897, par. 339, for "embroidery" and articles "embroidered in any manner," does not include articles stitched on the edge merely to prevent raveling. The fundamental idea of embroidery is that it is needlework done upon a previously completed fabric as distinguished from tapestry or lace work in which the design is a part of the original fabric. It is also essential that it should be ornamental, rather than merely useful. U. S. v. Waentig (C. C. 1909) 168 Fed. 570.

Held that testimony that thread used in machine embroidering was not "embroidery cottons" was insufficient, where it appeared that the witnesses had never seen the thread or yarn used in machine embroidery, and had no familiarity with the article in question. Loeb & Schoenfeld v. U. S. (C. C. 1905) 143 Fed. 698, decree reversed (1906) 150 Fed. 327, 80 C. C. A. 211.

Where napkins and tablecloths are

substantially embroidered, they are properly assessed for duty under Act 1894, par. 276, as articles embroidered by hand or machinery, at 50 per cent. ad valorem. Wells, Fargo & Co. v. U. S. (C. C. 1899) 99 Fed. 431.

So-called openwork articles, having ornamental designs stitched thereon by hand with a needle and thread, held to be "embroideries," within the meaning of Act 1890, par. 373. Neuss, Hesslein & Co. v. U. S. (C. C. 1896) 142 Fed. 281.

On the question of whether certain imported openwork articles were "embroideries," within the meaning of a tariff act, the only evidence was the testimony of a clerk of the importers testifying in their behalf, who had never bought or sold embroideries, and whose only knowledge was as to the designation of the goods in the linen trade. Held, that this testimony was insufficient to establish the commercial scope of the expression "embroideries," or to prove that the goods, though embroidered in fact, were not embroidery in a commercial sense. Id.

Articles upon which the only embroidery consisted of a single initial letter were not dutiable as "embroideries," etc., under paragraph 373 of Act 1890. U. S. v. Amster (C. C. 1896) 71 Fed. 958, applying U. S. v. Harden (1895) 15 C. C. A. 358, 68 Fed. 182.

A fabric made on a loom with a Jacquard attachment, and which is not known in the trade as "embroidery," or an "article of wearing apparel embroidered by hand or machine," cannot be classified under Act Oct. 1, 1890, par. 373. In re Fellheimer (C. C. 1894) 66 Fed. 720.

Certain importations were entered at the port of New York in February and March, 1891, consisting of goods invoiced as wool robes with silk embroidery, silk and metal embroidery, and silk and cotton embroidery, which were in fact combination dress patterns, composed of worsted material separated into two parts, one part containing the embroidery and the other part being plain, the value of each robe, consisting of two pieces, as above, being stated on the invoice as an entirety, and the value of each robe being given in francs. Said merchandise was classified for duty by the collector as "manufactures of worsted embroidered," and duty assessed thereon at the rate of 60 cents per pound and 60 per cent. ad valorem, under paragraph 398, Schedule K, and the proviso contained in paragraph 373 of Schedule J of Act October 1, 1890. Protest by the importer, claiming that the merchandise was dutiable under paragraph 395, Schedule K, of said tariff act, at the rate of 44 cents per pound and 50 per cent. ad valorem. Held, that the decision of the board of general appraisers, segregating the values of the robes so as to assess the duty upon the embroidered and plain parts of each robe separately, should be affirmed. In re Crowly (C. C. 1892) 50 Fed. 465, judgment affirmed In re Crowley (1893) 55 Fed. 283, 5 C. C. A. 109.

Cotton canvas, embroidered with worsted, valued at over 80 cents per pound, held properly dutiable at 35 cents per pound and 40 per centum ad valorem, under the provision in Schedule K of Act March 3, 1883, for "all manufactures of every description composed wholly or in part of worsted, not specially enumerated or provided for," and not at 35 per centum ad valorem, under the provision in Schedule I of the same act, for "all manufactures of cotton not specially enumerated or provided for." Ullmann v. Hedden (C. C. 1889) 38 Fed. 95, distinguishing Kohlsaat v. Murphy (1877) 96 U. S. 153, 24 L. Ed. 844.

Paragraph 349, Act 1909, provides not only for embroidered articles, but for fabrics embroidered in any manner by hand or machinery. The paragraph specifies the embroidered fabrics of the importation and as the completed article is in chief value of such fabric and has added the Lever or Gothrough lace, it comes directly within the terms of the proviso and is subject to the highest rate of duty. Altman & Co. v. U. S. (1914) 5 Ct. Cust. App. 170.

Initials embroidered on cotton shirts makes of the shirts embroidered articles, and the importation was dutiable as such under paragraph 339, Act 1897. Woodruff & Co. v. U. S. (1911) 2 Ct. Cust. App. 186.

12. Featherstitch braids.—Featherstitch braid prior to Act 1897, which shifted braids from the lower duty of the notion schedule (paragraph 320), to the highest duty of the trimming schedule (paragraph 339), held dutiable at 60 per cent. under the trimming schedule as cotton braids, and not at 45 per cent. under the notions schedule, as bindings or tapes. U. S. v. Baruch (1912) 32 Sup. Ct. 306, 223 U. S. 191, 56 L. Ed. 399, reversing decree Baruch v. U. S. (1909) 172 Fed. 342, 97 C. C. A. 40.

Featherstitch braids, so called, which are not produced by braiding, but by a process of weaving, but which are known commercially as braids, held within the provision for "braids" in paragraph 339, Act 1897. Vom Baur v. U. S. (C. C. 1905) 141 Fed. 439.

13. Galloons.—In construing paragraph 263, Act 1894, relating to cotton "galloons," held as to certain cotton bands, in widths not less than one inch, with perfectly straight or plain selvedged edges, which are used in trimming hats, that, although such articles, up to an inch in width, may be known as "galloons" in trade and commerce, they are not so known when

their width exceeds one inch. U. S. v. Walter H. Graef & Co. (1904) 127 Fed. 688, 62 C. C. A. 414, reversing judgment Walter H. Graef & Co. v. U. S. (C. C. 1903) 120 Fed. 1015.

The provision in Act 1897, par. 390, for galloons or trimmings, includes narrow strips of silk having interwoven thereon ornamental designs, which are chiefly used to decorate and embellish women's apparel. J. Loewenthal & Co. v. U. S. (C. C. 1910) 180 Fed. 941.

Certain articles which in a broad sense are trimmings, embroideries, and articles made of lace, but which in a specific sense are galloons, and are known as galloons, held dutiable under Act 1894, pars. 263, 300, for "galloons," and not under the provisions in paragraph 276 or 301, for trimmings, embroideries, articles made of lace, etc., "not specially provided for." Meyer v. U. S. (C. C. 1901) 124 Fed. 296.

Narrow metal braid, bearing square beads of glass, used for trimming ladies' garments, and known commercially as "galloon," held dutiable as such under Act 1883, par. 427, and not as "bead ornaments," under paragraph 396, nor, under paragraph 216, as "manufactures of metal not otherwise specifically provided for." Loewenthal v. U. S. (C. C. 1898) 91 Fed. 644.

Cotton hat trimmings, of the variety called "galloons," held dutiable as galloons, under paragraph 263 of Act 1894, and not as "trimmings of which cotton is the component material of chief value, not specifically provided for," under paragraph 276. Wotton v. U. S. (C. C. 1898) 84 Fed. 954.

14. Handkerchiefs.—Initialed handkerchiefs held not dutiable as embroidered handkerchiefs. See paragraphs 255, 282.

Handkerchiefs composed of linen cambric, and embroidered with cotton, known as "embroidered handkerchiefs," and of which the embroidery is a substantial part, held dutiable at 35 per cent. ad valorem, under paragraph 8, Schedule J, of Act March 3, 1883, which includes "brown and bleached linens, * * * handkerchiefs, lawns, or other manufactures of flax," and not at 30 per cent., under paragraph 11 of the same schedule, which includes "flax or linen laces, and insertings, embroideries, or manufactures of linen, if embroidered, * * * and not specially enumerated or provided for in this act." Robertson v. Glendinning (1889) 10 Sup. Ct. 44, 132 U. S. 158, 33 L. Ed. 298.

Embroidered handkerchiefs, although both hemstitched and embroidered, held dutiable under paragraph 276 of Act 1894, as "embroidered handkerchiefs"; such words being descriptive, and not a trade-name. Field v. U. S. (1898) 90 Fed. 412, 33 C. C. A. 138.

All embroidered handkerchiefs, whether they are hemstitched, imitation hemstitched, scalloped, initialed, plain, reverse, or otherwise, are dutiable as embroidered handkerchiefs, under paragraph 276 of Act 1894; the term "embroidered handkerchiefs," in that paragraph, being descriptive, and not a commercial or trade designation. Carson v. Nixon (1898) 90 Fed. 409, 33 C. C. A. 135.

Under Act 1890, par. 373, the provision for "embroidered and hemstitched handkerchiefs" covers only handkerchiefs which are both embroidered and hemstitched, and these words cannot be taken distributively, so as to include handkerchiefs which are embroidered only, or hemstitched only. In re Gribbon (1893) 55 Fed. 874, 5 C. C. A. 287, affirming (C. C. 1892) 53 Fed. 78.

Act 1897, par. 345, provides for handkerchiefs, hemmed, hemstitched, etc.; the duty being increased for each of these stages of elaboration. And paragraph 339 provides a still higher rate for "handkerchiefs * * * in part of lace * * * not elsewhere specially provided for." Held, that it was the intention of Congress to advance the duty in accordance with the advancement of the goods in condition, and that hemstitched lace-trimmed handkerchiefs are dutiable under the latter rather than the former paragraph. Glendinning, McLeish & Co. v. U. S. (C. C. 1908) 162 Fed. 910.

Certain handkerchiefs, composed of linen and cotton, imported under Act 1890, consisting—First, of handkerchiefs with a hemstitched border; second, of handkerchiefs embroidered or scalloped on the edge, and not hemstitched; and, third, of handkerchiefs with a hemstitched border, and embroidered either with initial letters or with figures worked by hand or machinery—held dutiable, the hemstitched handkerchiefs, under paragraph 349 of said act, at 50 per centum ad valorem, as "handkerchiefs;" those with embroidered edge as textile fabrics embroidered by hand or machinery, under the proviso in paragraph 373, at 60 per centum ad valorem; and only those handkerchiefs which are embroidered and also hemstitched are dutiable as such under paragraph 373 of said act. In re Gribbon (C. C. 1892) 53 Fed. 78, judgment affirmed (1893) 55 Fed. 874, 5 C. C. A. 287.

The merchandise is composed in chief value of one or more of the materials or goods specified in paragraph 349, Act 1909, and relating to laces and handkerchiefs. By the terms of the first proviso of that paragraph, such articles are made dutiable at a rate not less than the highest imposed by the first section of the act on any of the materials entering into their composition. Conformably to this proviso, the rate of duty is determined by paragraph 350, Act 1909, at 70 per cent. ad valorem. Stein & Co. v. U. S. (1912) 2 Ct. Cust. App. 519.

15. Haussegen or wall mottoes.—Certain so-called "Haussegen," or wall

mottoes, consisting of pasteboard cards with mottoes sewn thereon, and with various pictures surrounded by wreaths, affixed thereto by some adhesive material, held dutiable under paragraph 339, Act 1897, relating to appliqued or embroidered articles, and not under paragraph 407 of said act as manufactures in chief value of paper. Kaufmann v. U. S. (C. C. 1904) 128 Fed. 468.

16. Laces in general.—Insertions held not dutiable as lace. See paragraph 318.

Parasol covers held not dutiable as laces. See paragraph 318.

Laces, cigar ribbons, galloons, and braids, made of silk and cotton, but the silk so preponderating that they are substantially silk, held dutiable at 60 per cent. ad valorum as silk laces, ribbons, etc., under section 8 of Act 1864. Swan v. Arthur (1880) 103 U. S. 597, 26 L. Ed. 525.

Lace cannot be held dutiable as embroidery, because Congress has in successive tariff acts distinguished between the two. U. S. v. J. R. Simon & Co. (1909) 169 Fed. 106, 95 C. C. A. 434, writ of certiorari denied (1910) 30 Sup. Ct. 411, 215 U. S. 610, 54 L. Ed. 348.

Act 1897, par. 339, relating to "articles made * * * of lace," includes goods made by sewing together pieces of lace produced in shapes designed to be used in making the articles; the term "lace" not being restricted to articles made up from lace that is bought and sold by the yard. Goldenberg Bros. & Co. v. U. S. (1908) 157 Fed. 1003, 85 C. C. A. 678, affirming judgment (C. C. 1907) 152 Fed. 658.

Collars and cuffs composed of braids sewn together and ornamented with cords and threads held dutiable as "wearing apparel * * * in imitation of lace," under Act 1897, par. 339. It is not necessary that articles coming within this provision should be imitation lace as known to the trade. U. S. v. D. S. Hesse & Bro. (1907) 158 Fed. 407, 85 C. C. A. 517, reversing judgment D. S. Hesse & Bro. v. U. S. (C. C. 1907) 154 Fed. 171, and writ of certiorari denied D. S. Hesse v. U. S. (1908) 28 Sup. Ct. 762, 210 U. S. 434, 52 L. Ed. 1136.

Lace neckwear is more specifically provided for in paragraph 339, Act 1897, as "wearing apparel * * * made wholly or in part of lace," than in paragraph 314 of said act as "articles of wearing apparel of every description, including neckties or neckwear." Goldenberg Bros. & Co. v. U. S. (1904) 130 Fed. 108, 64 C. C. A. 442, affirming judgment (C. C. 1903) 124 Fed. 1003, and writ of certiorari denied Goldenburg Bros. & Co. v. Same (1904) 25 Sup. Ct. 791, 195 U. S. 634, 49 L. Ed. 354.

The distinction between real lace and imitation lace is that the former is made by hand and the latter upon machines. D. S. Hesse & Bro. v. U. S. (C. C. 1907) 154 Fed. 171, judgment reversed U. S. v. D. S. Hesse & Bro. (1907) 158 Fed. 407, 85 C. C. A. 517, writ of certiorari denied D. S. Hesse & Bro. v. U. S. (1908) 28 Sup. Ct. 762, 210 U. S. 434, 52 L. Ed. 1136.

The names given to articles by retailers puffing their wares, and by the women who buy them, do not control in the classification of merchandise under the tariff laws, and goods are not classifiable as lace simply because they are usually dealt in by the retail trade in this country as "lace" articles. Id.

Tidies made of flax, and known commercially as "Renaissance lace tidies," or "Renaissance tidies," made of tape, thread, and rings, held dutiable under paragraph 276 of Act 1894 as laces or articles made wholly or in part of lace composed of flax, and not under paragraph 277, as manufactures of flax not specially provided for. U. S. v. Van Blankensteyn (C. C. 1898) 91 Fed. 977.

The commercial designations "laces" and "lace" are not confined to lace which is sold by the yard only, but may include articles made of lace. Id.

Laces of which wool or worsted is a component material were dutiable under paragraph 398 of Act 1890, and did not come under paragraph 413, even though silk is the component material of chief value. Levi v. U. S. (C. C. 1897) 87 Fed. 193.

Lace aprons are dutiable at 50 per cent. ad valorem as "articles of wearing apparel," under paragraph 349 of Act 1890, and not as "articles made wholly or in part of lace," under paragraph 373 of the same act. In re Boyd (C. C. 1892) 49 Fed. 731, judgment reversed (1893) 55 Fed. 599, 5 C. C. A. 223.

Paragraph 358 provides for laces, articles of lace, and all articles or fabrics made wholly or in part of lace of any kind, of whatever yarns, threads, or filaments such laces, articles, or fabrics may be composed, and as well for nets, nettings, flouncings, edgings, and insertings of whatever yarns, threads, or filaments composed. This furnishes a more specific description of the goods here and controls. Wilson & Son v. U. S. (1915) 6 Ct. Cust. App. 255.

17. —— Cotton laces.—By Schedule D to the act of July 30, 1846, a duty of 25 per cent. ad valorem was imposed on "cotton laces, cotton insertings," and "manufactures composed wholly of cotton, not otherwise provided for." By Act March 3, 1857, § 1, the duties on the articles enumerated in Schedules C and D, Act 1846, were fixed at 24 and 19 per cent., respectively, "with such exceptions as are hereinafter made." By Id. § 2, "all manufactures composed

wholly of cotton, which are bleached, printed, painted, or dyed, and delaines," were transferred to Schedule C. Held, that laces and insertings composed wholly of cotton, and bleached or dyed, were dutiable at 24 per cent., under Act 1857. Cochran v. Schell (1883) 107 U. S. 617, 2 Sup. Ct. 301, 27 L. Ed. 490.

In reference to the provision for "cotton laces" in Act 1883, held, that evidence was admissible as to whether it had a commercial meaning differing from its ordinary signification, and as to what articles such meaning included. Mills v. Robertson (C. C. 1906) 147 Fed. 634.

The provision for "cotton laces" in Act 1883, would, in its ordinary significance, no contrary trade understanding being proved, include not only laces dealt in by the yard but made-up articles which are produced originally as lace only in the process of making the completed article. Id.

Made-up articles of cotton lace, such as collars, cuffs, handkerchiefs, tidies, etc., held dutiable, under Act 1883, as cotton lace. Sidenberg v. Robertson (C. C. 1890) 41 Fed. 763.

In order to take made-up articles of cotton lace, such as collars, cuffs, handkerchiefs, tidies, etc., out of the operation of Act 1883, it must be shown not only that they are always bought and sold by specific names, but also that the term "cotton lace," as used in commerce, has a restricted meaning that would exclude such articles. Id.

18. —— Silk laces.—Silk goods made in the manner of laces held not dutiable as silk laces. See paragraph 318.

Under Act 1864, imposing a duty of 60 per cent. on "silk laces" and a duty of 50 per cent. on "all manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for," an article of silk and cotton, bought and sold as "spotted or dotted net," but which was a lace, in which silk was the component material of chief value, was a "silk lace," and subject to a duty of 60 per cent. Drew v. Grinnell (1885) 6 Sup. Ct. 117, 115 U. S. 477, 29 L. Ed. 453.

Laces made substantially of silk, although cotton forms a part thereof, were subject to a duty of 60 per cent. ad valorem, under 13 Stat. 181. Swan v. Arthur (1880) 103 U. S. 597, 26 L. Ed. 525.

"Silk laces," as used in Act 1864, § 8, embraced all laces made of silk, except such as are specifically known exactly by other terms used in the tariff acts. Jaffray v. Murphy (C. C. 1874) Fed. Cas. No. 7,172.

19. —— Thread laces.—Under R. S. § 2504, Schedule C, laces made by machinery out of linen thread, and known as "torchons," were dutiable at 40 per cent. ad valorem, as "manufactures of flax," and could not be classed under Schedule C, p. 463, as "thread lace," dutiable at 30 per cent. ad valorem, which is always handmade. Meyerheim v. Robertson (1892) 144 U. S. 601, 12 Sup. Ct. 754, 36 L. Ed. 599.

In an action against the collector of customs for the amount of certain duties alleged to have been illegally imposed under this section upon articles invoiced as "white linen torchon laces and insertings," the court properly left it to the jury to determine whether the lace imported by plaintiffs was "thread lace" such as is meant and described in the statute, and properly instructed them that if it did not come under that general designation they should find for defendant, that it made no difference whether the lace was known to commerce at the time the law was enacted, and that, if brought into use afterwards and came under the general designation of "thread lace," the government must accept the duty imposed by the law upon that article. Smith v. Field (1881) 105 U. S. 52, 26 L. Ed. 1007.

A distinction between "silk lace" and "thread lace" ran through former tariff acts for many years. Arthur v. Lahey (1877) 96 U. S. 112, 115, 24 L. Ed. 766.

Thread lace, made wholly by machinery, composed of linen and cotton, introduced since Act July 30, 1846, took effect, held dutiable as "thread laces," in Schedule E. Lottimer v. Lawrence (C. C. 1850) Fed. Cas. No. 8,521.

20. Military ornaments. — Epaulets (military ornaments) composed in chief value of metal threads are more specifically classifiable as "ornaments; * * * of whatever yarns, threads, or filaments composed," under paragraph 358, Act 1913, than as "articles made wholly or in chief value of * * * metal threads, not specially provided for," under the provisions of paragraph 150 of the act. Horstman Co. v. U. S. (1915) 6 Ct. Cust. App. 458.

21. Neck rufflings.—In construing Act 1894, par. 276, which relates to "neck rufflings, * * * and articles made wholly or in part of * * * rufflings," held, that the word "neck" should not be re-read in connection with the word "rufflings," and that cotton curtains made in part of rufflings are dutiable under said paragraph, and not under paragraph 264 of said act as "manufactures of cotton." Brill v. U. S. (C. C. 1900) 123 Fed. 845.

22. Net.—The merchandise consists of nettings, all of which are Jacquard figured, and the relevant paragraphs in Act 1913 are 258 and 358. "Jacquard figured upholstery goods" in paragraph 258 restricts the operation of the term to goods whose chief use is as upholstery goods, the precise character of these upholstery goods being there defined, and accordingly the description applies to articles that might otherwise be appropriately designated nets or

nettings under paragraph 358. Carter & Son v. U. S. (1915) 6 Ct. Cust. App. 253.

The goods are nets such as are worn by women on the head to keep the hair in place. They are accordingly articles of wearing apparel, but they are the more specifically provided for in paragraph 358, Act 1913, by the eo nomine provision "nets." Proctor Co. v. U. S. (1915) 6 Ct. Cust. App. 119.

Lever and Gothrough machines enumerated in paragraph 197, Act 1909, are machines equipped with a Jacquard attachment. The testimony here is clear and explicit that the hair nets of the importation were not manufactured on a machine of this type nor on a transformed Lever or Gothrough machine, but on plain net machines having their own special names and distinguished by differences of form and mechanical movement. The goods were properly assessable under paragraph 402 of the act. U. S. v. Mills & Duflot (1915) 5 Ct. Cust. App. 534.

23. —— **Cotton net.**—Cotton net, cut into narrow strips, or small pieces, and known to the trade as "cotton net," "cotton net cut," "hat tips," "hat crowns," or "hat sides," held dutiable as cotton nettings, under Act 1894, par. 276, and not as manufactures of cotton under paragraph 264. Tilge v. U. S. (C. C. 1902) 115 Fed. 254.

Cotton is a vegetable fiber, and merchandise composed of cotton net, if embroidered with a design in artificial silk, cotton being the component of chief value, falls for dutiable purposes within the last proviso of paragraph 349, Act 1909, namely, that no article or fabric of any description composed of flax or other vegetable fiber, or of which these materials or any of them is the component of chief value, when embroidered shall pay a less duty than the duty there fixed. Shoninger v. U. S. (1911) 2 Ct. Cust. App. 125.

24. —— **Silk spot net.**—Silk spot nets and dotted nets held dutiable at 60 per cent. ad valorem, and not at 50 per cent. ad valorem, under section 8 of Act 1864. Morrison v. Miller (C. C. 1888) 37 Fed. 82.

25. **Proviso under former acts that embroidered, etc., articles shall not be dutiable at a less amount than the material plain.**—Act 1897, par. 339, provides "that no wearing apparel, * * * when embroidered, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which such embroidery is composed." Held, that under this provision valuable fur garments, to which embroidered silk adornments have been attached are subject to the duty provided for silk embroideries. Hugo Jaeckel & Son v. U. S. (1910) 178 Fed. 260, 101 C. C. A. 620, affirming judgment Jaeckel & Sons v. Same (C. C. 1909) 172 Fed. 292.

The proviso in paragraph 339, Act 1897, prescribing that no embroidered wearing apparel, etc., "shall pay duty at a less rate than that imposed in any schedule * * * upon any of the embroideries of the materials of which such embroidery is composed," is not restricted to the articles previously enumerated in the same paragraph, but extends to other portions of the act. Silk-embroidered cotton hosiery is therefore dutiable at the rate applicable to silk embroideries, when such rate exceeds that provided for cotton hosiery in paragraph 318. Carter, Webster & Co. v. U. S. (1906) 143 Fed. 256, 74 C. C. A. 394, affirming judgment (C. C. 1905) 137 Fed. 978, and writ of certiorari denied 26 Sup. Ct. 764, 202 U. S. 617, 50 L. Ed. 1173.

The main object of Act 1890, par. 373, providing that embroidered wearing apparel and textile fabrics shall not pay a less rate of duty than that fixed upon embroideries of the materials of which they are composed, was to prevent the classification by their specific names of articles embroidered with some material, which classification would render them dutiable at a lower rate than embroideries of that material; but such articles may be dutiable at a greater rate, because a higher duty may be imposed upon articles of that specific description. In re Schefer (1893) 53 Fed. 1011, 4 C. C. A. 153, affirming decree (C. C. 1892) 49 Fed. 826.

Under the proviso in Act 1897, par. 339, prescribing that embroidered articles shall not pay a less rate of duty than is applicable to "any embroideries of the materials of which such embroidery is composed," held, that silk-embroidered screens, composed of wood and other materials, are liable to the rate provided for silk embroideries in paragraph 390. The rule of "noscitur a sociis" does not operate to exclude such articles by reason of the enumeration in the same paragraph of laces, trimmings, etc. Lichtenstein Millinery Co. v. U. S. (C. C. 1907) 154 Fed. 736.

In the first proviso to paragraph 349, Act 1909, there was no purpose to use the term "article" in the restricted sense of something completed. Field v. United States (1896) 73 Fed. 808, 20 C. C. A. 19. And the connection in which the term "laces" occurs indicates that laces were regarded and treated as articles—articles composed of material or goods specified in the paragraph—thus differentiating this case from Altman v. U. S. (1914) 5 Ct. Cust. App. 170. The aim was to bring within the higher rate the article which had the more expensive work done upon it. Stiner & Son v. U. S. (1914) 5 Ct. Cust. App. 246.

In the proviso to paragraph 349, Act 1909, "goods" has no broader signification than as stated, and it was not there intended to include a completed

article in terms provided for elsewhere. The plain cotton underwear with lace added thereto of the importation does not fall within the named proviso. Altman & Co. v. U. S. (1914) 5 Ct. Cust. App. 170.

"Materials" means that from which an article is made up. "Goods" has a broader signification and includes the material upon which some work has been performed, and applies so long as these retain their character of not being manufactured into an article. Id.

The importations consisting of parasols of cotton, linen or silk embroidered or appliquéd were made, some under Act 1897 and the remainder under the act of 1909. The question raised is whether the proviso to paragraph 339 of the first act and the provisos to paragraphs 349 and 402 of the last act may be construed to exclude from their operation, respectively, paragraph 462, Act 1897, and paragraph 478, Act 1909, and so affect the duty on the parasols of the importation. There seems to be nothing in the language of the provisos that would limit their operation, and a fair interpretation requires that they should be held to cover the goods here. They were properly applied in making the assessment. Claflin Co. v. U. S. (1912) 3 Ct. Cust. App. 401. See, also, U. S. v. Harper (1911) 2 Ct. Cust. App. 101.

The proviso to paragraph 402, Act 1909, "That tamboured, embroidered, or appliquéd articles or fabrics shall pay no less rate of duty than that imposed upon the material if not so tamboured, embroidered, or appliquéd," is operative only when it appears that the duty on the articles or fabrics with the appliqué removed would under paragraph 399 of that act exceed the duty at sixty per centum provided by paragraph 402. U. S. v. Vietor (1911) 1 Ct. Cust. App. 297.

26. **"Scalloped by hand or machinery."** —"Scalloped by hand or machinery for any purpose," as these words appear in paragraph 349, Act 1909, must be taken to provide that if an article in other respects within the provisions of the paragraph has been in fact scalloped by hand or machinery it is dutiable thereunder regardless of the purpose for which the scalloping was done, and it is not necessary that the article should be otherwise ornamented or embroidered. Gardner & Co. v. U. S. (1912) 2 Ct. Cust. App. 477.

27. **Screens.** — Silk-embroidered screens composed of wood and other materials held liable to the rate provided for silk embroideries in paragraph 390, Act 1897. Lichtenstein Millinery Co. v. U. S. (C. C. 1907) 154 Fed. 736.

The merchandise is screens of embroidered silk panels with wooden frameworks. Silk is concededly the component material of chief value. These screens are not fairly to be considered "screens of wood," but rather as articles in chief value of silk. They are accordingly dutiable as such under paragraph 402, Act 1909. Vantine & Co. v. U. S. (1913) 3 Ct. Cust. App. 488.

On a review of the statutes and the decisions founded on the statutes, it is held that screens with panels of cotton, ornamented with embroidered designs or with figures appliquéd thereon, were not dutiable as furniture or as a manufacture of cotton under Act 1897, but were dutiable under paragraph 339 of that act at 60 per cent. as "other articles" embroidered or appliquéd. Morimura Bros. v. U. S. (1911) 2 Ct. Cust. App. 181.

28. **Tamboured articles.**—Tamboured pillow shams, consisting of a fine cotton fabric, ornamented with figures and designs in tambour work, in general appearance very like embroidery, held dutiable under Act 1890, par. 373, as "other similar tamboured articles," and not under paragraph 355. Lahey v. U. S. (1896) 71 Fed. 870, 18 C. C. A. 341, appeal dismissed U. S. v. Lahey (1897) 89 Fed. 1020, 32 C. C. A. 612.

29. **Trimmings.** — Astrachan trimmings held dutiable as pile fabrics. See paragraph 309.

Bands of cotton woven in widths held not dutiable as trimmings. See paragraph 266.

Garnitures and hussar sets held not dutiable as trimmings. See paragraph 318.

Ribbons held not dutiable as trimmings. See paragraphs 316, 318.

Tunics, motifs, garnitures, and gimps of bead held not dutiable as trimmings. See paragraph 333.

Under Act 1883, ribbons made of silk, or of which silk is the component material of chief value, and which the jury found are commonly and principally used in trimming hats, held dutiable at 20 per cent. ad valorem, as "hat trimmings," under Schedule N, and not at 50 per cent., under Schedule L, as unenumerated silk merchandise. Walker v. Seeberger (1893) 13 Sup. Ct. 983, 149 U. S. 541, 37 L. Ed. 839; Robertson v. Edelhoff (1890) 10 Sup. Ct. 186, 132 U. S. 614, 33 L. Ed. 477; Hartranft v. Langfeld (1888) 8 Sup. Ct. 732, 125 U. S. 128, 31 L. Ed. 672; Cadwalader v. Wanamaker (1893) 13 Sup. Ct. 979, 983, 149 U. S. 532, 37 L. Ed. 837; Hartranft v. Meyer (1893) 13 Sup. Ct. 982, 983, 149 U. S. 544, 37 L. Ed. 840.

Under Act 1883, goods composed, some entirely of silk, some chiefly of silk, and some chiefly of metal, and known by the general name of "trimmings," though they have specific names to distinguish one from the other, and some of which are used exclusively, and the others chiefly, for the making and ornamenting of hats, bonnets, and hoods, were dutiable at 20 per cent., under Schedule N, as trimmings for hats, etc., and not at 50 per

cent. for the goods composed wholly or chiefly of silk, and 45 per cent. for those composed chiefly of metal, under Schedules L and C, respectively. Walker v. Seeberger (1893) 13 Sup. Ct. 981, 982, 149 U. S. 541, 37 L. Ed. 839; Id. (1893) 13 Sup. Ct. 983, 149 U. S. 532, 541, 544, 37 L. Ed. 839, reversing Walker v. Seeberger (D. C. 1889) 38 Fed. 724, and following Cadwalader v. Wanamaker (1893) 13 Sup. Ct. 979, 149 U. S. 532, 37 L. Ed. 837.

Under Act March 3, 1883, piece goods composed of silk, or of which silk is the component material of chief value, which are bought and sold under the commercial designation of "chinas" and "marcelines," and which the jury finds are "trimmings," chiefly used in making hats and bonnets, were dutiable at 20 per cent., as trimmings used in making or ornamenting hats, bonnets, and hoods, and not at 50 per cent., under Schedule L, as unenumerated silk merchandise. Mr. Justice Brewer and Mr. Justice Brown, dissenting, on the ground that these articles are not "trimmings." Hartranft v. Meyer (1893) 13 Sup. Ct. 982, 149 U. S. 544, 37 L. Ed. 840, following Cadwalader v. Wanamaker (1893) 13 Sup. Ct. 979, 149 U. S. 532, 37 L. Ed. 837.

Ribbons composed of silk and cotton, silk being the component material of chief value, which are used exclusively for ornamenting hats and bonnets, not being specifically named in Act March 3, 1883 (22 Stat. 510), are dutiable as "trimmings" for hats, under Schedule N, "Sundries," of the act, which provides the duty for "hats, and so forth, materials for [naming eight articles, including 'trimmings'], used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material, not specially enumerated or provided for in this act," as the words, "composed of" and "not specially enumerated," refer to the eight articles previously specified; and such ribbons are not dutiable under Schedule L, "Silk and Silk Goods," of the act, which provides the duty for "all goods, wares, and merchandise not specially enumerated or provided for in this act, made of silk, or of which silk is the component material of chief value." Robertson v. Edelhoff (1890) 10 Sup. Ct. 186, 132 U. S. 614, 33 L. Ed. 477.

A charge to the jury, where all the evidence showed that the goods were "trimmings," that it is the use to which articles are chiefly adapted, and for which they are used, which determines their character within the meaning of the act; that they will therefore determine to which use the articles are chiefly devoted; if they are hat trimmings, and used for making and ornamenting hats, then the rate of duty imposed was excessive, and the plaintiff is entitled to recover; if they are chiefly used for other purposes, the defendants must recover—fairly presents the question, under 22 St. 512, which provides for a duty on trimmings used for making or ornamenting hats. Hartranft v. Langfeld (1888) 8 Sup. Ct. 732, 733, 125 U. S. 128, 31 L. Ed. 672.

Ornaments, loops, etc., manufactured separately, but temporarily stitched together in six-yard lengths for convenience and economy in handling and carding, and used singly in decorating garments, held not "trimmings or galloons," within the meaning of Act 1897, par. 390. U. S. v. Hilbert (1909) 171 Fed. 69, 96 C. C. A. 173.

In Act 1897, par. 390, the term "trimmings" is used in a commercial, rather than a descriptive sense. Naday & Fleischer v. U. S. (1908) 164 Fed. 44, 90 C. C. A. 462, affirming judgment (C. C. 1907) 155 Fed. 303.

Certain woven cotton articles, from 1 to 2½ inches wide, chiefly used as hat bands for trimming men's hats, held to be dutiable as "trimmings" of cotton, under paragraph 276, Act 1894, and not as "galloons," under paragraph 263 of said act, nor as "manufactures of cotton * * * not specially provided for," under paragraph 264 of said act. U. S. v. Walter H. Graef & Co. (1904) 127 Fed. 688, 62 C. C. A. 414, reversing judgment Walter H. Graef & Co. v. U. S. (C. C. 1903) 120 Fed. 1015.

Silk and cotton trimmings, silk chief value, and cotton more than 25 per cent. in value, used for making or ornamenting hats, and commercially known as hat bands, hat trimmings, bands, and bindings, held dutiable under R. S. § 2504, schedule M (Heyl, par. 1300), as hat trimmings not otherwise provided for, and not under schedule H (Heyl, par. 1113), as manufactures of which silk is the component of chief value, not otherwise provided for; the former paragraph being the more specific. Robertson v. Edelhoff (1899) 91 Fed. 642, 34 C. C. A. 34.

While ribbons that must be made up into bows, rosettes, and the like before being used for purposes of trimming or ornamentation held not dutiable as "trimmings," under Act 1897, par. 390, goods are so dutiable which are manufactured with ornamentation and characteristic design to be used as a trimming, and intended to be so used without anything further being done to them. Naday & Fleischer v. U. S. (C. C. 1907) 155 Fed. 303, judgment affirmed (1908) 164 Fed. 44, 90 C. C. A. 462.

So-called mourning crapes, consisting of all silk fabrics in the piece, of the width known as "4/4," held not dutiable as "woven fabrics in the piece not specially provided for," under paragraph 387 of Act 1897, but as "trimmings * * * made of silk, * * * not specially provided for," under paragraph 390 of said act. Robinson v. U. S. (C. C. 1900) 122 Fed. 970.

When the use of an article is the criterion of its classification, as in the case of "trimmings * * * used for making or ornamenting hats" (Act March 3, 1883, § 7), it is its chief use which is controlling. Meyer v. Cadwalader (C. C. 1891) 49 Fed. 26.

In assumpsit to recover an excess of duty alleged to have been paid on imported goods, which plaintiffs claim should have been classified under the clause of Act 1883 providing for a duty of 20 per cent. ad valorem on "braids, plats, flats, laces, trimmings, tissues, willow sheets, and squares used for making or ornamenting hats, bonnets, and hoods, composed of straw," etc., when the goods are acknowledged to be "trimmings," it must be further shown by plaintiffs that they are chiefly used for making or ornamenting hats, bonnets, and hoods. Id.

The fact that the articles are imported by the piece, and must be cut up before they are actually applied to use in making or ornamenting hats, does not exclude them from the class of trimmings, if they are distinctly adapted and chiefly used for trimming hats, bonnets, and hoods, and are not specially enumerated or provided for in the act. Meyer v. Cadwalader (C. C. 1891) 49 Fed. 19.

Hat trimmings held dutiable under the hat-trimming clause of Act 1883, and not under the silk Act Feb. 8, 1875, notwithstanding that silk is their component material of chief value, and that they contain less than 25 per cent. in value of cotton. Id.

The mere fact that chinas and marcelines are bought and sold by those particular names, and are called "linings," does not necessarily exclude them from the class of trimmings if they are in fact trimmings chiefly used either for making or ornamenting hats, bonnets, and hoods. Id.

Clause 448 of Heyl's Index of the New Tariff does not require that trimmings for hats, in order to be strictly dutiable at 20 per cent. ad valorem, shall be composed of any particular material. It is the use for which they are intended, and to which they are applied, that furnishes the criterion by which the duty is to be assessed. Marsh v. Seeberger (C. C. 1887) 30 Fed. 422.

Artificial fruits, with artificial stems and leaves, used only for trimming and ornamenting ladies' hats and bonnets, are "trimmings for hats, bonnets, and hoods," within clause 448 of Heyl's Index of the New Tariff, and subject to duty at 20 per cent. ad valorem. Id.

Though goods are made expressly to be used by milliners in making and ornamenting hats, bonnets, etc., yet, if they have become adapted to other uses to such an extent that the jury can say their chief and principal use is not in the making and ornamenting of hats, etc., there is a failure to show that they ought to have been classed as hat ornaments merely. Fisk v. Seeberger (D. C. 1889) 38 Fed. 718.

Ornaments, known variously to the trade as "drop ornaments," "trimmings," "tassels," "cords and tassels," and "silk tassels," which are composed chiefly of silk cords and threads but partly of other materials, including soutache braid and wood or pasteboard molds, and which are fashioned by knotting the cords into designs so elaborate that they lose their continuity and identity as cords, are not dutiable under paragraph 316, Act 1913, as "cords," or as "cords and tassels." They are tassels, but there being no provision in paragraph 316 for "tassels" as such, they are dutiable as ornaments or trimmings, within those provisions of paragraph 358. Willenborg & Co. v. U. S. (1915) 6 Ct. Cust. App. 451.

Trimmings were provided for eo nomine, in paragraph 390, Act 1897. The testimony shows that silk fabrics such as those imported, ½ to 1¼ inches in width, with original designs thereon, are known commercially as trimmings; and they fell within the eo nomine description, although the term is a comprehensive one and may include articles that are sometimes designated by a name more restricted in meaning. The importation was dutiable under paragraph 390, Act 1897. Loewenthal v. U. S. (1911) 2 Ct. Cust. App. 43. See, also, Sidenberg v. Robertson (C. C. 1890) 41 Fed. 763.

30. **Veils.**—Crape veils held not dutiable as silk veils, but as manufactures of silk. See paragraph 318.

Veils are within Act 1890, par. 349, relating to "articles of wearing apparel of every description." In re Spielman (C. C. 1894) 66 Fed. 724.

Crape veils, made of silk, are presumptively embraced within the term "silk veils," unless commercially known as distinctive articles. Morrison v. Arthur (C. C. 1875) Fed. Cas. No. 9,842.

31. **White frilled muslins.**—Cotton muslin, in pieces 30 yards by 30 inches, known to the trade as "white frilled muslins," and not as "ruffled flouncings or embroideries," held dutiable under Act 1890, par. 373, as "articles embroidered by hand or machinery," and not under paragraph 355, as "manufactures of cotton not especially provided for." Field v. U. S. (1896) 73 Fed. 808, 20 C. C. A. 19.

359. Chamois skins, 15 per centum ad valorem; pianoforte, pianoforte action, enameled upholstery leather, and glove leathers, 10 per centum ad valorem.

Notes of Decisions

Chamois skins.—These pieces of chamois or chamois skin, the terms being interchangeable, have not become manufactures of leather by being cut into particular sizes and by having their edges scalloped. They remain chamois or chamois skin and were dutiable as such under paragraph 451, Act 1909. U. S. v. American Express Co. (1914) 5 Ct. Cust. App. 125.

Glove leathers.—Dressed lamb and kid skins finished so as to be suitable for making gloves might be designated as either "lambskins dressed and finished" or as "glove leather"; but as the last is the more specific designation it must prevail, and the more certainly since otherwise it would be to deny any significance to "glove leather" in the law. The importation is not dutiable as sheep and goat skins (including lamb and kid skins) dressed and finished under paragraph 451, Act 1909, nor as grain, split, or buff leather under paragraph 450 of that act, but is dutiable as glove leather under paragraph 451. Stiner & Son v. U. S. (1911) 1 Ct. Cust. App. 545.

360. Bags, baskets, belts, satchels, card cases, pocketbooks, jewel boxes, portfolios, and other boxes and cases, made wholly of or in chief value of leather or parchment, not jewelry, and manufactures of leather or parchment, or of which leather or parchment is the component material of chief value, not specially provided for in this section, 30 per centum ad valorem; any of the foregoing permanently fitted and furnished with traveling, bottle, drinking, dining, luncheon and similar sets, 35 per centum ad valorem.

Notes of Decisions

1. Belting.
2. Book backs.
3. Chamois skin.
4. Cigar and cigarette cases.
5. Cordovan leather.
6. Furniture nails.
7. Hand bags.
8. Hat sweats.
9. Leather watch guards.
10. Patent leather.
11. State and parchment books.
12. Traveling sets.

1. Belting.—Strips of leather belting, made by gluing together pieces of leather cut to lengths of about 4 feet and so beveled as to give to the strips a uniform thickness when the several pieces have been permanently joined together, are not belting leather cut to form and dutiable under paragraph 451, Act 1909. They are a manufacture of leather and dutiable as such under paragraph 452. Belting leather is a particular kind of leather from which belting is made; leather cut to form is leather cut to shape, but not so far advanced as to constitute a finished, completed manufacture ready for use. The merchandise at bar is belting leather, cut to form and so far advanced as to form belting, a finished product. U. S. v. Kundtz (1916) 6 Ct. Cust. App. 501.

2. Book backs.—These book backs are not mere leather but new articles evolved from leather, bearing a distinctive name, and so processed that they are not only definitely and finally committed to a specific purpose, but they are expressly found to be fitted for no other. They were properly assessed as manufactures of leather under paragraph 452, Act 1909. Devoy v. U. S. (1912) 3 Ct. Cust. App. 444. See, also, Tilge & Co. v. U. S. (1912) 3 Ct. Cust. App. 97.

3. Chamois skin.—Pieces of chamois skins by being cut into particular sizes and by having their edges scalloped held not manufactures of leather. See paragraph 359.

4. Cigar and cigarette cases.—Leather-covered cigar and cigarette cases held not dutiable as manufactures of leather. See paragraph 381.

5. Cordovan leather.—Cordovan leather for shoe vamps held not dutiable as manufacture of leather. See paragraph 530.

6. Furniture nails.—Furniture nails of leather and metal held dutiable under paragraph 452, Act 1909. Richard & Co. v. U. S. (1913) 4 Ct. Cust. App. 252.

7. Hand bags.—Ladies' hand bags in chief value of leather and ornamented with beads are dutiable as "articles * * * in part of beads," rather than as "manufactures of leather, finished or unfinished, * * * or of which [leather] is the component material of chief value," under Act 1897, pars. 408, 450. U. S. v. Guthman, Solomons & Co. (1907) 159 Fed. 273.

8. Hat sweats.—If it were an original proposition for consideration here there would be some difficulty in holding that by the proviso to paragraph 451, Act 1909, it was the legislative intention to exclude from the operation of that proviso all forms cut from leather which were finished manufactured articles. However, the kindred clause in previ-

ous legislation having received a settled construction, the recent enactment must be taken as an enactment in view of that construction; and leather sweat bands or "hat sweats" are dutiable as manufactures of leather under paragraph 452 of that act. Tilge & Co. v. U. S. (1912) 3 Ct. Cust. App. 97.

9. Leather watch guards.—Leather watch guards, mounted with cheap miniature bits, stirrups, etc., intended to be worn by horsemen, held not "articles commonly known as jewelry," within paragraph 434, Act 1897, but dutiable as manufactures of leather, under paragraph 450. Veil Bros. v. U. S. (C. C. 1904) 128 Fed. 471.

10. Patent leather.—Patent leather held not dutiable as manufacture of leather. See paragraph 530.

11. State and parchment books.—State and parchment books held not dutiable as card cases and "similar articles." See paragraph 332.

12. Traveling sets.—The included penholder, lead pencil, and lead pencil holder of the importation when put up or assembled in a form which permits of their being conveniently carried by a traveler as a part of the baggage to which he has daily access, may be, and properly are, designated as traveling sets. They were dutiable as such under paragraph 452, Tariff Act 1909. U. S. v. Bartley Bros. & Hall (1914) 5 Ct. Cust. App. 249.

Any combination of toilet articles comes within the definition of "traveling set," provided they are made up to be carried by the traveler and are designed for the toilet or for the care of his person or clothing while traveling. Articles not so designed are not traveling sets. U. S. v. Mark Cross Co. (1913) 4 Ct. Cust. App. 274.

The term "set" as used in paragraph 452, Act 1909, is employed there in its popular rather than in its strict etymological sense, and it is properly to be taken as meaning two or more articles. Id.

There is no evidence here to overcome the presumption in favor of the collector's classification and assessment. It is not made to appear that no manicure sets whatever, together with the leather cases or holders thereof, mentioned in paragraph 452, Act 1909, could constitute a traveling or other similar set within the meaning of the last clause of that paragraph; and this could not be assumed as a matter of law. U. S. v. Arnold & Co. (1913) 4 Ct. Cust. App. 49.

361. Gloves, not specially provided for in this section, made wholly or in chief value of leather, whether wholly or partly manufactured, shall pay duty at the following rates, the lengths stated in each case being the extreme length when stretched to their full extent, namely:

Notes of Decisions

Length.—In Act 1897, par. 439, it is prescribed that in determining the length of gloves for duty purposes "the lengths stated in each case" shall be "the extreme length when stretched to their full extent." Held, that slight accidental excesses over the lengths mentioned in the law may be disregarded. U. S. v. Max Mayer & Co. (C. C. 1908) 164 Fed. 905, judgment affirmed (1909) 175 Fed. 963, 99 C. C. A. 636.

Embroidered kid gloves.—Act 1897, par. 445, relating to gloves "stitched or embroidered with more than three single strands or cords," held not to cover gloves having three rows of embroidery, each of which presents on the back of the gloves the appearance of three-plait crochet work, but is produced by the needle with only one cord or strand of thread. U. S. v. Trefousse, Goguenheim & Co. (1907) 154 Fed. 1005, 83 C. C. A. 679, affirming decree Trefousse, Goguenheim & Co. v. U. S. (C. C. 1905) 144 Fed. 708.

The provision in paragraph 458 of Act 1890 for "all embroidered gloves with more than three single strands or cords" includes all gloves embroidered on the back with three decorations, each of which is composed of more than a single strand or cord. Wertheimer v. U. S. (1896) 73 Fed. 296, 19 C. C. A. 504, affirming (C. C. 1895) 68 Fed. 186.

Act 1897, par. 445, relating to gloves stitched with more than "three single strands or cords," does not include gloves having but three points each, each point having three distinct rows of stitching, though the stitching shows nine chains of embroidery on the outside of the backs of the gloves and nine single rows of stitching on the inside. U. S. v. La Fetra (C. C. 1909) 172 Fed. 297, judgment affirmed (1910) 178 Fed. 1006, 101 C. C. A. 665.

Certain embroidered leather gloves, the embroidery being in three rows, each of which presents the appearance of three-plait crochet-work, this effect being produced by the needle with only one cord or strand of thread, are held not to be gloves, "stitched or embroidered with more than three single strands or cords," as provided for in Act 1897, par. 445. U. S. v. Robinson (C. C. 1900) 124 Fed. 1013.

Ladies' kid gloves, embroidered with more than three single strands or cords, are liable to duty under Act 1890, par. 458, in addition to other applicable rates therein specified, though they may be commercially known as "three row

embroidered" gloves. Wertheimer v. U. S. (C. C. 1895) 68 Fed. 186.

These gloves with so-called arrow-point embroidery are made with a machine carrying a single needle but two threads, stitching up and down the back, and the arrow points are produced by handwork. Whether they were subject to the additional duty provided for by paragraph 459, Act 1909, is to be determined not by the number of rolls or lines of stitching or embroidery but by the number of strands or threads employed in producing the effect; and here, owing to the fact that only two threads were employed, the provision for additional duty cannot apply. The uniform course of opinion with the courts is that these words were, as used in this connection, namely, "strands," "cords," and "threads," equivalent in meaning. Field v. U. S. (1915) 5 Ct. Cust. App. 477.

The second class of gloves bore three-point embroideries that were hand stitched. Each of the three points was stitched by the use of only two separate threads, but in each point the two threads are continued so as to form three or four rows or lines. As to these, U. S. v. Wertheimer (1913) 4 Ct. Cust. App. 338, rules, and the doctrine of stare decisis applies. Altman & Co. v. U. S. (1914) 5 Ct. Cust. App. 412.

"Stitched or embroidered with not more than three single strands or cords" means the number of threads employed in stitching or embroidering the decoration on the backs of the gloves and not the lines or rows of decoration produced. The Paris point gloves of the importation are not stitched with more than three single strands and are not subject to the additional duty prescribed by paragraph 459, Act 1909. U. S. v. Wertheimer & Co. (1913) 4 Ct. Cust. App. 338.

Record held not to show that "strands" and "cords" as applied to gloves have a recognized commercial meaning. Id.

The board found in effect that the testimony and the samples failed to show that the gloves of this importation were not stitched or embroidered with more than three single strands or cords and that they were accordingly subject to the accumulated duties provided for in paragraph 459, Act 1909. To warrant a reversal of this finding it must appear to be wholly without evidence to support it, or that it is clearly contrary to the weight of evidence as offered. Applying this rule, irrespective of any opinion proper on the merits or on a review of the authorities, the testimony and exhibits afford no such warrant, and the board is affirmed. Carson v. U. S. (1911) 2 Ct. Cust. App. 105.

362. Men's, women's, or children's "glacé" finish, Schmaschen (of sheep origin), not over fourteen inches in length, $1 per dozen pairs; over fourteen inches in length, 25 cents additional per dozen pairs for each inch in excess of fourteen inches.

Notes of Decisions

Ladies and children's gloves.—Under paragraph 458 of Act 1890, all gloves which are not men's gloves are to be classed together, as ladies' or children's gloves. Wertheimer v. U. S. (C. C. 1896) 71 Fed. 949.

Schmaschen gloves.—Ladies' gloves, 14 inches or less in extreme length, manufactured from the skins of immature kids, imported from Germany, described on the invoice as "schmaschen, low quality," costing from 14.50 to 15.25 marks per dozen, are dutiable as "schmaschen" gloves, under Act Oct. 1, 1890, par. 458, and not as "ladies' kid." In re Holzmaister (C. C. 1894) 61 Fed. 645.

363. All other women's or children's gloves wholly or in chief value of leather, not over fourteen inches in length, $2 per dozen pairs; over fourteen inches in length, 25 cents additional per dozen pairs for each inch in excess of fourteen inches; all men's leather gloves not specially provided for in this section, $2.50 per dozen pairs.

364. In addition to the foregoing rates there shall be paid the following cumulative duties: On all leather gloves when lined with cotton or other vegetable fiber, 25 cents per dozen pairs; when lined with a knitted glove or when lined with silk, leather, or wool, 50 cents per dozen pairs; when lined with fur, $2 per dozen pairs; on all piqué and prixseam gloves, 25 cents per dozen pairs.

Notes of Decisions

Cumulative duties.—Act 1890, par. 458, imposes a duty of 50 per cent. ad valorem on men's leather gloves, and then provides that, in addition to the above rates, there shall be paid on all men's gloves, $1.00 per dozen; on all lined gloves, $1.00 per dozen; on all pique or prick-seam gloves, $.50 per

dozen," etc. Held, that these additional rates were alternative, and not cumulative, and that, if the same article was included in two or more classes, it need only pay the rate applicable to the highest of those classes. In re Wertheimer (1893) 55 Fed. 281, 5 C. C. A. 107, affirming (C. C. 1892) 50 Fed. 67.

The provision relative to leather gloves in paragraph 445, Act 1897, that "in addition to the foregoing rates there shall be paid the following cumulative duties," justifies the imposition of more than one of said "cumulative duties" in addition to the rates applicable by virtue of the preceding provisions for gloves. Douillet v. U. S. (C. C. 1904) 133 Fed. 1007.

Reviewing the history of the legislation and of the decisions, and having these in mind, it does not appear affirmatively that the finding of fact as made by the board in this case was either contrary to or clearly against the weight of evidence. The gloves were not subject to a cumulative duty under paragraph 445, Act 1897. U. S. v. Germain (1912) 3 Ct. Cust. App. 321.

Prixseam gloves.—"Men's leather gloves, prick-seam and embroidered," held dutiable, under Act 1890, at $1 per dozen and 50 per cent. ad valorem. Wanamaker v. Cooper (C. C. 1895) 69 Fed. 465.

365. Glove tranks, with or without the usual accompanying pieces, shall pay 75 per centum of the duty provided for the gloves in the fabrication of which they are suitable.

366. Manufactures of catgut, or whip gut, or worm gut, including strings for musical instruments; any of the foregoing or of which these substances or any of them is the component material of chief value, not specially provided for in this section, 20 per centum ad valorem.

Notes of Decisions

Catgut.—Catgut and wormgut held not dutiable as manufactures of catgut and wromgut. See paragraph 443.

The coloring here is not a process occurring after the manufacture of the catgut, but pending the manufacture. Whatever the object of the coloring, the articles are manufactured in precisely the same form as the white article, and the colored article is not a manufacture of catgut. U. S. v. American Express Co. (1915) 6 Ct. Cust. App. 36.

This merchandise consists of various strands of gut twisted in the form of a rope or cable and then apparently coated with a light varnish-like material. It clearly falls within the description of a manufacture of catgut. U. S. v. Sheldon & Co. (1914) 5 Ct. Cust. App. 421. See, also, Fischer v. U. S. (1914) 5 Ct. Cust. App. 301.

367. Manufactures of amber, asbestos, bladders, or wax, or of which these substances or any of them is the component material of chief value, not specially provided for in this section, 10 per centum ad valorem; yarn and woven fabrics composed wholly or in chief value of asbestos, 20 per centum ad valorem.

Notes of Decisions

Albolene.—The article known as "albolene," consisting of a mechanical combination of paraffin, a petroleum product, and ceresia, a fossil wax, the paraffin constituting 80 per cent. of the article by weight, but only four-elevenths of its value, held not a product of petroleum, within paragraph 626, Free List, Act 1897, but dutiable under paragraph 448, as a manufacture of wax. Wm. Ropes & Co. v. U. S. (C. C. 1900) 123 Fed. 990.

Asbestos.—The merchandise is a plain, loose, open weave of thick asbestos cords. The change in the language of Act 1909 clearly manifests a legislative intention separately to provide for woven asbestos. The goods here are woven fabrics and fell properly under the last clause of paragraph 462 of that act. U. S. v. Grasselli Chemical Co. (1914) 5 Ct. Cust. App. 320.

Wax in general.—"Wax" is not restricted in its meaning by lexicographers, by the courts, or by Congress to substances of animal origin only, but they have included under that name all substances of kindred nature derived from mineral or vegetable sources. U. S. v. Coccaro (1913) 4 Ct. Cust. App. 506.

The paraffin in certain articles held to be wax, which constitutes their value in chief bringing them within paragraph 462 as manufactures of wax, a more specific designation than "articles in part of metal." Id.

The merchandise consists of small articles, resembling in shape and color, but not in size, various fruits or vegetables, and they are designed for use alone in waxing sewing thread. These articles do not substantially simulate artificial fruits and can not be held to

be "artificial fruits" within the meaning of paragraph 438, Act 1909. They were properly held dutiable as manufactures of wax under paragraph 462 of that act. U. S. v. Dieckerhoff, Raffloer & Co. (1913) 4 Ct. Cust. App. 384.

368. Manufactures of bone, chip, grass, horn, india rubber or gutta-percha, palm leaf, quills, straw, weeds, or whalebone, or of which any of them is the component material of chief value not otherwise specially provided for in this section, shall be subject to the following rates: Manufactures of india rubber or gutta-percha, commonly known as druggists' sundries, 15 per centum ad valorem; manufactures of india rubber or gutta-percha, not specially provided for in this section, 10 per centum ad valorem; palm leaf, 15 per centum ad valorem; bone, chip, horn, quills, and whalebone, 20 per centum ad valorem; grass, straw, and weeds, 25 per centum ad valorem; combs composed wholly of horn or of horn and metal, 25 per centum ad valorem. The terms "grass" and "straw" shall be understood to mean these substances in their natural state, and not the separated fibers thereof.

Notes of Decisions

1. Bags or pouches of rubber.
2. Balata.
3. Baskets.
4. Bone.
5. Braids.
6. Combs.
7. Dental rubber.
8. Dress shields.
9. Elastic goring.
10. Grasses.
11. Mats of straw.
12. Quills.
13. Rubber recoil pads.
14. Shoes.
15. Sponges of rubber.
16. Suspenders.
17. Tennis balls.
18. Tubing of India rubber.
19. Waterproof cloth.
20. Webbing.
21. Wood fiber in strips plaited into sheets.

1. **Bags or pouches of rubber.**—Small india rubber bags, with a small neck or inlet, which are intended to be inflated with gas, and closed, so as to make them buoyant, and then sold as a child's plaything, are "articles composed of India rubber not specially enumerated or provided for," and assessable under Act March 3, 1883 (Heyl, 454), and not under clause 425 as "toys," as they do not become "toys" until they are inflated by the addition of another material. Paturel v. Robertson (C. C. 1889) 41 Fed. 329 (writ of error dismissed Robertson v. Paturel [1891] 11 Sup. Ct. 1027, 140 U. S. 695, 35 L. Ed. 603); Vanacker v. Seeberger (C. C. 1889) 40 Fed. 57; Same v. Spalding (C. C. 1885) 24 Fed. 88.

2. **Balata.**—Without determining balata to be india rubber in the commercial sense, balata is in similitude, india rubber, and was dutiable under paragraph 449, Act of 1897. Robins v. U. S. (1911) 1 Ct. Cust. App. 252.

3. **Baskets.**—Baskets of wood stained, dyed or painted held not dutiable as manufacture of chip. See paragraph 175.

Baskets made of twisted hinoki wood shavings held dutiable as "manufactures of chip," under Act 1897, par. 449. Morimura Bros. v. U. S. (C. C. 1909) 167 Fed. 687.

Certain baskets held not to be manufactures of "chip," within the meaning of Act 1897, par. 449. Theodore Ollesheimer & Bros. v. U. S. (C. C. 1907) 154 Fed. 167, judgment affirmed Theodore Ollesheimer & Bro. v. U. S. (1907) 158 Fed. 977, 86 C. C. A. 181.

Baskets made of flat-looking narrow strips of split bamboo and so thin as to be flexible and capable of being woven into a desired form are manufactures of chip and were dutiable under paragraph 449, Act 1897. Tuska v. U. S. (1911) 1 Ct. Cust. App. 535.

4. **Bone.**—Bones which have been submitted to a process of crushing or grinding, producing an article known commercially as crushed or ground bone, which is fit for other than fertilizing purposes, were dutiable as "manufactures of bone," under paragraph 460 of Act 1890, and were not free under paragraph 511, as "bones crude, or not burned, calcined, ground, steamed, or otherwise manufactured, * * * fit only for fertilizing purposes." Gardiner v. Wise (1898) 84 Fed. 337, 28 C. C. A. 148.

Bones which have been crushed and screened must be regarded as "otherwise manufactured," within Act 1890, par. 511, and therefore are not admissible free, but are subject to duty as "manufactures of bone," under par. 460. In re Gardner (C. C. 1895) 72 Fed. 494.

5. **Braids.**—Elastic cords and braids held not dutiable as manufactures of india rubber. See paragraph 318.

In Act 1897, par. 339, the provision for braids "wholly or in chief value of * * * cotton, * * * whether composed in part of india rubber or otherwise," applies only to braids in which cotton is the chief or only component. Braids in part of cotton and in chief value of rubber are dutiable under

paragraph 449, as "manufactures in chief value of india rubber." Horrax v. U. S. (1909) 167 Fed. 526, 93 C. C. A. 22.

6. **Combs.**—Since they most nearly resemble combs made of horn, in accordance with the terms of paragraph 481, Act 1909, combs made of gallilith are dutiable under paragraph 463 of that act. Strauss & Co. v. U. S. (1911) 2 Ct. Cust. App. 203.

7. **Dental rubber.**—Dental rubber, although composed of a mixture of rubber with sulphur and coloring matter, is dutiable as an "article composed of india rubber," at 25 per cent. ad valorem, under Schedule N. The word "article" includes things partly or not at all manufactured, as well as those completely manufactured. Junge v. Hedden (1892) 13 Sup. Ct. 88, 89, 146 U. S. 233, 36 L. Ed. 953.

8. **Dress shields.**—Held, that certain wearing apparel, consisting of dress shields, and composed in chief value of rubber, and in part of cotton, held dutiable as manufactures in chief value of india rubber, under paragraph 460, Act 1890, and not under paragraph 349, relating to wearing apparel composed of cotton, or in chief value thereof, and to such wearing apparel "having india rubber as a component material." Darlington, Runk & Co. v. U. S. (C. C. 1905) 136 Fed. 716.

Dress shields, made of cotton and India rubber, the latter being the component material of chief value, held dutiable as manufactures of India rubber, under Act 1890, par. 460, and not under the proviso of paragraph 349, which is confined to clothing and wearing apparel of which cotton is the component part of chief value. Riley v. U. S. (C. C. 1895) 66 Fed. 741.

9. **Elastic goring.**—Elastic goods used to insert in the upper part of shoes or gaiters held not dutiable as fabrics in part of india rubber. See paragraph 292.

10. **Grasses.**—Bleached or dyed grasses held not dutiable as manufactures of grass. See paragraph 347.

Shida baskets, composed of vegetable fiber derived from ferns, held not dutiable by similitude, as manufactures of grass, etc., under Act 1897, par. 449. Butler Bros. v. U. S. (C. C. 1910) 181 Fed. 402.

Certain grasses are held to be more specifically provided for as manufactures of grass under Act 1897, par. 449, than as "artificial grains, leaves, or flowers," under paragraph 425. Bayersdorfer & Co. v. U. S. (C. C. 1909) 171 Fed. 286.

"Straw" and "grass" in popular usage have never been applied to fibers taken from the bark of trees, but even if bark fiber were regarded as vegetable fiber of like kind with ordinary grass and straw, paragraph 463, Act 1909, would not apply. That paragraph is expressly limited to manufactures of grass and straw in their natural form and structure. Brown & Co. v. U. S. (1914) 5 Ct. Cust. App. 396.

11. **Mats of straw.**—Paragraph 272, Act 1913, provides clearly and without ambiguity for mats and rugs having a warp of cotton, etc., and nothing appears which would warrant the court in rejecting the plain meaning of the language used and making search for some other signification. The mats here were not woven and had no warp, but were made of braids of straw sewn together with cotton. Held, that they did not fall within the provisions of paragraph 272, but were properly assessed at 25 per cent. ad valorem under paragraph 368. Akawo, Morimura & Co. v. U. S. (1915) 6 Ct. Cust. App. 379.

12. **Quills.**—Toothpicks held not dutiable as quills. See paragraph 174.

The wings and tails of birds held dutiable as feathers, and not quills. See paragraph 347.

Quills, black and white, from turkeys' wings and tails, only changed from their original condition by cleaning, and by dyeing the black ones, were free of duty, as "quills, prepared or unprepared, but not made up into complete articles," under paragraph 689 of Act 1890, and were not dutiable as "ornamental feathers," under paragraph 443. U. S. v. Stearns (1897) 79 Fed. 953, 25 C. C. A. 256, affirming decree (C. C. 1896) 75 Fed. 833.

13. **Rubber recoil pads.**—Rubber recoil pads, intended for reducing the shock from the discharge of a gun, but which are not a necessary attachment, their use being optional, held, in the absence of satisfactory evidence of a commercial understanding in support of such classification, not to be dutiable as parts or fittings of guns, under Act 1897, par. 158, but as manufactures of india rubber, under paragraph 449. Schoverling, Daly & Gales v. U. S. (C. C. 1906) 142 Fed. 302.

14. **Shoes.**—Under Act Aug. 30, 1842, shoes made of india rubber in Brazil are subject to a duty of 30 per cent., although they are made by the same process as bottles or sheets, provided they are imported in a condition to be worn without further material labor on them here, and are actually worn in this form, and provided they are called, in the language of commerce, "India rubber shoes," of which facts the jury ought to judge. Lawrence v. Allen (1849) 48 U. S. (7 How.) 785, 12 L. Ed. 914.

15. **Sponges of rubber.**—Act 1897, par. 82, relating to "sponges," does not include rubber sponges, which are dutiable under paragraph 449. Alfred H. Smith Co. v. U. S. (1906) 149 Fed.

1022, 79 C. C. A. 531, affirming judgment (C. C. 1906) 143 Fed. 691.

16. Suspenders.—Merchandise which is technically and commercially known as braces and suspenders composed in part of india rubber takes its dutiable character from that source, and not from the fact that it would otherwise fall under a general designation applicable to other subjects. Arthur v. Davies (1877) 96 U. S. 135, 136, 24 L. Ed. 810.

17. Tennis balls.—Act 1897, par. 391, providing that all manufactures of which wool is a component material shall be classified and assessed as manufactures of wool, does not apply to merchandise of which silk is not a component material; and tennis balls of wool and rubber (rubber being the component material of chief value) are not dutiable under the provision for "all manufactures of every description made wholly or in part of wool, not specially provided for" in paragraph 366 of that act, but as manufactures of india rubber, or of which india rubber is the component material of chief value, not specially provided for under paragraph 449. U. S. v. Slazenger (C. C. 1900) 113 Fed. 524.

Tennis balls of india rubber, covered with light felt of wool, the rubber being the component material of chief value, held dutiable under paragraph 352 of Act 1894. Slazenger v. U. S. (C. C. 1899) 91 Fed. 517.

18. Tubing of India rubber.—India rubber tubing, in meter lengths, colored, chiefly used in making stems of artificial flowers, was dutiable as manufactures of india rubber, under paragraph 460 of Act 1890, and not as parts of artificial flowers, under paragraph 443, not being any finished part of an artificial flower. U. S. v. Simon (C. C. 1897) 84 Fed. 154.

19. Waterproof cloth.—Waterproof cloth held excluded from the terms of paragraph 347, Act 1909, and dutiable under paragraph 463. Kenyon Co. v. U. S. (1913) 4 Ct. Cust. App. 344. See, also, U. S. v. Vandegrift (1912) 3 Ct. Cust. App. 161; Same v. Zinn (1912) 2 Ct. Cust. App. 419.

Waterproof cloth held not dutiable as manufacture of india rubber. See paragraph 288.

20. Webbing.—Webbing made of cotton, silk, and india rubber, the cotton predominating in quantity, and the rubber in value, cannot, in the absence of any finding as to its commercial or common designation, be classified as cotton webbing, under Schedule I, par. 354, of Act 1890, but should be placed under paragraph 460, as a manufacture of which india rubber is the component material of chief value. U. S. v. Shattuck (1894) 59 Fed. 454, 8 C. C. A. 176; In re Shattuck (C. C. 1893) 54 Fed. 365.

Under act 1883 webbing made of india rubber, wool, and cotton, and known as "wool elastic webbing" to distinguish it from "union elastic webbing" and "cotton elastic webbing," is dutiable as "webbing * * * composed wholly or in part of india rubber not otherwise provided for" at 35 per cent. ad valorem, and not as "webbing * * * made of wool or of which wool * * * is a component material" at 50 cents per pound and 50 per cent. ad valorem. Beard v. Nichols (1887) 7 Sup. Ct. 548, 120 U. S. 260, 30 L. Ed. 652.

Webbing made of india rubber, silk, and cotton held taxable as a manufacture of India rubber, silk, and other articles. Act July 14, 1866, § 8. Faxon v. Russell (C. C. 1876) Fed. Cas. No. 4,707.

21. Wood fiber in strips plaited into sheets.—Thin narrow strips of wood fiber, plaited into sheets of about 24x18 inches, held dutiable under Act 1890, par. 460, and were not entitled to free entry as "Sparterre," under paragraph 711. Zinn v. U. S. (C. C. 1896) 71 Fed. 952.

369. Ivory tusks in their natural state, or cut vertically across the grain only, with the bark left intact, 20 per centum ad valorem; manufactures of ivory or vegetable ivory, or of which either of these substances is the component material of chief value, not specifically provided for in this section, 35 per centum ad valorem; manufactures of mother-of-pearl and shell, plaster of Paris, papier-mâché, and vulcanized india rubber known as "hard rubber," or of which these substances or any of them is the component material of chief value, not specifically provided for in this section, 25 per centum ad valorem; shells engraved, cut, ornamented, or otherwise manufactured, 25 per centum ad valorem.

Notes of Decisions

1. Billiard ball blocks.
2. Cut ivory.
3. Figures representing religious subjects.
4. Fountain pens.
5. Mother of pearl for knife handles.
6. Opera glasses.
7. Papier-mâché.
8. Pearl buttons.
9. Piano keys.
10. Shells.
11. Statuettes of plaster of paris.

1. Billiard ball blocks.—Cross sections, 2–2½ inches long, sawed from the solid portion of ivory tusks, with the outer covering or bark left on, and

generally known in trade as "billiard ball blocks" and "logs," were free of duty, under paragraph 519 of Act 1894, as "ivory sawed or cut into logs, but not otherwise manufactured," and were not subject to a duty of 35 per cent., under paragraph 354 of the same act, as "manufactures of ivory not otherwise provided for." Arbib v. U. S. (C. C. 1898) 86 Fed. 121.

2. **Cut ivory.**—Where an importer of ivory called the attention of the ways and means committee to the fact that a certain provision relating to cut ivory in a tariff bill then in preparation would make a tusk once sawed dutiable, but the bill was not changed, it should be presumed that congress intended that the provision should have that effect. In re Gerdau (C. C. 1893) 54 Fed. 143.

Act 1890, par. 618, admitting, free of duty, ivory not sawed, cut, or otherwise manufactured, does not apply to elephants' tusks sawed into pieces of various lengths, when such sawing requires skill and judgment, and is done, not for convenience in transportation, but to separate the ivory into different grades, adapted to different uses. Id.

3. **Figures representing religious subjects.**—Certain figures five feet six inches in height, representing religious subjects, and scenes in the life of the Saviour, composed of pulverized stone, cement, plaster of paris, and other materials and colored and otherwise decorated, were properly assessed for duty under Act 1897, par. 97, and paragraph 450, as manufactures of plaster of paris not specially provided for, or as articles and wares composed wholly or in chief value of earthy or mineral substances not specially provided for, and were not exempt from duty, under paragraph 649 as casts of sculpture. Benziger v. U. S. (1902) 113 Fed. 1016, 51 C. C. A. 587, affirming opinion (C. C. 1900) 107 Fed. 257, and judgment reversed (1904) 24 Sup. Ct. 189, 192 U. S. 38, 48 L. Ed. 331.

4. **Fountain pens.**—Parts of fountain pens held under Act 1909 dutiable as manufactures of hard rubber. Schrader & Ehlers v. U. S. (1913) 4 Ct. Cust. App. 100.

There is no question of commercial designation, and "penholder" as employed in the statute cannot reasonably be held to include the rubber article of the importation. The language of paragraph 187, Act 1909, clearly contemplates that fountain pens for tariff purposes should be distinguished as they are in fact and in common understanding from the ordinary penholder, and should be subject to a different rate of duty. The importations were dutiable as manufactures of hard rubber under paragraphs 450, Act 1897, and 464, Act 1909, respectively. Schrader & Ehlers v. U. S. (1912) 2 Ct. Cust. App. 410.

5. **Mother of pearl for knife handles.**—Act 1897, par. 450, covering "manufactures" of mother of pearl held to include mother of pearl made into slabs by cutting or grinding, which are designed for use in the manufacture of knife handles and similar articles. Morris European & American Express Co. v. U. S. (C. C. 1906) 150 Fed. 608.

Strips of pearl, commonly called "pearl scales" or "stock pearl," chiefly used for knife handles, but also used on fans, opera glasses, button hooks, and for inlaid work, are dutiable under paragraph 450 of Act 1897, as "manufactures of mother of pearl, not specially provided for," and not under paragraph 153, as "parts of knives, wholly or partly manufactured." U. S. v. United States Exp. Co. (C. C. 1899) 94 Fed. 642.

Mother of pearl, cut into slabs, and designed for use in the manufacture of knife handles, held dutiable under paragraph 462 of Act 1890, as a manufacture of "mother of pearl," and not under section 4 of said act, as a nonenumerated unmanufactured article. In re John Russell Cutlery Co. (C. C. 1893) 56 Fed. 221.

6. **Opera glasses.** — Opera glasses, composed of metal, glass, and pearl or shell, in which the pearl or shell is the component of chief value, held dutiable under Act 1883 at 25 per cent. ad valorem; but, when the metal and pearl or shell are of equal value, they are dutiable at 45 per cent. ad valorem, as a manufacture of copper not otherwise provided for (Heyl's Dig. pt. 2, p. 13, cl. 216). Young v. Spalding (C. C. 1885) 24 Fed. 87.

7. **Papier-mâché.**—Toy papier-mâché rabbits held not dutiable as manufactures of papier-maché. See paragraph 342.

8. **Pearl buttons.**—Pearl collar buttons held not dutiable as manufactures of mother of pearl. See paragraph 339.

Small, highly polished disks of pearl, which are plain on the back, with grooved rings, or hollowed out in front, with rounded edges, and with small cavities in their centers, and which, except that they are not pierced with holes or shanked through their centers, exactly correspond in appearance with the ordinary superfine pearl buttons of commerce, held not dutiable as pearl buttons, under the provision for such buttons contained in paragraph 429 of Act 1890, but dutiable as manufactures of mother of pearl, under paragraph 462. In re Blumenthal (C. C. 1892) 51 Fed. 76.

9. **Piano keys.**—Pieces of ivory for keys of pianos and organs, and made into the proper shapes and sizes for certain octaves of those instruments, and sold for that purpose, are not dutiable as "musical instruments," but as manufactures of ivory, under Rev. St.

§ 2504, and Rev. St. § 2502. Robertson v. Gerdan (1889) 10 Sup. Ct. 119, 132 U. S. 454, 33 L. Ed. 403.

10. Shells.—Shells imported into the United States which before their importation had their outer layers cleaned off by acid and their second layers ground off by an emery wheel, and which were sold for ornaments without any new or distinctive name after such treatment, are not manufactures of shell, but fall under R. S. § 2505. Hartranft v. Winters (1887) 7 Sup. Ct. 1244, 121 U. S. 616, 30 L. Ed. 1015; Same v. Wiegmann (1887) 7 Sup. Ct. 1240, 1242, 121 U. S. 609, 30 L. Ed. 1012.

Mussel shells prepared by cutting and boring holes and used for ornamental purposes, having been advanced in value and adapted to a definite use, are not entitled to free entry under paragraph 635, Act 1897, but were dutiable as "shells engraved, cut, ornamented, or otherwise manufactured," under paragraph 450 of that act. U. S. v. Reed & Keller (1913) 3 Ct. Cust. App. 504. See, also, Hartranft v. Wiegmann (1887) 7 Sup. Ct. 1240, 121 U. S. 609, 30 L. Ed. 1012.

11. Statuettes of plaster of paris.—Decorated and ornamented statuettes, made from plaster of paris—sulphuric acid, lime, and water—held not taxable under Act 1897, par. 95, as china, porcelain, or crockery ware, including statuettes ornamented, etc., but taxable under paragraph 450, as manufactures of plaster of paris, or of which such substance is the component material of chief value, not specially provided for in the act. T. Bing & Co.'s Successors v. U. S. (C. C. 1903) 121 Fed. 194.

370. Masks, of whatever material composed, 25 per centum ad valorem.

371. Matting made of cocoa fiber or rattan, 5 cents per square yard; mats made of cocoa fiber or rattan, 3 cents per square foot.

372. Moss and sea grass, eelgrass, and seaweeds, if manufactured or dyed, 10 per centum ad valorem.

373. Musical instruments or parts thereof, pianoforte actions and parts thereof, cases for musical instruments, pitch pipes, tuning forks, tuning hammers, and metronomes; strings for musical instruments, composed wholly or in part of steel or other metal, all the foregoing, 35 per centum ad valorem.

Notes of Decisions

Drumheads.—The articles are called drumheads by the importers and the appraiser alike. They appear to be completely prepared and adapted for use as drumheads, and by their size and shape they would seem to have been finally appropriated to that use, and that use alone. They were properly dutiable as parts of musical instruments under paragraph 467, Act 1909. U. S. v. Lyon & Healy (1913) 4 Ct. Cust. App. 84.

Mouth organs.—Mouth organs held not dutiable as musical instruments. See paragraph 342.

Mouthpieces of wood and ivory.—The appearance of hollow cylindrical pieces of wood and ivory which might be used for mouthpieces for flutes, etc., held not to indicate that they are confined in their possible uses, nor does the evidence justify the conclusion that they are intended for use as parts of musical instruments. U. S. v. Lyon & Healy (1913) 4 Ct. Cust. App. 438.

Music rolls for self-playing instruments.—These music rolls are made for a player piano known as the Welte Mignon. This instrument can be used as an ordinary piano and it is equipped for the mechanical production of music. These rolls are essential to the use of the instrument as a player piano and are therefore parts of the instrument. Welte & Sons v. U. S. (1914) 5 Ct. Cust. App. 164.

Piano keys.—Pieces of ivory for piano keys held not dutiable as musical instruments. See paragraph 369.

Strings.—Strings for musical instruments composed of catgut wound with silk held not dutiable as parts of musical instruments. See paragraph 318.

"Strings for musical instruments" refers to strings used for the production of musical sounds; and the tailpiece gut of one of the two classes of importations are not so employed. As to the catgut of the other class of importations there is no dispute that when used as a part of an instrument they are used for the purpose of producing musical sounds. They are "strings for musical instruments" and were dutiable as such. Fischer v. U. S. (1914) 5 Ct. Cust. App. 301.

The merchandise, as appears from the testimony, is ready for immediate use as strings for musical instruments. It falls eo nomine under paragraph 467, Act 1909. Richard & Co. v. U. S. (1912) 3 Ct. Cust. App. 306. See, also, Davies, Turner & Co. v. Same (C. C. 1902) 115 Fed. 232.

Violin and cello necks, finger boards, bridges, etc.—Violin finger boards, necks, pegs, and bridges of wood held to have each been given such form and shape

that not only has its utility for any other purpose been destroyed but each article bears evidence of the use to which it is to be devoted and its adaptation to that use. They were dutiable, as assessed, as parts of musical instruments under paragraph 467, Act 1909. Richard & Co. v. U. S. (1913) 4 Ct. Cust. App. 470.

The physical construction of violin and cello necks held such as to render them plainly unserviceable for any other purpose than for use as parts of musical instruments. U. S. v. Lyon & Healy (1913) 4 Ct. Cust. App. 438. See, also, Id. (1913) 4 Ct. Cust. App. 84; Richard & Co. v. U. S. (1912) 3 Ct. Cust. App. 306; Athenia Steel & Wire Co. v. Same (1911) 1 Ct. Cust. App. 494.

374. Phonographs, gramophones, graphophones, and similar articles, or parts thereof, 25 per centum ad valorem.

Notes of Decisions

Disks.—The history of paragraph 468, Act 1909, makes it clear that the parts of phonographs therein provided for must be taken to include phonograph disks. American Express Co. v. U. S. (1913) 4 Ct. Cust. App. 279. See, also, American Graphophone Co. v. Amet (C. C. 1896) 74 Fed. 789.

Needles.—Whether equipped with records of one kind or another, a phonograph without a needle capable of being fitted to it and of following the cuts or undulations of the records would not serve the purpose for which it was made and would not be a complete machine. The needles stand for tariff purposes on a footing with the records themselves. Landay Bros. v. U. S. (1915) 5 Ct. Cust. App. 498.

375. Violin rosin, in boxes or cases or otherwise, 10 per centum ad valorem.

376. Works of art, including paintings in oil or water-colors, pastels, pen and ink drawings, or copies, replicas or reproductions of any of the same, statuary, sculptures, or copies, replicas or reproductions thereof, and etchings and engravings, not specially provided for in this section, 15 per centum ad valorem.

Notes of Decisions

Paintings in oil and water colors.—See, also, notes under paragraph 652.

Glazed tiles held not dutiable as paintings, etc. See paragraph 72.

Plaques painted held not classifiable as paintings, etc. See paragraph 80.

Certain pictures hand-painted on porcelain held dutiable under Rev. St. § 2504, as paintings and not as paint china or porcelain ware. Arthur v. Jacoby (1880) 103 U. S. 677, 678, 26 L. Ed. 454.

A painting produced before the year 1700 held dutiable under Act 1890, par. 465, imposing 15 per cent. ad valorem on paintings in oil or water colors, and is not exempt from duty, as a part of a collection of antiquities, under paragraph 524 of the free list. U. S. v. Gunther (1896) 71 Fed. 499, 18 C. C. A. 219.

Japanese wall decorations, made of paper, or of paper and cotton, or of narrow strips of bamboo joined together with cotton cord, and upon which representations of flowers, of birds, or of human figures are painted in water colors, the large bodies of colors being applied by stenciling while the features of the work which are delicate and ornamental and give character to the article are by hand, are dutiable, under paragraph 465 of Act Oct. 1, 1890, at 15 per cent. ad valorem, as "paintings in oil or water colors." U. S. v. China & Japan Trading Co. (1893) 58 Fed. 690, 7 C. C. A. 433.

The provision in Act 1897, par. 454, for "paintings" in oil or water colors does not include articles consisting of lithographic prints pasted on wood, and painted to a slight extent, and varnished. Steinhardt & Bro. v. U. S. (C. C. 1909) 172 Fed. 168.

In Act 1897, par. 454, the expression "paintings in oil or water colors" is not a commercial term, but is used descriptively. Id.

The term "paintings," in Act 1897, par. 454, includes handpainted panels having a small calendar affixed, which is a trifling part of the entire article. A. A. Vantine & Co. v. U. S. (C. C. 1909) 168 Fed. 562.

Splash mats or screens, which have been crudely decorated at an expense of about 2½ cents apiece by stenciling and by hand painting, which are worth about 4 cents apiece, and which primarily are articles of utility rather than for decoration, held not dutiable as "paintings in oil or water colors" under Act 1897, par. 454. F. W. Woolworth & Co. v. U. S. (C. C. 1907) 152 Fed. 483.

Articles composed of several tiles put together in rows, their faces forming a surface on which a picture is sketched by free-hand with brown mineral paint prepared with oil or water, which

is then fired, and by vitrification made blue, the whole being then framed, were not dutiable as "tiles," under paragraph 94 of Act 1890, but were included in the description "paintings, in oils or water colors," contained in paragraph 465. Richard v. U. S. (C. C. 1899) 91 Fed. 517.

Paintings in oil on panels of papier-mâché, to go into the frames of a false door, held dutiable under Act 1890, par. 465, as "paintings in oil," and not as manufactures of wood, under paragraph 230. Godwin v. U. S. (C. C. 1896) 71 Fed. 950.

Fans, composed of silk and bone, on which are executed artistic paintings in water colors, which are displayed as ornaments, and not used as fans ordinarily are, held not dutiable as manufactures of silk, under Act Oct. 1, 1890, par. 414, but under paragraph 465, as "paintings in oil or water colors." Tiffany v. U. S. (C. C. 1895) 66 Fed. 736.

Professional production of a sculptor. —See, also, notes under paragraph 652.

In providing a low rate of duty on works of art in Act 1897, par. 454, Congress evidently intended to welcome the works of meritorious artists and sculptors, and to exclude from the low rate the productions of artisans and empirics. The definition of statuary as "the professional production of a statuary or sculptor only" was aimed against such articles as are made by machinery or unskilled labor, or are cast in large numbers from molds by ordinary workmen. Such a paragraph should be construed liberally. U. S. v. Tiffany & Co. (1908) 160 Fed. 408, 87 C. C. A. 360.

In Act 1897, par. 454, relating to "such statuary as is cut, carved, or otherwise wrought by hand * * * and as is the professional production of a statuary or sculptor only," it is not necessary that the entire work on a statue shall be "by hand," nor that the entire handiwork must be that of the statuary or sculptor personally. Id.

Neither Act 1913 nor paragraph 376 thereof limits the definition of the word "sculptures" as used in said paragraph, and the word must be given the meaning ascribed to it in common understanding. Sculpture is the production of a professional sculptor; it embodies professional skill, taste, touch, and artistic conception, appealing not only to the eye but to the emotions as well. A copy, replica, or reproduction under this paragraph must possess the same qualities or characteristics, and must be made by a professional sculptor or under his supervision. The history of this legislation shows that Congress did not intend, by enacting paragraph 376 as new legislation in Act 1913, to lower the standard of work necessary to constitute sculpture or to dispense with the requirement that such work must be produced by, or under the supervision of, a sculptor, thereby admitting at a low rate of duty the commercial productions of artisans because of characteristics rendering them attractive, ornamental, or beautiful. If these parts are not sculpture, it follows that they are not works of art under paragraph 376. Having denied classification as works of art to the parts of this temple, the court refuses to classify the whole temple as a work of art. U. S. v. Downing & Co. (1916) 6 Ct. Cust. App. 545.

A work in marble, said to be a copy of a mantel in the Doge's Palace, at Florence, Italy, neither copy nor original being shown to be the production of a professional sculptor, is not sculpture or a work of art under paragraph 376, Tariff Act 1913. U. S. v. Halle Bros. Co. (1916) 6 Ct. Cust. App. 543. See, also, Same v. Downing & Co. (1916) 6 Ct. Cust. App. 545.

No typical exhibits of the merchandise were produced, and the testimony as offered in behalf of the importers was based on photographs. The burden of showing the goods to be sculptures rested on the importer. The board found the importers had failed to make out their case, and there is nothing in the record to warrant a reversal of that finding. Marshall Field & Co. v. U. S. (1914) 5 Ct. Cust. App. 191.

To constitute "sculptures" under Act 1909 the evidence must show the articles were cut, carved, or otherwise wrought by hand from solid blocks or masses of marble and that they were severally the professional productions of a sculptor. Hayden Co. v. U. S. (1913) 4 Ct. Cust. App. 35; Downing & Co. v. U. S. (1912) 3 Ct. Cust. App. 473.

Articles, though carved representations in marble of artistic subjects, held under Act 1909 not dutiable as sculptures, where there was no showing that they were the production of a sculptor, but dutiable as manufactures of marble. Warren & Wetmore v. U. S. (1912) 3 Ct. Cust. App. 461.

A sculpture must be the work of a sculptor and such a production as to be stamped with some of the individuality of the artist himself. The burden of showing the importation here to be sculptures was on the importer, and the evidence goes to prove the maker was not a sculptor proper, but an ornamentalist, rather, with a specialty in the decoration of stonework. Consmiller v. U. S. (1912) 3 Ct. Cust. App. 298.

The articles were bronze knockers fashioned after the human figure and bronze busts and statuettes, together with bases made expressly for these. The uncontradicted testimony of the maker of the articles is to the effect his work on them was that of an artist rather than as an artisan; that he employed his professional skill, in their production. The importations are du-

tiable under paragraph 454, Act 1897. U. S. v. Godwin's Sons (1912) 3 Ct. Cust. App. 226.

Jardinières and vases held within the provisions of the law relating to sculptures, and dutiable under paragraph 470, Act 1909. Stern v. U. S. (1912) 3 Ct. Cust. App. 124.

Without determining whether the importations rise to the dignity of "sculptures" in the arts, the character of their production by wholesale would exclude them from the terms of paragraph 470, Act 1909. Under that paragraph the sculptures designated must be made by hand from solid blocks of alabaster and be, too, the professional production of a sculptor only. Lazarus, Rosenfeld & Lehmann v. U. S. (1912) 2 Ct. Cust. App. 508.

A carved marble vase, made by a sculptor as a copy of an original in the Borghese collection, is not to be deemed a manufactured article. The evidence shows that artistic skill was employed in its production, and it was properly held to be dutiable as a "sculpture" under paragraph 470, Act 1909. U. S. v. Baumgarten & Co. (1911) 2 Ct. Cust. App. 321.

Marble parts of garden temple.—Marble parts of a garden temple held not dutiable as works of art. See paragraph 98.

377. Peat moss, 50 cents per ton.

378. Pencils of paper or wood, or other material not metal, filled with lead or other material, pencils of lead, 36 cents per gross, but in no case shall any of the foregoing pay less than 25 per centum ad valorem; slate pencils, 25 per centum ad valorem.

Notes of Decisions

School crayons.—Pencils of wood from four to seven inches in length, filled with material of various colors, and known in trade and commerce as "colored pencils," and often, especially since March 3, 1883, as "school crayons," held dutiable under Act 1883 as "pencils of wood filled with lead or other material," and not as "crayons of all kinds." In re Blumenthal (C. C. 1892) 49 Fed. 226.

Soap pencils.—Soap pencils for cleaning spectacles held not dutiable as pencils. See paragraph 385.

379. Pencil leads not in wood or other material, 10 per centum ad valorem.

380. Photographic cameras, and parts thereof, not specially provided for in this section, photographic dry plates, not specially provided for in his section, 15 per centum ad valorem; photographic-film negatives, imported in any form, for use in any way in connection with moving-picture exhibits, or for making or reproducing pictures for such exhibits, exposed but not developed, 2 cents per linear or running foot; if exposed and developed, 3 cents per linear or running foot; photographic-film positives, imported in any form, for use in any way in connection with moving-picture exhibits, including herein all moving, motion, motophotography or cinematography film pictures, prints, positives or duplicates of every kind and nature, and of whatever substance made, 1 cent per linear or running foot: Provided, however, That all photographic-films imported under this section shall be subject to such censorship as may be imposed by the Secretary of the Treasury.

Notes of Decisions

Moving picture films.—Cinematograph, or moving picture, films are photographs and were dutiable under paragraph 403, Act 1897. U. S. v. Berst (C. C. 1909) 175 Fed. 121; Same v. Sussfeld (1910) 1 Ct. Cust. App. 51.

381. Pipes and smokers' articles: Common tobacco pipes and pipe bowls made wholly of clay, 25 per centum ad valorem; other pipes and pipe bowls of whatever material composed, and all smokers' articles whatsoever, not specially provided for in this section, including cigarette books, cigarette-book covers, pouches for smoking or chew-

ing tobacco, and cigarette paper in all forms, except cork paper, 50 per centum ad valorem; meerschaum, crude or unmanufactured, 20 per centum ad valorem.

Notes of Decisions

1. Construction of paragraph in general.
2. Acetylene lamp lighter.
3. Cedar boxes.
4. Cigarette paper.
5. Cigar lighters.
6. Lamps for dealers.
7. Leather covered cases.
8. Mouthpieces for pipes.
9. Pyroxylin articles.
10. Tables.
11. Tin boxes.

1. Construction of paragraph in general.—Act 1897, par. 459, under the heading "pipes and smokers' articles," enumerated "tobacco pipes and pipe bowls, * * * and all smokers' articles whatsoever, * * * including cigarette books, cigarette book covers, pouches for smoking or chewing tobacco, and cigarette paper in all forms." Held that, in view. of the broad language employed, the doctrine of ejusdem generis has no application in construing the paragraph. A. Steinhardt & Bro. v. U. S. (C. C. 1903) 126 Fed. 443.

It is sufficient to bring a commodity within the classification "smokers' articles" if it is shown the article must have passed with its first use into the hands of a consumer for use as a smokers' article. Knauth v. U. S. (1911) 1 Ct. Cust. App. 334.

2. Acetylene lamp lighter.—Acetylene lamp lighter held not dutiable as smoker's article. See paragraph 167.

3. Cedar boxes.—Cedar boxes of suitable size, plain and decorated, marked "Cigars" or "Cigarettes," are smokers' articles, and a finding by the board of general appraisers that other cedar boxes also of suitable size, of the same importation and similar in all essential respects to the boxes marked "Cigars" or "Cigarettes," though unmarked and possibly fitted for uses other than by smokers, are smokers' articles, will be sustained. Vandiver v. U. S. (1911) 1 Ct. Cust. App. 194.

4. Cigarette paper.—Cigarette papers and covers for same, though imported separately, held dutiable as smokers' articles, and not as manufactures of paper, under Act 1883. Isaacs v. Jonas (1893) 13 Sup. Ct. 677, 148 U. S. 648, 37 L. Ed. 596.

There is a presumption in favor of a collector's classification and assessment which must be overcome by proof, and it being possible to show by chemical analysis alone that the importation of hygeia paper contained less magnesia than cigarette paper contains, and the results of no such analysis being shown, and it appearing the dominant use of paper such as this in question is for the manufacture of cigarettes, the assessment of the collector must stand, as proper, under paragraph 459, Act 1897. Hygeia Antiseptic Toothpick Co. v. U. S. (1911) 1 Ct. Cust. App. 497.

5. Cigar lighters.—Cigar lighters held properly assessed as smokers' articles. Bernhardt v. U. S. (1913) 4 Ct. Cust. App. 36. See, also, Dale v. Same (1911) 2 Ct. Cust. App. 384; Knauth v. Same (1911) 1 Ct. Cust. App. 334.

6. Lamps for dealers.—Small lamps, such as are mainly used for lighting pipes and cigars, and are usually carried in stock by those who deal in pipes and other articles of that sort, are "smokers' articles," within Act 1883. Wedemeyer v. Lancaster (C. C. 1887) 31 Fed. 446.

7. Leather covered cases.—Leather covered cigar and cigarette cases held, under Act 1909, dutiable not as manufactures of leather, but as "all smokers' articles whatsoever." Dale v. U. S. (1911) 2 Ct. Cust. App. 384; Mark Cross Co. v. U. S. (1911) 1 Ct. Cust. App. 377. See, also, Knauth v. Same (1911) 1 Ct. Cust. App. 334; Vandiver v. Same (1911) 1 Ct. Cust. App. 194.

8. Mouthpieces for pipes.—These mouthpieces for pipes are finished. They are not, it is true, designed to be used in any particular pipe or pipestem, but are made to be inserted in any pipe or stem so constructed as to receive the same, and seem to be of a size and shape commonly in use. They clearly fall within the description of "all smokers' articles whatsoever" in paragraph 475, Act 1909. U. S. v. Hanover Vulcanite Co. (1913) 4 Ct. Cust. App. 503. See, also, Same v. Eytinge & Co. (1913) 4 Ct. Cust. App. 266.

9. Pyroxylin articles.—Act 1897, par. 459, covering "all smokers' articles whatsoever, not specially provided for," enumerates pyroxylin smokers' articles more specifically than does paragraph 17, Schedule A, covering "all compounds of pyroxylin * * * if in finished or partly finished articles." U. S. v. Knauth, Nachod & Kuhne (C. C. A. 1906) 150 Fed. 610.

10. Tables.—Articles used chiefly for the convenience of smokers, consisting of tables on the top of which are affixed smokers' accessories, and of an ornamental miniature automobile for the use of smokers, held dutiable as "smokers' articles," under Act 1897, par. 459, and not as "house or cabinet furniture of wood," under paragraph 208. A. Steinhardt & Bro. v. U. S. (C. C. 1903) 126 Fed. 443.

11. Tin boxes.—Use in chief controls in classification, and the consignment of tin boxes here, being in shape, size, and markings plainly designed for use by smokers, could not properly be classed as manufactures of metal, and the boxes were properly held dutiable as smokers' articles under paragraph 459, Act 1897. Knauth v. U. S. (1911) 1 Ct. Cust. App. 334. See, also, Steinhardt v. U. S. (C. C. 1903) 126 Fed. 443.

382. Plush, black, known commercially as hatters' plush, composed of silk, or of silk and cotton, such as is used for making men's hats, 10 per centum ad valorem.

Notes of Decisions

Construction of paragraph.—Goods imported by a manufacturer of women's hats held not dutiable as plush for making men's hats. See paragraph 314.

Construing paragraphs 315 and 342 of Act 1897 together, "plushes, velvets, velveteens, corduroys and all pile fabrics, cut or uncut," "composed of cotton or other vegetable fibre," are dutiable under paragraph 315, except "pile fabrics of which flax is the component material of chief value," which are dutiable under paragraph 342; and, under such construction, colored flax and cotton plush, flax chief value, held dutiable under paragraph 342. Stern v. U. S. (1899) 98 Fed. 417, 39 C. C. A. 119, affirming judgment U. S. v. Stern (C. C. 1899) 91 Fed. 521.

It is clear that paragraph 477, Act 1909, must be taken to refer specifically to material used exclusively for making men's hats. The intention was to encourage the domestic production of men's hats. Comey & Johnson Co. v. U. S. (1912) 2 Ct. Cust. App. 532.

383. Umbrellas, parasols, and sunshades covered with material other than paper or lace, not embroidered or appliquéd, 35 per centum ad valorem. Sticks for umbrellas, parasols, or sunshades, and walking canes, finished or unfinished, 30 per centum ad valorem.

Notes of Decisions

Paper umbrellas.—Paper umbrellas held not dutiable as umbrellas. See paragraph 332.

Small parasols.—Small parasols of flimsy make covered with material other than paper held properly assessed as parasols covered with other material than paper, under paragraph 462, Act 1897, and the corresponding paragraph in Tariff Act 1909, and not as toys. Cattus v. U. S. (1913) 4 Ct. Cust. App. 9. See, also, Pacific Mail S. S. Co. v. Same (1912) 3 Ct. Cust. App. 102.

Umbrella sticks with celluloid handles.—Umbrella sticks of wood, having celluloid handles, that constitute the chief element of value in the articles, held more specifically provided for as "sticks for umbrellas," in paragraph 462, Act 1897, than as "articles of which * * * any compound of pyroxylin is the component material of chief value," in paragraph 17. U. S. v. Borgfeldt (C. C. 1900) 124 Fed. 304.

384. Waste, not specially provided for in this section, 10 per centum ad valorem.

Notes of Decisions

1. Camphor oil.
2. Candle tar or palm pitch.
3. Flax noils.
4. Fur waste.
5. Granito or terrazo.
6. Hog hair waste.
7. Lead shavings.
8. Mica.
9. Polishing stones.
10. Powdered glass.
11. Secondhand jute or cotton bagging.
12. Small pieces of cork for use in making linoleum.
13. Tin disks.
14. Tin parings.
15. Tobacco sweepings.

1. Camphor oil.—Camphor oil held not dutiable as waste. See paragraph 385.

2. Candle tar or palm pitch.—Candle tar or palm pitch held not dutiable as waste. See paragraph 385.

3. Flax noils.—Flax noils held dutiable as waste. See paragraph 485.

4. Fur waste.—Undressed clippings or waste fur held not dutiable as waste. See paragraph 491.

As to combings of loose or dead hair obtained in preparing rabbit or hare skins, which are commercially known as "hares' combings" or "fur waste," and which, after further treatment, are used as an adulterant in cheap hats, held, that they are dutiable as waste under Act 1897, par. 463, and not as furs prepared for hatters' use under paragraph 426, nor free of duty as "furs, undressed," under section 2, Free List, par. 561. U. S. v. Hatters' Fur Exchange (C. C. 1907) 153 Fed. 595.

Articles of merchandise and known to trade and commerce, respectively, as "fur waste," "hares' combings," "hares'

waste,' "hares dags," and "coneys' dags," were not dutiable under the provision for "hatters' fur, not on the skin," contained in paragraph 450, Act 1883, but were dutiable under the provision for "waste, not specially enumerated or provided for in this act," contained in paragraph 493. Wimpfheimer v. Erhardt (C. C. 1893) 59 Fed. 451.

5. **Granito or terrazo.**—Granito or terrazo held not dutiable as waste. See paragraph 385.

6. **Hog hair waste.**—Waste of hog hair used in the manufacture of artificial fertilizers held not dutiable as waste. See paragraph 499.

7. **Lead shavings.**—Lead shavings held not dutiable as waste. See paragraph 167.

8. **Mica.**—Mica in small pieces held not dutiable as waste. See paragraph 77.

9. **Polishing stones.** — Tam O'Shanter polishing stones held not dutiable as waste. See paragraph 95.

10. **Powdered glass.**—Powdered glass held not dutiable as waste. See paragraph 95.

11. **Secondhand jute or cotton bagging.**—Selected pieces of secondhand jute bagging, intended for patching the covering of cotton bales, held not "bagging for cotton, gunny cloth, and similar fabrics, suitable for covering cotton," under Act 1897, par. 344, nor "rags," under section 2, Free List, par. 648 but dutiable as "waste" under paragraph 463. U. S. v. Davies (1908) 160 Fed. 456, 87 C. C. A. 672.

Old gunny cloth or cotton bagging, formerly used for covering cotton bales in ragged, dirty, and partly rotten pieces, to be used chiefly as paper stock for making manila paper only, held dutiable under Act 1897, par. 463, as waste. Train v. U. S. (1902) 113 Fed. 1020, 51 C. C. A. 623, affirming judgment (C. C. 1900) 107 Fed. 261.

12. **Small pieces of cork for use in making linoleum.**—Small pieces of cork, which have been produced by grinding the refuse of cork bark for convenience in handling, and which need further preparation before becoming fit for its ultimate use in the manufacture of linoleum, etc., held dutiable as waste under Act 1897, par. 463, and not as a manufacture of cork under paragraph 448. Gudewill & Bucknall v. U. S. (C. C. 1904) 142 Fed. 214.

13. **Tin disks.**—Small disks produced in the manufacture of tin cans held not dutiable as waste. See paragraph 167.

14. **Tin parings.**—Tin parings held not dutiable as waste. See paragraph 167.

15. **Tobacco sweepings.**—Tobacco sweepings and scraps held not dutiable as waste. See paragraph 183.

385. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles not enumerated or provided for in this section, a duty of 10 per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of 15 per centum ad valorem.

Notes of Decisions

1. Agate penholders.
2. Artificial horsehair.
3. Bass fiber.
4. Bassine or palmyra fiber.
5. Beef and mushrooms.
6. Bichromate of soda.
7. Birch bark.
8. Bisque rings.
9. Bleach containing ferrocyanide of iron.
10. Bone size.
11. Bouillon cubes.
12. Caffeine.
13. Camphor oil.
14. Candle tar or palm pitch.
15. Capers.
16. Carbon points.
17. Catheters.
18. Cherries in maraschino.
19. Chlorophyll.
20. Crocus.
21. Crude coco fibers processed.
22. Crude ore mechanically ground.
23. Crude sulphide of antimony.
24. Dressed lava stone.
25. Dry egg yolk.
26. Edible snails.
27. Edible wafers.
28. Effect of similitude clause.
29. Ferrochrome.
30. Finings.
31. Floral waters.
32. Granito or terrazo.
33. Grasses dressed.
34. Grenadine.
35. Ground talc.
36. Hay.
37. Herbs immersed in alcohol.
38. Hone stone.
39. Honey cakes.
40. Hulled millet seeds.
41. Jade tableware.
42. Japanese granite lanterns.
43. Kittul.
44. Liquid extract of coffee bean.
45. Lubricating oil.
46. Marasque water.
47. Marble chips.
48. Melon seeds roasted.
49. Metal polish.
50. Mineralogical specimens.
51. Modeling clay.
52. Moss dyed.
53. Mother of pearl knife handles.
54. Needlecases.
55. Nonenumerated in general.
56. Nonenumerated manufactured articles in general.
57. Nucoa butter.
58. Olive pits.
59. Orchid and Persian berry extracts.

60. Papaw melon powder.
61. Pineapple juice.
62. Plastilina.
63. Polish.
64. Prune wine.
65. Ramie silver.
66. Rape meal.
67. Sago flour.
68. Sake.
69. Soap pencils.
70. Soapstone gas tips.
71. Soluble grease.
72. Sugar wafers.
73. Tennis balls.
74. Thick soy.
75. Tungsten ore or wolfram.
76. Viscose caps.
77. Walnuts pickled.
78. Wheat foodstuff.
79. Wheat injured by frost.
80. White hard enamel.

1. **Agate penholders.**—Agate penholder handles, etc., held dutiable as nonenumerated manufactured articles. See paragraph 98.

2. **Artificial horsehair.**—Artificial horsehair held dutiable as an unenumerated manufactured article. See paragraph 319.

3. **Bass fiber.**—This bass fiber has been subjected to a process that fits it for a definite use and has been advanced, accordingly, from a crude state to that of a manufactured article. It was not entitled to free entry under the Act 1909. U. S. v. Osborn Mfg. Co. (1915) 6 Ct. Cust. App. 276.

4. **Bassine or palmyra fiber.**—These goods, bassine or palmyra fiber, are not sufficiently similar in material, quality, texture, or the use to which they may be applied to the istle or tampico, dressed, dyed, or combed, of paragraph 285, Act 1913, to be dutiable thereunder by similitude, nor is their quality such as to warrant such an assessment. They are dressed goods, and are dutiable as an unenumerated manufactured article under paragraph 385 of the act. Cone v. U. S. (1915) 6 Ct. Cust. App. 263.

5. **Beef and mushrooms.**—Mushrooms and beef mixed together held dutiable as a nonenumerated manufactured article, and not free of duty as meat preserved. U. S. v. Furuya Co. (1915) 6 Ct. Cust. App. 207.

6. **Bichromate of soda.**—Bichromate of soda held not dutiable as a nonenumerated article. See paragraph 67.

7. **Birch bark.**—While the rule of ejusdem generis must be applied with some liberality in construing paragraph 630, Act 1909, it would be going too far to hold birch bark to be such a vegetable substance as is there named, and the importation was properly assessed as a nonenumerated unmanufactured article under paragraph 480. Reed & Keller v. U. S. (1914) 5 Ct. Cust. App. 95.

8. **Bisque rings.**—Bisque rings, insusceptible to decoration and designed for incandescent burners, held not dutiable as bisque under section 96, Act 1897, but under section 6 of that act, as an unenumerated manufacture. Fensterer & Ruhe v. U. S. (1910) 1 Ct. Cust. App. 93. See, also, Schoenmann v. Same (1903) 119 Fed. 584, 56 C. C. A. 104.

9. **Bleach containing ferrocyanide of iron.**—An article containing ferrocyanide of iron that is used exclusively for bleaching purposes held not dutiable as a "color" under paragraph 45, Act 1897, but dutiable under section 6 of that act. De Ronde v. U. S. (1910) 1 Ct. Cust. App. 104.

10. **Bone size.**—So-called bone size, used for filling and softening corduroys, held dutiable as an unenumerated manufactured article, under Act 1897, and not as "glue," under paragraph 23, as resembling glue in material, quality, texture, or use, within the meaning of the similitude clause. G. W. Sheldon & Co. v. U. S. (C. C. 1903) 127 Fed. 494.

11. **Bouillon cubes.**—Vegetable extractive matter with a small amount of meat extract held a nonenumerated manufacture under paragraph 480, Act 1909, and not a meat extract. Lang v. U. S. (1913) 4 Ct. Cust. App. 129.

12. **Caffeine.**—A compound used to make caffeine held not dutiable as a nonenumerated manufactured article. See paragraph 477.

13. **Camphor oil.**—Camphor oil obtained in a crude state from the same tree as crude gum camphor, the two being united without chemical connection, and separated merely by drainage, held not dutiable as "essential oil," within Act 1894 and Act 1897, nor should it be classified as "waste," but the same is dutiable as a nonenumerated unmanufactured article. U. S. v. Dodge (1901) 107 Fed. 106, 46 C. C. A. 166.

14. **Candle tar or palm pitch.**—The article known in trade as "candle tar" or "palm pitch" held not dutiable as "waste," under paragraph 472, but properly assessed as a nonenumerated manufactured article under section 4 of Act 1890. Standard Varnish Works v. U. S. (1894) 59 Fed. 456, 8 C. C. A. 178; In re Standard Varnish Works (C. C. 1893) 53 Fed. 786.

15. **Capers.**—A review of tariff legislation from 1790 and of the pertinent decisions of courts fails to disclose any legislative purpose or uniform customs practice indicating an intent to classify capers as either pickles or as vegetables prepared or preserved; and capers being a condiment used to flavor vegetables and meats rather than an edible vegetable, they were not dutiable under paragraph 241, Act 1897, but were dutiable as an unenumerated article in whole or in part manufactured, under the provisions of section 6 of that act.

Pierce v. U. S. (1911) 1 Ct. Cust. App. 171.

16. Carbon points.—Carbon points held, under Act 1894, dutiable as a manufactured article not provided for. See paragraph 82.

17. Catheters.—Catheters composed of a fabric of silk or cotton covered with a varnish made of linseed oil and copal, which varnish was the ingredient of chief value, should be assessed under Act 1897 as nonenumerated manufactured articles. Kraemer v. U. S. (C. C. 1906) 146 Fed. 148.

18. Cherries in maraschino.—Cherries in maraschino held dutiable as a nonenumerated manufactured article. See paragraph 217.

19. Chlorophyll.—Chlorophyll, a coloring matter used in staining oils and foodstuffs, held not a "color," within Act 1897, par. 58, but dutiable as an unenumerated manufactured article under section 6. U. S. v. Magnus & Lauer (C. C. 1908) 159 Fed. 751.

20. Crocus.—Crocus held not dutiable as a nonenumerated manufactured article. See paragraph 63.

21. Crude coco fibers processed.—The appraiser found the merchandise to be partly manufactured coco fibers and there is nothing in the record to contradict his finding. The fibers of the importation had been subjected to a certain process that fitted them as materials for use in the manufacture of brushes. They were not entitled to free entry. U. S. v. Flatt & Co. (1914) 5 Ct. Cust. App. 210.

22. Crude ore mechanically ground.—Mechanically ground crude ore, being advanced in condition, it is not entitled to free entry. It falls within paragraph 480, Act 1909, as a nonenumerated partly manufactured article. U. S. v. Davies, Turner & Co. (1914) 5 Ct. Cust. App. 196.

23. Crude sulphide of antimony.—Crude sulphide of antimony held not dutiable as a nonenumerated manufactured article. See paragraph 396.

24. Dressed lava stone.—Dressed lava stones used as a part of drums in wood pulp machines held dutiable as unenumerated manufactured articles at 20 per cent. ad valorem, under section 6, Act 1897, and not under paragraph 118 as building stone. Manufacturers' Paper Co. v. U. S. (1912) 3 Ct. Cust. App. 72. See, also, A. A. Vantine & Co. v. U. S. (C. C. 1907) 159 Fed. 289; U. S. v. Tamm (1912) 2 Ct. Cust. App. 425.

25. Dry egg yolk.—Dry egg yolk held dutiable as a nonenumerated manufactured article. See paragraph 204.

26. Edible snails.—Escargots or edible snails cannot be deemed shellfish and entitled to free entry. They are to be classified as a raw article designed to be converted into a food not enumerated or provided for. They were dutiable under paragraph 480, Act 1909. De Jonghe v. U. S. (1914) 5 Ct. Cust. App. 134.

27. Edible wafers. — Edible wafers, raised in the making by the use of baking powder or bicarbonate of soda, are "leavened," although such agents do not produce fermentation, and dutiable under section 6, Act 1897, as nonenumerated manufactured articles, and not entitled to free entry under paragraph 696 in the free list, covering "wafers, unleavened or not edible." F. H. Leggett & Co. v. U. S. (C. C. 1904) 131 Fed. 817.

28. Effect of similitude clause.—In a case in which the similitude clause in Act 1897, is applicable, the rate determined thereby is to be preferred to that fixed by section 6, relating to unenumerated articles. F. B. Vandegrift & Co. v. U. S. (C. C. 1908) 164 Fed. 65, judgment affirmed (1909) 173 Fed. 609, 97 C. C. A. 469.

29. Ferrochrome.—Ferrochrome held not dutiable as a nonenumerated manufactured article. See paragraph 102.

30. Finings.—Finings held not dutiable as an unenumerated manufactured article. See paragraph 34.

31. Floral waters.—Floral waters held dutiable as unenumerated manufactured articles. See paragraph 48.

32. Granito or terrazo. — So-called granito or terrazo, produced by crushing the waste of marble quarries and sifting or sorting it into various sizes, is subject to classification as an unenumerated manufactured article, under Act 1897, § 6, rather than as "waste," under section 1, Schedule N, par. 463, or as minerals "crude," under section 2, Free List, par. 614. U. S. v. Graser-Rothe (C. C. 1908) 164 Fed. 205.

It is true administrative usage furnishes some support for the contention of appellants, that granito was free of duty under paragraph 614, Act 1897, yet, it hardly appears there was such a long, uniform, and well-settled construction of the statute by the Treasury Department that the Congress can be presumed to have intended by that paragraph to declare granito, among other articles, free of duty. It was not entitled to free entry and was dutiable under section 6, Tariff Act 1897. Rossman v. U. S. (1911) 1 Ct. Cust. App. 280.

33. Grasses dressed.—Grasses dressed and prepared for a definite use in the manufacture of brushes held properly assessed under paragraph 480, Act 1909. Cone v. U. S. (1915) 5 Ct. Cust. App. 491. See, also, Schoenemann v. Same (1903) 119 Fed. 584, 56 C. C. A. 104; U. S. v. Danker & Marston (1912) 2 Ct. Cust. App. 522; Same v. Continental Color & Chemical Co. (1911) 2 Ct. Cust. App. 165.

34. **Grenadine.**—The testimony of the witnesses in the case was to the effect that grenadine is an article manufactured in accordance with a fixed formula, which, for 100 liters, is 80 kilograms of sugar, 50 liters of water, and 3 per cent. of coloring matter and citric acid. Held, that such an article is not a fruit sirup under the provisions of paragraph 310, Act 1909, but is dutiable as a nonenumerated manufactured article. U. S. v. Wakem & McLaughlin (1915) 6 Ct. Cust. App. 385.

35. **Ground talc.**—Ground talc held dutiable as a nonenumerated manufactured article. See paragraph 69.

36. **Hay.**—Hay dutiable as a raw or unmanufactured article. See paragraph 205.

37. **Herbs immersed in alcohol.**—Herbs immersed in alcohol held dutiable as a nonenumerated unmanufactured article. U. S. v. Stone & Downer Co. (C. C. 1909) 171 Fed. 293, judgment reversed (1909) 175 Fed. 33, 99 C. C. A. 49.

Herbs, imported in kegs, immersed in their natural condition in alcohol for preservation, held not dutiable as "alcoholic compounds," under paragraph 2, Act 1897, nor as "drugs * * * advanced in value or condition," under paragraph 20, but under the provision in section 6 of said act for "all raw or unmanufactured articles, not enumerated or provided for." Boericke & Runyon Co. v. U. S. (C. C. 1903) 120 Fed. 1018.

38. **Hone stone.**—Held, that certain articles of hone stone, which are used in polishing marble and lithographic stones, and which are not shown to be known commercially as "hones," are not free of duty as "hones" under paragraph 574, Act 1897, but are dutiable as unenumerated manufactured articles under section 6 of said act. R. J. Waddell & Co. v. U. S. (C. C. 1904) 135 Fed. 211.

39. **Honey cakes.**—Honey cakes, or so-called ginger bread, held not dutiable as a nonenumerated manufactured article. See paragraph 194.

40. **Hulled millet seeds.**—Hulled millet seed, which is adapted for use as food, and in which the germinating power has been destroyed, held dutiable, under section 3 of Act 1894, as an article "manufactured, in whole or in part, not provided for in this act," and not as "seeds," under paragraph 206½. U. S. v. Kaufmann (1898) 84 Fed. 446, 28 C. C. A. 150, reversing Kaufmann v. U. S. (C. C. 1897) 78 Fed. 804.

41. **Jade tableware.**—Tableware, etc., made from jade held not dutiable, as an unenumerated manufactured article. See paragraph 81.

42. **Japanese granite lanterns.**—Japanese garden lanterns of granite, completed manufactured articles imported in separate pieces merely for convenience, held not dutiable as "building or monumental stone, * * * hewn, dressed," in Act 1897, par. 118, but as unenumerated manufactured articles, under section 6. U. S. v. A. A. Vantine & Co. (1908) 166 Fed. 751, 92 C. C. A. 431, affirming judgment A. A. Vantine & Co. v. U. S. (C. C. 1907) 159 Fed. 289.

43. **Kittul.**—Kittul, being the fiber of the leaf stocks of the jaggery palm of East India, which has been combed between steel brushes with a little oil to soften it, and also slightly colored, and made straight for bunching by lengths for brushes, held dutiable, under section 4, Act 1890, as an article "manufactured in whole or in part," and not as "unmanufactured articles," nor under paragraph 597, as a "fibrous vegetable substance not specially provided for," nor under paragraph 653, as "vegetable substances," unmanufactured, not otherwise specially provided for. Wilkens v. U. S. (C. C. 1897) 84 Fed. 152.

44. **Liquid extract of coffee bean.**—Liquid extract of coffee bean held not dutiable as a nonenumerated manufactured article. See paragraph 233.

45. **Lubricating oil.**—As to this merchandise, lubricating oil, one of its constituents, petroleum, is an oil, but the other constituent differs physically, chemically, and commercially from the vegetable oil out of which it is made. It has become a sulphonated saponification of the original vegetable oil and a dissolution of petroleum in this does not constitute a combination of oils. It is a nonenumerated manufactured article and was dutiable as such at 20 per cent. under paragraph 480, Act 1909. U. S. v. Schrock & Squires (1914) 5 Ct. Cust. App. 444.

46. **Marasque water.**—Marasque water held dutiable as a nonenumerated manufactured water. See paragraph 48.

47. **Marble chips.**—Marble chips, known as marble waste, that have been crushed and screened, being thereby advanced in value and taking another name as well, are not crude mineral but manufactured articles. Rossman v. U. S. (1911) 1 Ct. Cust. App. 280.

48. **Melon seeds roasted.**—Melon seed which have been reduced in size by peeling, that have been roasted and salted for food, their germinating quality disappearing in these processes, are not to be deemed vegetables proper or as unmanufactured, but come within the category of manufactured articles and are dutiable as a nonenumerated manufacture under paragraph 480, Act 1909. U. S. v. Shing Shun & Co. (1911) 2 Ct. Cust. App. 388. See, also, Same v. Kauffman (1898) 84 Fed. 446, 28 C. C. A. 150.

49. **Metal polish.**—The amorphous viscous substance of the importation

called amor's metal polish, without any determinate shape or form, does not come within the provisions of paragraph 95, Act 1909, as an article composed wholly or in chief value of earthy or mineral substance. There is no evidence of similitude in the record, but it is clear the substance is a manufacture not expressly provided for by any paragraph of the law in question. It was classifiable as a nonenumerated manufacture under paragraph 480. Rosenheim v. U. S. (1914) 5 Ct. Cust. App. 100.

50. Mineralogical specimens.—Mineralogical specimens of agates held not dutiable as a nonenumerated article. See paragraph 390.

51. Modeling clay.—The merchandise here, modeling clay, does not fall within the terms of paragraph 81, Act 1913, but manufactured and composed as it is of earthy or mineral substances and a substance which is neither earthy nor mineral, namely, saponifiable matter in percentage 31.12, it is dutiable as an unenumerated manufactured article under paragraph 385 of the act. U. S. v. Strohmeyer & Arpe Co. (1915) 6 Ct. Cust. App. 246.

52. Moss dyed.—Dyed moss held not dutiable as a nonenumerated manufactured article. See paragraph 27.

53. Mother of pearl knife handles.—Mother of pearl cut for knife handles held not an unenumerated article. See paragraph 369.

54. Needlecases.—Needlebooks held dutiable as nonenumerated manufactured articles. See paragraph 135.

55. Nonenumerated in general.—When not described either "specifically" or "generally," they are "nonenumerated." (1889) 19 Op. Atty. Gen. 272.

56. Nonenumerated manufactured articles in general.—Held, that an article which has been advanced through one or more processes into a completed commercial article, known and recognized in trade by a specific and distinctive name other than the name of the material from which it is made, and is put into a completed shape, designed and adapted for a particular use to which the material in its original form is not adapted, is to be deemed a manufacture, although its component materials are unchanged. U. S. v. George Meier & Co. (1905) 136 Fed. 764, 69 C. C. A. 421, reversing judgment Geo. Meier & Co. v. U. S. (C. C. 1904) 128 Fed. 472.

An article is "enumerated," so as to be without the provision that on manufactured articles not "enumerated" the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material of chief value, not only when the article is mentioned by its specific trade name, but also when it may be fairly included within some generic clause contained in the tariff schedule, so as to be distinguished from other articles. Wolff v. U. S. (1895) 71 Fed. 291, 18 C. C. A. 41.

Articles produced incidentally to the manufacture of other articles, and which are themselves ready to be used for various purposes without further treatment, are under the tariff laws subject to classification as "manufactured," rather than as "waste." Shallus v. U. S. (C. C. 1907) 155 Fed. 213, decree reversed (1908) 162 Fed. 653, 89 C. C. A. 445.

If a nonenumerated manufactured article bears no substantial similitude to an enumerated article, or no substantial resemblance to two or more enumerated articles, chargeable with duty, and is not provided for under any of the other catch-all clauses of the tariff act, it is dutiable under the general provision for nonenumerated manufactured articles. Sykes v. Magone (C. C. 1889) 38 Fed. 494.

57. Nucoa butter.—Nucoa butter held not dutiable as a nonenumerated manufactured article. See paragraph 232.

58. Olive pits.—Olive pits held not dutiable as a nonenumerated article. See paragraph 27.

59. Orchil and Persian berry extracts.—Orchil and Persian berry extracts held dutiable as unenumerated manufactured articles. See paragraph 30.

60. Papaw melon powder.—Powder from the juice of the papaw melon held not dutiable as a nonenumerated manufactured article. See paragraph 27.

61. Pineapple juice.—Pineapple juice held not dutiable as a nonenumerated manufacturing article. See paragraph 247.

62. Plastilina.—Plastilina, or modeling clay, an article not containing clay, held not dutiable as "clay," but as an "unenumerated manufacture." Bancel v. U. S. (C. C. 1909) 176 Fed. 132.

63. Polish.—This polish appears to be composed of pulverized silica, alumina, and lime saturated and mixed with petroleum oil and fat. This combination of materials is not fairly to be described as a chemical compound or mixture. It was properly held dutiable as an unenumerated manufacture under paragraph 480, Act 1909. U. S. v. Holland-American Trading Co. (1913) 4 Ct. Cust. App. 336.

64. Prune wine.—Thompson's patent prune wine held not dutiable as a nonenumerated manufactured article. See paragraph 16.

65. Ramie silver.—Ramie silver held not dutiable as a nonenumerated manufactured article. See paragraph 250.

66. Rape meal.—The rape meal of the importation was assessed as a non-

enumerated manufactured article under paragraph 480, Act 1909. It was claimed to be a substance used only for manure and to be dutiable accordingly. The evidence strongly tends to show that rape meal is used in this country as suitable for feeding stock, but it is sufficient to support the collector's finding that the importers failed to show the merchandise is of a class that has no common, practicable, or profitable use other than use as manure. Taylor v. U. S. (1913) 3 Ct. Cust. App. 498.

67. **Sago flour.**—Sago flour held not dutiable as a raw article not otherwise provided for. See paragraph 590.

68. **Sake.**—Sake held dutiable as a nonenumerated manufactured article. See paragraph 244.

69. **Soap pencils.**—So-called soap pencils, for cleaning spectacle and eyeglass lenses, in which soap is the material of chief value, held dutiable as nonenumerated manufactured articles under section 6, Act 1897, and not as pencils under paragraph 456. U. S. v. American Express Co. (1905) 136 Fed. 594, 69 C. C. A. 368, affirming judgment (C. C. 1904) 131 Fed. 656.

70. **Soapstone gas tips.**—Small pieces of soapstone, cut in regular sizes for gas tips and burners, have been "manufactured," and were dutiable as unenumerated "manufactured" articles, under Act 1897, § 6. M. Kirschberger & Co. v. U. S. (C. C. 1908) 166 Fed. 1012.

71. **Soluble grease.**—Soluble grease, a preparation of tallow used in the process of dyeing cotton cloth for softening the fabric after the application of the dye, held not dutiable under Act 1897, par. 32 as an alizarin assistant, but under section 6 as an unenumerated manufactured article. Abram De Ronde & Co. v. U. S. (C. C. 1905) 140 Fed. 92; De Ronde v. Same (C. C. 1902) 113 Fed. 858.

72. **Sugar wafers.**—Sugar wafers held not dutiable as nonenumerated articles. See paragraph 417.

Sweetened biscuit known as "sugar wafers," held dutiable as nonenumerated articles, under Act 1894, § 3, rather than admissible free, under paragraph 667, as "wafers, unmedicated, and not edible." Stemmler v. U. S. (C. C. 1896) 72 Fed. 47.

73. **Tennis balls.**—Tennis balls held not an unenumerated article. See paragraph 368.

74. **Thick soy.**—Thick soy held not dutiable as a sauce under paragraph 241, Act 1897, but dutiable as a nonenumerated manufactured article under section 6. U. S. v. Wo On & Co. (1909) 167 Fed. 314, 92 C. C. A. 626.

75. **Tungsten ore or wolfram.**—Tungsten ore or wolfram held not dutiable as a nonenumerated unmanufactured article. See paragraph 102.

76. **Viscose caps.**—Viscose caps to form an air-tight and air-sealed cap, whether for bottles or tubes, were not dutiable by similitude as metal caps, but were dutiable as a nonenumerated manufactured article. Nevin v. U. S. (1914) 5 Ct. Cust. App. 423.

77. **Walnuts pickled.**—Pickled walnuts held dutiable as nonenumerated manufactured articles. See paragraph 201.

78. **Wheat foodstuff.**—It would seem this commodity has no commercial designation, but it is manifestly a foodstuff manufactured from wheat, and as such was dutiable under section 6, Act 1897. Malouf v. U. S. (1911) 1 Ct. Cust. App. 437.

79. **Wheat injured by frost.**—Wheat injured by frost held not dutiable as a nonenumerated unmanufactured article. See paragraph 644.

80. **White hard enamel.**—White hard enamel, used for various purposes, including watch dials, which in the condition imported cannot be used for any practical purpose, held dutiable under R. S. § 2513, as an article partly manufactured, and not provided for, and not under section 2502, reading "watches, watch cases, watch movements, parts of watches, and watch materials, not specially enumerated or provided for in this act," though the particular importation is intended for use in the watch business. Worthington v. Robbins (1891) 11 Sup. Ct. 581, 139 U. S. 337, 35 L. Ed. 181.

386. That each and every imported article, not enumerated in this section, which is similar, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this section as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; and if any nonenumerated article equally resembles two or more enumerated articles on which different rates of duty are chargeable, there shall be levied on such nonenumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest rate of duty; and on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable

if composed wholly of the component material thereof of chief value; and the words "component material of chief value," wherever used in this section, shall be held to mean that component material which shall exceed in value any other single component material of the article; and the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article. If two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates.

Notes of Decisions

Construction of similitude clause in general.—Articles held similar to enumerated articles, see the various enumerated articles.

—— What constitutes similarity.—The similarity required by the general similitude clause is one either of quality, material, texture, or use to which the article may be applied, but there may be similarity in other respects, such as in the manner of production or composition. Anderson & Co. v. U. S. (1915) 6 Ct. Cust. App. 108.

The similarity required by the similitude clause is a real or substantial similarity. U. S. v. Komada & Co. (1908) 162 Fed. 465, 89 C. C. A. 385; Same v. Roesseler & Hasslacher Chemical Co. (1905) 137 Fed. 770, 70 C. C. A. 346 (affirming judgment [C. C. 1904] 131 Fed. 576); Sykes v. Magone (C. C. 1889) 38 Fed. 494; Weilbacher v. Merritt (C. C. 1888) 37 Fed. 85.

The similitude clause of Act Aug. 30, 1842, does not contemplate that the nonenumerated articles shall in every particular bear a similitude to an enumerated article. Boker v. Redfield (C. C. 1859) Fed. Cas. No. 1,606a.

In Act 1897, relating to articles "similar" to other articles, to term quoted is used in the sense of nearly corresponding, resembling in many respects, somewhat like, or having a general resemblance. U. S. v. Komada & Co. (1908) 162 Fed. 465, 89 C. C. A. 385.

The similitude clause can be invoked for unenumerated articles only; that is to say, when no other paragraph than the one providing for nonenumerated unmanufactured or manufactured articles properly applies. U. S. v. Stouffer Co. (1912) 3 Ct. Cust. App. 67.

The assessment of an unenumerated article by similitude properly depends on its resemblance to some enumerated dutiable article and not upon the manner in which the enumerated article is itself named in the law; the unenumerated article is subject to the same duty that is levied on that enumerated article it most resembles in material, quality, texture, or use. U. S. v. Cochran & Co. (1912) 3 Ct. Cust. App. 57.

In a case in which the similitude clause in Act 1897, is applicable, the rate determined thereby is to be preferred to that fixed by section 6, relating to unenumerated articles. F. B. Vandegrift & Co. v. U. S. (C. C. 1908) 164 Fed. 65, judgment affirmed (1909) 173 Fed. 609, 97 C. C. A. 469.

The amount of duty is not one of the tests prescribed for the application of the similitude clause in Act 1897. U. S. v. Behrend (1909) 167 Fed. 317, 92 C. C. A. 629.

To apply the similitude clause in Act 1897, it is not necessary that all the particulars of resemblance mentioned should exist; but the presence of one of the qualities is sufficient. John A. Paterson & Co. v. U. S. (1908) 166 Fed. 733, 92 C. C. A. 524.

Where an unenumerated article has a very vague and questionable resemblance to some enumerated article, and is exactly identical with another enumerated article, its status under the similitude clause in Act 1897 is fixed by the latter condition; the former being disregarded. Id.

Act 1897 does not require that similitude should exist in all four of the respects specified. One of these resemblances will suffice. U. S. v. Komada & Co. (1908) 162 Fed. 465, 89 C. C. A. 385.

In Act 1897, "texture" does not relate to liquids, but only to the structure of woven fabrics. Stratton v. Komanda & Co. (C. C. 1906) 148 Fed. 125, judgment reversed U. S. v. Komada & Co. (1908) 162 Fed. 465, 89 C. C. A. 385.

In applying the similitude clause in Act 1897, relative to articles similar to other articles in "material," difference in the original materials from which the articles compared is not controlling. The law concerns itself only with the condition of the articles at the time of importation. U. S. v. Komada & Co. (1908) 162 Fed. 465, 89 C. C. A. 385.

The similitude described by that portion of R. S. § 2499, as amended by Act March 3, 1883, which provides that "nonenumerated articles, similar in material and quality and texture, and the use to which they may be applied, to articles on the free list, and in the manufacture of which no dutiable materials are used, shall be free," is a similitude in all four of the particulars mentioned therein. Lazard v. Magone (C. C. 1889) 40 Fed. 662.

The similitude either in material, quality, texture, or the use to which it may be applied, that a nonenumerated manufactured article must bear to an enumerated article chargeable with duty, in order to subject the former article to the same rate of duty which is levied and charged on the latter article, under

Act 1883, must be a substantial similitude, not merely an adaptability to sale as a substitute for the latter article, but representing either its employment, or its effects in producing a result. Sykes v. Magone (C. C. 1889) 38 Fed. 494; Weilbacher v. Merritt (C. C. 1888) 37 Fed. 85.

To constitute similarity in use, within the meaning of the similitude clause of Act 1894, which will require a nonenumerated article to be classified with one enumerated, the uses of the two need not be identical or interchangeable. U. S. v. Dana (1900) 99 Fed. 433, 39 C. C. A. 590.

The phrase "of similar description" in the tariff act of 1862 is not a commercial term, and the statute does not contemplate that goods classed under it shall be in all respects the same. Greenleaf v. Goodrich (1879) 101 U. S. 278, 283, 284, 25 L. Ed. 845.

An article not named in Act 1846 does not come under the clause providing for nonenumerated articles, where it so resembles some enumerated article, in quality, material, or use, as to be governed by the similitude clause of Act 1842. Ross v. Peaslee (C. C. 1855) Fed. Cas. No. 12,077.

The words "similar description" are to be understood in their popular and generally received meaning—goods similar in product, and adapted to similar uses, and not necessarily produced by similar processes or methods of manufacture. Greenleaf v. Goodrich (C. C. 1875) Fed. Cas. No. 5,778.

A nonenumerated article is to be classified for duty under the similitude clause of a tariff act, where the required similitude exists, rather than under the general residuary clause. Hahn v. U. S. (1900) 100 Fed. 635, 40 C. C. A. 622, reversing judgment U. S. v. Hahn (C. C. 1899) 91 Fed. 755.

If an article is found not enumerated in the tariff laws, the first inquiry is whether it bears similitude, either in material, quality, texture, or use to which it may be applied, to any article enumerated as chargeable with duty. If it does, and the similitude is substantial, it is to be deemed the same and to be charged accordingly. If nothing is found to which it bears the requisite similitude, then an inquiry is to be instituted as to its component materials, and a duty assessed at the highest rates chargeable on any of the materials. Arthur v. Fox (1883) 2 Sup. Ct. 371, 108 U. S. 125, 27 L. Ed. 675.

The question of similitude is one of fact. Herrman v. Miller (1888) 8 Sup. Ct. 1090, 1091, 127 U. S. 363, 32 L. Ed. 186; Same v. Arthur's Ex'rs (1887) 127 U. S. 363, 8 Sup. Ct. 1090, 32 L. Ed. 186; U. S. v. Komada & Co. (1908) 162 Fed. 465, 89 C. C. A. 385 (reversing judgment Stratton v. Komada & Co. [C. C. 1906] 148 Fed. 125); Greenleaf v. Goodrich (C. C. 1875) Fed. Cas. No. 5,778; Gamble v. Mason (C. C. 1858) Fed. Cas. No. 5,209; U. S. v. Buss & Warner (1912) 3 Ct. Cust. App. 87. See, also, Robins v. U. S. (1911) 1 Ct. Cust. App. 252.

—— Not enumerated.—To place an article among those designated as "enumerated," so that it does not come within the operation of the similitude clause of a customs law, it is not necessary that it should be specifically mentioned. In re Wise (C. C. 1898) 93 Fed. 443.

In order to remove an imported article from the operation of a tariff provision for merchandise, not "enumerated," it is not necessary to show that there is an enumeration of the article according to its chief use. It is enough if there is an enumeration describing any minor use. Dodge & Olcott v. U. S. (C. C. 1891) 130 Fed. 624.

Before the nonenumerated provision can be resorted to it must be found that the article is not fairly included within any of the enumerating clauses of the act. General Electric Co. v. U. S. (1913) 4 Ct. Cust. App. 398.

Where an article is designated eo nomine, whether for duty or to be free of duty, such designation must prevail over words of a general description. U. S. v. Hatters' Fur Exchange (1911) 1 Ct. Cust. App. 198.

Component of chief value.—In determining what is the component material of chief value in a manufactured article, under R. S. § 2499, as amended by Act 1883 (22 Stat. 491), the value of the materials should be taken at the time they were put together in the completed article, and not in their raw state, as received by the manufacturer. The express provision to this effect in Act 1890 was merely declaratory of the law. Seeberger v. Hardy (1893) 14 Sup. Ct. 170, 171, 150 U. S. 420, 37 L. Ed. 1129.

Act 1897, providing that the component material of chief value in imported merchandise shall be determined with reference to the value of the components in their condition as found in the article, means the state which the materials are in when put together, without regard to their value after being advanced to completion. U. S. v. Johnson & Johnson (1907) 154 Fed. 39, 83 C. C. A. 151, reversing judgment Kraemer v. U. S. (C. C. 1906) 146 Fed. 148, and writ of certiorari denied Johnson & Johnson v. U. S. (1907) 28 S. Ct. 261, 207 U. S. 595, 52 L. Ed. 356.

Under section 7, Act 1897, providing that the component material of chief value in imported merchandise "shall be determined by the ascertained value of such material in its condition as found in the article," held that, as to woven fabrics, the ascertainment should be made with reference to the time the process of weaving commences; that the operation of warping is not a part of such process; and that the cost of such operation should be included whol-

ly in the value of the material constituting the warp of the fabrics, and not distributed between the warp and the weft. U. S. v. Hoeninghaus & Curtiss (1905) 137 Fed. 478, 69 C. C. A. 626, affirming judgment Hoeninghaus & Curtis v. U. S. (C. C. 1904) 131 Fed. 570.

Held, that the provision in Act 1897, that "the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article," does not mean the value of the materials as they go into the hands of the manufacturer, but when in the condition that nothing remains to be done to them by the manufacturer, except to put them together to make the completed product. Hoeninghaus & Curtis v. U. S. (C. C. 1904) 131 Fed. 570, judgment affirmed U. S. v. Hoeninghaus & Curtiss (1905) 137 Fed. 478, 69 C. C. A. 626.

Where a tariff enumeration is descriptive of the use of imported merchandise, the chief or predominant use of an article should control in determining whether or not it comes within that enumeration. U. S. v. Lehn (C. C. 1901) 124 Fed. 87.

In manufacturing certain braids composed of cotton and india rubber, nine-tenths of the labor was employed on the cotton. Held that, under Act 1897, it was proper to add this cost of labor to the original cost of the cotton, in finding the component material of chief value, rather than to apply the value of the labor equally between the cotton and the rubber. Calhoun v. U. S. (C. C. 1901) 122 Fed. 894.

That component material of chief value means a component material which shall exceed in value any other single component material of the article is the signification prescribed for that phrase by paragraph 481, Act 1909. Hawley & Letzerich v. U. S. (1915) 6 Ct. Cust. App. 45.

To ascertain the material of chief value in any manufacture the value of the materials should be determined as of the time when they have reached such condition that nothing remains to be done by the manufacturer except to put them together. Bing & Co.'s Successors v. U. S. (1912) 3 Ct. Cust. App. 211. See, also, U. S. v. Meadows (1911) 2 Ct. Cust. App. 143.

To bring a manufacturing material within a particular designation in a tariff law that covers one of the ultimate uses of that material, it should be found to be so far advanced by the processes applied to it in fitting it for that ultimate use that either on an examination per se its ultimate use is clear or it is found so far advanced that its utility for another possible use has been destroyed. Athenia Steel & Wire Co. v. U. S. (1911) 1 Ct. Cust. App. 494.

Where no proper conclusion can be drawn from the evidence as to what in fact was the component of chief value in an article, no attempt to classify the article according to its component of value in chief will be made, and the finding of the board of general appraisers will be affirmed. Strakosh v. U. S. (1911) 1 Ct. Cust. App. 360.

Dutiable goods imported mixed with other goods subject to another rate of duty or none at all, if practicably separable or if determinable in quantity may, on a levy of duties, be segregated for that purpose. U. S. v. Waterhouse (1911) 1 Ct. Cust. App. 353. See, also, Same v. Ranlett (1898) 19 Sup. Ct. 114, 172 U. S. 133, 43 L. Ed. 393.

Rate of duty.—The provision in Act 1897, that merchandise to which "two or more rates of duty shall be applicable * * * shall pay duty at the highest of such rates" held not to apply in a case where one paragraph provides an ad valorem and the other a specific rate. Loggie v. U. S. (1905) 137 Fed. 813, 70 C. C. A. 433.

In the classification of imported articles it is immaterial that they were put in an unfinished condition to escape a higher rate of duty. Hunter v. U. S. (C. C. 1906) 143 Fed. 914.

R. S. § 2499, as amended by Act March 3, 1883, providing that "if two or more rates of duty should be applicable to any imported article, it shall be classified for duty under the highest of such rates," applies to a manufactured article composed partly of metal and partly of paper, the latter being the material of chief value. Hohenstein v. Hedden (C. C. 1889) 38 Fed. 94, judgment reversed (1893) 13 S. Ct. 1047, 149 U. S. 776, 37 L. Ed. 963.

Where two provisions of the tariff act apply to an imported article, the first of which provisions is qualified by the phrase, "not otherwise provided for," while the second contains no such qualifying phrase, the article is properly dutiable under the second provision, and must be held to be therein "otherwise provided for," so as to take it out of the operation of the first provision. Zucker & Levett Chemical Co. v. Magone (C. C. 1889) 37 Fed. 776.

Act Aug. 30, 1842, § 20, providing that on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which any of its component parts may be chargeable, though not repealed by Act June 30, 1846, applies only in cases where an article has not been specially provided for by the later act. Lottimer v. Lawrence (C. C. 1850) Fed. Cas. No. 8,521.

The present merchandise before and at the time of the passage of Act 1909 was known commercially as beads and known also commercially as agate button blanks, and under the testimony it cannot be well said that either designation is the more specific. Accordingly, the articles fall within the final clause of paragraph 481 of the act in

question, by which they must take the higher rate of duty assessed upon the two classifications. American Bead Co. v. U. S. (1914) 5 Ct. Cust. App. 459.

An article imported may not be confined in use exclusively to the purpose for which it is imported, and, if sold to persons who use it for other purposes, its classification is not thereby changed and the rate of duty should be assessed for its general and commonly known use. Vandiver v. U. S. (1911) 1 Ct. Cust. App. 194.

Paragraph 481, Act 1909, providing that if two or more rates of duty shall be applicable to any imported article, it is dutiable at the highest of such rates, will be construed in case of ambiguity in favor of the importer. Woolworth v. U. S. (1910) 1 Ct. Cust. App. 120.

All doubts arising under the act are presumptively to be resolved in favor of the lower rate of duty, save where the act mentions or describes the same article in two different places, when the higher rate governs. (1894) 21 Op. Atty. Gen. 66.

Where certain merchandise, consisting of a fabric composed of silk, cotton, and worsted, met all the requirements of Schedule L of Act March 3, 1883 (22 Stat. 510), and also fulfilled all the conditions imposed by Schedule K of the same act for classification for duty thereunder, held that, under section 2499, R. S. it should be classified for duty under Schedule L, which imposes the higher rate. (1889) 18 Op. Atty. Gen. 367.

FREE LIST

That on and after the day following the passage of this Act, except as otherwise specially provided for in this Act, the articles mentioned in the following paragraphs shall, when imported into the United States or into any of its possessions (except the Philippine Islands and the islands of Guam and Tutuila), be exempt from duty:

Notes of Decisions

Construction of free list.—Where an item in the free list has been continued without change as it was in Act 1846, it will be held to have the same meaning now that it had at the time of the passage of Act July 30, 1846 (9 Stat. 42). Sixty-Five Terra Cotta Vases (D. C. 1882) 10 Fed. 880.

Section 2 of Act Oct. 1, 1890 (26 Stat. 602), is exhaustive upon the subject of free entry of goods, so that an article not mentioned in said section cannot be held to be nondutiable because of any previous law granting it exemption from duty. (1893) 20 Op. Atty. Gen. 630.

387. Acids: Acetic or pyroligneous, arsenic or arsenious, [carbolic,] chromic, fluoric, hydrofluoric, hydrochloric or muriatic, nitric, phosphoric, [phthalic] prussic, silicic, sulphuric or oil of vitriol, and valerianic.

The words "carbolic" and "phthalic" in this paragraph, inclosed in brackets, were repealed by Act Sept. 8, 1916, c. 463, § 502, post, § 5291c, and certain duties imposed upon said articles by §§ 500, 501, of said Act Sept. 8, 1916, c. 463, post, §§ 5291a, 5291b.

Notes of Decisions

Crude carbolic acid.—Crude carbolic acid, although not chemically an acid, held entitled to free entry under paragraph 473 of Act 1890 as an "acid used for manufacturing purposes," and is not dutiable under paragraph 19 as a preparation of coal tar. Schoellkopf, Hartford & Maclagan v. U. S. (C. C. 1899) 94 Fed. 640.

Crystal carbolic acid.—A coal tar preparation from which crystal carbolic acid is made by "refining" held admissible free from duty, as an acid, within Act 1890, par. 473, and not dutiable under paragraph 19, which relates to "all preparations of coal tar, not colors or dyes, not specially provided for." Appeal of Schultz (C. C. 1899) 94 Fed. 820.

Loretin.—Loretin, a medicinal preparation, the medicinal action of which as an antiseptic and otherwise is chiefly due to its acid properties, held free, under paragraph 363 of Act 1894, as an "acid used for medicinal purposes," and not dutiable, under paragraph 59, as a medicinal preparation. Koechl v. U. S. (C. C. 1898) 84 Fed. 954.

388. Aconite.

389. Acorns, raw, dried or undried, but unground.

390. Agates, unmanufactured.

Notes of Decisions

Agates.—Mineralogical specimens of agates in rectangular pieces, faced and polished, were free, under Rev. St. § 2503, as "agates, unmanufactured," and

were not dutiable under section 2513, or, either directly or by assimilation, under the provision in section 2502 for "precious stones of all kinds." U. S. v. Hahn (C. C. 1899) 91 Fed. 755.

391. Agricultural implements: Plows, tooth and disk harrows, headers, harvesters, reapers, agricultural drills and planters, mowers, horserakes, cultivators, thrashing machines, cotton gins, machinery for use in the manufacture of sugar, wagons and carts, and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts.

Notes of Decisions

Agricultural implements. — Knives with folding blades held not free of duty as agricultural implements. See paragraph 128.

Lawn rakes held not dutiable as agricultural implements. See paragraph 167.

An agricultural implement serves some purpose in the production of food from the soil or in the raising of domestic animals thereon. U. S. v. Tower (1916) 6 Ct. Cust. App. 562.

That some of the articles dutiable under paragraph 128 may be put to agricultural uses, and that paragraph 391 exempts from duty all agricultural implements, creates no irreconcilable conflict. Quirk v. U. S. (1915) 6 Ct. Cust. App. 444.

Agricultural implements are such as are employed in pursuits that minister to human and, incidentally, animal subsistence; to the requirements of life (food) and possibly men's comfort (raiment), and not merely pleasurable or ornamental ends. U. S. v. Boker & Co. (1915) 6 Ct. Cust. App. 243.

"All other agricultural implements" includes, it is true, all implements devoted to agriculture proper, but the chief use here, as always, determines the classification, and these shears, suited for pruning trees and shrubbery, were not dutiable as agricultural implements under paragraph 391, Act 1913. Id.

Fraises.—"Fraises"—the abrading parts of machines which sharpen the knives of beet-cutting machines—being shown to be indispensable to the operation of the sharpening machines and used exclusively for that purpose, the cutting machines being shown to be indispensable to the operation of a beet-sugar factory, are entitled to free entry under paragraph 391, Tariff Act 1913, as "machinery for use in the manufacture of sugar * * * and all other agricultural implements of any kind and description, whether specially mentioned herein or not, whether in whole or in parts, including repair parts." U. S. v. American Express Co. (1916) 6 Ct. Cust. App. 494.

Whether in whole or in parts.—The phrase "whether in whole or in parts" relates not only to "all other agricultural implements" but also to the articles, appliances, or machines antecedently enumerated. U. S. v. American Express Co. (1916) 6 Ct. Cust. App. 494.

392. Albumen, not specially provided for in this section.

Notes of Decisions

Albumen.—An article which is not an albumen in the technical language of chemists, though one in common speech, held not within Act 1897, par. 245, putting a duty on "albumen, egg or blood," but within paragraph 468 putting on the free list "albumen not specially provided for." Merchants' Despatch Transp. Co. v. U. S. (C. C. 1903) 121 Fed. 443.

It is not a matter of common knowledge that a substance obtained as this was is albumen within paragraph 392, Act 1913, the chemical analysis relied on by the importers showing the substance to be 77.90 per cent. protein, 10 per cent. starch, and 12.10 per cent. moisture and fat. U. S. v. Kuyper & Co. (1915) 6 Ct. Cust. App. 142.

393. Alcohol, methyl or wood.

394. (Repealed.)

This paragraph was repealed by Act Sept. 8, 1916, c. 463, § 502, post, § 5291c, and certain duties imposed upon the articles enumerated therein by §§ 500, 501, of said Act Sept. 8, 1916, c. 463, post, §§ 5291a, 5291b. Said paragraph read as follows:

"394. Alizarin, natural or synthetic, and dyes obtained from alizarin, anthracene, and carbazol."

Notes of Decisions

Artificial alizarin.—The term "artificial alizarin," as used in tariff acts, has acquired a definite meaning, by which it is limited to such dyestuffs as are

derived from anthracin; and colors known as alizarin blacks and browns, which are not so derived, although they respond fully to the alizarin tests, are not within paragraph 469 of the free list of Act 1897, but are dutiable under paragraph 15, as coal tar dyes or colors not specially provided for. Farbenfabriken of Elberfeld & Co. v. U. S. (1900) 102 Fed. 603, 42 C. C. A. 525; Farbenfabriken of Elberfeld Co. v. Same (C. C. 1900) 99 Fed. 553.

Alizarin black.—Alizarin black is properly classified under Act 1890, par. 478, of the free list, and not under paragraph 18, as a coal tar color not specially provided for. Wm. J. Matheson & Co. v. U. S. (C. C. 1899) 99 Fed. 430; Id. (C. C. 1896) 90 Fed. 276.

Alizarin blues.—Alizarin blue, of a new form, not known at the time of the passage of Act 1890, was nevertheless to be classed as such, under paragraph 478, and not as a coal tar color, under paragraph 18. U. S. v. Sehlbach (1898) 90 Fed. 798, 33 C. C. A. 277; Sehlbach v. U. S. (C. C. 1897) 84 Fed. 157.

Alizarin brown.—The dyes known as "alizarin brown" and "coerulein" are not shown to be "derived from anthracin," so as to be free from duty, under Act 1897, par. 469, by the facts that the presence of anthracin in the colors has been determined by chemical tests, that no chemical examination of the article will satisfactorily disclose the raw materials from which the dye is made, and that the only other sources of information accessible to the government are the statement of the maker or importer, if he chooses to make one, or of the specification in the patent, if there be one, since not conclusive that the word "derived" should be used in its technical or chemical sense of having anthracin as a base, or responding to the chemical tests for anthracin, as distinguished from its ordinary sense. Pickhardt v. U. S. (C. C. 1900) 99 Fed. 719.

Alizarin violet.—Alizarin violet, known as "alizarin cyanine R," was entitled to free entry as an alizarin color or dye, under paragraph 368 of Act 1894, and was not dutiable as a coal-tar product, under paragraph 14 of said act. Klipstein v. U. S. (C. C. 1899) 94 Fed. 356.

Alizarin yellow.—A substance which responds to the alizarin tests, and which is commercially known and dealt in as "alizarin," or "alizarin yellow," is free, under paragraph 595 of Act 1883, though not chemically alizarin. Selbach v. U. S. (C. C. 1897) 78 Fed. 803, decree modified U. S. v. Sehlbach (1898) 90 Fed. 798, 33 C. C. A. 277.

Carbazol.—Carbazol is a chemical compound distinct from anthracin, having a different chemical formula, and it is used to produce different dyes from those derived from anthracin. The fact that carbazol is found in association with anthracin does not leave it open to say that a product derived solely from carbazol, not including anthracin, is derived from anthracin. The dyes here are a product of coal tar, some elements being eliminated, but none added, to produce carbazol. They were dutiable at 30 per cent. ad valorem under paragraph 15, Act 1909. Cassella Color Co. v. U. S. (1913) 4 Ct. Cust. App. 113.

Lake pigment.—A lake pigment, classed by the government chemist as an "alizarin color" comes within Act 1894, par. 368, providing for the free entry of alizarin colors, and is not subject to duty under section 48, providing for a duty on all paints, lakes, etc., not specially provided for in the act. Keppelmann v. U. S. (C. C. 1902) 116 Fed. 77.

395. Ammonia, sulphate of, perchlorate of, and nitrate of.

Notes of Decisions

Sulphate of ammonia.—Sulphate of ammonia, though made exclusively from bone, held dutiable under Act 1890, par. 10, and cannot be admitted free of duty, under paragraph 600, as a substance "expressly used for manure," even when imported and actually used for the manufacture of fertilizers. Marine v. George E. Bartol & Co. (C. C. 1894) 60 Fed. 601, following Magone v. Heller (1893) 14 Sup. Ct. 18, 150 U. S. 70, 37 L. Ed. 1001.

396. Antimony ore and stibnite containing antimony, but only as to the antimony content.

Notes of Decisions

Crude sulphide of antimony.—Crude sulphide of antimony held classifiable under Act 1897, Free List, par. 476, covering "antimony ore, crude sulphite of," and not assessable under section 6 as a "nonenumerated article manufactured in whole or in part," the word "sulphite" being regarded as a misprint for "sulphide." McKesson v. U. S. (C. C. 1902) 113 Fed. 996.

397. Any animal imported by a citizen of the United States, specially for breeding purposes, shall be admitted free, whether intended to be used by the importer himself or for sale for such purposes: Pro-

vided, That no such animal shall be admitted free unless pure bred of a recognized breed, and duly registered in a book of record recognized by the Secretary of Agriculture for that breed: And provided further, That the certificate of such record and pedigree of such animal shall be produced and submitted to the Department of Agriculture, duly authenticated by the proper custodian of such book of record, together with an affidavit of the owner, agent, or importer that the animal imported is the identical animal described in said certificate of record and pedigree. The Secretary of Agriculture may prescribe such regulations as may be required for determining the purity of breeding and the identity of such animal: And provided further, That the collectors of customs shall require a certificate from the Department of Agriculture stating that such animal is pure bred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed.

The Secretary of the Treasury may prescribe such additional regulations as may be required for the strict enforcement of this provision.

Horses, mules, and asses straying across the boundary line into any foreign country, or driven across such boundary line by the owner for temporary pasturage purposes only, together with their offspring, shall be dutiable unless brought back to the United States within six months, in which case they shall be free of duty, under regulations to be prescribed by the Secretary of the Treasury: And provided further, That the provisions of this Act shall apply to all such animals as have been imported and are in quarantine or otherwise in the custody of customs or other officers of the United States at the date of the taking effect of this Act.

Notes of Decisions

Pasturage.—Paragraph 373 of Act 1894, providing that cattle driven across the boundary line into a foreign country for pasturage purposes may, together with their increase, be brought back free of duty, does not apply to the increase of animals transported by railroad far into the interior of a foreign country for the stocking of a ranch. U. S. v. Cloete (1897) 81 Fed. 399, 26 C. C. A. 452.

Where cattle were owned in Mexican territory and regularly imported into the United States, the owner was liable for duties thereon, though they previously had been in this country. De Celis's Adm'r v. U. S. (1877) 13 Ct. Cl. 117.

Proof of pedigree.—In order that a horse of pure breed, imported specially for breeding purposes, should be entitled to free entry, under paragraph 482 of Act 1890, it was requisite that proofs of pedigree and identity, as prescribed by the second proviso to that paragraph, should be furnished to the customs officers; and, if this were not done, it was proper to assess the appropriate duty, and such assessment could not thereafter be disturbed by the court on proofs of pedigree, etc., produced before it. Beck v. U. S. (C. C. 1897) 84 Fed. 150.

Regulations of Secretary of Treasury.—Under the revenue law (R. S. § 2505) providing that "all animals alive, specially imported for breeding purposes from beyond the seas, shall be admitted free [of duty] upon proof thereof satisfactory to the secretary of the treasury, and under such regulations as he may prescribe," the secretary cannot by regulations confine the operation of the statute to animals of "superior stock," nor put into the body of the statute a limitation which Congress did not think it necessary to prescribe. Morrill v. Jones (1882) 1 Sup. Ct. 423, 424, 106 U. S. 466, 27 L. Ed. 267.

The requirement in the regulations of the Secretary of the Treasury that proof should be produced of the registry of the grandsires and grandams of animals imported for breeding purposes is not in contravention of the statute. Borden v. U. S. (C. C. 1904) 132 Fed. 205.

Restrictions on importation.—Paragraph 473 of Act 1897 does not limit such right of free importation to citizens of the United States, nor restrict it to animals imported for the personal use of the importer, and not for sale; and, in view of the manifest policy of the provision to encourage improvement in the breeds of live stock by farmers and stock raisers, neither the administrative officers nor the courts are authorized to read such restriction into the law. In re Page (C. C. 1904) 128 Fed. 317.

Act 1883 limits free importation of animals to such as are imported for the particular purpose of breeding; and it is a sufficient compliance with the statute that the importer, in good

faith, intends them for that purpose, and it does not prevent his otherwise disposing of them if he afterwards finds it necessary or desirable to do so. U. S. v. One Hundred and Ninety-Six Mares (C. C. 1886) 29 Fed. 139.

398. Animals brought into the United States temporarily for a period not exceeding six months, for the purpose of breeding, exhibition or competition for prizes offered by any agricultural, polo, or racing association; but a bond shall be given in accordance with regulations prescribed by the Secretary of the Treasury; also teams of animals, including their harness and tackle, and the wagons or other vehicles actually owned by persons emigrating from foreign countries to the United States with their families, and in actual use for the purpose of such emigration under such regulations as the Secretary of the Treasury may prescribe; and wild animals intended for exhibition in zoological collections for scientific and educational purposes, and not for sale or profit.

399. Annatto, roucou, rocoa, or orleans, and all extracts of.

Notes of Decisions

Rocoa.—Rocoa, having a distinct commercial name, held not dutiable as anhatto, nor entitled to entry free as a berry or vegetable. Act Aug. 30, 1842. Schneider v. Lawrence (C. C. 1853) Fed. Cas. No. 12,470.

400. Antitoxins, vaccine virus, and all other serums derived from animals and used for therapeutic purposes.

Notes of Decisions

Anthrax vaccine or blackleg.—A preparation known as "anthrax vaccine," or "blackleg," which is used for the prevention of anthrax or blackleg, a disease of cattle, held included within paragraph 692, Free List, Act 1897, relating to "vaccine virus," and is thereby taken out of the provision in paragraph 68, for "medicinal preparations not specially provided for." Pasteur Vaccine Co. v. U. S. (C. C. 1900) 123 Fed. 846.

Antitoxine.—Antitoxine, used by inoculation for the prevention and cure of diphtheria, held dutiable as a "medicinal preparation," under paragraph 59 of Act 1894, and not free, under paragraph 664, as "vaccine virus." Koechl v. U. S. (1898) 84 Fed. 448, 28 C. C. A. 458; U. S. v. Schulze (C. C. 1896) 77 Fed. 607.

401. Apatite.

402. Arrowroot in its natural state and not manufactured.

Notes of Decisions

Arrowroot.—Arrowroot held dutiable as starch. See paragraph 234.

Held, that the provision in paragraph 478, Act 1897, for "arrowroot in its natural state and not manufactured," relates to the tubers or root of the arrowroot plant, though no importations are ever made in that form. Leaycraft & Co. v. U. S. (1904) 130 Fed. 106, 64 C. C. A. 440, affirming judgment (C. C. 1903) 124 Fed. 999.

403. Arsenic and sulphide of arsenic, or orpiment.

404. Articles the growth, produce, or manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means; steel boxes, casks, barrels, carboys, bags, and other containers or coverings of American manufacture exported filled with American products, or exported empty and returned filled with foreign products, including shooks and staves when returned as barrels or boxes; also quicksilver flasks or bottles, iron or steel drums of either domestic or foreign manufacture, used for the shipment of acids, or other chemicals, which shall have been actually exported from the United States; but proof of the identity of such articles shall be made, under general regulations to be prescribed by the Secretary of the Treasury, but the exemption of bags from duty shall apply only to such domestic bags as may be imported by the exporter thereof, and if any such articles are subject to internal-revenue

tax at the time of exportation, such tax shall be proved to have been paid before exportation and not refunded; photographic dry plates or films of American manufacture (except moving-picture films), exposed abroad, whether developed or not, and films from moving-picture machines, light struck or otherwise damaged, or worn out, so as to be unsuitable for any other purpose than the recovery of the constituent materials, provided the basic films are of American manufacture, but proof of the identity of such articles shall be made under general regulations to be prescribed by the Secretary of the Treasury; articles exported from the United States for repairs may be returned upon payment of a duty upon the value of the repairs at the rate at which the article itself would be subject if imported under conditions and regulations to be prescribed by the Secretary of the Treasury: Provided, That this paragraph shall not apply to any article upon which an allowance of drawback has been made, the reimportation of which is hereby prohibited except upon payment of duties equal to the drawbacks allowed; or to any article manufactured in bonded warehouse and exported under any provision of law: And provided further, That when manufactured tobacco which has been exported without payment of internal-revenue tax shall be reimported it shall be retained in the custody of the collector of customs until internal-revenue stamps in payment of the legal duties shall be placed thereon: And provided further, That the provisions of this paragraph shall not apply to animals made dutiable under the provisions of paragraph 397.

Notes of Decisions

1. In general.
2. Barrels.
3. Cattle.
4. Change of condition.
5. Drawback.
6. Dredge boat.
7. Internal revenue tax.
8. Proof of identity.
9. Repeal.
10. Scrap iron.
11. Shooks.
12. Wheels and axles.

1. **In general.**—See, also, notes under § 5,313, post.

2. **Barrels.**—Barrels manufactured in this country, sent to Cuba, and reimported filled with molasses, are liable to duty. Knight v. Schell (C. C. 1860) Fed. Cas. No. 7,887.

3. **Cattle.**—Paragraph 387 of Act 1894, permitting entry free of duty of "articles the growth, produce, and manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means," does not apply to cattle which are exported as young and immature animals, and returned long after fully matured and suitable for market. U. S. v. Cloete (1897) 81 Fed. 399, 26 C. C. A. 452.

Where hides have been removed abroad from American cattle exported alive and the hides returned as imports, they are not to be deemed articles of the growth, produce, and manufacture of the United States. Buschoff v. U. S. (1912) 3 Ct. Cust. App. 1; Id. (1911) 1 Ct. Cust. App. 336.

4. **Change of condition.**—A dredge boat, which, having been exported from the United States, is reimported immediately after having been extensively repaired, and new and heavier machinery substituted, is not entitled to free entry under R. S. § 2505, as being returned "in the same condition as exported," though some of the work was done by American labor, and part of the material used was American material. U. S. v. Dunbar (1895) 67 Fed. 783, 14 C. C. A. 639.

Where property from being shipwrecked and submerged in salt water is greatly changed in appearance, the fact that the articles were the products or manufactures of the United States, and not the subject of duty, must be established in the manner provided by the regulations of the treasury department, so far as circumstances will permit, and not by ordinary testimony. Cargo from the Wreck of the Edwards (D. C. 1882) 12 Fed. 508.

Such damage as results to property from being shipwrecked and submerged in salt water, with breaking and loss of boxes and cases, held not to so change its condition as to exclude it from free entry, if shown to be products or manufactures of the United States, under provisions of Rev. St. § 2505. Id.

5. **Drawback.**—Schedule N of Act 1883, allowing, as amended by Act June 19, 1886 (24 Stat. 81), a drawback of 75 cents per ton on imported coal afterwards used by steam vessels of the United States engaged in foreign commerce or the coasting trade, was not repealed by Schedule N of Act 1890, which merely imposes a duty of 75 cents per ton on imported coal; but

the drawback, less 1 per cent. thereof, is continued in force by the proviso to section 25 of said act, relating to drawbacks "allowable under existing law." U. S. v. Allen (1893) 58 Fed. 864, 7 C. C. A. 547, affirming Allen v. U. S. (D. C. 1892) 52 Fed. 575.

In paragraph 493 of Act 1890, providing for the free reimportation of certain American goods, among which are casks, bags, etc., the proviso that "this paragraph shall not apply to any article upon which an allowance of drawback has been made, the reimportation of which is hereby prohibited except upon payment of duties equal to the drawbacks allowed," applies to bags of jute burlap upon which drawbacks were allowed, notwithstanding that they are reimported filled with nondutiable merchandise, such as canary seed. In re Schallenberger (C. C. 1895) 72 Fed. 491.

Act Feb. 8, 1875, provides that "grain bags, the manufacture of the United States, when exported filled with American products, may be returned to the United States free of duty, under such rules and regulations as shall be prescribed by the secretary of the treasury." Grain bags manufactured in this country from imported materials were exported full of California wheat. The exporter demanded and received according to law, out of the public treasury, the drawback due him on account of the duty formerly collected upon the materials of which the bags were made. Upon the return of the grain bags, held, that they were entitled to pass free of duty. The power of the secretary to prescribe rules and regulations does not authorize him to impose a duty, not provided for by congress, in repayment of the drawback. Balfour v. Sullivan (C. C. 1884) 19 Fed. 578.

Refined sugar manufactured in this country from raw sugar imported under Act 1883 and exported before April 1, 1891, with a drawback of the duties collected on the importation, and again imported after April 1, 1891, is subject to duty to the full amount of the drawback allowed on the sugar on its exportation. (1891) 20 Op. Atty. Gen. 77.

Where meat of American production, cured with foreign salt, was exported to Europe (the duty upon the salt being refunded), and subsequently brought back to this country, advised that, on the duties upon the salt being re-refunded, the meat may be admitted duty free under Act March 3, 1883 (22 Stat. 514). (1885) 18 Op. Atty. Gen. 139.

6. Dredge boat.—A dredge boat, having no power of propulsion, and capable of use as a dredging machine only, is a "manufacture or machine," within the meaning of Rev. St. § 2505, and, as such, is not dutiable if, after being exported from the United States, it is returned in the same condition as exported. U. S. v. Dunbar (1895) 67 Fed. 783, 14 C. C. A. 639.

7. Internal revenue tax.—Tobacco grown in Porto Rico after the cession of that island to the United States and brought into this country for warehousing, and afterwards exported to Canada and thence returned to the United States, is within the benefits of paragraph 483 of Act 1897, but subject to the internal revenue tax provisions of section 3 of Act April 12, 1900 (31 Stat. 77). (1903) 24 Op. Atty. Gen. 612.

8. Proof of identity.—Where bags of American manufacture, on being exported to be returned, were marked for identification as required by article 336 of the treasury regulations, but on their attempted reimportation an examination of sample packages disclosed but 8 per cent. having the same marks, they were not entitled to free entry under paragraph 493 of Act 1890, on other proof that they were of American manufacture. U. S. v. Brewer (1899) 92 Fed. 343, 34 C. C. A. 390.

Under paragraph 493 of Act Oct. 1, 1890, which permits the free reimportation of certain articles of American manufacture, including bags which have been exported filled with American products, or exported empty and returned filled with foreign products, but requires proof of identity to be "made under general regulations to be prescribed by the secretary of the treasury," the provision as to the manner of proof is of the essence of the exemption; and, the secretary having promulgated such general regulations, reasonable in their requirements, an importer cannot ignore them, and obtain the exemption by substituting other evidence satisfactory to the customs officers. Bags claimed to have been exported filled from another port, but of which fact no certificate of the collector is furnished, as required by article 331 of the treasury regulations, are properly dutiable. U. S. v. Brewer (1899) 92 Fed. 341, 34 C. C. A. 380.

The regulations for the proof of identity of American goods, prescribed by the Secretary of the Treasury under the authority of Act 1897, par. 483, must be complied with. Congress having provided this mode of proof, no other can be permitted; this express provision being of the very essence of the exemption permitted by the law. Roberts v. U. S. (C. C. 1910) 178 Fed. 607.

Flour bags, shown by proof according to the treasury regulations to have been made in this country, were entitled to free entry, under paragraph 387 of Act 1894, though the marks on some of the bags did not correspond to those in the invoices. Brewer v. U. S. (C. C. 1897) 84 Fed. 149.

The regulations for making proof, under paragraph 387 of Act 1894, of the identity of articles of American manu-

facture, imported without change, after exportation, must be prescribed after the passage of the act, and those in force before its passage are not applicable. Bartram v. U. S. (C. C. 1896) 77 Fed. 604, appeal dismissed (1897) 96 Fed. 1006, 37 C. C. A. 666.

Failure to file the certificate required on the reimportation of exported American machines, immediately upon the entry of the goods, does not deprive the importer of the right to re-enter them free, if such certificate is filed in a short time. Hensel v. U. S. (C. C. 1896) 72 Fed. 52.

Upon the reimportation of exported American manufactures, the mere failure to state, in the certificate presented on the entry, that the goods had not been advanced in value or improved in condition since they left this country, as required by the former treasury regulations, did not justify the collector in requiring payment of duties, if the fact that they had not been advanced in value or improved in condition otherwise appeared. Id.

There is no regulation made by the secretary of the treasury in relation to the proof of identity of reimported American goods, which is applicable to barrels exported in the form of "shooks"; and even if there be such a regulation the method prescribed by it is not exclusive, and if the identity appear by other evidence the goods are entitled to free entry. Dominici v. U. S. (C. C. 1896) 72 Fed. 46.

The oath as to the American manufacture of an article sought to be reimported may be waived by the collector when he admits its American character but claims duty on another ground. Knight v. Schell (C. C. 1860) Fed. Cas. No. 7,887.

Waiver of such oath by a deputy collector estops the collector from setting up the omission to give it. Id.

One claiming to reimport American goods free of duty under Act 1799, § 47, has the burden of showing that the goods are American goods in the same condition as exported. Kidd v. Swartwout (C. C. 1843) Fed. Cas. No. 7,756.

Article 570 of the customs regulations requires as to American goods returned the filing of the declaration by the foreign exporter with the entry and as well the filing therewith of the oath or declaration of the owner, importer, consignee, or agent. The collector has no authority to waive the filing of the oath or declaration of the owner with the entry and a subsequent filing was not a compliance with the law. U. S. v. Saunders (1915) 6 Ct. Cust. App. 86. See, also, Same v. Rettig (1912) 2 Ct. Cust. App. 537.

The regulations of the Treasury are explicit and they are reasonable and lawful in requiring that when free entry is claimed for goods under paragraph 500, Act 1909, the importer must furnish a certificate of prior exportation of the goods, made by the collector and naval officer, if any, at the place of export; or failing in this, the production of them must be waived by the collector and naval officer, if any, at the port of entry. Neither the certificate nor the fact of waiver is here shown, and the goods were not entitled to free entry. U. S. v. Goldberg (1912) 3 Ct. Cust. App. 394.

Where goods have been exported from one port of the United States and later are returned here for entry at another port, and when free entry of these goods as of domestic growth, produce, or manufacture is claimed, it is a reasonable exercise of the power vested in the Secretary of the Treasury for him to require a certificate showing the fact of original exportation; and it appearing the collector at the port of entry did not waive the production of such a certificate, and such a certificate not having been produced, an appeal will not lie against the collector's decision holding the goods dutiable. Lunham v. U. S. (1911) 1 Ct. Cust. App. 220.

9. **Repeal.**—The provision of section 7 of Act Feb. 8, 1875 (18 Stat. 307, 308), which permitted the return to the United States free of duty of foreign-made bags in which grain had been exported, was repealed by Act 1883, which was a complete revision of the subject, and from which such provision was omitted. U. S. v. Ranlett (1898) 19 Sup. Ct. 114, 116, 172 U. S. 133, 43 L. Ed. 393.

Act Feb. 8, 1875, § 7, amending the tariff laws so as to admit free, on their return to the United States, foreign-made bags in which American grain has been exported, was superseded by Acts 1883 and 1890, from which this provision was omitted; and under the latter act (paragraph 365) such foreign bags were dutiable. Kent v. U. S. (1896) 73 Fed. 680, 19 C. C. A. 642, affirming (C. C. 1895) 68 Fed. 536.

Certain animals, American products, were exported while the Tariff Act 1897 permitting the free entry of these on return to the United States was in force; these animals were returned to the United States subsequent to the enactment of Act 1909, by which free entry was denied an importation of this kind. Held, a tariff law creates no vested rights to import free or at any particular rate of duty goods, wares, merchandise, or products of any kind; no contractual obligation had been incurred by the taxing power incapable of being impaired by a subsequent modification or repeal of the provision in question; the law in force at the date reentry was sought applies and the importation of animals was properly held dutiable under paragraphs 225 and 227, Act 1909. Bragg v. U. S. (1911) 2 Ct. Cust. App. 22. See, also, Campbell v.

Same (1882) 2 Sup. Ct. 759, 107 U. S. 407, 27 L. Ed. 592.

10. Scrap iron.—Importers claimed, first, that old scrap iron imported from Cuba was entitled to admission free of duty as "articles the growth, produce, or manufacture of the United States;" and, second, that the scrap iron was a product of the soil or industry of Cuba and therefore entitled to a reduction of 20 per cent. from the regular rate by virtue of the commercial convention with that country. U. S. v. Morton B. Smith Co. (1913) 4 Ct. Cust. App. 500.

As to the first claim, held that it was incumbent on the importers to show not only that this scrap iron was goods the growth, produce, or manufacture of the United States, but to show as well in the manner prescribed by the Treasury regulations that they were the articles originally exported from this country, and, further, they had not been advanced in value or improved in condition. They failed to do this and the goods were not entitled to free entry. Id.

11. Shooks.—The circular letter of the secretary of the treasury of October 20, 1890, continuing in force articles 381–383 of the treasury regulations of 1884, prescribed the regulations under which proof should be made of the identity of American articles reimported, under paragraph 493 of Act 1890. Such regulations apply to boxes imported filled with fruit, which have been exported from the United States in the form of shooks, and proof of their identity with the shooks in any other form than that prescribed will not entitle the boxes to free entry. U. S. v. Dominici (1897) 78 Fed. 334, 24 C. C. A. 116, reversing judgment Dominici v. U. S. (C. C. 1896) 72 Fed. 46.

In view of a long, practical departmental construction of language that does not essentially differ from the language of paragraph 500, Act 1909, boxes or barrels made from American staves or shooks are entitled to free entry under that paragraph. This right is not limited to the value of the shooks and staves constituting a part of the barrels or boxes. Kraemer & Co. v. U. S. (1913) 4 Ct. Cust. App. 91.

12. Wheels and axles.—These wheels and axles of American manufacture, with tires made in Germany, were shipped into Mexico to have certain alterations made there and were then returned to the United States. The goods were not dutiable as entireties. The wheels and axles should have been admitted free under paragraph 500, Act 1909, as articles the growth, produce, or manufacture of the United States. The tires, made in Germany, were dutiable at 1¼ cents per pound. Denike v. U. S. (1914) 5 Ct. Cust. App. 364.

405. Asafetida.

406. Asbestos, unmanufactured.

407. Ashes, wood and lye of, and beet-root ashes.

408. Bagging for cotton, gunny cloth, and similar fabrics, suitable for covering cotton, composed of single yarns made of jute, jute butts, seg, Russian seg, New Zealand tow, Norwegian tow, aloe, mill waste, cotton tares, or other material not bleached, dyed, colored, stained, painted, or printed, not exceeding sixteen threads to the square inch, counting the warp and filling, and weighing not less than fifteen ounces per square yard; plain woven fabrics of single jute yarns by whatever name known, not bleached, dyed, colored, stained, printed, or rendered noninflammable by any process; and waste of any of the above articles suitable for the manufacture of paper.

Notes of Decisions

Cotton bagging.—The duty imposed by Act July 14, 1832, upon cotton bagging, cannot properly be levied upon an article which was not known in the market as cotton bagging in 1832, although subsequently so called. Curtis v. Martin (1845) 44 U. S. (3 How.) 106, 11 L. Ed. 516, affirming Martin v. Curtis (C. C. 1842) Fed. Cas. No. 9,160. CONTRA, Lee v. Lincoln (C. C. 1841) Fed. Cas. No. 8,195.

In the merchandise here jute is the component material of chief value; it constitutes from 70 to 80 per cent. of the weight of the materials used in making the goods, while the flax waste and seg employed are used as adulterants. The bagging so made is accordingly of jute and jute butts, substantially, and comes within the meaning and intent of paragraph 355. Act 1909. Hawley & Letzerich v. U. S. (1915) 6 Ct. Cust. App. 45.

Gunny bagging.—Gunny cloth, known in commerce by that name, held dutiable as a manufacture of jute, and not as an article "suitable for the uses to which cotton bagging is applied," not otherwise provided for. Troost v. Barney (C. C. 1863) Fed. Cas. No. 14,185.

Plaintiffs entered second-hand gunny bags as paper stock. The appraiser returned some of the bags as gunny bagging suitable for the uses to which cotton bagging may be applied. Held, if the bagging was commercially valuable

only to be, and could only profitably be, converted into paper, and was of no other commercial value, it was admissible as paper stock, and that the purpose for which it was imported or used after importation was irrelevant. Jessup & Moore Paper Co. v. Cooper (D. C. 1891) 46 Fed. 186.

Jute bagging.—Jute bagging, commercially fit for bagging cotton, held dutiable under Act 1890, par. 366, and not under paragraph 374, as a manufacture of jute not specially provided for. White v. U. S. (C. C. 1895) 69 Fed. 93.

Jute butts.—The terms "jute" and "jute butts" are not used without qualification by the trade in the buying and selling of jute; and, consequently, those terms, standing by themselves, cannot have been given by the trade a special commercial signification that excluded jute waste or any class of jute fiber available for textile uses. Overton & Co. v. U. S. (1914) 5 Ct. Cust. App. 183.

Goods more than 98 per cent. jute are to be regarded as articles composed of jute, and an insignificant percentage of material other than jute found to be present on analysis of bagging did not exclude the goods from the operation of paragraph 355, Act 1909. Id.

Paddings, canvas, or burlaps.—Second-hand jute bagging held not classifiable as bagging for cotton, gunny cloth, etc. See paragraph 384.

Under Act June 6, 1872, providing for an import duty of 30 per cent. ad valorem on all burlaps, the fact that they are suitable and can be used for oil cloth foundations, or for any purpose except bagging for cotton, is immaterial, and does not subject them to an ad valorem duty of 40 per cent. Arthur v. Cumming (1875) 91 U. S. 362, 23 L. Ed. 438.

The provision for "burlaps," in Act 1894, Free List, par. 424½, held not to include so-called double-warp Dundee bagging. Corbitt & Macleay Co. v. U. S. (C. C. 1907) 153 Fed. 648.

Canvas woven with double warp and single filling, each of single jute yarn, held a plain woven fabric, dutiable under Act 1897, par. 341, rather than a manufacture of vegetable fiber, not otherwise provided for, under paragraph 347. U. S. v. Lamb (C. C. 1900) 99 Fed. 262.

Manufactures of jute, having the single warp and single weft characteristic of burlaps, and which are known as black burlaps, black paddings, Hessians, parcelines, etc., are dutiable, under paragraph 277 of Act 1894, as manufactures of flax not otherwise provided for, and are not free as "burlaps," under paragraph 424½. McLeod v. U. S. (C. C. 1896) 75 Fed. 927.

Articles woven of flax, and of jute and flax, less than 60 inches in width, used chiefly in the manufacture of clothing, for stiffening, and known commercially as "canvas," "paddings," "ducks," "coatings," etc., are dutiable as manufactures of flax, under Act 1890, par. 317, and as manufactures of jute and flax, under paragraph 374, and not as burlaps, not exceeding 60 inches in width, under paragraph 364. White v. U. S. (C. C. 1895) 65 Fed. 788, affirmed (1896) 72 Fed. 251, 18 C. C. A. 541.

Paddings or canvas, from 18 to 24 inches in width, and used chiefly in the clothing trade, and for making small bags, and for similar purposes, are dutiable, under Act 1890, as "burlaps," at 1⅝ cents per pound, under paragraph 364, and not as "manufactures of jute," at 40 per centum ad valorem, under paragraph 374 of said act. In re White (C. C. 1893) 53 Fed. 787.

Act March 3, 1883, provided specially for a duty upon "paddings" and "canvas" (paragraph 334) different from "burlaps," (paragraph 338,) but Act Oct. 1, 1890, omitted any special mention of paddings or canvas in any paragraph. Held that, as jute paddings or canvas are a species of "burlaps," they are now dutiable, as such, under the latter act. Id.

Crash or canvas 15 and 17 inches in width, respectively, made of flax tow, and of from 1 to 2 per cent. of cotton, and containing less than 100 threads to the square inch, counting both warp and filling, held not dutiable at 40 per cent. ad valorem, as manufactures of other vegetable fiber except flax, or of which other vegetable fiber except flax is the component material of chief value, under the provision for such manufactures contained in paragraph 374, Act 1890. In re Wilmerding (C. C. 1892) 49 Fed. 824.

Manufactures of jute, less than 40 inches in width, sized, and having a patent selvedge, are "paddings" or "canvas," and not "burlaps," as known in the trade at and prior to March 3, 1883, and are dutiable at 35 per cent. ad valorem, under Act March 3, 1883 (T. I. 334). Lamb v. Robertson (C. C. 1889) 38 Fed. 716.

Waste.—Waste under this paragraph must be a waste of bagging, gunny cloth, or similar woven fabric. The waste here is the short broken warp ends of the jute thread used in the manufacture of burlap cloth, and is in fact a thread waste. It falls under the provisions of paragraph 384, Act 1913, as waste not specially provided for. U. S. v. Crompton & Son (1915) 6 Ct. Cust. App. 197.

409. Balm of Gilead.

410. Barks, cinchona or other, from which quinine may be extracted.

411. Bauxite or beauxite, crude, not refined or otherwise advanced in condition from its natural state.

Notes of Decisions

Refined beauxite.—Refined beauxite held not dutiable as beauxite. See paragraph 6.

412. Beeswax.

413. Bells, broken, and bell metal, broken and fit only to be remanufactured.

414. Bibles, comprising the books of the Old or New Testament, or both, bound or unbound.

415. All binding twine manufactured from New Zealand hemp, manila, istle or Tampico fiber, sisal grass, or sunn, or a mixture of any two or more of them, of single ply and measuring not exceeding seven hundred and fifty feet to the pound.

416. Birds and land and water fowls, not specially provided for in this section.

Notes of Decisions

Guinea fowl and turkeys.—Guinea fowl and turkeys held not dutiable as birds and land fowls. See paragraph 229.

Singing birds.—Singing birds held not dutiable as live animals. See paragraph 416.

417. Biscuits, bread, and wafers, not specially provided for in this section.

Notes of Decisions

Sugar wafers.—Sugar wafers which are made by biscuit makers of flour, sugar, milk, and eggs, flavored with vanilla, and are used exclusively as articles of table food, held not dutiable as nonenumerated manufactured articles, under Act 1890, but were free of duty, as "wafers unmedicated," under the provision for such wafers contained in paragraph 750. In re Duncan (C. C. 1893) 57 Fed. 197.

418. Bismuth.

419. Bladders, and all integuments, tendons and intestines of animals and fish sounds, crude, dried or salted for preservation only, and unmanufactured, not specially provided for in this section.

420. Blood, dried, not specially provided for in this section.

421. Blue vitriol, or sulphate of copper; acetate and subacetate of copper, or verdigris.

Notes of Decisions

Acetate of copper.—Acetate of copper held not dutiable as subacetate of copper. See paragraph 5.

Verdigris.—The kind of verdigris known as subacetate of copper held not dutiable under Act 1897, par. 3, as a chemical compound not specifically provided for, being specifically placed on the free list by paragraph 694. U. S. v. Petry (C. C. 1902) 116 Fed. 929.

422. Bolting cloths composed of silk, imported expressly for milling purposes, and so permanently marked as not to be available for any other use. Press cloths composed of camel's hair, imported expressly for oil milling purposes, and marked so as to indicate that it is for such purposes, and cut into lengths not to exceed seventy-two inches and woven in widths not under ten inches nor to exceed fifteen inches and weighing not less than one-half pound per square foot.

Notes of Decisions

Bolting cloth.—Bolting cloth, made of silk and cotton, silk chief value, used for other than milling purposes, held not dutiable as a manufacture of silk, under paragraph 383 of Act 1883, but free of duty, under paragraph 657 of the free list. In re Van Blankensteyn (1892) 56 Fed. 474, 5 C. C. A. 579; Id. (C. C. 1892) 49 Fed. 220.

Held, that the provision in Act 1894, par. 407, for "bolting cloths, especially for milling purposes, but not suitable

for the manufacture of wearing apparel," is not limited to bolting cloth composed of silk, but includes also bolting cloth made of fine copper-wire gauze, U. S. v. Markt (C. C. 1899) 124 Fed. 1012.

423. Bones, crude, burned, calcined, ground, steamed, but not otherwise manufactured, and bone dust or animal carbon, bone meal, and bone ash.

Notes of Decisions

Boneblack.—Boneblack is not included in the clause, "bones crude, and not manufactured, burned, calcined, ground, or steamed," in the free list of Rev. St. § 2504. Harrison v. Merritt (C. C. 1885) 23 Fed. 653, judgment affirmed (1885) 6 S. Ct. 191, 115 U. S. 577, 29 L. Ed. 494.

Burnt bones.—Distinction between the expression in Schedule M (R. S. p. 473) "black of bone or ivory drop black," and the expression (Free List, Id. 483), "bones crude and not manufactured; burned, calcined, ground, or steamed," pointed out; and held that burnt bones intended and fitted for other uses in the arts than that of imparting color are duty free, although in fact they are black. (1884) 17 Op. Atty. Gen. 676.

Crushed bone.—Crushed bone held not entitled to free entry as bone crude, etc. See paragraph 368.

424. Books, engravings, photographs, etchings, bound or unbound, maps and charts imported by authority or for the use of the United States or for the use of the Library of Congress.

425. Books, maps, music, engravings, photographs, etchings, lithographic prints, bound or unbound, and charts, which shall have been printed more than twenty years at the date of importation, and all hydrographic charts, and publications issued for their subscribers or exchanges by scientific and literary associations or academies, or publications of individuals for gratuitous private circulation, not advertising matter, and public documents issued by foreign governments.

Notes of Decisions

Books for private circulation.—Books published by an individual for gratuitous private circulation were entitled to free entry, under paragraph 410 of Act 1894, though such distribution was intended to promote the sale of an article manufactured by the publisher. Schieffelin v. U. S. (1898) 84 Fed. 880, 28 C. C. A. 554.

Small samples of cloth goods, arranged on cardboards, and folded into book form for gratuitous distribution, are not free of duty, as publications of individuals for gratuitous private circulation, under Act 1897, par. 501. Matheson v. U. S. (C. C. 1900) 99 Fed. 261.

These catalogues were trade publications used for advertising purposes and they were distributed gratuitously and generally to the public. They did not come within the provision for free entry contained in paragraph 517, Act 1909. Smith & Co. v. U. S. (1915) 5 Ct. Cust. App. 523.

The term "publications" in paragraph 517, Act 1909, must be held to apply to importations of the same general class or type as those mentioned in the preceding provisions of the paragraph. Roger & Gallet v. U. S. (1914) 5 Ct. Cust. App. 443.

To admit purely advertising matter under that paragraph would extend the meaning beyond the fair import of the language employed. Id.

These books appear to have been printed by the Brusse Publishing House, of Rotterdam, for the Holland-American Line. This shipping company circulates the books gratuitously to excite interest in foreign travel and so secure patronage for its steamers. The mere size of the circulation of these books, an edition of 40,000 being printed, does not negative the importer's contention that they were gratuitously privately circulated. U. S. v. Gips (1913) 4 Ct. Cust. App. 458.

It is reasonably clear that the term "individuals," as employed in paragraph 517, Act 1909, was intended to differentiate between the publications of those other than literary associations or academies and foreign governments and to include under "individuals" all others. U. S. v. Badische & Co. (1913) 3 Ct. Cust. App. 528.

The publishers of the books imported were dealers in dyes and chemicals; were sellers of the dyestuffs listed in the publication. The testimony showed that these books were intended to be, and were, circulated gratuitously. They were entitled to free entry under paragraph 517, Act 1909. Id.

Rebound books.—Under Act 1890, par. 512, books printed and bound more than 20 years ago are entitled to entry free, notwithstanding that they have been recently rebound. In re Boston Book Co. (C. C. 1892) 50 Fed. 914.

Scientific books under Act 1894.—Act 1894, par. 410, exempts from import duties books devoted to original scientific research. Paragraph 311 makes dutiable all printed matter not specially provided for. Held, that printed sheets of a literary work of original scientific research constituted a "book," within paragraph 410, and so were not dutiable under paragraph 311, though imported without being bound or stitched together. Read v. Certain Merchandise Imported by O. G. Hempstead & Son (1900) 103 Fed. 197, 43 C. C. A. 178.

Printed sheets of an English work on anatomy, imported unbound, and comprising all of the book except the first few pages, which had been printed in this country by the American publisher, were admissible free of duty, under paragraph 410 of the free list in Tariff Act 1894, as a "scientific book." Macmillan Co. v. U. S. (C. C. 1902) 116 Fed. 1018.

The word "books," as used in the provision of the free list of Act 1894, par. 410, permitting the free entry of "scientific books and periodicals devoted to original scientific research," cannot be given such a narrow construction as to exclude the unbound sheets of a scientific book. In re Hempstead (C. C. 1899) 95 Fed. 967.

The fact that the author of a medical work quotes largely from the writings of others, and deals with the results of investigations made by others, does not deprive his book of its character as one of "original scientific research," entitled to free entry, under paragraph 410 of Act 1894. Id.

Unbound books.—Where certain law reports, printed in the year 1840–41, were imported into the United States in an unbound condition, the printed sheets not being even stitched together, held, that they came within the provision of Act 1883, exempting from duty "books * * * bound or unbound * * * which shall have been printed and manufactured more than twenty years at the date of importation," and were therefore not dutiable. (1889) 18 Op. Atty. Gen. 461.

426. Books and pamphlets printed wholly or chiefly in languages other than English; also books and music, in raised print, used exclusively by the blind, and all textbooks used in schools and other educational institutions; Braille tablets, cubarithmes, special apparatus and objects serving to teach the blind, including printing apparatus, machines, presses, and types for the use and benefit of the blind exclusively.

Notes of Decisions

Books printed in foreign languages.—German books containing lithographic prints held not dutiable as books printed in other than English. See paragraph 325.

The provision in paragraph 502, Act 1897, for "books * * * printed exclusively in languages other than English," includes architectural portfolios containing 18 or 20 pages of illustrations and a preface of 15 lines in German. R. F. Downing & Co. v. U. S. (C. C. 1905) 140 Fed. 92.

Held, that the provision in paragraph 502, Act 1897, for "books and pamphlets printed exclusively in languages other than English," includes certain portfolios of two kinds, made up of loose sheets not intended to be bound together in book form, and containing, respectively, 19 and 24 sheets of pictures and prints, and accompanied, respectively, with 4 and 12 loose pages printed in foreign languages; each portfolio having a loose outside covering, bearing the title of the work. Downing v. U. S. (C. C. 1903) 130 Fed. 393.

Music books, with exclusively German words, are on the free list, under Act 1894, par. 411, putting on such list "books and pamphlets printed exclusively in language other than English." Fisher v. U. S. (C. C. 1900) 99 Fed. 260.

Photomechanic reproductions of paintings.—Unbound photomechanic reproductions of paintings held not entitled to free entry. See paragraph 329.

Textbooks.—Volumes of a series planned to embrace 1,000 titles, being reprints of the world's classical literature in fiction, poetry, history, biography, economics, essays, children's books, etc., do not become textbooks because, on account of their compactness, cheapness, and convenient form, they are largely used by teachers and students as supplementary or illustrative reading or in classrooms. Dutton & Co. v. U. S. (1915) 6 Ct. Cust. App. 460.

The term "textbook" carries with it the idea of special preparation for classroom use, such as exceptional title page, introduction, glossary, notes, spacing, and other features. Books which appeal as readily to the general reader as to the student are not fairly to be regarded as textbooks. Id.

427. Books, maps, music, engravings, photographs, etchings, lithographic prints, and charts, specially imported, not more than two copies in any one invoice, in good faith, for the use and by order

of any society or institution incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use and by order of any college, academy, school, or seminary of learning in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe.

Notes of Decisions

Books imported to take place of books sold to library.—Books imported for the purpose of sale are not free of duty under paragraph 413 of Act 1894, even though imported to take the place of books which had been previously imported by the same person, and upon which duties had been paid by him, and which he had afterwards sold to a state library. (1896) 21 Op. Atty. Gen. 301.

Clubs.—The charter of a club provided that it was formed "as a permanent social club, for the promotion of literary, artistic and antiquarian tastes among the citizens of P., and such kindred purposes as the club may from time to time determine, by establishing and maintaining a library and reading room, and a collection of works of art and antiquities, either by loan or otherwise." It appeared that while the club maintained a well selected and valuable library, etc., its social side was fully as prominent as its literary or artistic side. Held, that books for the club were not admissible free of duty. U. S. v. Vandiver (C. C. 1903) 122 Fed. 740.

Law library.—County law library associations organized and maintained under Rev. Laws Me. c. 55, which provides for the organization of such associations, and that their libraries shall be kept in rooms in the court houses provided by the counties, and shall be open to all the people of such counties, and to the support of which that and subsequent statutes devote certain fees and fines collected, are state institutions, and the library of each is a "state library," within paragraph 503 of Act 1897, which places on the free list books imported solely for the use of state and public libraries. Little v. U. S. (C. C. 1900) 104 Fed. 540.

428. Books, libraries, usual and reasonable furniture, and similar household effects of persons or families from foreign countries, all the foregoing if actually used abroad by them not less than one year, and not intended for any other person or persons, nor for sale.

Notes of Decisions

Household effects.—That term "household effects" includes not only those things necessarily kept within the house, but comprises everything that contributes to the use or convenience of a householder. (1900) 23 Op. Atty. Gen. 310.

—— **Automobiles.**—Act 1897, par. 504, relating to books, libraries, furniture, and "similar household effects," does not include automobiles, because they are not "similar" to libraries, furniture, etc. U. S. v. W. R. Grace & Co. (1909) 166 Fed. 748, 92 C. C. A. 596.

Held that an automobile should not be excluded from importation free of duty as household effects used abroad more than one year, under Act 1897, par. 504, by reason of having been extensively repaired shortly before importation. So much of the machine as is a new manufacture may be assessed with duty; but the rest, including the cost of overhauling, oiling, cleaning, readjusting, and regulating, is free under said paragraph. Hillhouse v. U. S. (1907) 152 Fed. 163, 81 C. C. A. 415, reversing judgment (C. C. 1906) 142 Fed. 303, and writ of certiorari denied U. S. v. Hillhouse (1908) 28 Sup. Ct. 568, 208 U. S. 615, 52 L. Ed. 646.

The provision for "household effects" in Act 1897, par. 504, includes automobiles. Id.

—— **Carriage.**—A carriage in use abroad for a year by its owner, who brings it to this country for his own use here, and not for another person, nor for sale, is "household effects," under Rev. St. § 2505, and free from duty. Arthur v. Morgan (1884) 5 Sup. Ct. 241, 112 U. S. 495, 28 L. Ed. 825.

—— **Cows.**—"Cows," when kept for household use, are to be considered "household effects" as that term is used in paragraph 504 of Act 1897. (1900) 23 Op. Atty. Gen. 310.

—— **Family carriage horses.**—Family carriage horses used as such abroad were entitled to free entry under paragraph 516 of Act 1890 as "household effects." Sandow v. U. S. (C. C. 1897) 84 Fed. 146.

—— **Period of use abroad.**—The provision for household effects "used abroad * * * not less than one year," in Act 1897, par. 504, is satisfied if the periods of such use aggregate one year, even though not continuous. Hillhouse v. U. S. (1907) 152 Fed. 163, 81 C. C. A. 415, writ of certiorari denied U. S. v. Hillhouse (1908) 28 Sup. Ct. 568, 208 U. S. 615, 52 L. Ed. 646.

429. Borax, crude and unmanufactured, and borate of lime, soda, and other borate material, crude and unmanufactured, not otherwise provided for in this section.

Notes of Decisions

Borate material.—An antiseptic preservative held not borax or borate material. See paragraph 1.

Borate of manganese held not dutiable as borate material. See paragraph 5.

Perborate of sodium not dutiable as borate material. See paragraph 5.

430. Brass, old brass, clippings from brass or Dutch metal, all the foregoing, fit only for remanufacture.

Notes of Decisions

Old cannon.—Old cannon made of composition metal held not free of duty as old brass. See paragraph 167.

431. Brazilian pebble, unwrought or unmanufactured.
432. Bristles, crude, not sorted, bunched, or prepared.

Notes of Decisions

Bristles.—Distinction between bristles crude and prepared. See paragraph 337.

433. Bromin.
434. Broom corn.
435. Buckwheat and buckwheat flour.
436. Bullion, gold or silver.
437. Burgundy pitch.
438. Burrstones, manufactured or bound up into millstones.
439. Cadmium.
440. Calcium, acetate of, brown and gray, and chloride of, crude; calcium carbide and calcium nitrate.
441. Cash registers, linotype and all typesetting machines, sewing machines, typewriters, shoe machinery, cream separators valued at not exceeding $75, sand-blast machines, sludge machines, and tar and oil spreading machines used in the construction and maintenance of roads and in improving them by the use of road preservatives, all the foregoing whether imported in whole or in parts, including repair parts.
442. Castor or castoreum.
443. Catgut, whip gut, or worm gut, unmanufactured.

Notes of Decisions

Catgut and worm gut.—Catgut and worm gut are free from duty under Act 1897, par. 517, as "unmanufactured," and are not classifiable for duty under paragraph 448, as "manufactures of catgut and worm gut, not specially provided for." Davies, Turner & Co. v. U. S. (C. C. 1902) 115 Fed. 232.

Paragraph 509, Act 1909, of the free list provides for "catgut, whip gut, or worm gut, unmanufactured." The terms "catgut" and "whip gut" are often used interchangeably. Whip gut or whipcord is the result of the process of the manufacture of gut into a twisted article, which clearly falls within paragraph 509. U. S. v. American Express Co. (1915) 6 Ct. Cust. App. 36.

The fact that whip gut, the result of such manufacture, is of a length suitable for use in the manufacture of tennis rackets, does not remove it from the free list provision, as the record discloses that this is the length in which whipcord so manufactured is produced in the first instance. Id.

444. Cement, Roman, Portland, and other hydraulic.
445. Cerium, cerite, or cerium ore.
446. Chalk, crude, not ground, bolted, precipitated, or otherwise manufactured.

447. Charcoal, blood char, bone char, or bone black, not suitable for use as a pigment.

Notes of Decisions

Blood charcoal.—Blood charcoal a substance which, like bone char, is composed chiefly of carbon, and is used for decolorizing sugar, held not dutiable under Act 1897, par. 97, as an article composed of carbon, but either under paragraph 10, as bone char by similitude, or at the similar rate provided in section 6 for unenumerated manufactured articles. U. S. v. George Lueders & Co. (C. C. 1906) 148 Fed. 398.

Boneblack.—Boneback is not included in the clause "bones crude, and not manufactured, burned, calcined, ground or steamed" in the free list of Rev. St. § 2504, but is liable to a duty of 25 per cent. ad valorem, under Schedule M of that section. Harrison v. Merritt (1885) 115 U. S. 577, 6 Sup. Ct. 191, 29 L. Ed. 494, reversing (C. C. 1885) 23 Fed. 653; Peters v. Robertson (C. C. 1884) 20 Fed. 818.

448. Chromate of iron or chromic ore.

449. Chromium, hydroxide of, crude.

450. Common blue clay and Gross-Almerode glass-pot clay, in cases or casks, suitable for the manufacture of crucibles and glass melting pots or tank blocks.

451. Coal, anthracite, bituminous, culm, slack, and shale; coke; compositions used for fuel in which coal or coal dust is the component material of chief value, whether in briquets or other form.

Notes of Decisions

Anthracite coal.—Decisions under Act 1897 placing a duty on anthracite coal containing less than 92 per cent. pure carbon, see Evans v. Collector of Customs of Port of San Francisco (1901) 107 Fed. 110, 46 C. C. A. 170; Coles v. Same (C. C. A. 1900) 100 Fed. 442; Perkins Co. v. U. S. (C. C. 1910) 180 Fed. 935; In re Coles (C. C. 1899) 93 Fed. 954.

Bituminous coal.—Bituminous coal, imported for the use of the government, held dutiable under paragraph 432 of Act 1890. (1892) 20 Op. Atty. Gen. 314.

Coal slack or culm.—The term "coal slack or culm," appearing in paragraph 415, Act 1897, may not be taken as employed there in a commercial sense limiting the words to coal screened at the mines, but applies as well to coal screened on entry at a port of entry; and coal having been so screened here, the coal slack or culm resulting from the process was dutiable under the act named at 15 cents per ton of 28 bushels, 80 pounds to the bushel. U. S. v. Waterhouse (1911) 1 Ct. Cust. App. 353.

Coke.—In order to ascertain whether "coke" is within the designation of "coal" in the tariff act, the intention of congress, as well as the commercial meaning of the word, will be inquired into. Cochrane v. Swartout (D. C. 1834) Fed. Cas. No. 2,928.

452. (Repealed.)

This paragraph was repealed by Act Sept. 8, 1916, c. 463, § 502, post, § 5291c, and certain duties imposed upon the articles enumerated therein by §§ 500. 501, of said Act Sept. 8, 1916, c. 463, post, §§ 5291a, 5291b. Said paragraph read as follows:

"452. Coal tar, crude, pitch of coal tar, wood or other tar, dead or creosote oil, and products of coal tar known as anthracene and anthracene oil, naphthalin, phenol, and cresol."

Notes of Decisions

Dead oil.—Carbolineum or carbolineum avenarius held not creosote or dead oil. See paragraph 21.

The merchandise known as "coal tar product," or "dead oil," is not dutiable under the provision for "products known as distilled oils" in paragraph 60 of Act 1894, but is entitled to free entry under paragraph 443, as a product of coal tar not a color or dye, and not specially provided for. U. S. v. Warren Chemical & Manufacturing Co. (1898) 84 Fed. 638, 28 C. C. A. 500; Warren Chemical Mfg. Co. v. U. S. (C. C. 1897) 81 Fed. 375.

It was contended by the importers of an article known as "dead oil" that it should have been assessed with duty at the rate held in various court decisions to be applicable to so-called dead oil. Held, that it cannot be assumed that dead oil is always and everywhere, either actually or commercially, the same article, nor, in the absence of evidence, that the article in question was the same as that covered by the decisions referred to. Schoellkopf, Hartford & Maclagan v. U. S. (C. C. 1906) 147 Fed. 855.

In paragraph 536, Act 1909, it was

the evident intention to restrict the grade of oil admissible free of duty under that paragraph to that known as dead oil. It is not shown here that the importation is in any sense dead oil; the record shows, on the contrary, that the importation was not at the date of the enactment of Act 1909 known as creosote oil, but was in fact an oil of much greater value. Hawley & Letzerich v. U. S. (1913) 4 Ct. Cust. App. 268.

Products of coal tar.—In paragraph 443 of Act 1894, the words "products of coal tar" are not within the excepting clause, but are part of the enumeration of articles entitled to free entry. U. S. v. Warren Chemical & Manufacturing Co. (1898) 84 Fed. 638, 28 C. C. A. 500.

Soluble creosote.—The liquid creosote of commerce is not a "distilled oil," subject to duty, under Act 1894, par. 60, but is a "product of coal tar" not specially provided for in said act, and entitled to free entry, under paragraph 443 thereof. Wise v. Southern Pac. Co. (1898) 87 Fed. 863, 31 C. C. A. 263, affirming In re Southern Pac. Co. (C. C. 1897) 82 Fed. 311.

Soluble creosote, an article prepared from coal tar dead oil, is less specifically provided for as a "chemical compound" than under a provision for "products or preparations of coal tar," and is properly classified for duty under the latter head, in paragraph 443, Act 1894, or paragraph 15. Schoellkopf v. U. S. (C. C. 1901) 124 Fed. 89.

453. Cobalt and cobalt ore.
454. Cocculus indicus.
455. Cochineal.
456. Cocoa, or cacao, crude, and fiber, leaves, and shells of.

Notes of Decisions

Crude cocoa fibers.—Crude cocoa fibers processed held not free of duty. See paragraph 385.

457. Coffee.
458. Coins of gold, silver, copper, or other metal.

Notes of Decisions

Austrian florins.—Austrian florins are to be received by the custom house at the rate fixed by the United States mint. Meyer v. Cooper (C. C. 1890) 44 Fed. 55.

Chinese coin.—Chinese coin composed of copper and an alloy is not free of duty as "coins, gold, silver, and copper," unless imported to be used as currency. Crocker v. Redfield (C. C. 1859) Fed. Cas. No. 3,400.

Coin swords.—Coin swords held not free of duty as coins. See paragraph 167.

459. Coir, and coir yarn.
460. Composition metal of which copper is the component material of chief value, not specially provided for in this section.

Notes of Decisions

Composition metal.—Flitters held not dutiable as composition metal. See paragraph 146.

Composition metal of which copper is the component material of chief value, in sheets which require to be reworked before the metal is available for use, held not dutiable under paragraph 177 of Act 1894, as a partly manufactured article composed wholly or in part of any metal, but is entitled to free entry under paragraph 452. Grempler v. U. S. (1901) 107 Fed. 687, 46 C. C. A. 557.

Sheets of composition metal, of which copper is the component material of chief value, are free under Act 1894, par. 452, putting on free list "old copper, fit only for manufacture, clipping from new copper, and all composition metal of which copper is a component material of chief value, not specially provided for," and not under paragraph 177. Benedix v. U. S. (C. C. 1900) 99 Fed. 258.

461. Copper ore; regulus of, and black or coarse copper, and copper cement; old copper, fit only for remanufacture, copper scale, clippings from new copper, and copper in plates, bars, ingots, or pigs, not manufactured or specially provided for in this section.

Notes of Decisions

Bronze ornaments.—Bronze ornaments held not dutiable as old copper. See paragraph 167.

Copper in plates.—Round copper bars and round copper plates are not subject to duty upon importation, within

the meaning of Act July 20, 1789, and Act Aug. 10, 1790 (1 Stat. 180). U. S. v. Kid (1807) 8 U. S. (4 Cranch) 1, 2 L. Ed. 531.

"Round copper bottoms, turned up at the edge," are not liable to duties, although imported under the denomination of raised bottoms." Id.; U. S. v. Potts (1809) 9 U. S. (5 Cranch) 284, 3 L. Ed. 102.

Plates that have been ground, polished, and planished are not copper in "plates * * * not manufactured," within Act 1897, par. 532. U. S. v. B. F. Drakenfeld & Co. (1910) 178 Fed. 258, 101 C. C. A. 618, reversing judgment B. F. Drakenfeld & Co. v. U. S. (C. C. 1909) 172 Fed. 296.

Copper matte.—Copper matte, an article containing lead and copper, and produced in smelting ores, which is not strictly an ore itself, and which is shown to be known commercially and scientifically as copper regulus, is not dutiable under Act 1897, par. 181, for "lead-bearing ore of all kinds," but is free of duty as "copper, regulus of," under Free List, par. 534. Spencer v. Philadelphia Smelting & Refining Co. (C. C. 1899) 124 Fed. 1002.

The merchandise copper matte is produced by smelting metalliferous rock containing sulphides of lead, copper, and iron. It was stipulated that the importations were mattes, and that "matte" and "regulus" are interchangeable terms. Now the uncontradicted testimony shows that mattes containing the percentages of copper, lead, iron, and sulphur found in these importations were known to the wholesale trade before and after the passage of tariff act of 1909 as copper mattes. They must be accepted to be copper mattes, and as such being regulus of copper they were entitled to free entry. U. S. v. American Smelting & Refining Co. (1914) 5 Ct. Cust. App. 398.

462. Copperas, or sulphate of iron.
463. Coral, marine, uncut, and unmanufactured.
464. Cork wood, or cork bark, unmanufactured, and cork waste, shavings, and cork refuse of all kinds.

Notes of Decisions

Cork clippings.—It is immaterial whether the clippings or shavings of cork bark here be deemed waste or not. A review of the legislation affecting the subject matter, of the practice at the customs, and of pertinent judicial decisions makes it clear these cork clippings and shavings were meant to be, and were, included within the provisions of paragraph 547, Act 1909, and so were entitled to free entry. U. S. v. Johns-Manville Co. (1914) 5 Ct. Cust. App. 404.

Cork unmanufactured. — "Cork squares" are free from duty, under Act 1870 as "cork unmanufactured." King v. Smith (C. C. 1872) Fed. Cas. No. 7,806.

In order that cork wood or bark should be classed as "manufactured," under Act of 1864, it should be in a state capable of being used, and designed for use, without further manufacture. Id.

465. Corn or maize.
466. Corn meal.
467. Cotton, and cotton waste or flocks.

Notes of Decisions

Cotton waste.—The provision in Act 1897, par. 537, for "cotton waste," includes a mixture of cotton waste and jute threads in about equal proportions, which is commercially known as "cotton waste." Wood v. U. S. (C. C. 1908) 160 Fed. 990.

Cotton waste recovered from mill sweepings or used cotton waste is not "advanced in value" by processes of combing, washing, and bleaching in the sense implied by "advanced in value" appearing in section 313, Act 1909. It is entitled to free entry under that act. Simpson v. U. S. (1911) 2 Ct. Cust. App. 222.

Linters.—Short bits of lint that adhere to the seed of cotton in the ordinary process of ginning and are later stripped from the seed by a specially constructed gin, becoming then what are commonly known as "linters," are not waste, but cotton, and under paragraph 548, Act 1909, are free of duty; and this, irrespective of a cleansing process to which the linters may have been subjected before importation. U. S. v. Salomon (1911) 1 Ct. Cust. App. 246.

468. Cryolite, or kryolith.
469. Cudbear.
470. Curling stones, or quoits, and curling-stone handles.
471. Curry, and curry powder.

472. Cuttlefish bone.
473. Dandelion roots, raw, dried or undried, but unground.
474. Glaziers' and engravers' diamonds, unset, miners' diamonds.

Notes of Decisions

Diamonds.—Act 1894, par. 467, which reads as follows: "Diamonds; miners', glaziers', and engravers' diamonds not set, and diamond dust or bort, and jewels to be used in the manufacture of watches or clocks"—does not exempt from duty diamonds except of the classes enumerated, precious stones of all kinds being made dutiable by paragraph 338. The word "diamonds," beginning the paragraph quoted, is designated merely as a heading, and should be read as though followed by a colon. Keck v. U. S. (1899) 19 Sup. Ct. 254, 255, 172 U. S. 434, 43 L. Ed. 505.

Act 1897, List, par. 545, provides for "diamonds * * * not advanced from their natural state by cleaving, splitting, * * * including miners' * * * diamonds not set." Held, that the provision for miners' diamonds is not qualified by what precedes, and that such diamonds, split, but unset, are within the paragraph. Sullivan Machinery Co. v. U. S. (C. C. 1909) 168 Fed. 561.

475. Divi-divi.
476. Dragon's blood.
477. Drugs, such as barks, beans, berries, buds, bulbs, bulbous roots, excrescences, fruits, flowers, dried fibers, dried insects, grains, gums, gum resin, herbs, leaves, lichens, mosses, logs, roots, stems, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, weeds; any of the foregoing which are natural and uncompounded drugs and not edible and not specially provided for in this section, and are in a crude state, not advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture: Provided, That no article containing alcohol shall be admitted free of duty under this paragraph.

Notes of Decisions

1. Balsam capsules.
2. Compound to make caffeine.
3. Dandelion root.
4. Dried lizards.
5. Dyes.
6. "Edible."
7. Elaterium in cakes.
8. Guarana.
9. Powder from juice of papaw melon.
10. Resin.
11. Sierra Leone chillies or bird peppers.
12. Young fustic dyewood.

1. Balsam capsules.—Where the process of placing crude balsam in gelatin capsules has resulted in an article with a greater value and an improved condition, the combination held not classible as "crude drugs not advanced in value or condition," within Act 1897, par. 548. U. S. v. Lehn & Fink (C. C. 1909) 172 Fed. 171.

2. Compound to make caffeine.—A compound used exclusively to make caffeine, held not dutiable under section 6, Act 1897, as a nonenumerated manufactured article, nor under paragraph 20 as a drug advanced in value or condition, but entitled to free entry as a crude drug. U. S. v. Hensel (C. C. 1901) 107 Fed. 260.

3. Dandelion root.—Dandelion root, imported while Act March 3, 1883, was in force, which was not edible, and was in a crude state, and not advanced in value or condition by refining or grinding, or by other process of manufacture, and which was not used or intended to be used as coffee or as a substitute therefor, but was used for medicine, and in medicinal preparations, was not dutiable under the provision for "acorns and dandelion root, raw or prepared, and all other articles used or intended to be used as coffee or as substitutes therefor," contained in paragraph 290 of the act, but was free of duty. Clay v. Erhardt (C. C. 1891) 48 Fed. 293.

4. Dried lizards.—Dried lizards, used by the Chinese in compounding a medicine, are drugs within the meaning of Act 1897, par. 548. Wing On Wo v. U. S. (C. C. 1906) 148 Fed. 334.

5. Dyes.—Articles used in dyeing or tanning held not drugs. Leber & Meyer v. U. S. (C. C. 1904) 135 Fed. 243.

6. "Edible."—"Edible" is to be taken in its common meaning. Cruikshank v. U. S. (1894) 59 Fed. 446, 8 C. C. A. 171, reversing In re Cruikshank (C. C. 1893) 54 Fed. 676.

7. Elaterium in cakes.—Elaterium in cakes, prepared from the juice of the fruit of "echallium elaterium" by evaporation and drying, and containing a medicinal drug known as "elaterine," which is extracted from the cakes before it is used, is exempt from duty under Act 1890, par. 560, as a drug "in

a crude state," and cannot be classified as a "medicinal preparation," within paragraph 75, nor as a "drug which has been advanced in value or condition," within paragraph 560. U. S. v. Merck (1895) 66 Fed. 251, 13 C. C. A. 432, certiorari denied (1895) 15 Sup. Ct. 1043, 159 U. S. 272, 40 L. Ed. 147.

8. Guarana.—Guarana, a medicinal drug, consisting of a dried paste in the form of sausage-shaped rolls, this being the crudest state in which it is ever imported, and which, before being used as a medicine, must be further prepared, held not dutiable as a "medicinal preparation," under paragraph 68, Act 1897, but free of duty under paragraph 548. Cowl v. U. S. (C. C. 1900) 124 Fed. 475.

9. Powder from juice of papaw melon.—Powder from the juice of the papaw melon held not dutiable as a crude drug. See paragraph 27.

A powder made from the juice of the papaw melon, caught in pans, dried in the sun, sifted to remove foreign substances, and packed in tins, held free, under paragraph 470 of Act 1894, as "drugs * * * not edible, and which have not been advanced in condition by refining and grinding, or by other process of manufacture," and was not dutiable, under paragraph 59, as a medicinal preparation. U. S. v. Godwin (C. C. 1899) 91 Fed. 753.

10. Resin.—Resin held entitled to free entry. Lange Soap Co. v. U. S. (1912) 3 Ct. Cust. App. 440.

Gum resin or rosin is the product of the ordinary treatment that oleoresin or crude turpentine is subjected to in order to separate its two contents. They merely serve to get the article by itself. The terms "in a crude state" are broad enough to include as "crude" all the grades of resin shown by the record in this case. U. S. v. Sheldon & Co. (1912) 2 Ct. Cust. App. 485. See, also, Schoenemann v. U. S. (1903) 119 Fed. 584, 56 C. C. A. 104; Roessler & Hasslacher Chemical Co. v. Same (C. C. 1899) 94 Fed. 822; U. S. v. Godwin (C. C. 1899) 91 Fed. 753.

11. Sierra Leone chillies or bird peppers.—Sierra Leone "chillies" or "bird peppers," whole, but in a dried state, held exempt from duty, as spices not edible, under paragraph 560 of Act 1890, and not dutiable as Cayenne pepper unground, under paragraph 326. In re Cruikshank (C. C. 1893) 54 Fed. 676, reversed Cruikshank v. U. S. (1894) 59 Fed. 446, 8 C. C. A. 171.

12. Young fustic dyewood.—Young fustic dyewood cut or shredded into pieces held advanced in condition. See paragraph 27.

478. Eggs of poultry, birds, fish, and insects (except fish roe preserved for food purposes): Provided, however, That the importation of eggs of game birds or eggs of birds not used for food, except specimens for scientific collections, is prohibited: Provided further, That the importation of eggs of game birds for purposes of propagation is hereby authorized, under rules and regulations to be prescribed by the Secretary of the Treasury.

Notes of Decisions

Duck eggs.—Act 1897, par. 549, relating to "eggs of birds," does not include eggs of the domesticated duck, which are dutiable under paragraph 244 as "eggs, not specially provided for." Sun Kwong On v. U. S. (1906) 143 Fed. 115, 74 C. C. A. 309.

Fish roe.—Fish roe, or caviar, which was necessarily put into brine before importation, because otherwise it would not be suitable for food after importation, held "preserved for food purposes," within Act 1897, par. 549. Hansen & Dieckmann v. U. S. (C. C. 1909) 175 Fed. 892.

Fresh roe of the sturgeon rubbed through a sieve, dropping thence into a solution of brine, the brine drawn off and the roe packed for shipment in tins and transported in a refrigerated state, does not constitute "fish roe preserved for food purposes," as excepted by paragraph 549, Act 1897, and was not dutiable under paragraphs 258 and 261 of said act. Hansen v. U. S. (1910) 1 Ct. Cust. App. 1.

479. Emery ore and corundum, and crude artificial abrasives, not specially provided for.

Notes of Decisions

Artificial abrasives.—The term "artificial abrasives" implies an abrasive product resulting from processing or treatment, and the word "crude" implies that such artificial product must be in a crude condition. Harrison Supply Co. v. U. S. (1915) 6 Ct. Cust. App. 72.

The true, final, and distinctive purpose of an abrasive is to create new surfaces by rubbing or grinding away older ones, and not to produce friction or heat. The use of powdered glass on match heads or the sides of match boxes is not as an abrasive. Chrystal v. U. S. (1915) 5 Ct. Cust. App. 489.

480. Fans, common palm-leaf, plain and not ornamented or decorated in any manner, and palm leaf in its natural state, not colored, dyed, or otherwise advanced or manufactured.

481. Felt, adhesive, for sheathing vessels.

Notes of Decisions

Adhesive felt.—"Felt, adhesive, for sheathing vessels," is among the articles enumerated in "the free list" of Act 1883. This description is held to cover adhesive felt such as was used at the date of the act for sheathing vessels, although such felt may be imported for other uses. The use of an article does not necessarily control its classification for tariff purposes. U. S. v. Nichols (C. C. 1891) 46 Fed. 359.

482. Fibrin, in all forms.

483. Fresh-water fish, and all other fish not otherwise specially provided for in this section.

Notes of Decisions

Fish pickled or salted.—The processes to which the fish of the importation had been subjected put them in a class apart from "fish in tin packages," as provided for in paragraph 270, Act 1909. The evidence sustains the finding that the merchandise here consisted of herring or mackerel, pickled or salted, and these were dutiable as such under the eo nomine provisions of paragraphs 272 and 273, respectively. U. S. v. Smith & Nessle Co. (1913) 4 Ct. Cust. App. 70.

Fresh fish.—In Act 1894, the free list (paragraph 481) enumerates "fish, frozen or packed in ice fresh." The schedule relating to dutiable fish enumerates (paragraph 210) "herrings, pickled, frozen, or salted, and salt water fish frozen or packed in ice, one-half of one cent per pound." Held that, under the rule of construction requiring each part of a law to be made effective if possible, the paragraph in the free list must be held as generic, and paragraph 210 as exceptional or specific; consequently salt water fish, fresh and packed in ice, are dutiable under paragraph 210. De Long v. U. S. (1896) 76 Fed. 453, 22 C. C. A. 474, affirming In re De Long (C. C. 1895) 70 Fed. 775.

Under Act 1897, par. 261, relating (1) to "fish, fresh, * * * frozen, packed in ice, or otherwise prepared for preservation, not specially provided for," and (2) to "salmon, fresh," salmon packed in ice for preservation are dutiable under the first provision; for Congress by enumerating fish packed in ice separately from fish fresh, indicated an intention to exclude the former class from the provision for the latter. U. S. v. Perry (C. C. 1909) 171 Fed. 303.

Fresh fish (that is, unsalted or uncured fish), imported in bulk, or otherwise than in barrels or half barrels, in a frozen condition, to be sold for immediate use, are to be admitted free, upon the importer furnishing to the collector reasonable or proper proof or assurances of an honest intention to put them on the market for immediate use. Clause 699, New Tariff Index. Cross v. Seeberger (C. C. 1887) 30 Fed. 427.

Fresh fish imported frozen together in barrels or large cakes are not exempt from duty as "fish, fresh for immediate consumption." Rev. St. § 2505. Gauthier v. Bell (C. C. 1877) Fed. Cas. No. 5,277.

Salmon from which the larger part of the backbone had been removed, leaving the side bones and other bones in the fish, and which had been treated with a solution of salt or brine for the purpose of preserving them during transportation and not sufficient to affect their acceptability to the consuming public as fresh fish, were not boned within the meaning of paragraph 216, Act 1913, but were entitled to free entry under the provision for "fresh water fish, and all other fish not otherwise specially provided for" in paragraph 483 of said act. Woodward & Son v. U. S. (1915) 6 Ct. Cust. App. 372.

Smoked herring.—Smoked herring, though salted before being smoked, held not dutiable as "herrings, pickled or salted," under Act 1897, par. 260, being a commodity distinct therefrom both commercially and in common speech. Mattlage v. U. S. (C. C. 1904) 139 Fed. 704.

484. Fish skins.

485. Flax straw, flax, not hackled or dressed; flax hackled, known as "dressed line," tow of flax and flax noils; hemp, and tow of hemp; hemp hackled, known as "line of hemp."

Notes of Decisions

East India Bombay hemp.—An article known in the trade as "East India Bombay hemp," invoiced and entered as such in the custom house, will be held

dutiable as hemp; and testimony that it is in effect a species of Sisal grass will not cause it to be dutiable at the rate of that article. Bailey v. Cadwalader (C. C. 1890) 43 Fed. 294.

Flax noils.—Flax noils held dutiable as waste, under Act 1897, par. 463, and not under paragraph 326 as "tow of flax," by similitude. G. B. Ritchie & Co. v. U. S. (C. C. 1905) 141 Fed. 664.

New Zealand flax.—New Zealand flax held covered by provision for sunn, sisal grass, etc. See paragraph 494.

486. Flint, flints, and flint stones, unground.
487. Fossils.
488. Fruits or berries, green, ripe, or dried, and fruits in brine, not specially provided for in this section.

Notes of Decisions

1. In general.
2. Fruits dried—Citron.
3. —— Currants.
4. —— Lychee.
5. Fruits in brine.
6. —— Cherries.
7. —— Lemons.
8. —— Limes.
9. —— Ripe olives.
10. —— Umeboshi.

1. In general.—Cherries preserved by a sulphur treatment held not dutiable as fruits green, ripe, or dried. See paragraph 217.

Fox berries held not dutiable as berries green, ripe, or dried. See paragraph 217.

Ripe cherries held not free of duty, as fruits green, ripe, or dried. See paragraph 217.

Tomatoes held dutiable as vegetables. See paragraph 215.

2. Fruits dried — Citron.—Candied citron held not dutiable as fruits green or dried. See paragraph 217.

Leghorn citron is not dutiable under Act 1883, par. 302, as a comfit, sweetmeat, or fruit preserved in sugar, but is entitled to free entry as a dried fruit. Nordlinger v. U. S. (C. C. 1895) 69 Fed. 92.

3. —— Currants.—"Dried currants," so called, from the Levantine, which are known to the trade by some 30 different names, indicating the islands or localities where grown, and which, although in fact raisins, made from a small grape, constitute the only currants known commercially or imported, are, except those grown on the island of Zante, entitled to free entry, under paragraph 489 of Act 1894, as "fruits, * * * dried, not specially provided for," and are not dutiable under paragraph 217, which covers "plums, prunes, figs, raisins and other dried grapes, including Zante currants." Hills Bros. Co. v. U. S. (1900) 99 Fed. 264, 39 C. C. A. 500.

4. —— Lychee.—Dried lychee held not entitled to free entry. See paragraph 217.

5. Fruits in brine.—Olives in brine held not dutiable as fruit in brine. See paragraph 218.

Orange and lemon peel in brine held not dutiable as preserved peel. See paragraph 221.

A saline solution used in packing fruit is used as a preservative simply and fruit of the kind is "in brine" in the language of paragraph 559. Act 1909. Without undertaking to fix what percentage of salt in a solution will make that solution brine, the evidence here does not warrant the conclusion that the fruit of this importation was "in brine." Mihalovitch, Fletcher & Co. v. U. S. (1913) 4 Ct. Cust. App. 98.

6. —— Cherries.—Cherries immersed in a solution containing not more than .402 per cent. of salt are not fruits in "brine," within Act 1897, par. 559. Causse Mfg. Co. v. U. S. (1906) 151 Fed. 4, 80 C. C. A. 461, modifying judgment A. L. Causse Mfg. Co. v. Same (C. C. 1906) 143 Fed. 690.

7. —— Lemons.—Halved lemons in brine are "fruits in brine," within paragraph 559, Act 1897, and not dutiable as lemon peel preserved, under paragraph 267, notwithstanding the brine renders the pulp inedible, and the only value is in the peel. Hills Bros. Co. v. U. S. (1903) 123 Fed. 477, 59 C. C. A. 412, reversing judgment (C. C. 1902) 113 Fed. 857.

8. —— Limes.—Pickled limes held not dutiable as fruit in brine. See paragraph 220.

Limes in brine held not to be dutiable as "limes" under Act 1897, par. 266, but to be free of duty under paragraph 559 of said act. Brennan v. U. S. (1905) 136 Fed. 743, 69 C. C. A. 395, reversing judgment (C. C. 1904) 120 Fed. 837.

9. —— Ripe olives.—Ripe olives, sometimes called "black olives," are free of duty under Act 1897, par. 559, as "fruits in brine." U. S. v. Zucca & Co. (C. C. 1909) 175 Fed. 578.

10. —— Umeboshi.—The evidence does not warrant the conclusion that the merchandise is fruit packed in its own juice. It does justify the contention of the importers that the umeboshi imported should be classified as fruits in brine. They were entitled to free entry under Act 1909. Sakai v. U. S. (1914) 5 Ct. Cust. App. 159.

489. Fruit plants, tropical and semitropical, for the purpose of propagation or cultivation.

490. Fulminates, fulminating powder, and other like articles not specially provided for in this section.

491. Furs and fur skins, undressed.

Notes of Decisions

Angora goatskins.—Raw Angora goat skins, with the hair on, being for all commercial purposes undressed fur skins, it being unprofitable to separate the hair from the skin and to use the hair as wool, cannot be classified as "wools on the skin," under Act 1890, par. 387, but are free of duty, under paragraph 588, as fur skins "not dressed in any manner." U. S. v. Bennet (1895) 66 Fed. 299, 13 C. C. A. 446.

Pulled or plucked coney skins.—"Pulled" or "plucked" coney skins—that is, such as have had the hair removed from them—held not dutiable as "dressed furs or skins," within Act 1890, par. 444, but entitled to entry free, under paragraph 588, as "fur skins, not dressed in any manner." U. S. v. Wotten (1892) 53 Fed. 344, 3 C. C. A. 553; Id. (C. C. 1892) 50 Fed. 693.

Sheepskins.—Sheepskins, purchased indiscriminately and imported unsorted, without regard to any particular use to which they might be adapted, and not shown to be used as furs, are not classifiable as "furs," or "fur skins," under Act 1897, pars. 561, 562. International Hide & Skin Co. v. U. S. (C. C. 1909) 177 Fed. 602.

Buenos Ayres sheepskins, imported with the wool on and dried, but not dressed, do not fall within the head of "raw hides and skins of all kinds." etc., and are subject to a duty of 20 per cent. ad valorem. Act July 30, 1846, § 3. Coggill v. Lawrence (C. C. 1850) Fed. Cas. No. 2,956.

Undressed clippings or waste.—Hares' combings or fur waste held not dutiable as fur undressed. See paragraph 384.

Act 1897, par. 561, providing for "furs, undressed," includes undressed clippings and detached portions of fur, used for the same purpose as the skin from which derived; and such material is therefore removed from the provision for "waste, not specially provided for," in paragraph 463. Hatters' Fur Exchange v. U. S. (C. C. 1909) 175 Fed. 588.

Fur gathered as scraps or waste from the first treatment of skins is not waste in the strict sense of refuse, but is undressed fur and as such was free of duty under section 561, Act 1897. U. S. v. Hatters' Fur Exchange (1911) 1 Ct. Cust. App. 198.

492. Gambier.

493. Glass enamel, white, for watch and clock dials.

Notes of Decisions

Watch enamel.—The substance known as "watch enamel" held dutiable as "watch material," at 25 per cent. ad valorem, and not as "manufactures of glass, or of which glass shall be a component material." Elgin Watch Co. v. Spaulding (C. C. 1884) 19 Fed. 411.

494. Glass plates or disks, rough-cut or unwrought, for use in the manufacture of optical instruments, spectacles, and eyeglasses, and suitable only for such use: Provided, however, That such disks exceeding eight inches in diameter may be polished sufficiently to enable the character of the glass to be determined.

Notes of Decisions

Goggles.—Glass disks, rough cut or unwrought, made from crown or cylinder glass, bent, known to the trade as mi-coquille glasses, which are chiefly used in the manufacture of automobile goggles to protect the eyes from dust or wind, which do not in any manner transform the rays of light which pass through them or affect the focus of the eyes in any way and which are not capable of being ground into lenses for any such purpose, are not admissible free under paragraph 577, Act 1909, as being "for use in the manufacture of optical instruments, spectacles, and eyeglasses, and suitable only for such use." Bache & Co. v. U. S. (1916) 6 Ct. Cust. App. 507.

From the use of the words "spectacles, eyeglasses, and goggles" in Act 1909, par. 105, and "spectacles and eyeglass," only goggles being omitted, in paragraph 577, it may be reasonably inferred that Congress understood goggles to be different things from spectacles and eyeglasses, and deliberately refrained from making material for them dutiable under paragraph 577. Id.

Polished discs.—In construing the provision in Act 1897, par. 565, for "glass plates or discs, rough cut or un-

wrought," with the proviso that "discs exceeding eight inches in diameter may be polished sufficiently to enable the character of the glass to be determined," held, that the proviso does not require the exclusion from said paragraph of polished square plates less than eight inches across, where the polishing is done simply to determine the character of the articles, is of no other use, and is taken off in their manufacture. Hensel, Bruckmann & Lorbacher v. U. S. (C. C. 1905) 139 Fed. 95.

Spectacle lenses rough.—Spectacle lenses ground or polished held not exempt from duty, see paragraph 84.

Spectacle lenses manufactured from Brazil or Scotch pebbles, imported with rough or unfinished edges, and commercially known as "pebbles for spectacles, rough," held free under Act 1883, and not dutiable as manufacture of glass. Young v. Spalding (C. C. 1885) 24 Fed. 22.

495. Gloves, made wholly or in chief value of leather made from horsehides, pigskins, and cattle hides of cattle of the bovine species, excepting calfskins, whether wholly or partly manufactured.

496. Goldbeaters' molds and goldbeaters' skins.

497. Grasses and fibers: Istle or Tampico fiber, jute, jute butts, manila, sisal grass, sunn, and all other textile grasses or fibrous vegetable substances, not dressed or manufactured in any manner, and not specially provided for in this section.

Notes of Decisions

1. Bass fiber.
2. Birch bark.
3. Bleached wheat stems.
4. Broken fibers of jute.
5. Grasses cut into lengths.
6. Grass, sun bleached.
7. Kittul.
8. New Zealand flax.
9. Rush.
10. Sisal grass.

1. Bass fiber.—Bass fiber subjected to a process that fits it for a definite use held not dutiable as fiber not manufactured. See paragraph 385.

2. Birch bark.—Act 1897, pars. 566, 617, relating to "fibrous vegetable substances" and to "moss, seaweeds, and vegetable substances," does not include birch bark. Reed & Keller v. U. S. (C. C. 1909) 172 Fed. 453; Reed & Keller v. U. S. (1914) 5 Ct. Cust. App. 95.

3. Bleached wheat stems.—Bleached wheat stems or wheat heads are entitled to admission free from duty, under Act 1897, par. 566, including textile grasses or fibrous vegetable substances not dressed or manufactured in any manner, and are not dutiable, under paragraph 251, and the similitude clause of the act, as "natural flowers, preserved or fresh, suitable for decorative purposes." Bayersdorfer & Co. v. U. S. (C. C. 1903) 122 Fed. 968, decree reversed U. S. v. H. Bayersdorfer & Co. (1903) 126 Fed. 732, 62 C. C. A. 16.

4. Broken fibers of jute.—The merchandise consists of broken fibers of undressed raw jute rejected by the carding machine in the first process of manufacture. These broken fibers had been later subjected to a carding process of their own. The product is more accurately described as jute, unmanufactured, than as waste not specially provided for and was entitled to free entry under both Acts 1897 and 1909. Salomon Bros. & Co. v. U. S. (1912) 2 Ct. Cust. App. 431. See, also, U. S. v. Hatters' Fur Exchange (1911) 1 Ct. Cust. App. 198.

5. Grasses cut into lengths.—Grasses cut into lengths to be used in manufacture of brushes held not dutiable under this paragraph. See paragraph 385.

6. Grass, sun bleached.—Bleached or dyed grasses held not dutiable as grasses not dressed or manufactured. See paragraph 347.

Natural grass, sun bleached, used for emblems, is not a manufactured article, and is put on the free list, under Act 1897, par. 566, as textile grasses "not manufactured in any manner, and not specially provided for." U. S. v. Richard (C. C. 1900) 99 Fed. 262.

There might be some difficulty in holding that the sun-dried grasses of the importation are textile grasses, or fibers, or other vegetable substances within the meaning of paragraphs 578 and 630, Act 1909, here relied on by the importer; but the rulings of the board of general appraisers and those of the courts, acquiesced in, as these apparently have been by Congress, establish a construction that may not now be departed from. U. S. v. Post & Co. (1912) 3 Ct. Cust. App. 260.

7. Kittul.—Kittul held not dutiable as a fibrous vegetable substance. See paragraph 385.

8. New Zealand flax.—The decision of the Treasury Department of April, 1871, holding that the article known as New Zealand flax is dutiable as flax not hackled or dressed, should, under Schedule J of Act March 3, 1883 (22 Stat. 507), be modified so as to classify the article for duty under the provision for sunn, sisal grass, and other vegetable substances not specially enumerated or provided for. (1889) 19 Op. Atty. Gen. 334.

9. Rush.—Unmanufactured rush, imported from China, cured, but not split or dyed, is "straw," within the common acceptation and definition of that word, and is therefore free of duty, under Act 1883, as "straw unmanufactured." Blydenburgh v. Magone (C. C. 1889) 40 Fed. 573, writ of error dismissed Magone v. Blydenburgh (1892) 12 Sup. Ct. 984, 145 U. S. 645, 36 L. Ed. 858.

10. Sisal grass.—East India Bombay hemp held not dutiable as sisal grass. See paragraph 485.

498. Grease, fats, vegetable tallow, and oils (excepting fish oils), not chemically compounded, such as are commonly used in soap making or in wire drawing, or for stuffing or dressing leather, not specially provided for in this section.

Notes of Decisions

In general.—The legal effect of paragraph 580, Act 1909, is to cast upon importers the burden of establishing not only that the oil imported is fit for the uses therein enumerated, but that it has no practical commercial fitness for other uses than those named. There is here a clear preponderance of proof of the government's contention that the grease of the importation was not so limited in its use. U. S. v. Klipstein & Co. (1913) 5 Ct. Cust. App. 28. See, also, Stone & Downer Co. v. U. S. (1913) 4 Ct. Cust. App. 47.

Birch tar oil.—It appearing from the evidence that the article imported was birch tar oil distilled from the wood and used in dressing russia leather, to give an odor to the leather, the mere possible but undisclosed use of this oil for other purposes did not remove it from the operation of paragraph 568, Act 1897, and it was nondutiable under that paragraph. Klipstein v. U. S. (1910) 1 Ct. Cust. App. 122.

Cod oil.—Cod oil held not dutiable as an oil for dressing leather. See paragraph 44.

Hard yellow grease.—Hard yellow grease held not free as grease. See paragraph 44.

Japanese fish oil.—"Japanese fish oil," fit only for use in soap making, wire drawing, or stuffing or dressing leather, is entitled to free entry, under paragraph 599 of Act 1890, and not classifiable, under paragraph 46, as "whale and other fish oil." U. S. v. Wells (1896) 77 Fed. 411, 23 C. C. A. 210.

Niger seed oil.—Niger seed oil, which, while used in soap making, can be used for other purposes, though without the proper qualities for such purposes, is within Act 1897, par. 568, for oils "commonly used in soap making, * * * fit only for such use." U. S. v. Colby & Co. (1907) 153 Fed. 883, 82 C. C. A. 629.

Oleic acid.—Act 1897, par. 568, relating to oils commonly used in soap making and "fit only for such uses," does not include so-called "oleic acid," or red oil, which is fit for other uses, although commonly used as soap stock. Edward Hill's Sons & Co. v. U. S. (1906) 151 Fed. 475, 81 C. C. A. 13, affirming judgment (C. C. 1906) 143 Fed. 361.

Olein.—Olein a distillate from wool grease held not dutiable as wool grease. See paragraph 46.

Vegetable tallow.—Conceding for the purposes of this case only that the merchandise is a vegetable tallow or that it is commercially known as such, it is not the vegetable tallow described in paragraph 580, Act 1909, and it cannot, therefore, be admitted free of duty. U. S. v. Davies, Turner & Co. (1913) 4 Ct. Cust. App. 81.

499. Guano, manures, and all substances used only for manure, including basic slag, ground or unground, and calcium cyanamid or lime nitrogen.

Notes of Decisions

"Expressly used for manure."—By the use of the expression "manure and all substances expressly used for manure," found in the free list of Tariff Act 1883, Congress signified that any article coming within this description should be exempt from duty, although it might be a chemical product scientifically classifiable by name under "Schedule A—Chemical Products." Magone v. Heller (1893) 14 Sup. Ct. 18, 19, 150 U. S. 70, 37 L. Ed. 1001, reversing judgment Heller v. Magone (C. C. 1889) 38 Fed. 908.

The phrase "expressly used for manure" means used "especially" or "particularly" for manure; and when there is testimony that an import invoiced as "manure salts," and containing 90 to 95 per cent. of sulphate of potash, and more than 40 per cent. of pure potash, is used as a fertilizer, or in the manufacture of fertilizers, but there is also other testimony that it is used for other purposes, it is a question for the jury whether or not it is used "expressly for manure," as above defined. Id.

Rape meal.—Rape meal held not free of duty as manure. See paragraph 385.

Substances to enrich the soil.—All imported substances, whether especially

provided for eo nomine, or covered by any language descriptive of their origin or qualities, which subserve the purpose of enriching the soil, are free, under paragraph 505 of the free-list. Schultz v. Cadwalader (C. C. 1890) 43 Fed. 290, judgment reversed Cadwalader v. Shultz (1894) 14 Sup. Ct. 1143, 154 U. S. 496, 38 L. Ed. 1082.

Sulphate of ammonia.—Sulphate of ammonia held not covered by provision for manure. See paragraph 395.

Waste of hog hair.—Certain waste of hog hair, consisting of sweepings in factories, which is used solely in the manufacture of artificial fertilizers, although not suitable in its imported condition for use as fertilizer, held subject to classification under Act 1897, par. 569, providing for "substances used only for manure," and not as "waste, not specially provided for," under paragraph 463 of said act. Shallus v. U. S. (C. C. 1903) 129 Fed. 845.

500. Gum: Amber in chips valued at not more than 50 cents per pound, copal, damar, and kauri.

501. Gunpowder, and all explosive substances, not specially provided for in this section, used for mining, blasting, and artillery purposes.

502. Gutta-percha, crude.

503. Hair of horse, cattle, and other animals, cleaned or uncleaned, drawn or undrawn, but unmanufactured, not specially provided for in this section.

Notes of Decisions

Bristles.—Bristles held not dutiable as hair of animals. See paragraph 337.

Goat's hair.—The question for determination is almost entirely one of fact, and on a review of the testimony it is held the merchandise is China goat hair, not wool, and as such was entitled to free entry under paragraph 583, Act 1909. U. S. v. Fearon Daniel Co. (1915) 5 Ct. Cust. App. 500.

Hair of the common goat, which is unfit for combing purposes, should be admitted free of duty under the provisions in the free list for hair of horses and cattle, and hair of all kinds not specifically enumerated, Act March 3, 1883 (22 Stat. 519). (1890) 18 Op. Atty. Gen. 527.

504. Hide cuttings, raw, with or without hair, and all other glue stock.

505. Hide rope.

506. Hides of cattle, raw or uncured, or dry, salted, or pickled.

Notes of Decisions

Hides in general.—Hides not specially provided for. See paragraph 604.

Where hides have been removed abroad from American cattle exported alive and these hides so removed returned here as imports, they are not to be deemed articles of the growth, produce, and manufacture of the United States and as such free of duty, but as hides of cattle as described in paragraph 437, Act 1897, and were dutiable under that paragraph. Buschoff v. U. S. (1911) 1 Ct. Cust. App. 336.

507. Hones and whetstones.

Notes of Decisions

Hones and whetstones.—Articles of hone stone held not free of duty as hones. See paragraph 385.

The provision for "hones and whetstones," in paragraph 574, Act 1897, includes only articles used in sharpening edged instruments. R. J. Waddell & Co. v. U. S. (C. C. 1904) 135 Fed. 211.

508. Hoofs, unmanufactured.

509. Hoop or band iron, or hoop or band steel, cut to lengths, or wholly or partly manufactured into hoops or ties, coated or not coated with paint or any other preparation, with or without buckles or fastenings, for baling cotton or any other commodity.

Notes of Decisions

Cotton ties.—Cotton ties, each consisting of iron strips and an iron buckle, imported in bundles, each bundle consisting of 30 strips and 30 buckles, each strip 11 feet long, the whole blackened, were held to be subject to an ad valorem duty as "manufactures of iron, not otherwise provided for" under R. S. § 2504, Schedule E, and not dutiable under such schedule as "band, hoop,

and scroll iron." Badger v. Ranlett (1882) 1 Sup. Ct. 346, 106 U. S. 255, 27 L. Ed. 194.

Hoop iron.—The words "all hoop iron," as used in R. S. § 2504, include not only hoop iron in strips of from 30 to 60 feet in length as it comes from the rolls, in which form it is usually bought and sold, but also all lengths of hoop iron not changed by manufacture into a new and distinct article. Kennedy v. Hartranft (C. C. 1881) 9 Fed. 18.

510. Hop roots for cultivation.

511. Horns and parts of, including horn strips and tips, unmanufactured.

Notes of Decisions

Polished horn strips.—Polished horn strips, ready and completed for use as bones or stays for ladies' corsets or dresses, are free of duty, under R. S. § 2503, par. 513, placing upon the free list "horns and parts of horns, unmanufactured, and horn strips and tips." Borgfeldt v. Erhardt (C. C. 1890) 41 Fed. 102.

512. Ice.

513. India rubber, crude, and milk of, and scrap or refuse india rubber, fit only for remanufacture.

Notes of Decisions

Crude balata.—The term "india rubber," in Act 1897, par. 579, has a commercial meaning that includes nearly a hundred varieties of inspissated vegetable gums, among them balata, which are used in the manufacture of what are commonly known as "rubber goods." Earle Bros. v. U. S. (C. C. 1907) 153 Fed. 773.

Crude rubber.—Dental rubber held not entitled to free entry as crude rubber. See paragraph 368.

Old india rubber shoes, purchased and imported for the same purposes as crude rubber, the commercial value of which is due solely to the rubber which they contain, and not the preparation or manufacture which they have undergone, were exempt from duty under Act March 3, 1883, as "similar in material and quality" to crude rubber. Cadwalader v. Jessup & Moore Paper Co. (1893) 13 Sup. Ct. 875, 876, 149 U. S. 350, 37 L. Ed. 764, affirming Jessup & Moore Paper Co. v. Cadwalader (C. C. 1890) 43 Fed. 288.

Scrap rubber.—Old india rubber shoes, purchased and imported for the same purposes as crude rubber, is old scrap or refuse India rubber within Act 1890, c. 1234, p. 613. Cadwalader v. Jessup & Moore Paper Co. (1893) 13 Sup. Ct. 875, 876, 149 U. S. 350, 37 L. Ed. 764.

Rubber boots and shoes, worn out by use, and fit only for remanufacture, held to be dutiable at 10 per centum ad valorem as "rags" or "waste," under paragraphs 481 and 493 of Schedule N of Act March 3, 1883, and not dutiable at 25 per centum ad valorem, as "articles composed of India rubber," under paragraph 454 of said schedule. In re Salomon (C. C. 1891) 47 Fed. 711.

There is no basis in the record for segregating the worn and the new scrap rubber of the importation. The new scrap rubber here is not a manufactured article with a changed texture; it is still rubber and "rubber, crude." Since 1890 rubber of this description had been entitled to free entry, and the act of 1909, which still relates the scrap there dealt with to the articles of which it had once been composed, does not withdraw from the term "rubber, crude" anything that had theretofore fallen within the clause. The merchandise was entitled to free entry. Magee & Co. v. U. S. (1913) 4 Ct. Cust. App. 443.

Chopping old scrap or crude rubber, separating therefrom particles of iron, such as rivets, valves, etc., grinding the rubber into smaller particles, chemically treating, washing, riffling, and blowing these, are all done to separate the rubber from the other component materials of the scrap or refuse—in short, to recover or reclaim the rubber in a shape suitable for transportation and marketing; and it has not thus been manufactured, in whole or in part, becoming a particular manufactured article; it has rather been made fit as a single material to be manufactured anew. U. S. v. Michelin Tire Co. (1911) 1 Ct. Cust. App. 518.

Paragraph 579, Act 1897, to be given its due and proper effect, must be taken to have placed on the free list all india rubber, whatever its condition, imported as a material for manufacturing india-rubber articles; and it applied to old scrap and refuse rubber, whether imported after separation or as the content of, or associated with, other materials as a part of articles formerly useful. Id.

514. (Repealed.)

This paragraph was repealed by Act Sept. 8, 1916, c. 463, § 502, post, § 5291c, and certain duties imposed upon the articles enumerated therein by §§

500, 501, of said Act Sept. 8, 1916, c. 463, post, §§ 5291a, 5291b. Said paragraph read as follows:

"514. Indigo, natural or synthetic, dry or suspended in water, and dyes obtained from indigo."

Notes of Decisions

Sulphonated and brominated indigo.—Sulphonated indigo and brominated indigo are alike pastes in point of consistency and are alike extracts of the same parent substance. Klipstein & Co. v. U. S. (1913) 4 Ct. Cust. App. 510.

515. Iodine, crude, or resublimed.

516. Ipecac.

517. Iridium, osmium, palladium, rhodium, and ruthenium and native combinations thereof with one another or with platinum.

518. Iron ore, including manganiferous iron ore, and the dross or residuum from burnt pyrites; iron in pigs, iron kentledge, spiegeleisen, wrought iron and scrap and scrap steel; but nothing shall be deemed scrap iron or scrap steel except second-hand or waste or refuse iron or steel fit only to be remanufactured; ferromanganese; iron in slabs, blooms, loops or other forms less finished than iron bars, and more advanced than pig iron, except castings, not specially provided for in this section.

Notes of Decisions

Crude hematite ore.—Hematite iron ore in a form in which it cannot be used as a pigment is not dutiable as "pigments," under Act 1897, par. 58, but as "iron ore," under paragraph 121. Hill v. Francklyn & Ferguson (1908) 162 Fed. 880, 89 C. C. A. 570.

Crude hematite ore, which in its present state cannot be used as a pigment or color, is assessable at 40 cents per ton as "iron ore," within paragraph 121, Act 1897, and not at 30 per cent. ad valorem, as "color," under paragraph 58. Francklyn v. U. S. (C. C. 1902) 119 Fed. 470.

Ferro-chrome.—Ferro-chrome, ferro-molybdenum, ferro-tungsten, and ferro-vanadium, which, like ferro-manganese, are employed as alloys in making steel, which so resemble ferro-manganese that even experts are unable to tell them apart, and which are similar in quality and use to ferro-manganese, though they produce different results, and are not applied at the same stage in the process of making steel, are, by virtue of the similitude clause, dutiable at the rate applicable to ferro-manganese under paragraph 122, Act 1897. U. S. v. Roesseler & Hasslacher Chemical Co. (1905) 137 Fed. 770, 70 C. C. A. 346, affirming judgment (C. C. 1904) 131 Fed. 576.

Ferro-chrome was dutiable under Act 1894 at four dollars per ton, as being an article similar to ferro-manganese, provided for in paragraph 110. Dana v. U. S. (C. C. 1899) 91 Fed. 522.

Ferro-manganese.—Alloys experimentally wrought held dutiable as ferro-manganese. See paragraph 102.

An alloy held not dutiable as ferro-manganese. See paragraph 154.

An alloy in the form of pigs which alloy is mixed with other metals held not dutiable as ferro-manganese. See paragraph 102.

Iron ore.—Collin's oxide held not subject to classification as iron ore. See paragraph 63.

Presence of water in iron ore, see Earnshaw v. Cadwalader (1892) 12 Sup. Ct. 851, 145 U. S. 247, 36 L. Ed. 693.

Under the tariff act of 1874, importations of iron ore are subject to a duty of 20 per cent. ad valorem under section 2504, Schedule M, R. S., as a mineral substance in a crude state not otherwise provided for, and not to 10 per cent. ad valorem under section 2516 as an unmanufactured article not herein enumerated or provided for. Marvel v. Merritt (1885) 6 Sup. Ct. 207, 208, 116 U. S. 11, 29 L. Ed. 550.

The term "iron ore," as used in the act of March 3, 1883 (22 Stat. 497), is generic, embracing all the different species of iron ore, regardless of their price, value, or accidental component chemical ingredients. It is the iron ore of commerce. (1887) 18 Op. Atty. Gen. 530.

In determining the meaning of "iron ore," as used in the provision of the act of March 3, 1883 (22 Stat. 497), which imposes a duty thereon, regard should be had to the commercial signification of the term, as Congress must be understood to have used the same in its commercial sense. (1886) 18 Op. Atty. Gen. 466.

Iron sand.—In construing the provision in Act 1897, par. 124, for "all iron in * * * forms less finished than iron in bars, and more advanced than pig iron," held, that the test is the degree of advancement in manufacture, rather than in refinement or quality, and that iron sand, a finished manufactured article, is not within said provi-

sion, but is dutiable as "manufactures of iron," under paragraph 193. Harrison Supply Co. v. U. S. (1909) 171 Fed. 406, 96 C. C. A. 362.

Muck bars.—Muck bars held not within the provision for iron in forms less finished than iron bars and more advanced than pig iron. See paragraph 103.

Scrap iron or steel.—Under R. S. § 2504, Schedule E, imposing a duty of eight dollars per ton on "wrought scrap iron of every description," and providing, further, that "nothing shall be deemed scrap iron except waste or refuse iron that has been in actual use, and is fit only to be remanufactured," it was held, that iron rails that have never been in use are not dutiable as scrap iron, though they are old and rusty, and are in fact intended by the importer to be remanufactured. Dwight v. Merritt (1891) 11 Sup. Ct. 768, 140 U. S. 213, 35 L. Ed. 450.

Punchings and clippings of wrought iron boiler plates and wrought sheet iron left after the process of the manufacture of the boiler plates into boilers is completed, and the ends of bridge rods and beams of wrought iron cut off to bring the rods and beams to the required length, are iron that has been in "actual use" within the meaning of that term as used in this section and dutiable as wrought scrap iron under this section. Schlesinger v. Beard (1887) 7 Sup. Ct. 546, 547, 120 U. S. 264, 30 L. Ed. 656.

Act 1897, par. 122, which provides for "scrap iron," and defines it as "waste or refuse iron * * * fit only to be remanufactured," refers not only to pieces or scraps thrown off or discarded in the course of manufacture, but to completed articles worn out by use, such as old chains, in small pieces, fit only for remanufacture. G. W. Sheldon & Co. v. U. S. (1907) 159 Fed. 105, 86 C. C. A. 295, affirming judgment (C. C. 1907) 152 Fed. 318.

The provision for "scrap iron" in Act 1897, par. 122, is more specific than that for "junk, old," in paragraph 588, as the latter includes an infinite variety of things, of which one kind is "scrap iron." Id.

Old fishplates, which are so worn as to have lost their usefulness for railway purposes and are suitable for use only as scrap steel, held not dutiable under Act 1897, par. 130, as "railway fishplates," but under paragraph 122, as "scrap steel." R. L. Ginsburg & Sons v. U. S. (C. C. 1906) 147 Fed. 531.

Strips of steel cut from the sides of boiler plates after their first trimming, to remove holes or other defects, or to obtain the exact size of plate desired, having two cut edges, but generally untrue, and of varying length, breadth, and thickness, and which after importation are separately rolled into long thin plates, and used for the manufacture of tacks, trunk irons, and other small articles, are "waste or refuse steel fit only to be remanufactured," and dutiable as "scrap steel," under paragraph 122, Act 1897, and not under paragraph 135, covering steel in all forms or shapes not specially provided for. U. S. v. Milne (C. C. 1902) 117 Fed. 352.

The importation was of irregularly broken pieces of old sugar mills, originally iron and steel shafting. The testimony shows that the greater part of the goods could be remanufactured only by melting and so they came within the very terms of paragraph 118, Act 1909. U. S. v. Strauss & Co. (1912) 3 Ct. Cust. App. 180.

To bring old steel rails within the provisions of paragraph 118, Act 1909, the burden is on the importer to show that the importation is not only of scrap steel, but that it is such scrap steel as to constitute "waste or refuse iron or steel fit only to be remanufactured by melting." The evidence in the record falls short of showing the shipment was of this character; it was properly held dutiable under paragraph 126. Benjamin Iron & Steel Co. v. U. S. (1911) 2 Ct. Cust. App. 159.

Iron bar ends, consisting of the crop ends, from 1 to 4 inches long, cut off from Swedish bar iron in the process of manufacturing the bars, have not been "in actual use" so as to justify their classification as scrap iron under Schedule C of the act of March 3, 1883 (22 Stat. 497). (1888) 19 Op. Atty. Gen. 103.

Steel in slabs.—Metal imported from Sweden, being in the form of cakes or slabs from 24 to 30 inches in length by 12 to 14 inches in width, and from an inch to an inch and a half thick, with the upper surface nicked into rectangular or oblique angular "caramels," about an inch and a quarter square, invoiced as "remelting steel in cakes," held dutiable as "steel in slabs" under Act 1883. Farris v. Magone (C. C. 1891) 46 Fed. 845.

519. Jalap.
520. Jet, unmanufactured.
521. Joss stick or joss light.

Notes of Decisions

Joss sticks or joss light.—A dried paste of sandalwood dust and clay, in the form of sticks, cones and coils, which, when lighted, yields a fragrant

odor and is burnt at the altars and shrines of joss houses and temples in China and Japan, is "joss light," within Act 1897, par. 587. Yamanaka & Co. v. U. S. (C. C. 1909) 172 Fed. 249.

Articles which are in truth and fact joss sticks or joss lights are subject to classification as such under Act 1897, par. 587, notwithstanding that they may have no commercial designation as such. Id.

The provision in Act 1897, par. 587, for "joss stick," held to include articles used in setting off fireworks, other than those well known as joss sticks and used for incense. Champion & Staudinger v. U. S. (C. C. 1906) 150 Fed. 239.

522. Junk, old.

Notes of Decisions

Scrap iron.—Scrap iron held not classifiable as junk, old. See paragraph 518.

Secondhand bottles.—Secondhand bottles held not junk. See paragraph 83.

523. Kelp.
524. Kieserite.
525. Kyanite, or cyanite, and kainite.
526. Lac dye, crude, seed, button, stick, and shell.

Notes of Decisions

Tetrachloride of tin.—Tetrachloride of tin, while admittedly a chemical compound, was not dutiable as such under Act 1897, and being, as appears from a preponderance of the testimony in this case, lac spirits, it was, as such, free of duty under that act. Consolidated Color & Chemical Co. v. U. S. (1911) 2 Ct. Cust. App. 192.

527. Lactarene or casein.

Notes of Decisions

Casein.—Casein is "lactarene," as enumerated in Act 1897, par. 594. U. S. v. Brownell (1908) 166 Fed. 1022, 92 C. C. A. 668, affirming judgment (C. C. 1907) 159 Fed. 219.

So-called casein industrielle, which is produced by drying the substance left after drawing off the whey from skimmed milk that has been allowed to sour, held to be "lactarene," under Act 1897, par. 594. B. P. Ducas Co. v. U. S. (C. C. 1906) 143 Fed. 362.

Plasmon.—A gritty, yellowish powder, with the trade name of "plasmon," but invoiced as lactarene, and known to the trade as lactarene, casein, or milk albumen, is not milk preserved. The importation was free of duty as lactarene under paragraph 594, Act 1909. U. S. v. Corsi, Zumsteg & Co. (1911) 2 Ct. Cust. App. 292.

528. Lard, lard compounds, and lard substitutes.
529. Lava, unmanufactured.
530. All leather not specially provided for in this section and leather board or compressed leather; leather cut into shoe uppers or vamps or other forms suitable for conversion into boots or shoes; boots and shoes made wholly or in chief value of leather; leather shoe laces, finished or unfinished; harness, saddles, and saddlery, in sets or in parts, finished or unfinished.

Notes of Decisions

1. Band or belting leather.
2. Chinese shoes.
3. Cordovan leather.
4. Gauffre.
5. Grain leather.
6. Japanned skins.
7. Leather for dress trimmings.
8. Patent leather.
9. Rough leather.
10. Saddlery.
11. Sealskin.
12. Skins for morocco.
13. Split leather.

1. Band or belting leather.—The leather strips here had been given a form and a size specially and definitely adapting them for conversion into automobile treads of different lengths and widths, and they were dutiable as assessed at 15 per cent. ad valorem under paragraph 451, Act 1909. Michelin Tire Co. v. U. S. (1914) 5 Ct. Cust. App. 91.

The merchandise consisted of strips or bands of chrome leather beveled on the edges and cut into suitable lengths for the manufacture of automobile treads. To adapt these to their special use further labor upon them was necessary. The goods are band or belting leather. They were dutiable as determined by the board under paragraph 451, Act 1909, and were likewise subject to the additional duty imposed by the proviso of that paragraph. U. S.

v. Dubied Machinery Co. (1912) 3 Ct. Cust. App. 442.

The merchandise is cut from leather of the bovine species in a form suitable to be shaped and fitted upon a particular roller, and so adapted to its final use. It is governed accordingly by U. S. v. Ringk & Co. (1912) 3 Ct. Cust. App. 353, and is dutiable under paragraph 451, Act 1909. U. S. v. Crabb & Co. (1912) 3 Ct. Cust. App. 373.

There is no uniform general trade meaning attached to the words "leather belting" confining it to that class of leather suitable in making belts for the transmission of power. U. S. v. Richards (1911) 1 Ct. Cust. App. 537.

The importation here of leather to be used in the manufacture of appliances in textile machinery, namely, picker strap and apron leather, falls properly within the description "belting leather" as used in Act 1909; it includes equally leather suited to transmit power from wheel to wheel and leather suited simply to convey materials, and is dutiable as belting leather under paragraph 451 of that act. Id.

2. **Chinese shoes.**—Chinese shoes or slippers embroidered held not dutiable as shoes of leather. See paragraph 358.

Paragraph 456, Act 1890, is applicable to all shoes made of leather, notwithstanding the fact that other materials are used in greater quantity; and Chinese shoes manufactured from various materials, including leather, cotton, silk, thread, and felt, but of which leather is the component material of chief value, are dutiable under such paragraph, and not under paragraph 461, as articles, of which leather is the component part of chief value, not specially provided for. In re Wise (C. C. 1898) 93 Fed. 443.

3. **Cordovan leather.**—Cordovan leather, cut during the process of dressing into a shape suitable for recutting into shoe-vamps, was, under the tariff act of March 3, 1883, properly dutiable as "dressed upper leather," under paragraph 461, and not as a "manufacture or article of leather," under paragraph 463, at 30 per cent. ad valorem. In re Salomon (C. C. 1891) 48 Fed. 287.

4. **Gauffre.**—"Gauffre leather," in pieces 28 inches wide, and from 32 to 36 inches long, plain on one side. and covered with designs in silver and various colors on the other, was dutiable under Act 1894, as "leather not specially provided for," under paragraph 340, and not as manufactures of leather not otherwise provided for, under paragraph 353, or as skins not otherwise provided for under paragraph 341. U. S. v. Naday (C. C. 1898) 92 Fed. 140, judgment affirmed (1899) 98 Fed. 421, 39 C. C. A. 124.

The leather of the importation dressed leather ornamented on its grain side with a diced effect does not present the appearance of raised figures in relief upon its surface, nor has it been subjected to processes aimed to produce such a result. The article is not embossed or gauffre, but diced leather. U. S. v. Brown & Co. (1914) 5 Ct. Cust. App. 212.

There is no commercial designation shown, but the artificially embossed surface of the goods makes them aptly described as "gauffre leather" in the common and ordinary acceptation of the term. The importation was dutiable as calfskins tanned and dressed, under paragraph 451, Act 1909, and was subject to the cumulative duty imposed in the proviso of that paragraph upon gauffre leather. Louis Dejonge & Co. v. U. S. (1912) 3 Ct. Cust. App. 463.

"Gauffre" is a word of French derivation and is variously spelled gauffre, gauffree, gouffre, goffer, gauffer, gaufre, and gauffrer. It accords in meaning with embossed. U. S. v. White (1911) 2 Ct. Cust. App. 80.

The fact that "gauffre" had no fixed uniform trade meaning as applied to leather when the tariff law of 1909 was enacted cannot be taken to shift the burden of proof on the government in determining whether the skins imported were gauffre leather; there is necessary simply an inquiry as to what was intended by the Congress in using "gauffre leather" in that act, and to give effect, it may be, to the actual language employed. The word "cut" there appearing, it would seem was used to impress the customary features of gauffre leather, definite sizes and shapes, but in any view cannot be taken to defeat the plain intention as to the dutiable status of the goods. The rate of duty was clearly ascertainable and the importation is dutiable as gauffre leather under paragraph 451, Act 1909. Id.

5. **Grain leather.**—The merchandise was invoiced as "dull black lining calf leather." Of the two competing provisions, "grain leather" as used in paragraph 450, Act 1909, and "calfskins tanned or tanned and dressed" in paragraph 451, the latter phrase is the more specific and controls here. Knauth, Nachod & Kuhne v. U. S. (1913) 4 Ct. Cust. App. 58. See, also, Worsdell & Co. v. Same (1911) 2 Ct. Cust. App. 270; Tilge v. Same (1911) 2 Ct. Cust. App. 129.

It would appear that the proviso to paragraph 451, Act 1909, was intended to be limited in its application to the articles described in that paragraph, and it would be to force the construction to extend it to cover the merchandise here. The leather of the importation, with a natural and an artificial grain, is properly dutiable under paragraph 450, Act 1909. Spalding & Bros.

and Worsdell & Co. v. U. S. (1912) 3 Ct. Cust. App. 356.

6. Japanned skins.—Japanned skins used for uppers are within Act 1890, par. 456, for "dressed upper leather, including * * * japanned leather," rather than under the provision in the same paragraph for "japanned calfskins," the latter provision being limited to japanned skins which are not upper leather. U. S. v. Bittel, Tepel & Eilers (C. C. 1892) 155 Fed. 554, judgment affirmed In re Collector of Customs (1893) 4 C. C. A. 680.

7. Polishing stones—Tam O'Shanter Pieces of leather, cut uniform, 28 inches in width and from 32 to 36 inches in length, having on one side an embossed pattern in silver and other colors, and designed to be cut and used in making dress trimmings, pocketbooks, and other fancy articles, are dutiable under paragraph 340, Act 1894, as leather not specially provided for, and not under paragraph 341, as "skins," or under paragraph 342, as leather cut into forms suitable for conversion into manufactured articles. U. S. v. Naday (1899) 98 Fed. 421, 39 C. C. A. 124, affirming judgment (C. C. 1898) 92 Fed. 140.

8. Patent leather.—"Patent leather" was dutiable under the act of July 30, 1846, at 20 per cent. ad valorem as "leather, upper, of all kinds," and not as a manufacture of leather. Keutgen v. Lawrence (C. C. 1850) Fed. Cas. No. 7,745.

9. Rough leather.—In determining whether rough leather includes both skins and hides a distinction between "hides" and "skins" will be recognized; hides pertaining to animals of a larger size and skins to smaller animals. Kaufmann & Co. v. U. S. (1914) 5 Ct. Cust. App. 117.

The provision for "rough leather" in paragraph 451, Act 1909, was not intended to comprehend the tanned but unfinished skins of small animals. Id.

The importation, while not entirely finished for its intended use, is nevertheless raised above classification as rough leather, using that term as it appears in the paragraph that controls (paragraph 451, Act 1909). It was properly assessed as dressed leather. Sherrard v. U. S. (1912) 3 Ct. Cust. App. 377.

"Rough leather" as used in paragraph 451, Act 1909, had such a well-established and definite trade meaning before and at the time of that enactment that no change or modification of the meaning by interpretation is permissible. U. S. v. Robertson (1911) 1 Ct. Cust. App. 379.

Where the hides of the importation had been tanned by prolonged soaking in a running stream, chosen for the purpose because of a peculiar effect that particular water had upon the hides and where the hair of these hides had then been scraped off with knives, and the hides with oil upon them trodden down in barrels, replaced again in the running stream, later to be removed, tightly stretched and pegged on the ground to dry and bleach in the sun, and so made water tight, held, this leather, as shown by the evidence, being now ready for immediate use in manufacture, is not rough leather, but leather, rather, not specially provided for, tanned and curried in effect, and as such dutiable at 15 per cent ad valorem under paragraph 451, Act 1909. Id.

10. Saddlery.—Woolen bands for use of veterinary surgeons held not classifiable as harness saddles and saddlery. See paragraph 292.

The word "saddlery," in the provision in Act 1883, for "coach and harness furniture of all kinds, saddlery, coach, and harness hardware," etc., is to be taken as a noun, and not as an adjective qualifying "hardware." McCoy v. Hedden (C. C. 1889) 38 Fed. 89.

In view of the construction by the administrative departments, by the board, and by the courts, and in the absence of clear proof of a commercial designation, the word "saddlery" occuring in paragraphs 450 and 461, Act 1909, cannot be taken to apply to articles used in the care of horses or for horsestable equipment. Stone v. U. S. (1911) 2 Ct. Cust. App. 46.

Currycombs, hoof picks, horse clippers, whip thongs, and the like are not "saddlery," and these are dutiable according to the component of chief value as manufactures of metal or the manufactures of leather. Id.

11. Sealskin.—The provision for "rough leather" not applying to unsplit sealskins, tanned, but not dressed or finished, they fall appropriately under the provision in the paragraph for "all other leather." Kaufmann & Co. v. U. S. (1914) 5 Ct. Cust. App. 117.

12. Skins for morocco.—The provision in Act 1897, par. 438, for "skins for morocco," is not limited to goatskins, but includes also certain sheepskins known as "New Zealand basils," or "Cape sheepskins." Helmrath v. U. S. (C. C. 1903) 125 Fed. 634.

13. Split leather.—Paragraph 450, Act 1909, does not cover leathers made from the hides or skins of animals that are not cattle of the bovine species, and as seal splits or seal split leathers are made from animals not of the bovine species, they do not fall within the provisions of that paragraph. Worsdell & Co. v. U. S. (1911) 2 Ct. Cust. App. 270.

It not having been shown that the terms "grain leather" and "split leather," as used in paragraph 450, Act 1909, are applicable in the trade only to leathers which are unfinished, finished leathers of these kinds made from the

hides of cattle of the bovine species are dutiable under said paragraph. Id.

Reviewing the legislative history of the proviso to paragraph 450, Act 1909, it cannot be held the Congress meant to extend its provisions to still other paragraphs—to paragraph 451, for example—and so "split leather," as employed in that proviso, does not include articles such as the skivers of the importation. These were properly held to be dutiable under paragraph 451; and as the duty would be the same it is unnecessary to determine their classification as between either "sheepskins dressed and finished" or as "other leather." Tilge v. U. S. (1911) 2 Ct. Cust. App. 129.

531. Leeches.

532. Lemon juice, lime juice, and sour orange juice, all the foregoing containing not more than 2 per centum of alcohol.

533. Lifeboats and life-saving apparatus specially imported by societies and institutions incorporated or established to encourage the saving of human life.

534. Limestone-rock asphalt; asphaltum, and bitumen.

Notes of Decisions

Asphaltum.—Asphalt mastic in cakes weighing about 55 pounds each, which were produced by subjecting limestone rock asphalt to a crushing process and mixing it with bitumen and certain crude oils, held dutiable under paragraph 93, Act 1897, for "asphaltum and bitumen, not specially provided for, * * * if dried or otherwise advanced in any manner," and not under the provision in section 6 of said act for "all articles manufactured, in whole or in part, not provided for." Gabriel v. U. S. (C. C. 1900) 122 Fed. 896; Saacke v. Same, Id. 895.

Asphaltum, from an asphalt lake, holding water mechanically, and so tenaciously that intense heat, with stirring, is necessary for drying it. and which has accordingly been exposed in a vessel to heat from steam pipes, and from steam jets which stirred it, thereby expelling the water, and, incidentally and necessarily, some volatile oils also, is entitled to free entry as "asphaltum * * * dried but not otherwise manipulated or treated," under paragraph 390 of the act of 1894. U. S. v. Trinidad Asphalt Co. (C. C. 1896) 77 Fed. 609.

In the composition of the merchandise, it appears from the record that the original substances employed in the making are different kinds of asphalt or bitumen and that certain chemicals and water are added solely for the purpose of combining the different kinds of asphalt and bitumen and so to perfect the material resulting for use as paving material. Held, the material is not to be classified as a chemical compound or mixture, but rather as asphaltum or bitumen advanced in condition, and as such dutiable under paragraph 90, Act 1909. U. S. v. Central Westrumite Co. (1911) 1 Ct. Cust. App. 400.

535. Lithographic stones, not engraved.

536. Litmus, prepared or not prepared.

537. Loadstones.

538. Madder and munjeet, or Indian madder, ground or prepared, and all extracts of.

539. Magnesite, crude or calcined, not purified.

540. Manganese, oxide and ore of.

541. Manna.

542. Manuscripts.

543. Marrow, crude.

544. Marshmallow or althea root, leaves or flowers, natural or unmanufactured.

545. Meats: Fresh beef, veal, mutton, lamb, and pork; bacon and hams; meats of all kinds, prepared or preserved, not specially provided for in this section: Provided, however, That none of the foregoing meats shall be admitted into the United States unless the same is healthful, wholesome and fit for human food and contains no dye, chemical, preservative, or ingredient which renders the same unhealthful, unwholesome or unfit for human food, and unless the same also complies with the rules and regulations made by the Secretary of Agriculture, and that, after entry into the United States in compliance with said rules and regulations, said imported meats shall be deemed and treated as domestic meats within the meaning of and shall be subject to the provisions of the

Act of June thirtieth, nineteen hundred and six (Thirty-fourth Statutes at Large, page six hundred and seventy-four), commonly called the Meat Inspection Amendment, and the Act of June thirtieth, nineteen hundred and six, (Thirty-fourth Statutes at Large, page seven hundred and sixty-eight), commonly called the Food and Drugs Act, and that the Secretary of Agriculture be and hereby is authorized to make rules and regulations to carry out the purposes of this paragraph, and that in such rules and regulations the Secretary of Agriculture may prescribe the terms and conditions for the destruction for food purposes of all such meats offered for entry and refused admission into the United States unless the same be exported by the consignee within the time fixed therefor in such rules and regulations.

The provisions of the Meat Inspection Amendment of Act June 30, 1906, c. 3913, 34 Stat. 674, mentioned in this paragraph, were re-enacted and included in the provisions of the similar act of the next following year, Act March 4, 1907, c. 2907, post, § 8681.

The Food and Drugs Act of June 30, 1906, c. 3915, also mentioned in this section is set forth post, §§ 8717-8728.

Notes of Decisions

Beef and mushrooms mixed.—Beef and mushrooms mixed together held not dutiable as meats preserved. See paragraph 385.

Chinese sausages in casing.—The provision for "sausages, Bologna," in Act 1897, par. 655, does not include all sausages in casings; and Chinese sausages in casings, which are not shown to be commercially known as "Bologna sausages," are not classifiable as such. Wing Sing Lung v. U. S. (C. C. 1909) 171 Fed. 906, judgment affirmed Wing Sing Lung & Co. v. Same (1910) 180 Fed. 392, 103 C. C. A. 538.

Cooked poultry and game in tins.—Duck meat in tins, some salted and dried, and some packed in oil, is not "poultry * * * dressed," within the meaning of Act 1897, par. 278, but is rather classifiable as "meats of all kinds, prepared or preserved," under paragraph 275. Kwong Yuen Shing v. U. S. (C. C. 1909) 177 Fed. 605.

In Act 1897, par. 275, the provision for "meats of all kinds prepared or preserved," includes cooked poultry and game, in tins, and also goose livers prepared as pâté de foie gras. James P. Smith & Co. v. U. S. (C. C. 1909) 168 Fed. 462.

The meat of ducks, salted, dried, and packed in tins, with or without peanut oil, is dutiable not as poultry dressed, nor as a nonenumerated raw or unmanufactured article, but under paragraph 275, Act 1897, as meats prepared or preserved, and not specially provided for. Kwong Yuen Shing v. U. S. (1910) 1 Ct. Cust. App. 16.

Hams.—These hams have not lost their name or their character by reason of any process to which they were subjected before importation; and the eo nomine provision for hams in paragraph 284, Act 1909, being more specific than that for prepared or preserved meats in paragraph 286, paragraph 284 controls. Neuman & Schwiers Co. v. U. S. (1913) 4 Ct. Cust. App. 64.

Sausages made of blood pudding.—Sausages made of blood pudding, being composed of material closely related to meat in every way, similar in appearance and being prepared for a similar use and being so used, were properly classified for duty, respectively, under paragraph 275, Act 1897, and paragraph 286, Act 1909. Strohmeyer & Arpe Co. v. U. S. (1912) 3 Ct. Cust. App. 399.

546. Medals of gold, silver, or copper, and other articles actually bestowed as trophies or prizes, and received and accepted as honorary distinctions.

Notes of Decisions

Cups.—The "Foxhall" gold and silver cup, having similitude in "material, quality, and texture, and the use to which it may be applied" to a "medal" made of those materials, is free of duty under sections 2499 and 2502, R. S. (1884) 18 Op. Atty. Gen. 62.

Necessity of delivery abroad.—Actual manual delivery abroad of an article awarded as an honorary distinction is not a condition precedent to the free admission of that article. American Express Co. v. U. S. (1913) 3 Ct. Cust. App. 490.

Prizes.—Copper medals washed with silver, used for distribution as prizes, but which have not been awarded as trophies, are not entitled to free entry, under Act 1890, as "medals of gold, silver or copper, such as trophies or prizes." U. S. v. McSorley (1895) 65 Fed. 492, 13 C. C. A. 15.

Shotgun.—The provision in paragraph 624, Act 1909, for free entry of "other metallic articles usually bestowed as trophies or prizes" is not limited to such as are ejusdem generis with medals, and a shotgun won in a prize shooting tournament is a trophy or prize within the meaning of the law. American Express Co. v. U. S. (1913) 3 Ct. Cust. App. 490.

547. Milk and cream, including milk or cream preserved or condensed, or sterilized by heating or other processes, and sugar of milk.

548. Mineral salts obtained by evaporation from mineral waters, when accompanied by a duly authenticated certificate and satisfactory proof showing that they are in no way artificially prepared and are only the product of a designated mineral spring.

549. Minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture, not specially provided for in this section.

Notes of Decisions

1. In general.
2. Granito or terrazo.
3. Marble chips.
4. Mexican onyx.
5. Molybdenite.
6. Natural gas.
7. Polishing stones.
8. Talc sawed into cubes.
9. Tungsten ore.
10. Whetstone blocks.

1. In general.—Crude ore mechanically ground held not free of duty as minerals crude. See paragraph 385.

It has been uniformly held in customs interpretation that the application of processes necessary to produce an article from its native condition and to bring it into a condition that it may be imported, without affecting its per se character, is not regarded either as a manufacturing process or as a process advancing it in value or condition. Hampton, Jr., & Co. v. U. S. (1915) 6 Ct. Cust. App. 392.

To exclude minerals from the provisions of paragraph 614, Act 1897, covering "minerals crude and not advanced in value or condition by refining, grinding, or other process of manufacture," it is not essential that the product of such process be given a new name. Myers v. U. S. (1911) 1 Ct. Cust. App. 506.

2. Granito or terrazo.—Granito or terrazo held not free of duty as minerals crude. See paragraph 385.

3. Marble chips.—Marble chips held not dutiable as minerals crude. See paragraph 385.

4. Mexican onyx.—Mexican onyx held not a crude mineral. See paragraph 97.

5. Molybdenite.—Molybdenite, a mineral substance imported in its natural state as freed from the rock or gangue formation in which it is found by crushing the rock or gangue without crushing or changing the condition or formation of the mineral itself and then placing the whole in water when the mineral rises to the surface and is skimmed off, is not dutiable under paragraph 81, Act 1913, as a mineral substance partially manufactured, but is free of duty under paragraph 549 as a mineral not advanced in value or condition, etc. Hampton, Jr., & Co. v. U. S. (1915) 6 Ct. Cust. App. 392. See, also, Myers v. Same (1911) 1 Ct. Cust. App. 506.

6. Natural gas.—Natural gas was exempt from duty under paragraph 496, Act 1890, as a "crude bitumen," or paragraph 651, as a "crude mineral, not advanced in value by manufacture," and was not dutiable under section 4 as a raw or unmanufactured article not enumerated. U. S. v. Buffalo Natural Gas Fuel Co. (1899) 19 Sup. Ct. 200, 201, 172 U. S. 339, 43 L. Ed. 469.

7. Polishing stones.—Tam O'Shanter polishing stones held not free of duty as minerals crude. See paragraph 81.

8. Talc sawed into cubes.—Talc sawed into cubes for use in making gas burners and insulators, the sawing being not merely to remove foreign matter and to put the material in shape for transportation, but to give it certain desired dimensions, has been "advanced in value or condition" within the meaning of Act 1897, par. 614. Kraemer & Foster v. U. S. (C. C. 1910) 180 Fed. 638.

9. Tungsten ore.—Tungsten ore, the primary extracted product of which is used as a mordant in dyeing cloth and for various other commercial purposes, and another to make high-grade steel, imparting thereto extreme hardness, density, weight, and durability, held free from duty, under section 614, Act 1897, and not dutiable under section 183, which covers "metallic mineral substances in a crude state." O. G. Hempstead & Son v. Thomas (1903) 122 Fed. 538, 59 C. C. A. 342.

10. Whetstone blocks.—Whetstone blocks, of an approximately rectangular shape, which after being quarried have had their projections removed by a process of rough dressing, and which are used in that state, held within the

provision for "minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture," under Act 1897, par. 614. Charles A. Johnson & Co. v. U. S. (C. C. 1906) 152 Fed. 656.

550. Miners' rescue appliances, designed for emergency use in mines where artificial breathing is necessary in the presence of poisonous gases, to aid in the saving of human life, and miners' safety lamps, and parts, accessories, and appliances for cleaning, repairing, and operating all the foregoing.

551. Models of inventions and of other improvements in the arts, to be used exclusively as models and incapable of any other use.

Notes of Decisions

Models of steamships.—Exact models of steamships of improved design, showing the details of the vessels valued at about $1,000 each, and intended for exhibition in steamship offices, are models of improvements in the art of shipbuilding, and are free of duty, under paragraph 616, Act 1897. Boas v. U. S. (C. C. 1904) 128 Fed. 470.

Molders' patterns.—The provision in Act 1897, par. 616, for "models of inventions and of other improvements in the arts, including patterns for machinery," is not limited to the class of patterns known as "model patterns," intended to show the working of the thing illustrated, but includes also molders' patterns, which are used as models about which to form sand molds in which castings may be made, and which are fitted for successive use in that way. U. S. v. R. Hoe & Co. (1906) 147 Fed. 201, 77 C. C. A. 427, affirming judgment R. Hoe & Co. v. U. S. (C. C. 1905) 141 Fed. 488, and writ of certiorari denied (1906) 27 Sup. Ct. 784, 203 U. S. 595, 51 L. Ed. 333.

552. Moss, seaweeds, and vegetable substances, crude or unmanufactured, not otherwise specially provided for in this section.

Notes of Decisions

Birch bark.—Birch bark held not dutiable as a vegetable substance. See paragraph 385.

Crude horseradish roots. — Crude horseradish roots held entitled to free entry as a vegetable substance, unmanufactured, under paragraph 630, Act 1909. U. S. v. Nix & Co. (1913) 4 Ct. Cust. App. 145.

A review of the decisions shows that the word "vegetables" has not been employed in tariff acts in a strictly botanical sense, but rather has been applied to vegetables commonly used as food. Horseradish is botanically a vegetable. Its use, however, is not as a food, but as a condiment. It is free of duty under paragraph 630, Act 1909, as a vegetable substance, unmanufactured, not otherwise specially provided for. U. S. v. Wallace (1913) 4 Ct. Cust. App. 142.

Lily buds.—Lily buds held not dutiable as vegetable substances crude. See paragraph 210.

Lily of the valley roots.—Lily of the valley roots are not covered by Act 1894, par. 558, relating to "moss, seaweeds, and vegetable substances," not being vegetable substances in the class of moss and seaweeds. McAllister v. U. S. (C. C. 1906) 147 Fed. 773.

Nori.—Nori, a seaweed gathered from the ocean and sun-dried, without the addition of any other substance and without being subjected to any other process than spreading it on mats to facilitate drying, is "seaweeds * * * crude or unmanufactured," within the meaning of Act 1897, par. 617. U. S. v. M. Furuya & Co. (C. C. 1910) 176 Fed. 480.

"Not otherwise provided."—In construing provisions of the tariff laws, such as paragraph 558, Act 1894, which provides for "moss, seaweeds, and vegetable substances, crude or unmanufactured, not otherwise specially provided for in this act," the principle of "noscitur a sociis" is to be applied, so as to confine the concluding general words to vegetable substances of the same kind with those specifically enumerated. Dodge v. U. S. (1898) 84 Fed. 449, 28 C. C. A. 152, affirming (C. C. 1896) 77 Fed. 602, and distinguishing Ingersoll v. Magone (1893) 53 Fed. 1008, 4 C. C. A. 150.

Sea grass.—Sea grass, used for making mattresses and unholstery purposes, and which is an entirely different article from sea moss, which is used for food and for medical purposes, and is not known commercially, as sea moss, held not dutiable as such under Act 1897, par. 81, but entitled to free entry under paragraph 617, which covers "moss, seaweeds and vegetable substances, crude, or unmanufactured, not otherwise specially provided for in this act." In re F. W. Myers & Co. (C. C. 1903) 123 Fed. 952.

Sliced beets, kiln-dried.—Sliced beets kiln-dried held not vegetable substances. See paragraph 200.

Vegetable substances in general.—The term "vegetable substances" in paragraph 630, Act 1909, cannot be limited to articles that are strictly ejusdem generis with moss and seaweeds. Reed & Keller v. U. S. (1914) 5 Ct. Cust. App. 95.

553. Myrobolans fruit.

554. Cut nails and cut spikes of iron or steel, horseshoe nails, horseshoe nail rods, hobnails, and all other wrought-iron or steel nails not specially provided for in this section; wire staples, wire nails made of wrought iron or steel, spikes, and horse, mule, or ox shoes, of iron or steel, and cut tacks, brads, or sprigs.

Notes of Decisions

Staples.—Wire in U forms of heavy wire held not dutiable as staples. See paragraph 114.

555. Needles, hand sewing and darning, and needles for shoe machines.

Notes of Decisions

Needlecases.—Paper folders of such a flimsy nature that, unless most carefully handled, their use cannot be long continued without crumpling or breaking, are not of the permanent character ordinarily and commonly associated with the terms "needlebooks" and "needlecases." Merchandise consisting of such folders, containing packages of needles of various sizes, is classifiable on the free list, paragraph 555, Act 1913, as needles, and is not dutiable under paragraph 135 as "needlecases or needlebooks furnished with assortments of needles. * * *" U. S. v. Strauss Bros. & Co. (1916) 6 Ct. Cust. App. 498.

Surgical needles.—The provision in Act 1897, par. 620, for "hand sewing" needles, relates to such as are used by persons generally who use needles, and does not include surgical needles. A. J. Woodruff & Co. v. U. S. (C. C. 1905) 138 Fed. 946.

556. Newspapers and periodicals; but the term "periodicals" as herein used shall be understood to embrace only unbound or paper-covered publications issued within six months of the time of entry, devoted to current literature of the day, or containing current literature as a predominant feature, and issued regularly at stated periods, as weekly, monthly, or quarterly, and bearing the date of issue.

Notes of Decisions

Periodicals.—German novels translated into English and issued in pamphlet form at stated intervals held not free of duty as periodicals. See paragraph 329.

Illustrations for magazine imported separately held not free as periodicals. See paragraph 324.

A pictorial paper, wholly printed in Germany, and imported to be used as a supplement to a paper in New York, is exempt from duty as a periodical, under Act 1890, par. 657. New York Daily News v. U. S. (1895) 65 Fed. 493, 13 C. C. A. 16, reversing judgment In re New York Daily News (C. C. 1894) 61 Fed. 647.

Lithographic fashion prints, forming part of a monthly fashion periodical published abroad, and having a literary part, consisting of notes upon, and a letter concerning, ladies' current fashions, were excepted from duty under the excepting clause of paragraph 562, Act 1894. Richards v. U. S. (C. C. 1899) 91 Fed. 516.

The provision for "periodicals" in Act 1883, held to include a periodical publication not devoted at all to current events, but made up of serial stories supplemented by a small quantity of miscellaneous matter. Schmidt v. U. S. (C. C. 1892) 150 Fed. 238.

Periodical publications bound in stiff covers in regular book form (each volume containing several numbers of any such publication) lose their character as periodicals and become dutiable as books under Act 1883. (1885) 18 Op. Atty. Gen. 315.

557. Nuts: Marrons, crude; coconuts in the shell and broken coconut meat or copra, not shredded, desiccated, or prepared in any manner; palm nuts and palm-nut kernels.

558. Nux vomica.

559. Oakum.

560. Oil cake.

561. Oils: Birch tar, cajeput, coconut, cod, cod liver, cottonseed, croton, ichthyol, juglandium, palm, palm-kernel, perilla, soya-bean, and olive oil rendered unfit for use as food or for any but mechanical or manufacturing purposes, by such means as shall be satisfactory to the Secretary of the Treasury and under regulations to be prescribed by him; Chinese nut oil, nut oil or oil of nuts not specially provided for in this section; petroleum, crude or refined, and all products obtained from petroleum, including kerosene, benzine, naphtha, gasoline, paraffin, and paraffin oil; and also spermaceti, whale, and other fish oils of American fisheries, and all fish and other products of such fisheries.

Notes of Decisions

1. Albolene.
2. Cocoanut oil.
3. Ichthyol sodium.
4. Isarol.
5. Nucoa butter.
6. Nut oil.
7. Olive oil.
8. Products of American fisheries.
9. Products of petroleum.
10. Sesame oil.

1. Albolene.—Albolene held not a product of petroleum. See paragraph 367.

2. Cocoanut oil.—In Act 1897, par. 626, the provision for "cocoanut oil" includes refined as well as unrefined oil. Fuerst Bros. & Co. v. U. S. (1909) 176 Fed. 95, 100 C. C. A. 25, reversing judgment (C. C. 1908) 166 Fed. 1014.

"Cocoanut oil," in Act 1897, par. 626, is a more specific term than "cocoa butterine," in paragraph 282. Id.

As to certain cocoanut oil of the melting point of 70° to 75° F., which has been purified and rendered suitable for culinary purposes and the manufacture of high-grade soaps, and which is not susceptible of the same uses as cocoabutter, held, that the article is not subject to duty as "cocoa-butterine," under paragraph 282, Act 1897, but free of duty under paragraph 626. U. S. v. Oriental Amer. Co. (C. C. 1904) 129 Fed. 249.

3. Ichthyol sodium.—Inasmuch as, technically and commercially, the term "ichthyol" includes no other ichthyol compounds than ichthyol ammonium, the unqualified enumeration of "ichthyol" in Act 1897, par. 626, should not, in the absence of words indicating an intention to include such compounds, be held to include ichthyol sodium. Merck & Co. v. U. S. (C. C. 1910) 177 Fed. 482.

4. Isarol.—The importation is a compound obtained by treating crude ichthyol oil with sulphuric acid and neutralizing this with ammonium carbonate. Paragraph 626, Act 1897, is confined to oils, and, so far as it relates to ichthyol, may properly be read, "oils, namely, ichthyol," etc. The particular name by which an ichthyol preparation is known cannot determine the question of fact as to whether it is dutiable under that paragraph as ichthyol oil; whether, in truth, it is such a preparation as retains sufficient characteristics of the ichthyol oil to be within the intent and meaning of Congress in enacting paragraph 626. Is the commodity ichthyol oil, must be the true inquiry, for the paragraph covers all ichthyol oils. The importation here is a product of ichthyol, called isarol. Equally with Merck's ichthyol, it is an ammonium sulphoichthyolate, and as such is an oil within the meaning of paragraph 626. It was entitled to free entry as "oil, ichthyol." Cassett v. U. S. (1912) 2 Ct. Cust. App. 465.

5. Nucoa butter.—Nucoa butter made from cocoanut oil held not exempt as cocoanut oil. See paragraph 232.

6. Nut oil.—So-called nut oil, derived from the fruit of aleurites vernica, of China, is properly subject to classification under paragraph 626, Act 1897, and not under that in paragraph 3 of said act, for "essential oils." Edward Hills, Sons & Co. v. U. S. (C. C. 1903) 127 Fed. 970.

7. Olive oil.—Certain olive oil found to be edible, and held, therefore, to be excluded from Act 1897, par. 626, relating to olive oil "fit only" for manufacturing or mechanical purposes. Holbrook Mfg. Co. v. U. S. (C. C. 1909) 174 Fed. 736.

Where witnesses called for the government were Italians, who testified that the olive oil imported was fit for food, but was of a poor quality, and that it burned the throat, and that it was bought by the poorer class of Italians, and it had a strong, offensive, and rancid odor, and a witness for the importer testified that it was a nonedible oil, unsafe for human consumption, and that it was not manufactured, imported, or adapted for food consumption, it was free, under Act 1897, par. 626, as olive oil for manufacturing or mechanical purposes, "fit only for such use," and not dutiable as olive oil not specially provided for, under paragraph 40 of the act. Oil Seeds Pressing Co. v. U. S. (C. C. 1902) 114 Fed. 793.

The result of chemical tests as here shown is inconclusive, and in view of the greater number and experience of the witnesses for the importers as to the appearance, taste, and smell of the oils, and further in view of the fact that the oils here were actually import-

ed and sold as mechanical oils and for use as mechanical oils, the importation must be deemed olive oil for manufacturing or mechanical purposes, worth not more than 60 cents per gallon, and as such it was free of duty under paragraph 626, Act 1897. Sheldon & Co. v. U. S. (1911) 2 Ct. Cust. App. 275.

This importation, it seems, by a marked preponderance of the evidence, consisted of olive oil made of decayed fruit and shipped in a variety of containers, such as petroleum barrels or fresh goatskins; that it was ill smelling and rancid to the taste and was used generally for manufacturing purposes. Held, the oil was not edible, was fit only for manufacturing or mechanical purposes, and was so free of duty under paragraph 626, Act 1897. Holbrook v. U. S. (1911) 1 Ct. Cust. App. 263.

8. Products of American fisheries.—An American corporation imported fish caught in Canadian fresh waters by a Canadian corporation, which in catching the fish used nets which were bought by the former corporation, and leased to the latter for a period covering the life of the nets, and for a sum much less than their value. Held, that the importing corporation "owned" these nets, within paragraph 571, Act 1890, providing for the free entry of "fresh or frozen fish (except salmon), caught in fresh waters * * * with nets or other devices owned by citizens of the United States," and that the fish thus caught were free of duty under said paragraph. Detroit Fish Co. v. U. S. (C. C. 1901) 125 Fed. 801.

A corporation consisting of American citizens fitted out a registered American vessel, which was manned with an American crew, and engaged in the business of catching turtles in Central American waters, and canning them aboard the vessel. Held, that this constitutes an American fishery, within Act 1894, par. 568. Downing v. U. S. (C. C. 1900) 124 Fed. 107.

Fish caught in a bay on Lake Ontario, in Canadian waters, by citizens of Canada, notwithstanding such citizens were employed by a corporation of New York, are not within Act 1897, par. 555, placing on the free list fish caught in the Great Lakes by citizens of the United States. Lake Ontario Fish Co. v. U. S. (C. C. 1900) 99 Fed. 551.

Act 1897, par. 626, relating to oils, and putting on the free list, after enumerating a large number of oils, "spermaceti, whale and other fish oils of American fisheries, and all fish and other products of such fisheries," will not be construed to admit free of duty "all fish and other products of American fisheries," since paragraphs 258–261 provide specifically for the duty on such fish. Id.

Though originally caught in American waters, and frozen in Canada, they are still subject to duty, unless identity be regularly proved. Gauthier v. Bell (C. C. 1877) Fed. Cas. No. 5,277.

Whale oil, manufactured by the crew of an American whaler, is not dutiable as the product of "foreign fishing," though purchased and brought into port by persons in a foreign service. U. S. v. Burdett (C. C. 1801) Fed. Cas. No. 14,684.

In all essentials the equipment put in place by the importer in the Canadian waters of Lake Erie, or put in place by the importers' orders, constituted an American fishery, and all the fish there taken were the sole property of the importer and the products of an American fishery. There was no requirement of law as to the showing necessary to be made to entitle these fish to free entry other than that they should be the products of American fisheries. This showing could be made before the board after protest had been filed in due form and in due time. U. S. v. Post Fish Co. (1914) 5 Ct. Cust. App. 130.

The American fishing vessel took no part in the fishing operations in question here except to convey from the United States to Newfoundland certain fishing supplies. A portion of the fishing tackle so conveyed was used under the supervision and by employees of an American citizen temporarily at Bonne Bay, Newfoundland; but the fishermen engaged there for service apparently used their own boats and presumably obtained there their supplies. The fish so caught were cured on British soil and shipped to the United States in a British vessel. Held, the importation was not entitled to free entry as the product of American fisheries under paragraph 567, Act 1909. U. S. v. Reading (1911) 1 Ct. Cust. App. 515.

9. Products of petroleum.—Act 1897, par. 626, provides a countervailing duty on "the products of crude petroleum produced in any country which imposes a duty on petroleum or its products exported from the United States." Held, that this is not applicable where the product is manufactured in a country imposing no duty on such products imported from the United States, though the petroleum used originated in a country imposing a duty on American petroleum. U. S. v. Swan & Finch Co. (1909) 169 Fed. 108, 95 C. C. A. 669.

In accordance with the practice in the First Circuit, the decision of the Circuit Court of Appeals for the Second Circuit in U. S. v. R. F. Downing & Co. (1906) 146 Fed. 56, 76 C. C. A. 376, with reference to Act 1897, par. 626, as applied to the products of petroleum, followed. U. S. v. F. A. Marsily & Co. (1908) 165 Fed. 186, 91 C. C. A. 220.

The proviso in paragraph 626, Act 1897, providing a countervailing duty on "crude petroleum, or the products of crude petroleum," is not limited to

the articles enumerated in the preceding portion of that paragraph, but should be read into every section of the tariff which enumerates a product of petroleum. The special enumeration of "paraffin" in paragraph 633, does not remove that substance from the scope of the proviso. U. S. v. R. F. Downing & Co. (1906) 146 Fed. 56, 76 C. C. A. 376, reversing judgments (C. C. 1904) 135 Fed. 250, and Schoellkopf, Hartford & Hanna Co. v. U. S. (C. C. 1905) 139 Fed. 58.

The provision in paragraph 626, Act 1897, for "products of crude petroleum" does not include articles not composed in chief value of petroleum, even though the petroleum predominates in quantity. Id.

Paragraph 626, Act 1897, providing a countervailing duty on "crude petroleum, or the products of crude petroleum, produced in any country which imposes a duty on petroleum or its products exported from the United States," is intended to provide that, when crude petroleum or any of its products is imported from a country which imposes a duty thereon when imported from the United States, it shall pay duty at the rate so imposed by such country on merchandise in the same condition. A product of petroleum is subject to the duty so imposed by the country of manufacture on such product when coming from the United States, rather than to that so imposed on crude petroleum by the country in which the petroleum was produced. If no duty is so imposed on such product by the country in which it is manufactured, it is not liable to the countervailing duty, even though produced from petroleum originating in a country which does impose such a duty thereon. Id.

The clear oily liquid described in the German Pharmacopœia as "Parafinum Liq. Ph.: G.," and consisting of a mixture of the higher fluid members of the paraffine series of hydrocarbons, was entitled to free admission under paragraph 671 of the act of October 1, 1890, as "paraffine," and was not dutiable under the designation, "Products or preparations known as alkalies * * *, distilled oils, * * * and all combinations of the foregoing," contained in paragraph 76. Shoellkopf, Hartford & MacLagan v. U. S. (1896) 71 Fed. 694, 18 C. C. A. 301.

In the interpretation of a statute, whenever possible, effect will be given to all parts of the act, even though to do this enlarges or limits the stricter meaning of some provision in the act, and though paraffin is free of duty, according to one paragraph of the Act of 1897, paraffin oil produced from petroleum must be taken to have been included by intent in paragraph 626 of that act, the proviso to which makes crude petroleum or its products subject to a countervailing duty and to be dutiable under said paragraph 626. Sonneborn Sons v. U. S. (1911) 1 Ct. Cust. App. 443.

10. Sesame oil.—The provision for sesame oil in paragraph 626, Act 1897, held to include ground sesame seed in the form of pulp, from which the oil has not been removed, the article being known commercially as sesame oil. It is immaterial that there is another and more refined product known and dealt in under the same name. F. Zaloom & Sons v. U. S. (C. C. 1905) 140 Fed. 31.

562. Oleo stearin.
563. Orange and lemon peel, not preserved, candied, or dried.
564. Orchil, or orchil liquid.

Notes of Decisions

Orchil extract.—Orchil extract held not included in Act 1897, par. 628, relating to "orchil, or orchil liquid," because it is a manufactured article. G. Siegle & Co. v. U. S. (C. C. 1908) 166 Fed. 1015.

565. Ores of gold, silver, or nickel, and nickel matte; ores of the platinum metals; sweepings of gold and silver.

Notes of Decisions

Silver ore, ground.—Silver ore, ground, is not dutiable under the tariff act of March 3, 1883 (22 Stat. 488). (1885) 18 Op. Atty. Gen. 148.

Sweepings.—The merchandise is sweepings of silver contained in sawdust, and it is imported so that the silver content may be reclaimed. It falls clearly within paragraph 643, Act 1909, providing free entry for "sweepings of gold and silver." U. S. v. Henderson (1914) 5 Ct. Cust. App. 62.

566. Paper stock, crude, of every description, including all grasses, fibers, rags, waste, including jute, hemp and flax waste, shavings, clippings, old paper, rope ends, waste rope, and waste bag-

ging, and all other waste not specially provided for in this section, including old gunny cloth and old gunny bags, used chiefly for paper making.

Notes of Decisions

Gunny bagging.—Gunny bagging as paper stock. See paragraph 408.

Mill sweepings.—Certain waste of an inferior quality, fit only for paper stock, consisting of mill sweepings, which contain not more than 1 per cent. of wool, that is not of sufficient fiber for commercial purposes, and is not separable from the material with which it is mixed, held not dutiable as waste in part of wool, under Act 1897, par. 362, but within the provision for "paper stock * * * fit only to be converted into paper," in paragraph 632. In re R. F. Downing & Co. (C. C. 1905) 139 Fed. 590.

567. Printing paper (other than paper commercially known as handmade or machine handmade paper, japan paper, and imitation japan paper by whatever name known), unsized, sized, or glued, suitable for the printing of books and newspapers, but not for covers or bindings, not specially provided for in this section, valued at not above 5 cents per pound, decalcomania paper not printed.

This paragraph was amended by Act Sept. 8, 1916, c. 463, § 600, 39 Stat., to read as set forth above. The amendment consisted in changing the figures 2½ to 5.

568. Parchment and vellum.

Notes of Decisions

Cutch.—The importation in question, being an extract of the bark of the mangrove, used for tanning, is classifiable as "cutch," under paragraph 542, Act 1897. U. S. v. Marden (C. C. 1909) 175 Fed. 153.

569. Paris green and London purple.

570. Pearl, mother of, and shells, not sawed, cut, flaked, polished, or otherwise manufactured, or advanced in value from the natural state.

Notes of Decisions

Shells.—Shells not entitled to free entry as uncut, etc., see paragraph 369.

Shells were imported into the United States, which, before their importation, had their outer layers cleaned off by acid, and their second layers ground off by an emery wheel so as to expose the brilliant interior. They were sold for ornaments, and also used for buttons, handles to pen-knives, etc., without, however, any new or distinctive name or use after such treatment. Held, that such shells were not within the sense of section 2504 of the Revised Statutes, which imposes a duty on manufactures of shells, but that they fell under section 2505, which exempts from duty "shells of every description not manufactured." Hartranft v. Wiegmann (1887) 7 Sup. Ct. 1240, 121 U. C. 609, 30 L. Ed. 1012; Same v. Winters (1887) 7 Sup. Ct. 1244, 121 U. S. 616, 30 L. Ed. 1015.

Shells which have been treated with chloride of lime and washed with water to cleanse them from animal or vegetable matter are entitled to free entry under paragraph 635, Act 1897. While the cleansing may add slightly to their value, they cannot be said to have been advanced in value from their natural state so as to exclude them from such paragraph. Schoenemann v. U. S. (1903) 119 Fed. 584, 56 C. C. A. 104, reversing decree (C. C. 1902) 115 Fed. 842.

571. Personal effects, not merchandise, of citizens of the United States dying in foreign countries.

572. Pewter and britannia metal, old, and fit only to be remanufactured.

573. Philosophical and scientific apparatus, utensils, instruments, and preparations, including bottles and boxes containing the same, specially imported in good faith for the use and by order of any society or institution incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use and by order of any college, academy, school, or seminary of learning in the United

States, or any State or public library, and not for sale, and articles solely for experimental purposes, when imported by any society or institution of the character herein described, subject to such regulations as the Secretary of the Treasury shall prescribe.

Notes of Decisions

Construction in general.—The history of paragraph 650, Act 1909, shows a purpose to regard less the character of the article imported than its intended use. The object was to admit the articles described free of duty when imported by designated institutions in the furtherance of education. U. S. v. Kastor & Bros. (1915) 6 Ct. Cust. App. 52.

Absolute alcohol.—So-called "absolute alcohol," manufactured in Germany, showing 198 degrees of proof, imported for the laboratory use of certain colleges, held duty free as a scientific preparation imported in good faith for the use of institutions incorporated for educational and scientific purposes, not intended for sale, under paragraph 677, Act 1890, and not dutiable as alcohol. under paragraphs 329 and 333. In re Kny (C. C. 1893) 57 Fed. 190.

Affidavit.—To entitle an importer to the benefit of paragraph 585, Act 1894, authorizing the free entry of "philosophical and scientific instruments imported for the use of a society incorporated for scientific purposes," the affidavit required by the regulations prescribed by the secretary of the treasury in such cases must be filed before the arrival of the articles, showing that they were imported by order of such institution, and not for sale or distribution; otherwise, the collector is justified in requiring payment of the prescribed duty. Eimer v. U. S. (C. C. 1898) 87 Fed. 202.

Certificate of delivery.—Certain scientific apparatus, etc., imported for educational institutions, was claimed to be subject to paragraph 638, Act 1897, exempting such articles from duty when imported in compliance with regulations of the Secretary of the Treasury; but the importers had not filed a certificate of delivery to the institutions within 90 days after entry, as required by such regulations. Held, that that requirement is a reasonable one, and that, the collector, in default of a compliance therewith, properly exacted duty on the apparatus. Eimer & Amend v. U. S. (C. C. 1906) 146 Fed. 144.

Educational institutions in general.—A review of the decisions makes clear that in fixing the dutiable or nondutiable status of articles imported by institutions to further educational objects regard should be had not so much to intrinsic character or to use in chief but rather to the actual use for which the particular goods were in fact brought in. This judicial interpretation stands approved by subsequent congressional enactments. The scissors of the importation, marked "Board of Education," and destined to be used in the teaching of sewing in New York City schools, were entitled to free entry under paragraph 650, Act 1909. U. S. v. Kastor & Bros. (1915) 6 Ct. Cust. App. 52.

Straw-sewing machines imported for the use of the Boston Trade School for Girls held ruled by U. S. v. Kastor & Bros. (1915) 6 Ct. Cust. App. 52, and were entitled to free entry. U. S. v. Durbrow & Hearne Mfg. Co. (1915) 6 Ct. Cust. App. 65.

Hospitals.—A hospital, with incidental educational features, such as the training of nurses and the instruction of medical students, is not an "institution incorporated or established solely for * * * educational * * * purposes," nor a "college, academy, school, or seminary of learning," within paragraph 638, Act 1897; and surgical instruments or appliances imported by such a hospital for its use are not entitled to admission free of duty under said paragraph. Massachusetts General Hospital v. U. S. (1901) 112 Fed. 670, 50 C. C. A. 417.

It is immaterial that the act of incorporation of such hospital did not specifically recognize or provide for its educational features, but that the same were of subsequent growth. U. S. v. Massachusetts General Hospital (C. C. A. 1900) 100 Fed. 932, affirming decree In re Massachusetts General Hospital (C. C. 1899) 95 Fed. 973.

This institution was established for the sole purpose of providing a post graduate course in medicine and surgery for practicing physicians. The hospital was established as an adjunct to the school, no cases being received for treatment except for purposes of instruction. The institution is an educational one. U. S. v. Rheinboldt (1915) 6 Ct. Cust. App. 66.

It being an educational institution, scientific instruments imported for use in the New York Postgraduate Medical School and Hospital were entitled to free entry under paragraph 650, Act 1909. Id.

Medical schools.—The College of Physicians and Surgeons, which is known as the "Medical School of Columbia College," is an "institution" for whose use philosophical and scientific apparatus may be entered free of duty, under paragraph 677, Act 1890. U. S. v. Hensel (C. C. 1896) 72 Fed. 41.

Philosophical and scientific apparatus.—Surveyors' compasses held not philo-

sophical instruments. See paragraph 94.

Whether certain articles shall be classed as "philosophical apparatus" or as "manufactured articles or wares not specially enumerated or provided for in this act," and composed wholly or in part of any metal, is to be determined by ascertaining whether they are used wholly or mainly in carrying on observations and experiments of a philosophical character, or wholly or mainly in the practice of the arts and professions, and, where an instrument is much used for both purposes, it is a question for the jury to determine by the preponderance of use. Robertson v. Oelschlaeger (1890) 11 Sup. Ct. 148, 137 U. S. 436, 34 L. Ed. 744.

Paragraph 585 of the tariff act of 1894, which permits the free importation of "philosophical and scientific apparatus, utensils, instruments, and preparations" for certain uses, among others for the use of institutions incorporated or established for educational or scientific purposes, is entitled to a liberal construction, the exemption having in view the highest interests of the public, and being one which has been made, in some terms, in every customs act. The addition in the later statutes of the word "scientific" to the word "philosophical," which was used alone in the earlier enactments, must also be held, under general rules of construction, to have broadened the exemption. Surgical instruments, designed and adapted for use in practical surgery, are scientific instruments, and within the exemption, when specially imported in good faith by a general hospital, maintained, among others, for educational purposes, for use in its clinics and training school for nurses. U. S. v. Massachusetts General Hospital (1900) 100 Fed. 932, 41 C. C. A. 114, affirming decree In re Massachusetts General Hospital (C. C. 1899) 95 Fed. 973.

The mere fact that imported articles were designed for use by physicians and surgeons was not sufficient to bring them within the category of "scientific instruments," admissible free under Act 1890. U. S. v. Presbyterian Hospital (1896) 71 Fed. 866, 18 C. C. A. 338.

Museum or preparation jars held admissible free of duty. O. G. Hempstead & Son v. U. S. (C. C. 1903) 122 Fed. 752.

Surgical scissors held admissible free of duty. Id.

Microscopes and a movable object table held to be "philosophical and scientific apparatus," within the meaning of paragraph 677, Act 1890. CONTRA, however, as to a microscope case imported without a microscope. U. S. v. Hensel (C. C. 1896) 72 Fed. 41.

A microscope imported by a physician or surgeon who swears that it is for use in his laboratory, of which he is the instructor (being evidently a laboratory for clinical purposes), is to be regarded as imported for the use of an "institution," within paragraph 677, Act 1890. But a microscope imported by one who swears that he is to be instructor of a class of histology at Greenville, in the state of South Carolina, is not to be so regarded, in the absence of evidence to show that such a class is in existence. Id.

Where descriptive words used in the tariff acts are commercial terms, they are to be construed in the sense in which they are used in commerce; and since at the time of the passage of Act of 1883 there was a class of articles defined and known in the branch of commerce to which they belonged as philosophical instruments, all articles within that class are dutiable under the trade name, as used in said act. Fox v. Cadwalader (C. C. 1889) 42 Fed. 209.

Anemometers, hygrometers, Ruhmkorf coils, barometers, stereopticons, galvanometers, Geissler tubes, Grenat batteries, and radiometers, held to be dutiable, as "philosophical apparatus and instruments," at the rate of 35 per cent. ad valorem. Manasse v. Spalding (C. C. 1885) 24 Fed. 86.

An iron cylinder containing sulphurous acid indispensable in keeping its contents in the safe and proper way to make contents available for scientific instruction held scientific apparatus, and as such free of duty. U. S. v. Wyman & Co. (1912) 2 Ct. Cust. App. 440.

An instrument designed for the reproduction of artists' models, statuary, and decorative architecture, imported for the purpose of being temporarily exhibited as a philosophical or scientific apparatus for the promotion of industry in the United States, and to be exported within six months after its importation, may fairly be regarded as a "philosophical or scientific apparatus" within the meaning of paragraph 701 of the tariff act of July 24, 1897 (30 Stat. 203), and is entitled to be admitted free of duty. (1902) 24 Op. Atty. Gen. 28.

574. Phosphates, crude.

575. Phosphorus.

576. Photographic and moving-picture films, sensitized but not exposed or developed.

577. Plants, trees, shrubs, roots, seed cane, and seeds, imported by the Department of Agriculture or the United States Botanic Garden.

578. Platinum, unmanufactured or in ingots, bars, plates, sheets, wire, sponge, or scrap, and vases, retorts, and other apparatus, vessels, and parts thereof, composed of platinum, for chemical uses.

Notes of Decisions

Substitute for platinum wire.—Substitute for platinum wire held not platinum in wire. General Electric Co. v. U. S. (1913) 4 Ct. Cust. App. 398.

579. Plumbago.

580. Potash: Crude, or "black salts"; carbonate of; cyanide of; sulphate of; hydrate of, when not containing more than 15 per centum of caustic soda; nitrate of, or saltpeter, crude; and muriate of.

Notes of Decisions

Refined carbonate of potash.—Refined carbonate of potash was entitled to free entry as "potash, * * * carbonate of," under paragraph 595, Act 1894, and was not subject to duty under paragraph 60, as within the description "all chemical compounds and salts not specially provided for in this act." U. S. v. Giese (1897) 83 Fed. 692, 28 C. C. A. 380, affirming decree (C. C. 1897) 78 Fed. 805.

The enumeration, in paragraph 595, Act 1894, of "potash, crude, carbonate of, or black salts," includes the three articles, crude potash, carbonate of potash, and black salts; and carbonate of potash, from which impurities have been removed by leeching, is accordingly entitled to free entry. U. S. v. Giese (C. C. 1897) 78 Fed. 805, judgment reversed (1897) 83 Fed. 692, 28 C. C. A. 380.

Saltpeter.—Saltpeter, known in commerce as "crude saltpeter," held entitled to free entry as such, though partly manufactured. Act 1832. Farnham v. Bancroft (C. C. 1840) Fed. Cas. No. 4,671.

Sulphate of potash.—In relation to each other, paragraph 70, Act 1883, is general, and paragraph 505 is specific, as differentiating from the larger class of articles, denominated "sulphate of potash," the smaller portion "expressly used as manure." Schultz v. Cadwalader (C. C. 1890) 43 Fed. 290, judgment reversed Cadwalader v. Shultz (1894) 14 Sup. Ct. 1143, 154 U. S. 496, 38 L. Ed. 1082.

581. Potatoes, and potatoes dried, desiccated, or otherwise prepared, not specially provided for in this section: Provided, That any of the foregoing specified articles shall be subject to a duty of 10 per centum ad valorem when imported directly or indirectly from a country, dependency, or other subdivision of government which imposes a duty on such articles imported from the United States.

Notes of Decisions

Potatoes.—Potato ground meal or flour is produced from potatoes only, and contains the entire and chemically unaltered elements of which the constituent potatoes themselves were composed. It has not acquired a new name, use, or character, and serves such culinary purposes as potatoes themselves. It is potatoes, prepared, and falls within the provisions of paragraph 581, Act 1913. Stein, Hirsch & Co. v. U. S. (1915) 6 Ct. Cust. App. 154.

582. Professional books, implements, instruments, and tools of trade, occupation, or employment in the actual possession of persons emigrating to the United States owned and used by them abroad; but this exemption shall not be construed to include machinery or other articles imported for use in any manufacturing establishment, or for any other person or persons, or for sale, nor shall it be construed to include theatrical scenery, properties, and apparel; but such articles brought by proprietors or managers of theatrical exhibitions arriving from abroad, for temporary use by them in such exhibitions, and not for any other person, and not for sale, and which have been used by them abroad, shall be admitted free of duty under such regulations as the Secretary of the Treasury may prescribe; but bonds shall be given for the payment to the United States of such duties as may be imposed by law upon any and all such articles as shall not be exported within six

months after such importation: Provided, That the Secretary of the Treasury may, in his discretion, extend such period for a further term of six months in case application shall be made therefor.

Notes of Decisions

Actual possession.—Articles that do not arrive in the United States at the same time or in the same vessel with the importer are not in his "actual possession." Rosenfeld v. U. S. (1895) 66 Fed. 303, 13 C. C. A. 450.

Decision of the board of general appraisers sustaining the collector in refusing to admit performing horses and dogs free, under paragraph 686, Act 1890, as "tools of trade," must be affirmed, where the only evidence that the animals were in the actual possession of the importer at the time of importation consists of a vague statement of the broker's clerk that the importer came directly to the broker's office on the arrival of the vessel, though he did not know whether he came on the same vessel with the animals or not, and the importer fails to produce further evidence, though given an opportunity to do so by the board. Barrett v. U. S. (C. C. 1902) 115 Fed. 206.

Articles properly classifiable as implements of occupation, which arrived some time after the owner by a different ship, because the ship in which he came refused to carry them, were not entitled to free entry, under paragraph 686, Act 1890, which provides for free admission of implements of occupation "in the actual possession at the time of persons arriving in the United States." Sandow v. U. S. (C. C. 1897) 84 Fed. 146.

Failure to export articles admitted for temporary purposes.—Theatrical costumes admitted free, under bond, for temporary use, pursuant to paragraph 596 of the act of 1894, are subject, if not re-exported at the end of the bonded period, to the duties prevailing at the time of importation, though a new law, imposing different rates, has gone into effect in the meantime. U. S. v. Russell (1898) 84 Fed. 878, 28 C. C. A. 552, reversing Russell v. U. S. (C. C. 1897) 78 Fed. 808.

Glove machines.—A glove manufacturer imported four machines used in the manufacture of gloves, which he himself, his father, and his two brothers had worked in Germany, intending to transplant his business to the United States, and to manufacture gloves in the same way. Held, that all the machines were entitled to entry free of duty as "tools of trade," under Act 1890, par. 686. In re Lindner (C. C. 1894) 66 Fed. 723.

Persons emigrating.—A citizen of the United States after residence in another country is not, upon returning, within the meaning of paragraph 582, Act 1913. Newton v. U. S. (1916) 6 Ct. Cust. App. 503.

By changing the language of this paragraph from "persons arriving," in earlier tariff laws, to "persons emigrating," in later ones, Congress evidently intended to narrow the class of persons who might claim under it. Id.

Snakes.—Snakes brought into the country by a snake charmer purely for use in exhibitions, and not for sale, held not dutiable as "live animals not specially provided for," but are free of duty, under Act 1890, par. 686, as instruments of her trade. U. S. v. Magnon (1895) 71 Fed. 293, 18 C. C. A. 43, affirming judgment Magnon v. U. S. (C. C. 1895) 66 Fed. 151.

Steam pump and boring apparatus.—A steam pump and boring apparatus, used in deep prospecting for oil and coal, with connecting iron tubes, etc., brought into this country by a coal and petroleum seeker for the purpose of pursuing his profession here, do not come within the meaning and intent of the clause in the act of 1883, exempting from duty "implements, instruments, and tools of trade, occupation, or employment of persons arriving in the United States," and should not be admitted free. (1887) 18 Op. Atty. Gen. 538.

583. Pulu.

584. Quinia, sulphate of, and all alkaloids or salts of cinchona bark.

Notes of Decisions

Euquinine.—In Act 1897, par. 647, the provision for "salts of cinchona bark" includes derivatives of cinchona bark which preserved its essential medicinal element; and euquinine, which is such a preparation, though not chemically a salt, is within said provision. U. S. v. Merck & Co. (1909) 168 Fed. 244, 94 C. C. A. 74.

585. Radium and salts of, radioactive substitutes, selenium and salts of.

586. Rags, not otherwise specially provided for in this section.

Notes of Decisions

Rags.—Secondhand jute bagging held not classifiable as rags. See paragraph 384.

Held, that the provision for "rags" in paragraph 648, Act 1897, includes coarse pieces of jute bagging which are in their

condition as torn from cotton bales, and are not sufficiently large and otherwise suitable for other use than as mere rags in stuffing and as paper stock. Train-Smith Co. v. U. S. (C. C. 1905) 140 Fed. 113.

The importation consisted of small pieces of gunny bagging packed in bales, and appropriate samples of the merchandise were exhibited. The proper classification of these goods could be ascertained without expert knowledge on an inspection of them; and the collector's classification should not be taken as conclusive. The goods were rags and as such entitled to free entry under the tariff act of 1897. Shallus v. U. S. (1912) 2 Ct. Cust. App. 456. See, also, Krauth v. Same (1911) 1 Ct. Cust. App. 178; Krusi v. Same (1911) 1 Ct. Cust. App. 168.

587. Railway bars, made of iron or steel, and railway bars made in part of steel, T rails, and punched iron or steel flat rails.

Notes of Decisions

Steel rails.—Steel rails, which are new, but by reason of defects are depreciated in value, but which have not lost their character or identity as rails, held not within the provision in paragraph 122, Act 1897, for "scrap steel * * * fit only to be remanufactured," but dutiable as "rails," under paragraph 130, even though they may be intended to be used as scrap iron. Illinois Cent. R. Co. v. McCall (C. C. 1904) 147 Fed. 925.

588. Rennets, raw or prepared.
589. Rye and rye flour.
590. Sago, crude, and sago flour.

Notes of Decisions

Sago flour.—Sago flour held entitled to free entry under paragraph 652, Act 1897, as "sago, crude," and not dutiable under paragraph 285 as "starch," or under paragraph 20 as a drug, or under section 6, covering raw or unmanufactured articles not otherwise provided for. Littlejohn v. U. S. (C. C. 1902) 119 Fed. 483.

591. Salicin.
592. Salep, or salop.
593. Salt.
594. Santonin, and its combinations with acids not subject to duty under this section.
595. Seeds: Cardamom, cauliflower, celery, coriander, cotton, cummin, fennel, fenugreek, hemp, hoarhound, mangelwurzel, mustard, rape, Saint John's bread or bean, sorghum, sugar beet, and sugar cane for seed; bulbs and bulbous roots, not edible and not otherwise provided for in this section; all flower and grass seeds; coniferous evergreen seedlings; all the foregoing not specially provided for in this section.

All mature mother flowering bulbs imported exclusively for propagating purposes were to be admitted free of duty by a proviso annexed to paragraph 210 of Schedule G of this section, ante.

Notes of Decisions

Beans and lentils.—Beans and lentils in a dry state held not dutiable as seeds. See paragraph 197.

Canary seed.—Canary seed held not dutiable as grass seed. See paragraph 212.

Coriander seed. — Coriander seed should be classified under Act 1883 as "seeds, aromatic, which are not edible," etc. (1887) 19 Op. Atty. Gen. 75.

Garden seed.—Beet and cabbage seed are "garden seed," and subject to a 20 per cent. ad valorem duty under R. S. § 2502, and turnip and mangel-wurzel seed are field seed, and not garden seed, and are exempt from duty under the "free list" in Id. § 2503. Ferry v. Livingston (1885) 6 Sup. Ct. 175, 115 U. S. 542, 29 L. Ed. 489.

Since Act 1883 such variety of celery seed as is not intended to be sown or planted to raise celery to be consumed by man is not medicinal seed, but an aromatic seed, is not edible, is in a crude state, and not advanced in value or condition by refining or grinding, or by other process of manufacture, is not dutiable at 20 per centum ad valorem as "garden seed," under the provision for "garden seeds, except seed of the sugar beet" in Schedule N, but is free as "seed," under the provision for "seeds" in the free list. Clay v. Magone (C. C. 1889) 40 Fed. 230.

Mustard, caraway, cardamon, and fen-

ugreek held dutiable under provision for "garden seed and all other seeds not otherwise provided for." Boving v. Lawrence (C. C. 1850) Fed. Cas. No. 1,712.

The evidence here, while not ample, is sufficient to support the finding that the importation was not garden celery seed, but celery seed of the aromatic kind, used commonly in the drug trade and as such was free of duty. U. S. v. Squibb & Sons (1911) 2 Ct. Cust. App. 353.

Millet seed.—Millet seed, not in its natural state, but peeled, having the outer hull removed, and which will not germinate, used for making soup, and also for bird food, is not a "seed" within Act 1883, exempting "seeds of all kinds, except medicinal seeds, not specially enumerated or provided for in this act." Nordlinger v. Robertson (C. C. 1887) 33 Fed. 241.

St. John's bread.—The locust pods had been chopped into coarse pieces, the pith and seed being indiscriminately mixed together, but relatively few of the seed being broken in the process and nothing being taken away. The importation is accordingly not to be deemed a manufacture, but rather as by its collective name it is designated "St. John's bread." It was entitled to free entry. U. S. v. Winter & Smillie (1913) 4 Ct. Cust. App. 392.

596. Sheep dip.

Notes of Decisions

Sheep dip.—In Act 1897, par. 657, providing for sheep dips, except "compounds or preparations that can be used for other purposes," the application of this exception is not to be determined by the rule of chief or predominant use of an article as sheep dip; and Cannon's dip, a preparation advertised as fit for various other purposes, and presumably having commercial value for such purposes, is not covered by the paragraph. Moody v. Patterson (C. C. 1907) 153 Fed. 830.

Thymo-cresol, a sheep dip which is used also as a disinfectant and otherwise, is, by reason of such other uses, excluded from the provision for "sheep dip, not including compounds or preparations that can be used for other purposes," in Act 1897, par. 657. Shallus v. Stone (C. C. 1906) 150 Fed. 605.

Act 1897, par. 657, which places on the free list "sheep dip not including compounds that can be used for other purposes," permits the free entry of any preparation for sheep dipping, which is in a commercial sense adapted to, and usually and generally employed for, that purpose only; but not of a compound which may be used, and is in fact extensively used, for other purposes. Wyman v. U. S. (C. C. 1901) 118 Fed. 202.

The article known as "Cooper's sheep dipping powder" held dutiable at 50 per cent. ad valorem, under the act of March 3, 1883 (22 Stat. 494). (1887) 18 Op. Atty. Gen. 552.

597. Shotgun barrels, in single tubes, forged, rough bored.

Notes of Decisions

Gun barrels.—Certain gun barrels, made under the Whitworth patent process, and shown to have been subjected to a hammering process, are held to be "forged," and to be free of duty as "shotgun barrels, forged, rough bored," under Act 1894, par. 614. U. S. v. Baldwin (C. C. 1899) 125 Fed. 156.

598. Shrimps, lobsters, and other shellfish.

Notes of Decisions

Escargots or edible snails.—Escargots or edible snails held not free of duty as shell fish. See paragraph 385.

Oysters.—Shellfish, such as oysters, Chinese abelones, etc., when prepared by drying or pickling, are entitled to free entry under the free list, sundries, in the act of March 3, 1883 (22 Stat. 521). (1889) 19 Op. Atty. Gen. 401.

599. Silk cocoons and silk waste.

Notes of Decisions

Cocoons.—Paragraph 661, Act 1897, enumerating "silk cocoons and silk waste," includes those articles only when not manufactured at all. Fawcett v. U. S. (1907) 154 Fed. 1003, 83 C. C. A. 197, affirming judgment (C. C. 1906) 116 Fed. 83.

Silk waste.—Combed silk that has been caught in the machines held not free of duty as silk waste. See paragraph 311.

Silk organzine held not free of duty as silk waste. See paragraph 313.

600. Silk, raw, in skeins reeled from the cocoon, or rereeled, but not wound, doubled, twisted, or advanced in manufacture in any way.

Notes of Decisions

Raw tussah silk.—Raw tussah silk, in the same condition as when reeled from cocoons, except that it has been transferred from the large reels on which it was taken from the cocoons to smaller reels, the result of this process not be-

ing any change in the condition of the silk other than to adapt the skeins thus produced to American spinning machines, held not dutiable as "silk partially manufactured from cocoons," under paragraph 384, Act 1897, but to be free of duty under paragraph 660, as "silk raw, or as reeled from the cocoon, but not * * * advanced in any way." U. S. v. Stewart (C. C. 1904) 133 Fed. 811.

Singles.—In construing the provision in Act 1897, par. 660, held: (1) That the provision does not cover any form of raw silk advanced beyond the condition of skeins; (2) that silk known as "singles" or "silk on tubes," which has been wound from the skeins onto tubes, the effect of this process being to advance the silk a stage in preparation for its ultimate use, has been "advanced in manufacture"; (3) that silk in this form is not free of duty under this provision. Klots v. U. S. (1905) 139 Fed. 606, 71 C. C. A. 590, affirming judgment U. S. v. Klotz (C. C. 1904) 133 Fed. 808.

601. Silkworm eggs.

602. Skeletons and other preparations of anatomy.

603. Skins of hares, rabbits, dogs, goats, and sheep, undressed.

Notes of Decisions

Cabretta skins.—Cabretta skins are "sheepskins" within Act 1897, par. 664, relating to raw skins "except sheepskins with the wool on," and the growth thereon is subject to duty, as provided in paragraph 360, for "wools on the skin." Lawrence Johnson & Co. v. U. S. (1906) 145 Fed. 1022, 74 C. C. A. 322, affirming judgment (C. C. 1905) 140 Fed. 116.

Mocha whitehead sheepskins.—Mocha whitehead sheepskins held not dutiable as skins. See paragraph 650.

604. Skins of all kinds, raw, and hides not specially provided for in this section.

Notes of Decisions

Angora goatskins.—Skins from Cape of Good Hope, taken from goats which are a cross between Cape of Good Hope and Angora goats, and commercially known as "Cape Angoras," imported with the hair attached, which hair is only used for mixing with mortar and is comparatively valueless, are improperly assessed under Act 1890, as class 2 mohair, but are free, under paragraph 605 of said act, as skins. Keen Sutterle Co. v. U. S. (C. C. 1900) 107 Fed. 263.

East India buffalo.—The term "hides of cattle," in Act 1897, par. 437, is not used in a commercial sense, but according to the ordinary dictionary meaning of the words, and refers to the hides of domesticated animals of the bovine species, including those of the East Indian buffalo. Schmoll v. U. S. (1907) 157 Fed. 1005, 85 C. C. A. 679, affirming judgment U. S. v. Schmoll (C. C. 1907) 154 Fed. 734, and writ of certiorari denied (1908) 28 Sup. Ct. 758, 209 U. S. 548, 52 L. Ed. 920.

Lambskins.—Lambskins cannot be deemed sheepskins, and the merchandise was entitled to free entry whether classified under either paragraph 574 or 676, Act 1909. Goat & Sheepskin Import Co. v. U. S. (1914) 5 Ct. Cust. App. 178.

Mocha sheepskins.—A growth on skins of Mocha sheep imported from Arabia, which is commercially known, designated, and dealt in as Mocha hair, having none of the characteristics of wool, and which would not be accepted by dealers therein as a good delivery of wool, held not dutiable under Act 1897, par. 360, as wool on the skin, but entitled to free entry under paragraph 664, placing on the free list "skins of all kinds, raw (except sheepskins with the wool on), and hides not specially provided for in this act." Goat & Sheepskin Import Co. v. U. S. (1907) 27 Sup. Ct. 634, 635, 206 U. S. 194, 51 L. Ed. 1022, reversing judgment (1906) 145 Fed. 1022, 74 C. C. A. 82.

Mud buffalo.—The hide of the mud buffalo of the Straits Settlements, an animal killed in the chase, held not within the provision for "hides of cattle" in Act 1897, par. 437, but free of duty under paragraph 664, covering "hides not specially provided for." U. S. v. Winter & Smillie (1904) 134 Fed. 841, 67 C. C. A. 437.

Singapore buffaloes are not "cattle," because they are not domesticated, and their hides are therefore not within the provision for hides of "cattle," in Act 1897, par. 437. U. S. v. Wadleigh (C. C. 1909) 172 Fed. 169, judgment affirmed (1910) 178 Fed. 1007, 101 C. C. A. 666.

605. Soda, arseniate of, cyanide of, sulphate of, crude, or salt cake and niter cake, soda ash, silicate of, nitrate of, or cubic nitrate.

606. Soya beans.

Notes of Decisions

Soya beans.—Soya beans, cooked and salted, but not enough to so change them as to prevent their identification as soya beans, and packed in tins, jars,

bottles, or similar packages, do not thereby lose their status as soya beans, and are more specifically classified on the free list, paragraph 606, Act 1913, as "soya beans" than under paragraph 199 as "beans, * * * prepared or preserved, or contained in tins, jars, bottles, or similar packages." Brown & Co. v. U. S. (1915) 6 Ct. Cust. App. 415.

607. Specimens of natural history, botany, and mineralogy, when imported for scientific public collections, and not for sale.

608. Spunk.

609. Spurs and stilts used in the manufacture of earthen, porcelain, and stone ware.

610. Stamps: Foreign postage or revenue stamps, canceled or uncanceled, and foreign government stamped post cards bearing no other printing than the official imprint thereon.

611. Statuary and casts of sculpture for use as models or for art educational purposes only; regalia and gems, where specially imported in good faith for the use and by order of any society incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use and by order of any college, academy, school, seminary of learning, orphan asylum, or public hospital in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe; but the term "regalia" as herein used shall be held to embrace only such insignia of rank or office or emblems as may be worn upon the person or borne in the hand during public exercises of the society or institution, and shall not include articles of furniture or fixtures, or of regular wearing apparel, nor personal property of individuals.

Notes of Decisions

Casts of sculpture.—Figures representing religious subjects held not free of duty as casts of sculpture. See paragraph 369.

The omission from Act 1897, par. 638, of the provisions of prior tariff acts for the free entry of casts, was not intended to prevent the free entry of such casts as also come within the designation of "casts of sculpture," under paragraph 649. Benziger v. U. S. (1904) 24 Sup. Ct. 189, 192 U. S. 38, 48 L. Ed. 331, reversing judgment (1902) 113 Fed. 1016, 51 C. C. A. 587.

Plaster casts of clay models, though painted and gilded and produced in unlimited quantities, are "casts of sculpture," which, under Act 1897, par. 649, are entitled to free entry where specially imported, in good faith, for the use and by the order of any society incorporated or established solely for religious, philosophical, scientific, educational, or literary purposes. Id.

A marble statute is a specimen of sculpture, within the meaning of paragraph 649, Act 1897, covering "specimens or casts of sculpture." Sibbel v. U. S. (C. C. 1900) 124 Fed. 105.

Regulations as to regalia.—The Secretary of the Treasury is not empowered to abridge the right of free entry of the articles covered by Act 1897, par. 649, relating to regalia, etc. Siegman & Weil v. U. S. (C. C. 1905) 141 Fed. 491.

Proof that certain imported regalia was entitled to admission under Act 1897, par. 649, was not produced at the time of entry as required by the customs regulations, but was offered the collector before he had liquidated the entry. Held, that free entry should have been allowed by the collector. Id.

Stained glass windows.—Stained glass windows held not to come within the terms of this paragraph. See paragraph 95.

612. Steel engraved forms for bonds, debentures, stock certificates, negotiable receipts, notes and other securities; and engraved steel plates, dies and rolls, suitable for use in engraving or printing bonds, stock certificates or other securities.

613. Steel ingots, cogged ingots, blooms and slabs, die blocks or blanks, and billets, if made by the Bessemer, Siemens-Martin, open-hearth or similar processes, not containing alloy, such as nickel, cobalt, vanadium, chromium, tungsten, or wolfram, molybdenum, titanium, iridium, uranium, tantalum, boron, and similar alloys.

614. Stone and sand: Burrstone in blocks, rough or unmanufactured; rotten stone, tripoli, and sand, crude or manufactured; cliff stone, freestone, granite, sandstone, and limestone, unmanufactured, and not suitable for use as monumental or building stone; all of the foregoing not specially provided for in this section.

Notes of Decisions

Corundum ore.—In Act 1897, par. 671, relating to "sand, crude or manufactured," the term "sand" is inapplicable to any metalliferous mineral, though it be in comminuted fragments; and corundum ore, being a mineral of this character, is not, when ground, classible as "sand, * * * manufactured." F. W. Myers & Co. v. U. S. (1908) 163 Fed. 53, 89 C. C. A. 284, affirming judgment (C. C. 1907) 155 Fed. 502.

Crude sand.—Held that, under Act 1897, par. 671, relating to "sand, crude or manufactured," "crude," sand is such as is found in nature, and "manufactured" sand is, though manufactured substantially the same as crude sand; and pulverized corundum, which is not produced from crude sand, is therefore not sand of either kind within the meaning of the act. F. W. Myers & Co. v. U. S. (C. C. 1907) 155 Fed. 502, judgment affirmed (1908) 163 Fed. 53, 89 C. C. A. 284.

Fire sand.—The merchandise here is made by combining approximately 60 parts of crushed quartz with 30 parts of coke, 1 part of salt, and 10 parts of sawdust. The term "manufactured sand," paragraph 683, Act 1909, relates to material composed of common or crude sand, and cannot be taken to include this merchandise. Henderson & Hall v. U. S. (1913) 4 Ct. Cust. App. 327. See, also, Myers v. Same (1911) 1 Ct. Cust. App. 506.

615. Strontia, oxide of, protoxide of strontian, and strontianite or mineral carbonate of strontia.

616. Strychnia or strychnine, and its combinations with acids not subject to duty under this section.

617. Sulphur in any form, brimstone, and sulphur ore as pyrites, or sulphuret of iron in its natural state, containing in excess of 25 per centum of sulphur.

Notes of Decisions

Crocus.—Crocus held not dutiable as dross residuum from burnt pyrites. See paragraph 63.

"Crude."—"Crude" refers commonly to substances or articles in a condition unfit for the ultimate purpose or use for which they are intended. Newhall & Co. v. U. S. (1913) 4 Ct. Cust. App. 134.

Sulphur.—The sulphur of the importation is from Japan. It is expelled by volcanic force from geysers, is drawn off in conduits, and when cooled is broken into various shapes and placed in sacks for transportation. This sulphur, very nearly pure, cannot be said to have been refined; nor is it crude. It falls within the free entry paragraphs of Acts 1897 and 1909, as sulphur not otherwise provided for. Newhall & Co. v. U. S. (1913) 4 Ct. Cust. App. 134.

Sublimation of sulphur is the artificial distillation thereof, in the course of which the sulphur content of the article distilled is, after evaporation, deposited, collected, and formed according to the commercial or other uses for which it may be designed. Id.

618. Sumac, ground or unground.

619. Swine, cattle, sheep, and all other domestic live animals suitable for human food not otherwise provided for in this section.

620. Tagua nuts.

621. Talcum, steatite, and French chalk, crude and unground.

622. Tallow.

Notes of Decisions

Stearine.—Stearine is not to be classed as "tallow," but as a "manufacture of tallow," and as such is subject to a duty of 25 per cent. under R. S. § 2516. Fairbanks v. Spaulding (C. C. 1884) 19 Fed. 416.

623. Tamarinds.

Notes of Decisions

Tamarinds.—It appears that "tamarinds" as a commercial designation has been accepted for a number of years in the administration of our tariff laws, and having been incorporated in Act 1909, it is to be inferred the interpreta-

tion so established was there adhered to. The addition of the words "packed in molasses" will not suffice to change the classification. The importation was entitled to free entry. U. S. v. John Duncan's Sons (1911) 2 Ct. Cust. App. 380.

624. Tanning material: Extracts of quebracho, and of hemlock bark; extracts of oak and chestnut and other barks and woods other than dyewoods such as are commonly used for tanning not specially provided for in this section; nuts and nutgalls and woods used expressly for dyeing or tanning, whether or not advanced in value or condition by shredding, grinding, chipping, crushing, or any other process; and articles in a crude state used in dyeing or tanning; all the foregoing not containing alcohol and not specially provided for in this section.

Notes of Decisions

Chrome alum.—The provision for articles in a "crude state," in Act 1897, par 482, does not include chrome alum, which is removed from its crude state of a paste by a crystalizing process, in which it is freed from incidental impurities. Kuttroff, Pickhardt & Co. v. U. S. (1909) 169 Fed. 283, 94 C. C. A. 559.

"Crude article."—Though an article may have been processed, if, as a matter of fact, it must be subjected to some additional process to fit it for its chief or only use, it is, so far as that use is concerned, a crude article. U. S. v. Danker & Marston (1912) 2 Ct. Cust. App. 522. See, also, Roessler & Hasslacher Chemical Co. v. U. S. (C. C. 1899) 94 Fed. 822.

Gum tragasol.—Gum tragasol is an article in a "crude" state used in dyeing; it is not a vegetable extract for dyeing, coloring, staining, or tanning. It was free of duty under paragraph 482, Act 1897, and paragraph 499, Act 1909. U. S. v. Danker & Marston (1912) 2 Ct. Cust. App. 522.

Hydroxide of chrome.—Hydroxide of chrome, as here imported, in the state of its first production, unrefined and unfit for use for dyeing or tanning without being subjected to refining processes, was not dutiable as a chemical compound under either the tariff act of 1897 or that of 1909, but under each act was free of duty as an article in a crude state used in dyeing or tanning not specially provided for. U. S. v. Continental Color & Chemical Co. (1911) 2 Ct. Cust. App. 165.

Lentiscum.—So-called lentiscum or lentiscus, consisting of the leaves or stems of the pistacia lentiscus, or mastic tree, ground or crushed to a finely powdered condition, is held to be a crude article, and to be within paragraph 482, Act 1897. Leber & Meyer v. U. S. (C. C. 1904) 135 Fed. 243.

Zinc dust.—Zinc dust, an article used in dyeing, which is crude as a metal, but not as a mineral, held not included in the provision in paragraph 183, Act 1897, for "metallic mineral substances in a crude state, * * * not specially provided for," but free of duty under paragraph 482, covering "articles in a crude state used in dyeing or tanning not specially provided for." U. S. v. Klipstein (C. C. 1901) 123 Fed. 996.

625. Tapioca, tapioca flour, cassava or cassady.

Notes of Decisions

Tapioca flour.—The general words, "preparations * * * fit for use as starch," are insufficient to show that an article fit for such use, but which is specially named on the free list, is "otherwise specially provided for" so as to prevent its exemption from duty. Chew Hing Lung & Co. v. Wise (1900) 20 Sup. Ct. 320, 323, 176 U. S. 156, 44 L. Ed. 412, reversing judgment Wise v. Chew Hing Lung (1897) 83 Fed. 162, 27 C. C. A. 494.

Tapioca flour, being one of the three forms of tapioca known to commerce, is entitled to free entry under Act 1890, par. 730, as tapioca, even if it should be deemed fit for use as starch, so that, if not named on the free list, it would have been dutiable under paragraph 323, as a preparation fit for use as starch. Id.

Tapioca flour, which is commercially known as "tapioca," and is used mainly by calico printers and carpet manufacturers for thickening colors, and which, though chemically a starch, is not adapted to commercial use as starch, belongs in the free list, as "tapioca," under paragraph 730, Act 1890, and is not dutiable as a "preparation * * * fit for use as starch," under paragraph 323. In re Townsend (1893) 56 Fed. 222, 5 C. C. A. 488.

626. Tar and pitch of wood.

627. Tea not specially provided for in this section, and tea plants: Provided, That the cans, boxes, or other containers of tea

packed in packages of less than five pounds each shall be dutiable at the rate chargeable thereon if imported empty: Provided further, That nothing herein contained shall be construed to repeal or impair the provisions of an Act entitled "An Act to prevent the importation of impure and unwholesome tea," approved March second, eighteen hundred and ninety-seven, and any Act amendatory thereof.

Act March 2, 1897, c. 358, to prevent the importation of impure and unwholesome tea, mentioned in this paragraph, is set forth post, §§ 8786–8796.

Act June 13, 1898, c. 448, § 50, 30 Stat. 470, which imposed a duty upon tea of ten cents a pound,' was repealed by Act April 12, 1902, c. 500, § 10, 32 Stat. 99, and tea was included in the Free List in the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 1, par. 691, 36 Stat. 80, with a proviso similar to that annexed to this paragraph.

Notes of Decisions

Bohea tea.—"Bohea tea," in the sense of the revenue laws, means the article known as such in the usage of trade, and scientific classifications are not to be resorted to for the definition of those words. Two Hundred Chests of Tea (1824) 22 U. S. (9 Wheat.) 430, 6 L. Ed. 128.

Containers.—Paragraph 627, Act 1913, levying duty upon "cans, boxes, or other containers of tea packed in packages of less than five pounds," does not levy duty upon the immediate containers of tea in less than 5-pound packages. The provision is relative in its terms and does not apply to immediate containers. Wright & Graham Co. v. U. S. (1916) 6 Ct. Cust. App. 528.

Reviewing the history of the legislation affecting containers, such as the immediate coverings of tea in this case, and the larger holders or boxes carrying the packages of tea, it is held that the larger containers used in the shipment and transportation of tea put up and imported in packages less than 5 pounds each should be taxed under paragraph 627, Act 1913, but the immediate coverings or wrappers, constituting a part of the packages, are free of duty. Wright & Graham Co. v. U. S. (1914) 5 Ct. Cust. App. 453.

Standard.—The present tariff law vests in the administrative officers of the government the power to fix the standard of quality of teas that may be imported, which does not necessarily depend on their purity and wholesomeness, and to determine finally the question whether an importation meets the requirements of the standard so fixed; and such provisions are a constitutional exercise of legislative power. Buttfield v. Bidwell (C. C. 1899) 94 Fed. 126.

628. Teeth, natural, or unmanufactured.
629. Terra alba, not made from gypsum or plaster rock.
630. Terra japonica.

Notes of Decisions

Gambia.—"Gambia" held synonymous with "terra japonica," and exempt from duty. Act 1861. Hallett v. Smythe (C. C. 1867) Fed. Cas. No. 5,959.

631. Tin ore, cassiterite or black oxide of tin, tin in bars, blocks, pigs, or grain or granulated, and scrap tin: Provided, That there shall be imposed and paid upon cassiterite, or black oxide of tin, and upon bar, block, pig tin and grain or granulated, a duty of 4 cents per pound when it is made to appear to the satisfaction of the President of the United States that the mines of the United States are producing one thousand five hundred tons of cassiterite and bar, block, and pig tin per year. The President shall make known this fact by proclamation, and thereafter said duties shall go into effect.

Notes of Decisions

Tin in plates or sheets.—"Tin in plates or sheets" is subject to a duty of 15 per cent. ad valorem, in accordance with the provisions of R. S. § 2504, Schedule E. May v. Simmons (C. C. 1880) 4 Fed. 499.

632. Tobacco stems.
633. Tungsten-bearing ores of all kinds.
634. Turmeric.
635. Turpentine, Venice, and spirits of.

636. Turtles.

637. Type, stereotype metal, electrotype metal, linotype composition, all of the foregoing, old and fit only to be remanufactured.

638. Uranium, oxide and salts of.

639. Valonia.

640. Wafers, unleavened or not edible.

Notes of Decisions

Sugar wafers.—Sweetened biscuit known as sugar wafers held not dutiable as wafers not edible. See paragraph 385.

Unleavened wafers.—Edible wafers held not free of duty as unleavened wafers. See paragraph 385.

641. Wax, vegetable or mineral.

Notes of Decisions

Carnauba wax substitute.—Carnauba wax substitute, which is compounded of carnauba wax (vegetable wax), and paraffin (mineral wax), and which is to all appearance a waxy substance used for the same purpose as other waxes, is covered by the provision for "wax, vegetable or mineral," in Act 1897, par. 695. U. S. v. Charles Morningstar & Co. (1909) 168 Fed. 541, 94 C. C. A. 123.

Mineral wax.—The expression "wax, * * * mineral," in Act 1897, par. 695, must have been used in the popular sense of those words, inasmuch as the so-called mineral waxes are not waxes in the chemical sense. U. S. v. Charles Morningstar & Co. (1909) 168 Fed. 541, 94 C. C. A. 123.

642. Wearing apparel, articles of personal adornment, toilet articles, and similar personal effects of persons arriving in the United States; but this exemption shall include only such articles as were actually owned by them and in their possession abroad at the time of or prior to their departure from a foreign country, and as are necessary and appropriate for the wear and use of such persons and are intended for such wear and use, and shall not be held to apply to merchandise or articles intended for other persons or for sale: Provided, That in case of residents of the United States returning from abroad all wearing apparel, personal and household effects taken by them out of the United States to foreign countries shall be admitted free of duty, without regard to their value, upon their identity being established under appropriate rules and regulations to be prescribed by the Secretary of the Treasury: Provided further, That up to but not exceeding $100 in value of articles acquired abroad by such residents of the United States for personal or household use or as souvenirs or curios, but not bought on commission or intended for sale, shall be admitted free of duty.

Notes of Decisions

Construction of paragraph in general.—The rule is to exempt from duty such articles as fulfill the following conditions: (1) Wearing apparel owned by the passenger and in a condition to be worn at once without further manufacture; (2) brought with him as a passenger and intended for the use or wear of himself or his family who accompanied him as passengers, and not for sale or purchase, or imported for other persons, or to be given away; (3) suitable for the season of the year immediately approaching at the time of arrival; (4) not exceeding in quantity or quality the value of what the passenger was in the habit of ordinarily providing for himself or his family at that time, and keeping on hand for his and their reasonable wants, in view of their means and habits in life, though such articles had not been actually worn. Astor v. Merritt (1884) 4 Sup. Ct. 413, 418, 111 U. S. 202, 28 L. Ed. 401.

Persons arriving in the United States are citizens returning or foreigners visiting or emigrating, and the statute applies to all equally. Id.

Act 1897, par. 697, provides for "personal effects of persons arriving in the United States," with a proviso relating to "residents of the United States returning from abroad." Held, that the first provision is only for immigrants, and that the proviso concerns Ameri-

cans only. U. S. v. Bernays (1908) 158 Fed. 792, 86 C. C. A. 52.

Act 1897, par. 697, places on the free list "such articles of wearing apparel, personal adornment, toilet articles and similar personal effects as are in the use of and accompanying persons arriving in the United States and are necessary and appropriate for the immediate purposes of the journey and their present comfort and convenience: provided that in case of residents of the United States returning from abroad all wearing apparel and other personal effects taken by them out of the United States to foreign countries shall be admitted free of duty, without regard to their value, * * * but no more than one hundred dollars in value of articles purchased abroad by such residents of the United States shall be admitted free of duty upon their return." Held, that such paragraph classifies exempt articles according to the citizenship of the persons arriving in this country, and that the provisions preceding the proviso have no application in case of a citizen of the United States, whose exemptions are those only enumerated in the proviso. U. S. v. One Pearl Necklace (1901) 111 Fed. 164, 49 C. C. A. 287, 56 L. R. A. 130.

Good faith.—One going to a foreign country to buy clothing is not entitled to free entry thereof, though he wears the same in returning home. Simmons' Case (D. C. 1865) Fed. Cas. No. 12,865.

Persons crossing into Canada for no other purpose than to purchase clothing there, and immediately returning, are not entitled to introduce the same free of duty as "personal effects" under paragraph 752, Act 1890. (1894) 21 Op. Atty. Gen. 3.

Loss of exemption.—The exemption from duty of $100 worth of articles in the personal effects of residents of the United States returning from abroad, as provided in Act 1897, par. 697, may not be claimed, except where there has been a compliance with the provisions of section 2802, R. S., section 5499, post, regarding the entry of baggage. If the baggage is confiscated through failure to observe the provisions of said section, the right of exemption is lost. Harts v. U. S. (1905) 140 Fed. 843, 72 C. C. A. 255, affirming judgments U. S. v. Harts (D. C. 1904) 131 Fed. 886, and Same v. Sixteen Bolts of Silk (D. C. 1904) 139 Fed. 1008.

In construing the provision in paragraph 697, Act 1897, that $100 in value of articles purchased abroad by returning residents of the United States may be admitted free of duty, held that it is the passengers' duty to enter and declare the value of such articles, whether they cost more than $100 or not, and that when not so declared they are subject to forfeiture. Dodge v. U. S. (1904) 131 Fed. 849, 65 C. C. A. 603, writ of certiorari denied (1904) 25 Sup. Ct. 790, 195 U. S. 632, 49 L. Ed. 353.

Personal effects.—Act 1897, par. 697, provides in its final clause for the exemption from duty of "one hundred dollars in value of articles purchased abroad by * * * residents of the United States, * * * upon their return." Held, that this privilege does not extend to articles which are not personal effects, such as the "wearing apparel, toilet articles," etc., specified in the preceding portion of the paragraph, and that pictures, chairs, tables, and other small trinkets brought in by an American resident are therefore not within the paragraph. U. S. v. Bernays (1908) 158 Fed. 792, 86 C. C. A. 52.

Personal effects of a person arriving in the United States do not cease to be baggage by being so disposed on the person as to be covered from view by the passenger's dress. U. S. v. One Pearl Chain (1905) 139 Fed. 513, 71 C. C. A. 500.

Bicycles are "personal effects" within the meaning of the tariff acts. (1893) 20 Op. Atty. Gen. 648; (1894) 20 Op. Atty. Gen. 719; (1884) 17 Op. Atty. Gen. 679.

Residence.—The appellant, though born in the United States, lived in England for many years with her father, who, at her birth and continuously thereafter, was a resident of England. She married in London a citizen of the United States. Voyaging to the United States after her marriage, she is not to be deemed a resident of the United States, returning thereto, but a person arriving in the United States, and under paragraph 642, Act 1913, her personal effects were entitled to entry free of duty. Thompson v. U. S. (1914) 5 Ct. Cust. App. 341.

The appellant, a married woman, had lived mainly abroad for a number of years to educate her children. During this time her husband's home was in New York, his business was there, and there he voted. She, during this period, went to France and returned after longer or shorter intervals, living admittedly in amicable relations with her husband. Her legal residence remained accordingly her husband's residence, and she was entitled to have entered free of duty only such wearing apparel or personal effects as she took out of this country and such articles as she may have purchased abroad not exceeding $100 in value (Act 1909). Bache v. U. S. (1913) 4 Ct. Cust. App. 414.

Apart from any question of legal citizenship, one who is in good faith residing and making his home abroad, according to the evidence, and who visits the United States with no intention of remaining here, is entitled to bring in his wearing apparel—his per-

sonal effects—free of duty. Bradley Martin, Jr., v. U. S. (1911) 1 Ct. Cust. App. 134.

Theatrical costumes.—Theatrical costumes imported by one of two joint owners, for their joint use in the production of a theatrical burlesque, held not subject to duty (Act 1890, par. 686) on the ground that they were imported for another person as well as for the one arriving with them. Henderson v. U. S. (1895) 66 Fed. 53, 13 C. C. A. 328.

Value of articles.—Articles 610, 611, Treasury Regulations of 1908, requiring passengers to state the value of their baggage, held valid, because Act 1897, par. 697, puts a pecuniary limitation upon the exemption to which the passenger is entitled. U. S. v. One Trunk (D. C. 1909) 175 Fed. 1012, decree affirmed (1912) 192 Fed. 913, 114 C. C. A. 353.

The rules and regulations relating to the importation of baggage, or articles upon the person, of people arriving in the United States, though applying usually to articles of no great value, apply as well where the articles so imported are of very great value. U. S. v. One Pearl Chain (D. C. 1904) 139 Fed. 510.

Wearing apparel.—The term "wearing apparel," as generally used in the tariff acts, refers not merely to a person's outer clothing, but covers all articles usually worn, including underclothing. Arnold v. U. S. (1893) 13 Sup. Ct. 406, 407, 147 U. S. 494, 37 L. Ed. 253.

643. Whalebone, unmanufactured.

644. Wheat, wheat flour, semolina, and other wheat products, not specially provided for in this section: Provided, That wheat shall be subject to a duty of 10 cents per bushel, that wheat flour shall be subject to a duty of 45 cents per barrel of 196 pounds, and semolina and other products of wheat, not specially provided for in this section, 10 per centum ad valorem, when imported directly or indirectly from a country, dependency, or other subdivision of government which imposes a duty on wheat or wheat flour or semolina imported from the United States.

Notes of Decisions

In general.—To entitle merchandise to free entry under paragraph 644, Act 1913, it must appear that it is a wheat product not specially provided for and that it is imported from a country or subdivision thereof which does not impose a duty on wheat products imported from the United States. U. S. v. Kuyper & Co. (1915) 6 Ct. Cust. App. 142.

"Wheat" is used in the act of 1909 without limitation or qualification, and in the absence of a contrary commercial custom must be applied to every kind and class of merchandise embraced in the term. Schade & Co. v. U. S. (1914) 5 Ct. Cust. App. 465.

Wheat bin burned.—This wheat was stored in a damp condition and it heated and fermented and became "bin burned." To prevent further deterioration it was subjected to a process of dry heating. Notwithstanding the commodity had been "bin burned" and "dry heated" it remained essentially wheat and was bought and sold as wheat. Atwood-Stone Co. v. U. S. (1914) 5 Ct. Cust. App. 472. See, also, U. S. v. W. P. Devereux Co. (C. C. 1905) 135 Fed. 428; Malouf v. U. S. (1911) 1 Ct. Cust. App. 437.

Wheat injured by frost.—Wheat injured by frost to such an extent as to reduce it to a low grade, or to "no grade," but which can still be used for seed and for making flour, is dutiable as wheat, under paragraph 234, Act 1897, and not as a nonenumerated unmanufactured article, under section 6 of said act. U. S. v. W. P. Devereux Co. (C. C. 1905) 135 Fed. 428.

This importation was of frozen Manitoba wheat. Even if it be assumed that no commercial designation was shown, and that the merchandise here was improperly classed as "no grade," the record and the samples clearly establish that the common, ordinary designation of "wheat" applies, and this is so, though the wheat was confessedly of inferior quality, suitable alone for animal food. Schade & Co. v. U. S. (1914) 5 Ct. Cust. App. 465.

Wheat prepared into food product.—Wheat that has been boiled, dried, and ground or otherwise broken, constituting thereby a food product, has lost its character as a grain and takes on a form, nature, appearance, and use differing distinctly from those it had before being subjected to the described treatment, and it cannot be properly classified as wheat, or by similitude as wheat. Malouf v. U. S. (1911) 1 Ct. Cust. App. 437.

645. All barbed wire, galvanized wire not larger than twenty one-hundredths of one inch in diameter and not smaller than eight

one-hundredths of one inch in diameter of the kind commonly used for fencing purposes, galvanized wire fencing composed of wires not larger than twenty one-hundredths of one inch in diameter nor smaller than eight one-hundredths of one inch in diameter, and wire commonly used for baling hay or other commodities.

646. Witherite.

Notes of Decisions

Native carbonate of baryta.—Under paragraph 489, Act 1897, native or precipitated carbonate of baryta was non-dutiable. U. S. v. Gabriel & Schall (1910) 1 Ct. Cust. App. 90.

647. Wood: Logs, timber, round, unmanufactured, hewn or sawed, sided or squared; pulp woods, kindling wood, firewood, hop poles, hoop poles, fence posts, handle bolts, shingle bolts, gun blocks for gunstocks rough hewn or sawed, or planed on one side; hubs for wheels, posts, heading bolts, stave bolts, last blocks, wagon blocks, oar blocks, heading blocks, and all like blocks or sticks, rough hewn, sawed, or bored; sawed boards, planks, deals, and other lumber, not further manufactured than sawed, planed, and tongued and grooved; clapboards, laths, pickets, palings, staves, shingles, ship timber, ship planking, broom handles, sawdust, and wood flour; all the foregoing not specially provided for in this section.

Notes of Decisions

1. Blocks or sticks, rough-hewn, sawed, etc.
2. Boards planed for splines.
3. Boards tongued and grooved.
4. Firewood.
5. Gun blocks.
6. Lumber fireproofed.
7. Pulp woods.
8. Round timber.
9. Sandalwood.
10. Sawed lumber.
11. Shingles.

1. Blocks or sticks, rough-hewn, sawed; etc.—In construing Act 1897, par. 200, relating to "blocks or sticks, * * * rough-hewn, sawed," etc., held that the hewing contemplated is a new shaping, and that the sawing is something more than merely sawing the blocks or sticks off from longer pieces. U. S. v. Pierce (C. C. 1905) 140 Fed. 962, judgment affirmed (1906) 147 Fed. 199, 77 C. C. A. 425.

The question is whether the beading which appears upon the ceiling lumber and upon some of the novelty siding serves to exclude the importation from proper classification as "not further manufactured than sawed, planed, and tongued and grooved," paragraph 647, Act 1913. The planer and matcher used in dressing sawed boards is, in fact, simply a planing machine, and its work is simply planing, whether the boards are or not beaded in the process. "Planing" includes beading, the beading giving the boards no new name, character, or use. The free entry clause applies. U. S. v. Myers & Co. (1915) 5 Ct. Cust. App. 541.

2. Boards planed for splines.—Boards and planks, of uniform length, width, and thickness, planed and matched for splines, are not dutiable as "manufactures of wood," under paragraph 181, Act 1894, but are entitled to free entry as "dressed lumber," under paragraph 676. U. S. v. Dudley (1897) 79 Fed. 75, 24 C. C. A. 449, affirming Dudley v. U. S. (C. C. 1896) 74 Fed. 548, and judgment affirmed (1899) 19 Sup. Ct. 801, 174 U. S. 670, 43 L. Ed. 1129.

3. Boards tongued and grooved.—Lumber planed on one side, and tongued and grooved, to be used as flooring and sheathing, is entitled to be admitted free of duty, as "sawed boards, plank. deals and other lumber, rough and dressed," under Act 1894, par. 676, and is not dutiable as "house or cabinet furniture, of wood, wholly or partly finished, manufactures of wood," under paragraph 181. U. S. v. Dudley (1899) 19 Sup. Ct. 801, 174 U. S. 670, 43 L. Ed. 1129, affirming judgment (1897) 79 Fed. 75, 24 C. C. A. 449.

4. Firewood.—The evidence here is that not over 30 per cent. of these importations is suitable for or is used for making matches, and that the remainder is used for firewood. The merchandise—ends cut from deals or planks—should be classified as firewood, and was entitled to free entry. U. S. v. Saunders (1914) 5 Ct. Cust. App. 102.

5. Gun blocks.—Under Act 1883, prescribing rates of duty on wood and wooden wares, gun blocks, which are not "rough-hewn or sawed only," but are planed on two sides, are subject to an ad valorem duty of 35 per cent. U. S. v. Windmuller (C. C. 1890) 42 Fed. 292.

6. Lumber fireproofed.—Lumber which has been subjected to a fireproofing process that largely increases its value, but which can still be applied to the ordinary uses of sawed lumber, held not dutiable as manufactures of wood, under paragraph 208, Act 1897, but as "sawed lumber," under paragraph 195. F.

W. Myers & Co. v. U. S. (1906) 147 Fed. 204, 77 C. C. A. 430, affirming judgment U. S. v. F. W. Myers & Co. (C. C. 1905) 139 Fed. 344.

7. **Pulp woods.**—In construing the provision in paragraph 699, Act 1897, for "round unmanufactured timber including pulp woods," held, that the pulp wood subjected to the rossing process, whereby the bark, skin, and rough places are removed, is not manufactured in any true sense; also that it is not necessary that the "pulp woods" should be "round unmanufactured timber," "including" being used as equivalent to "also." U. S. v. Pierce (1906) 147 Fed. 199, 77 C. C. A. 425, affirming judgment (C. C. 1905) 140 Fed. 962.

The term "pulp woods" in paragraph 699, Act 1897, has no commercial signification differing from its ordinary meaning, and is employed as a short, comprehensive expression intended to cover pulp wood in all its forms, including such as has been subjected to the rossing process. Id.

8. **Round timber.**—In Act 1897, pars. 194, 196, provide, respectively, for "round timber used in building wharves," and for electric light poles, etc.; and paragraph 699 enumerates "round unmanufactured timber * * * not specially provided for." Held, that any round sticks which in their shape as imported are used for any of the purposes specified in said paragraphs 194 and 196, either in the rough or finished, are subject to classification under those paragraphs, rather than under paragraph 699. Perfection Pile-Preserving Co. v. U. S. (C. C. 1905) 147 Fed. 922.

These white oak logs were imported substantially as the tree had fallen when cut down. The branches had been cut off, but the logs had not been peeled or sided. It is doubtful if importations of this character and condition are within the letter or spirit of paragraph 200, Act 1909, and there is nothing in the record so convincing of the contrary as to warrant a reversal. The logs were properly held not dutiable as being the round unmanufactured timber of paragrap 712. U. S. v. MacNaughton (1913) 5 Ct. Cust. App. 114.

It was clearly intended in paragraph 712, Act 1909, to include in the phrase "round, unmanufactured timber" something other than logs; that timber should not have there a restricted, limited meaning. Articles ejusdem generis with those specifically named are included, and the importation accordingly was entitled to free entry. U. S. v. Nightingale (1914) 5 Ct. Cust. App. 79.

9. **Sandalwood.**—Sandalwood, in pieces of varying sizes, several feet long and several inches thick, to which nothing has been done beyond removing the bark and sawing the wood into lengths convenient for transportation, held not dutiable under paragraph 198, Act 1897, as "wood, unmanufactured, not specially provided for," but free of duty, under the provision in paragraph 699 of said act, for "logs of wood." George Lueders & Co. v. U. S. (C. C. 1904) 131 Fed. 655.

10. **Sawed lumber.**—White pine lumber in sticks measuring 6 by 12 inches held dutiable as "sawed lumber, not specially provided for," under paragraph 195, Act 1897, and not as timber "hewn, sided or squared," under paragraph 194. In re E. W. Rathbun & Co. (C. C. 1898) 88 Fed. 257.

By Act March 2, 1861, § 20, a duty of 20 per cent. ad valorem was laid on "sawed timber"; and by Act June 6, 1872, § 1, a certain duty per thousand feet was imposed on "sawed lumber." The Treasury Department construed the latter provision to supersede the former. Both provisions were, however, subsequently re-enacted in section 2504, R. S. Held, that the construction of the Treasury Department was correct, and that the mere bringing forward into the Revised Statutes of the two provisions has not changed the previous state of the law. (1875) 15 Op. Atty. Gen. 493.

11. **Shingles.**—Shingles, not specifically enumerated in Act 1861, held dutiable as manufactures of wood. Stockwell v. U. S. (C. C. 1870) Fed. Cas. No. 13,466.

648. Woods: Cedar, including Spanish cedar, lignum-vitæ, lance-wood, ebony, box, granadilla, mahogany, rosewood, satinwood, and all forms of cabinet woods, in the log, rough, or hewn only, and red cedar (Juniperus virginiana) timber, hewn, sided, squared, or round; sticks of partridge, hair wood, pimento, orange, myrtle, bamboo, rattan, reeds unmanufactured, india malacca joints, and other woods not specially provided for in this section, in the rough, or not further advanced than cut into lengths suitable for sticks for umbrellas, parasols, sunshades, whips, fishing rods, or walking canes.

Notes of Decisions

Bamboo.—Split bamboo, cut into lengths of 12 inches, and tied in bundles intended for use in making brooms, held not taxable under Act 1897, par. 208, as manufactures of wood, but is entitled to free entry as "bamboo, rattan, and reed unmanufactured," under paragraph 700. R. Brauss & Co. v. U. S. (C. C. 1903) 120 Fed. 1017.

The splitting and cutting into lengths of this bamboo does not in fact make of it anything and putting it up into bun-

dles did not change its character. It has not been manufactured. The decisions and the legislative history of the relevant provision show the merchandise was entitled to free entry under paragraph 713, Act 1909. U. S. v. Steeb & Co. (1915) 6 Ct. Cust. App. 275.

Cabinet woods.—Cabinet wood, sawed lengthwise on two or more sides, held not free of duty, under paragraph 700, Act 1897, for "all forms of cabinet wood, in the log, rough or hewn only," but dutiable under paragraph 198, covering "cabinet woods not further manufactured than sawed." I. T. Williams & Sons v. U. S. (C. C. 1903) 126 Fed. 838.

The issue as made here was one of fact, whether the wood of the importation is or is not cabinet wood as described in paragraph 203, Act 1909. The board found that oak, poplar, and ash are not cabinet woods and the evidence supports this finding. Paragraph 201 applies. U. S. v. Mitsui & Co. (1913) 4 Ct. Cust. App. 449.

Dyers' sticks.—Bamboo dyers' sticks, rounded at the ends and smoothed off at the joints, are covered by the enumeration of bamboo in Act 1897, par. 700, rather than by the provision for wood, unmanufactured, in paragraph 198. U. S. v. Knipscher & Maas Silk Dyeing Co. (C. C. 1907) 152 Fed. 590.

Dyers' sticks of hard wood, which have been trimmed and peeled, and had the rough edges removed, and the ends rounded, held not dutiable as manufactures of wood, under Act 1897, par. 208, but as wood unmanufactured, under paragraph 198. Id.

Rattan.—These pieces of rattan are not further advanced than cut into lengths suitable for umbrella sticks, etc. They cannot be said to be by their condition definitely appropriated to any specified use. They were entitled to free entry under paragraph 648, Act 1913. U. S. v. Larzelere & Co. (1915) 6 Ct. Cust. App. 273.

The slab rattan and the broom or split rattan of the importation are used only in the manufacture of brooms and never in the manufacture of chairs. They did not fall within paragraph 212, Act 1909, but were entitled to free entry as rattan unmanufactured. Rattan & Cane Co. v. U. S. (1915) 6 Ct. Cust. App. 1.

Red or canoe cedar.—Lumber manufactured from the tree botanically known as "thuja gigantea," and commonly called "red cedar" or "canoe cedar," is not within the exception of "cedar * * * and all other cabinet woods," in Act Aug. 27, 1894, par. 676, but is entitled to free entry under that paragraph. In re Myers (C. C. 1895) 69 Fed. 237.

Reeds.—Reeds not cut into lengths, but stripped of enamel so as to transform them from rattan into reed, leaving the inner portion intact, are free under Act 1897, par. 700, as "reeds unmanufactured." U. S. v. Foppes (C. C. 1899) 99 Fed. 558.

Rattan, from which the outer bark or enamel ("chair cane") has been cut by a first process from the raw material, leaving a product known in trade and commerce in the United States at the time of the passage of the tariff act of 1883, as "round reeds," are duty free, under paragraph 770 of that act, as "rattans and reeds, unmanufactured." Foppes v. Magone (C. C. 1889) 40 Fed. 570.

The articles known in trade and commerce at the same date as "square reeds," "oval reeds," and "flat reeds," being obtained by a further process of cutting from the "round reeds," held liable to duty under Act 1883, par. 482, as "rattans and reeds, manufactured but not made up into completed articles, ten per centum ad valorem. Id.

Reeds imported in the rough in the crudest form in which such reeds are imported are unmanufactured, and fall within the terms of paragraph 713, Act 1909, for "reeds unmanufactured * * * or not further advanced than cut into lengths suitable for sticks for umbrellas, parasols, sunshades, etc.," although not suitable for sticks, etc. The fact that a further provision or exception extended the paragraph to reeds partly manufactured, to wit, when advanced but not further than cut into lengths suitable for sticks, etc., does not exclude the importation in question therefrom. The further provision was not designed as restrictive, but the words employed are words of extension. U. S. v. Winter & Smillie (1913) 4 Ct. Cust. App. 522.

Umbrella sticks.—These sticks are in the rough and not further advanced than cut into lengths suitable for use in making umbrellas, parasols, etc. They remain boxwood sticks in the rough and their principal use, as was shown, is for umbrella or parasol handles, and it further appears that umbrella handles are parts of umbrella sticks. Paragraph 713, Act 1909, applied, and the sticks were entitled to free entry. U. S. v. Benneche (1915) 6 Ct. Cust. App. 92; Same v. Gerdau Co., Id. 97.

649. Mechanically ground wood pulp, chemical wood pulp, unbleached or bleached, and rag pulp.

Notes of Decisions

Dry weight.—The term "dry weight," as used in paragraph 415, Act 1890, imposing a duty of six dollars per ton dry weight on unbleached chemical wood pulp, and seven dollars per ton dry weight on bleached chemical wood

pulp, does not refer to the absolute dry weight of the material immediately after desiccation in a kiln, but to the air-dry weight as understood in commerce. U. S. v. Perkins (1895) 66 Fed. 50, 13 C. C. A. 324.

Wood pulp.—Wrapping paper held not dutiable as wood pulp. See paragraph 328.

Wood flour, produced by grinding small pieces of wood obtained by breaking or cutting waste wood, etc., held dutiable as a manufacture of wood under Act 1897, par. 208, and not as "wood pulp," under paragraph 393, nor as "waste" under paragraph 463. Nairn Linoleum Co. v. U. S. (C. C. 1907) 151 Fed. 955.

Wood ground into a powder by a dry process, and known in trade both as "wood flour" and "wood pulp," held not dutiable as wood pulp, under paragraph 303, Act 1894. Goldman v. U. S. (C. C. 1898) 87 Fed. 193.

Wood flour held dutiable as a manufacture of wood. Lang v. U. S. (1913) 4 Ct. Cust. App. 464. See, also, Salomon v. Same (1911) 2 Ct. Cust. App. 92; Rossman v. Same (1911) 1 Ct. Cust. App. 280.

The wood pulp of this importation and the pulp wood from which it was manufactured were entitled to exportation from Canada into the United States free of any export charge or prohibition or restriction upon exportation, and it accordingly falls directly within the provisions of section 2 of the reciprocity act, superseded by this paragraph, and is thereby entitled to free entry. Cliff Paper Co. v. U. S. (1913) 4 Ct. Cust. App. 186.

650. Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by schedule K of the existing law shall remain in full force and effect

Notes of Decisions

Cabretta skins.—The growth on cabretta skins held dutiable as "wool," under Act 1897. Lawrence Johnson & Co. v. U. S. (C. C. 1907) 159 Fed. 189, judgment affirmed (1908) 166 Fed. 728, 92 C. C. A. 418, and writ of certiorari denied (1909) 29 Sup. Ct. 694, 214 U. S. 511, 53 L. Ed. 1062.

Classification and quality of wool.—Scoured wool, made up in England into the form of "tops," which were afterwards purposely torn up in order to be imported as "waste," was not classifiable under the act of 1883 (22 Stat. 508) as "waste," nor as manufactures of wool, but was dutiable at 60 cents per pound, under the provision imposing treble duties upon scoured wool as compared with unwashed wool, and the further provision imposing double duties in case of wools purposely changed in character or condition for the purpose of evading the duty properly chargeable upon them. Patton v. U. S. (1895) 16 Sup. Ct. 89, 92, 159 U. S. 500, 40 L. Ed. 233, affirming (D. C. 1891) 46 Fed. 461.

The provision in the act of 1883 (22 Stat. 508) imposing double and treble duties, respectively, upon wools imported washed and wools imported scoured, refers, not to the commercial designation, but to the fact whether the wool has been actually washed or scoured, or is imported unwashed. Id.

The statute makes the appraised value of wool in its unwashed state the standard for determining the amount of ad valorem duty to be collected upon washed wool. Arthur v. Pastor (1883) 3 Sup. Ct. 96, 98, 109 U. S. 139, 27 L. Ed. 882.

Certain bales of merchandise purporting to be the fleeces of the unimproved North China sheep were imported from Shanghai, the papers being regular, and free from all question of fraud. The goods consisted of very low grade wool, containing a large mixture of coarse, short hair, and cost three cents a pound in Shanghai, and were worth but nine cents in Baltimore. The importer testified that he had lived in China, and had dealt in the fleeces of the China sheep, and that the importation consisted of such fleeces. A customhouse expert, however, testified that the hair in the fleeces was goat's hair, and on this evidence the collector and board of appraisers placed the importation in class 2, par. 377, Act Oct. 1, 1890, and assessed a duty of 12 cents a pound, and this conclusion was sustained by the circuit court. Held, that an appellate court, taking judicial notice of the fact that a large proportion of hair grows on the bodies of unimproved sheep, would find that the whole importation consisted of the fleece of the sheep, and therefore belonged to class 3, (paragraph 378,) and was dutiable at 32 per cent. ad valorem. Lyon v. Marine (1893) 55 Fed. 964, 5 C. C. A. 359.

The importation of wool separated as to colors by entire fleeces, the colors being of different values, and entered for duty as washed wool of the third class, is not within paragraph 383 of the tariff act of 1890, which imposes double duties upon wool "which shall be im-

ported in any other than ordinary condition, or which shall be changed in its character or condition for the purpose of evading the duty, * * * or which has been sorted or increased in value by the rejection of any part of the original fleece." In re Higgins (1893) 55 Fed. 278, 5 C. C. A. 104, affirming (C. C. 1892) 50 Fed. 910.

The proviso excepting "wools on which duty is assessed amounting to three times or more than that which would be assessed if said wool was imported unwashed" from the double duty imposed by paragraph 383 of the tariff act of 1890 on wools sorted in quality for the purpose of evading duty cannot be restricted to those classes of wool upon which the act assesses duty by the express term "unwashed." Id.

The standard samples of wool prescribed by the Secretary of the Treasury on the authority of Act 1897, par. 352, are conclusive in respect to classification and quality, except, perhaps, where the issue is one of fraud or mistake, and regulations in respect to such samples are not subject to review by the courts or the Board of General Appraisers; and where imported wools answer the quality of the standard samples, they should be classified accordingly regardless of whether such standards operate unjustly, oppressively, or disproportionately to other classifications and values. U. S. v. American Express Co. (C. C. 1910) 177 Fed. 735.

In Act 1897, par. 349, relating to wools, the words "merino blood, immediate or remote," convey an unmistakable meaning, and include wool in which the presence of merino blood is marked, though of inferior quality. Id.

Wools are classified in paragraphs 349, 350, and 351, Act 1897, according to quality, and not place of origin, and wool of English blood, containing no perceptible mixture of merino, belongs in class 2, and is dutiable under paragraph 350, although imported from New Zealand. Hempstead v. U. S. (C. C. 1902) 116 Fed. 99.

The "sorting clause" (so called) of paragraph 383, Schedule K, Tariff Act Oct. 1, 1890 (26 Stat. 567), applies to wools of all classes. In re Higgins (C. C. 1892) 50 Fed. 910, judgment affirmed U. S. v. Higgins (1893) 55 Fed. 278, 5 C. C. A. 104.

Schedule K, Tariff Act 1883, imposing a double duty upon "wool of the sheep * * * imported in any other than ordinary condition, as now and heretofore practiced," etc., is not to be restricted to wool changed in its character or condition for the purpose of evading the duty, nor to wool reduced in value by the admixture of dirt or any other foreign substance, but to cover also wool advanced or improved beyond such "ordinary condition." Juillard v. Magone (C. C. 1889) 37 Fed. 857.

The rate on washed wool is computed by doubling the specific and ad valorem rates for unwashed wool. R. S. § 2504, Schedule L. Foster v. Simmons (C. C. 1878) Fed. Cas. No. 4,982a.

Where wool imported has been changed from one condition to another for the purpose of evading duty, whether the condition in which it was entered was a customary condition in which wool was imported prior to the date of the act of 1883 or not, it is subject to double duty. U. S. v. Patton (D. C. 1891) 46 Fed. 461.

In the tariff act of 1883, in the enumeration of wools of the first class, as "wools of merino blood, near or remote," "remote" is limited to mean within the limit of merino blood requisite to characterize the wool as possessing merino qualities, and adding to the value. U. S. v. Midgley (D. C. 1890) 42 Fed. 668.

A wool was originally placed in the third class by the examiner, who afterwards, upon the orders of the appraiser, made another examination, and placed it in the second, and, upon the refusal of the appraiser to indorse, made a third examination, and placed it in the first class. On trial several experts testified, upon seeing the wool for the first time, that it was plainly clothing wool (first class). Held, that the fact of the original judgment of the government examiner was evidence for the defendant as to the "grade" of the wool, and to impeach the reliability of plaintiff's expert testimony produced at the trial. Id.

Goat hair.—In Schedule K of the act of March 3, 1883 (22 Stat. 488), the words, in class 2, "combing wools," apply only to the first part of the clause, which enumerates wools, and not to the latter part, reading, "and also all hair of the alpaca, goat, and other like animals;" and such hairs, whether fit for combing or not, are dutiable at a uniform rate of 10 cents a pound. Common goat hair is therefore included in this specification, and is not comprehended in the clause (paragraph 717) relating to hair "not specially provided for in this act." Cooper v. Dobson (1895) 15 Sup. Ct. 568, 157 U. S. 148, 39 L. Ed. 652, reversing Dobson v. Cooper (D. C. 1891) 46 Fed. 184, and approving U. S. v. Hopewell (1892) 51 Fed. 798, 2 C. C. A. 510.

Under Act 1890, common goat hair, even if not fit for combing, is dutiable at 12 cents a pound, under Schedule K, par. 377, class 2, and is not embraced in paragraph 604 of the free list. U. S. v. Hopewell (1892) 51 Fed. 798, 2 C. C. A. 510, reversing In re Chase (C. C. 1892) 48 Fed. 630.

"Like animals."—A sheep, in respect to its fleece, is not a "like animal" to the goat, within Act 1890, par. 377, classifying wools. Lyon v. Marine (1893) 55 Fed. 964, 5 C. C. A. 359.

Sheepskins.—Under the tariff act of July 30, 1846 (9 Stat. 42), imported sheepskins, dried with the wool on them, do not come within the class of "raw hides, and skins of all kinds, whether dried, salted or pickled, not otherwise provided for;" nor can the skins be treated as coming within that class, and the wool upon them estimated separately, as "wool unmanufactured;" but the skins and wool together must be charged with a duty of 20 per cent. ad valorem, as nonenumerated articles. De Forest v. Lawrence (1851) 54 U. S. (13 How.) 274, 14 L. Ed. 143; Coggill v. Lawrence (C. C. 1850) Fed. Cas. No. 2,956.

As to the coat on so-called mocha whitehead sheepskins, which contains a percentage of wool of a low order, held, that it is subject to the duty provided for wools on the skin in paragraphs 351, 358, 360, Act 1897, and is not free of duty under paragraph 664, relating to raw skins, "except sheepskins with the wool on." Goat & Sheepskin Import Co. v. U. S. (C. C. 1905) 141 Fed. 493, judgment affirmed (1906) 145 Fed. 1022, 74 C. C. A. 82, which is reversed (1907) 27 Sup. Ct. 634, 206 U. S. 194, 51 L. Ed. 1022.

Paragraph 360, Act 1897, must be taken to refer to skins with wool upon them of such character and quantity that it would be profitable to remove this wool from the skins; and there being no question here that the importation of raw sheepskins was not of that kind, but was of skins the wool upon which could not be removed with profit, following the rule established by a long-continued practice in the customs administrative service, these were free of duty under paragraph 562. U. S. v. Heckman (1911) 1 Ct. Cust. App. 272. See, also, Same v. Bennet (1895) 66 Fed. 299, 13 C. C. A. 446; Lawrence, Johnson & Co. v. U. S. (C. C. 1903) 124 Fed. 1000.

Weight.—Wool must pay duty on its weight on arrival, though the same was increased by absorption of moisture, where not exposed to or injured by sea water. U. S. v. Choteau (D. C. 1855) Fed. Cas. No. 14,793.

651. Wool wastes: All noils, top waste, card waste, slubbing waste, roving waste, ring waste, yarn waste, bur waste, thread waste, garnetted waste, shoddies, mungo, flocks, wool extract, carbonized wool, carbonized noils, and all other wastes not specially provided for in this section. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by schedule K of the existing law shall remain in full force and effect.

Notes of Decisions

Noils.—Camel's hair noils, being the short hair of the camel, obtained by combing, were dutiable as noils, under paragraph 388, Act 1890, and not as camel's hair of the second class, under paragraphs 377 and 384, or as waste, under paragraph 472. Lobsitz v. U. S. (C. C. 1896) 75 Fed. 834, appeal dismissed (1897) 89 Fed. 1018, 32 C. C. A. 609.

Reviewing the authorities bearing on the paragraph of the tariff involved, it is clear that the "wool wastes" of paragraph 651, Act 1913, embracing as it does all noils, includes noils of hair from Angora or alpaca goats. Crimmins & Pierce v. U. S. (1915) 6 Ct. Cust. App. 137.

Wool waste.—Mill sweepings held not classifiable as wool waste. See paragraph 566.

Merchantable wool "tops," which have been torn into fragments for the purpose of changing their character from that of tops to that of "waste," in order to evade the duty to which the wool would be subject in the form of tops, is liable to pay the double duty expressly imposed in such cases by the act of 1883, irrespective of the question whether such torn-up tops were commercially known as "waste" or "top waste" or not. Patton v. U. S. (1895) 16 Sup. Ct. 89, 159 U. S. 500, 40 L. Ed. 233, affirming judgment U. S. v. Patton (D. C. 1891) 46 Fed. 461.

The word "waste," as used in respect to wools in the tariff act of 1883 (22 Stat. 508), means refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable. Id.

Clippings of woolen material, produced in the process of making up garments, are "rags," within both the popular and the commercial signification of the term, and are more specifically provided for as "woolen rags," in paragraph 363, Act 1897, than in paragraph 362 of said act, as "wastes composed wholly or in part of wool, not specially provided for." U. S. v. Pearson & Emmott (1905) 137 Fed. 1021, 70 C. C. A. 306, affirming judgment (C. C. 1904) 131 Fed. 571.

Waste pieces of cloth, composed in part of rubber, cotton, and wool, held to be dutiable as "waste, composed in part of wool," under Act 1890, par. 388, and not as "waste, not specially provided for in this act." U. S. v. Cummings (C. C. 1895) 65 Fed. 495.

Pulverized waste or flock or shoddy is dutiable as "waste or shoddy" and

not as a manufacture of wool. Act July 30, 1846. Lennig v. Maxwell (C. C. 1853) Fed. Cas. No. 8,243.

"Wool waste," as employed in the tariff acts, signifies such parts or particles of wool as are thrown off in the several processes of manufacture of wool in wool or worsted fabrics, and does not include wool which has been prepared for spinning, and artificially and intentionally made into a form like such parts or particles, even if sometimes called "waste" by the trade. U. S. v. Patton (D. C. 1891) 46 Fed. 461.

652. Original paintings in oil, mineral, water, or other colors, pastels, original drawings and sketches in pen and ink or pencil and water colors, artists' proof etchings unbound, and engravings and woodcuts unbound, original sculptures or statuary, including not more than two replicas or reproductions of the same; but the terms "sculpture" and "statuary" as used in this paragraph shall be understood to include professional productions of sculptors only, whether in round or in relief, in bronze, marble, stone, terra cotta, ivory, wood, or metal, or whether cut, carved, or otherwise wrought by hand from the solid block or mass of marble, stone, or alabaster, or from metal, or cast in bronze or other metal or substance, or from wax or plaster, made as the professional productions of sculptors only; and the words "painting" and "sculpture" and "statuary" as used in this paragraph shall not be understood to include any articles of utility, nor such as are made wholly or in part by stenciling or any other mechanical process; and the words "etchings," "engravings," and "woodcuts" as used in this paragraph shall be understood to include only such as are printed by hand from plates or blocks etched or engraved with hand tools and not such as are printed from plates or blocks etched or engraved by photochemical or other mechanical processes.

Notes of Decisions

Blocks.—In Act 1897, par. 454, relating to "statuary * * * wrought by hand from a solid block or mass of marble * * * or from metal," the words "solid block," etc., do not refer to metal." U. S. v. Tiffany & Co. (1908) 160 Fed. 408, 87 C. C. A. 360, affirming judgment Tiffany & Co. v. U. S. (C. C. 1907) 154 Fed. 168.

The provision in paragraph 454, Act 1897, for statuary produced from "a solid block or mass of marble," etc., is not limited to statuary made from single blocks, and is held to include certain statues, each carved from three solid blocks of marble. U. S. v. Perry (C. C. 1904) 133 Fed. 841.

Busts of metal.—It seems that busts of lead are duty free, under Act 1832, as "all busts of marble, metal, or plaster," though put in that form to avoid the duty on lead in pigs, bars, and sheets. U. S. v. Levitt (D. C. 1842) Fed. Cas. No. 15,594.

Frames.—Frames of paintings held dutiable as manufactures of wood. See paragraph 176.

Paintings in oil or water color.—See, also, notes under paragraph 376.

Ceilings, painted on wood taken from a palace in Italy, should be classified under Act 1897, par. 454, as paintings in oil, and not under paragraph 208, as manufactures of wood not specially provided for. White v. U. S. (C. C. 1902) 113 Fed. 855.

Certain antique mythological paintings of great value and high artistic character, consisting of a ewer and tray made of copper, and enameled by a process not now understood, are not covered by the provision in paragraph 159, Act 1897, for "sheets, plates, wares, or articles of iron, steel, or other metal, enameled or glazed with vitreous glasses," but dutiable under paragraph 454, as "paintings in oil or water colors." Amerman v. U. S. (C. C. 1900) 124 Fed. 298.

Artistic paintings in oil on a plain slab of porcelain, intended solely for ornamental purposes, and not susceptible of any other use, and whose valuable and distinctive feature is the painting, and not the porcelain, are dutiable as "paintings in oil or water color" at 15 per cent. ad valorem, under paragraph 465, and not as "porcelain ware, painted," under paragraph 100, of the act of October 1, 1890. In re Davis Collamore (C. C. 1893) 53 Fed. 1006.

Professional production of a sculptor.—See, also, notes under paragraph 376.

Bronze statue, molded, but finished by the hand of the sculptor, held not dutiable as statuary, etc. See paragraph 167.

Manufactures of marble held not free as articles the production of a sculptor. See paragraph 98.

Plaintiff imported bronze statues and statuettes, and, being compelled to pay 45 per cent., sued to recover back all but 10 per cent. It was shown that all

of the statues, except two, were made by manufacturers or mechanics, by means of artists' models, from which any number could be cast. Expert witnesses testified that the process was purely mechanical, but that it was necessary to use the model of a sculptor. There was testimony that two of the statues were modeled by an artist, and manufactured under his personal supervision. Held, that it was error to refuse to instruct in behalf of defendant that if the imported articles were made, not by professional sculptors or statuaries, or by their assistants, under their direction, but by skilled workmen or mechanics in the employ of the manufacturer, the verdict should be for defendant. Merritt v. Tiffany (1889) 10 Sup. Ct. 52, 132 U. S. 167, 33 L. Ed. 299.

Marble statues, executed by professional sculptors in the studio and under the direction of another professional sculptor, whether from models just made by a professional sculptor, or from antique models whose author is unknown, held to be "professional productions of a statuary or of a sculptor," liable to a 10 per cent. ad valorem duty under R. S. § 2504, Schedule M. Tutton v. Viti (1883) 2 Sup. Ct. 687, 689, 108 U. S. 312, 27 L. Ed. 737.

A statue of great value and high artistic merit, in which bronze was overwhelmingly predominant in bulk, though ivory was the component of chief value, was produced by the "cire perdue" process. After the metal part was cast, it was gone over carefully by hand by a renowned sculptor, who thereby made the alterations necessary to the execution of his artistic conceptions; this being the important part, which gave the piece its distinctive personal character. The entire work, from the original conception to the last touch, was under the sculptor's constant supervision, and he did everything that a sculptor could do to make his work complete. Held, that this statue was within the provision of Act 1897, par. 454, for "such statuary as is cut, carved, or otherwise wrought by hand * * * from metal, and is the professional production of a statuary or sculptor only." U. S. v. Tiffany & Co. (1908) 160 Fed. 408, 87 C. C. A. 360.

The phrase "professional production of a sculptor," as used in Act 1897, par. 454, providing that "the term 'statuary' * * * shall be understood to include only such statuary * * * as is the professional production of a statuary or sculptor," must be considered as synonymous with "productions of a professional sculptor." U. S. v. Townsend (1902) 113 Fed. 442, 51 C. C. A. 276.

Statues cut, carved, and wrought by hand from a solid block of marble, by a person who is a graduate of a recognized school of art, are "statuary, the work of a professional sculptor," within paragraph 454, Act 1897, and entitled to entry as such, without regard to the purpose for which they are to be used. U. S. v. Townsend (1901) 112 Fed. 1023, 50 C. C. A. 680, affirming judgment Townsend v. U. S. (C. C. 1901) 108 Fed. 801.

Carved figures or statues in wood, made by a professional statuary or sculptor from designs made by another professional statuary or sculptor, shown by full-sized drawings, in the making of which statues it was necessary to first model them in clay, and then take a plaster cast, from which the work in wood was done, are "statuary," entitled to free entry, under paragraph 575 in the free list of the tariff act of 1894, and are not dutiable as manufactures of wood, under paragraph 181. U. S. v. Morris European & American Exp. Co. (1900) 101 Fed. 111, 41 C. C. A. 240, affirming judgment Morris European & American Exp. Co. v. U. S. (C. C. 1899) 94 Fed. 643.

A single bronze statuette, imported for the purpose of being added to, and becoming a part of, a pre-existing collection, held not a "collection of antiquities," within Act 1890, par. 524, but dutiable as statuary wrought by hand, under paragraph 465. In re Glaenzer (1893) 55 Fed. 642, 5 C. C. A. 225, reversing judgment (C. C. 1892) 49 Fed. 730.

In Act 1897, par. 454, the definition there given the term "'statuary' as used in this act," governs the provision for "statuary" in section 3, and the reciprocal commercial agreements negotiated as provided in said section. Altman & Co. v. U. S. (C. C. 1909) 172 Fed. 161, judgment affirmed B. Altman & Co. v. Same (1912) 32 Sup. Ct. 593, 224 U. S. 583, 56 L. Ed. 894.

Held, that a "cistern" in several pieces, with figures sculptured thereon in almost full relief, is "statuary," within the meaning of that term as used in Act 1897, par. 454. U. S. v. American Express Co. (C. C. 1905) 139 Fed. 89.

A marble figure, produced in the establishment of a professional sculptor, under whose instructions the original model was made, and who gave such oral instructions and other supervision as were necessary to insure a faithful reproduction of the design, is held to be "statuary," within the meaning of paragraph 454, Act 1897, where it is provided that that term, wherever used in the act, "shall be understood to include only such statuary * * * as is the professional production of a statuary or sculptor only." Sibbel v. U. S. (C. C. 1900) 124 Fed. 105.

Statues carved out of wood by a professional sculptor may be admitted free of duty, as "the professional production of a statuary or sculptor," although the design was produced by an artist in the United States. Morris European &

American Exp. Co. v. U. S. (C. C. 1899) 94 Fed. 643.

Under R. S. § 2504, the artistic work of a professional sculptor is liable to a duty of 10 per cent. ad valorem, and is not to be classed with "all manufactures of marble not otherwise provided for," which are liable to a duty of 50 per cent. ad valorem. Viti v. Tutton (C. C. 1882) 14 Fed. 241, judgment affirmed Tutton v. Viti (1883) 2 Sup. Ct. 687, 108 U. S. 312, 27 L. Ed. 737.

A winged figure of a woman, concededly a sculpture, upon a pedestal made of a square shaft with a carved capital and base, the testimony showing that the monument was ordered, designed, and made as an entirety, was dutiable as an entirety under paragraph 470, Act 1909. U. S. v. Haaker (1913) 4 Ct. Cust. App. 508.

Highly ornamented columns made of solid marble were found by the board to be sculptures and dutiable as such under paragraph 470, Act 1909. On the whole record it does not appear that the finding of the board is clearly against the weight of the testimony. U. S. v. Sterling Bronze Co. (1913) 4 Ct. Cust. App. 389.

Bronze and ivory statue held dutiable as a sculpture under paragraph 470, Act 1909. U. S. v. Masson (1912) 3 Ct. Cust. App. 168.

Statuary wrought from metal.—In Act 1897, par. 454, the provision for "statuary * * * wrought * * * from metal" does not require metal to be the only component, or even the component of chief value. It is enough if it so greatly predominate as to characterize the entire work. U. S. v. Tiffany & Co. (1908) 160 Fed. 408, 87 C. C. A. 360.

The provision for "statuary * * * wrought by hand * * * from metal," in Act 1897, par. 454, does not include a bronze statue cast in a foundry by artisans from a model that was made in plastic material by an artist, but upon which he did little or no retouching. Altman & Co. v. U. S. (C. C. 1909) 172 Fed. 161, judgment affirmed B. Altman & Co. v. U. S. (1912) 32 Sup. Ct. 593, 224 U. S. 583, 56 L. Ed. 894.

653. Works of art, drawings, engravings, photographic pictures, and philosophical and scientific apparatus brought by professional artists, lecturers, or scientists arriving from abroad for use by them temporarily for exhibition and in illustration, promotion, and encouragement of art, science, or industry in the United States, and not for sale, shall be admitted free of duty, under such regulations as the Secretary of the Treasury shall prescribe; but bonds shall be given for the payment to the United States of such duties as may be imposed by law upon any and all such articles as shall not be exported within six months after such importation: Provided, That the Secretary of the Treasury may, in his discretion, extend such period for a further term of six months in cases where application therefor shall be made.

654. Works of art, collections in illustration of the progress of the arts, sciences, agriculture, or manufactures, photographs, works in terra cotta, parian, pottery, or porcelain, antiquities and artistic copies thereof in metal or other material, imported in good faith for exhibition at a fixed place by any State or by any society or institution established for the encouragement of the arts, science, agriculture, or education, or for a municipal corporation, and all like articles imported in good faith by any society or association, or for a municipal corporation, for the purpose of erecting a public monument, and not intended for sale nor for any other purpose than herein expressed; but bond shall be given under such rules and regulations as the Secretary of the Treasury may prescribe, for the payment of lawful duties which may accrue should any of the articles aforesaid be sold, transferred, or used contrary to this provision, and such articles shall be subject, at any time, to examination and inspection by the proper officers of the customs: Provided, That the privileges of this and the preceding paragraph shall not be allowed to associations or corporations engaged in or connected with business of a private or commercial character

Notes of Decisions

Associations.—A company incorporated in this country for the purpose of importing pictures and paintings for purposes of exhibition and then reexportation, and which is established in part as an advertising adjunct of a commercial firm of art dealers and publishers, whose name it adopts, whose

place of business it uses gratuitously, and whose employé is its general manager, is not an "association established in good faith * * * expressly and solely for the promotion and encouragement of science, art or industry," within the meaning of paragraph 758, Act 1890, which permits the free importation of paintings, etc., by such associations. U. S. v. Boussod-Valadon Co. (1896) 71 Fed. 503, 18 C. C. A. 223, reversing Boussod-Valadon Co. v. U. S. (C. C. 1895) 66 Fed. 718.

Clubs.—The principal purpose of the Olympic Club is to encourage athletics, and to do this a regular corps of teachers is employed to give systematic physical instruction. Such an institution is engaged in educational work, and a statue artistic in character, imported for exhibition in the club, falls within the terms of paragraph 715, Act 1909, and was entitled to free entry. U. S. v. Olympic Club (1914) 5 Ct. Cust. App. 251.

Picture frames.—Picture frames, containing oil paintings which are imported into this county for exhibition purposes, are not to be treated as parts of "works of art" and therefore are not entitled to entry free of duty under paragraph 702, Act July 24, 1897 (30 Stat. 203). (1904) 25 Op. Atty. Gen. 276.

655. Works of art, productions of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution or to any State or municipal corporation or incorporated religious society, college, or other public institution, including stained or painted window glass or stained or painted glass windows imported to be used in houses of worship, and excluding any article, in whole or in part, molded, cast, or mechanically wrought from metal within twenty years prior to importation; but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

Notes of Decisions

Altars.—Held, that the provision in paragraph 703, Act 1897, for "works of art" intended for presentation to religious societies, includes certain marble altars imported for presentation to a church, which were carved by a professional sculptor and were of a value of $1,800. U. S. v. Ecclesiastical Art Works (C. C. 1904) 139 Fed. 798, judgment affirmed (1905) 142 Fed. 1038, 71 C. C. A. 685.

Plaintiff imported a church altar and reredos for presentation to a church in New York. It was originally designed by a leading American artist in this style of church architecture. A French artist of reputation made original designs for the angels, and impressed his personality upon the work. Held, that it is a "work of art," within the meaning of Act 1894, par. 686. Morris European & American Exp. Co. v. U. S. (C. C. 1898) 85 Fed. 964.

American artist.—A native Porto Rican, an artist by profession, although temporarily living in France on the 11th day of April, 1899, is, under section 7 of the act of April 12, 1900, a citizen of Porto Rico, and, as such, is an American artist, whose paintings upon importation into the United States are entitled to the privileges provided in paragraph 703, Act 1897. (1902) 24 Op. Atty. Gen. 40.

An artist of foreign birth, but who has resided in the United States for 14 years and has declared his intention to become a citizen thereof, may properly be treated as an American artist within the meaning of the provision in Act 1883 declaring free of duty "works of art, painting, etc., the production of American artists." (1885) 18 Op. Atty. Gen. 163.

Casts of sculpture.—The omission from Act 1897, par. 638, of the provisions of prior tariff acts for the free entry of casts, was not intended to prevent the free entry of such casts as also come within the designation of "casts of sculpture," which, under paragraph 649, are entitled to free entry where specially imported, in good faith, for the use and by the order of any society incorporated or established solely for religious, philosophical, scientific, educational, or literary purposes. Benziger v. U. S. (1904) 24 Sup. Ct. 189, 192 U. S. 38, 48 L. Ed. 331, reversing judgment (1902) 113 Fed. 1016, 51 C. C. A. 587.

Residence abroad.—The regulation prescribed by the secretary of the treasury that an artist can live abroad only five years, with right to have his paintings admitted free of duty, under Act 1897, par. 703, as the product of an American artist residing temporarily abroad, cannot be sustained. Knoedler v. U. S. (C. C. 1902) 113 Fed. 999.

Stained window glass.—Under Act 1890, stained-glass windows containing representations of saints and other Biblical subjects, and imported in a fragmentary state for the use of a convent, are not exempt from duty, under paragraph 677, as "paintings," specially imported in good faith, for the use of any society or institution established

for religious purposes, but are dutiable at 45 per cent. ad valorem, under paragraph 122, as "stained or painted window glass and stained or painted glass windows," "wholly or partly manufactured, and not specially provided for in this act." In re Perry (C. C. 1891) 47 Fed. 110, reversed U. S. v. Perry (1892) 13 Sup. Ct. 26, 146 U. S. 71, 36 L. Ed. 890.

The legislative history of that portion of paragraph 655, Act 1913, that relates to painted or stained glass windows shows clearly, and the language itself must be taken to show, that it is a complete and independent provision, in no wise modified or affected by the clause of exclusion in the paragraph. Houses of worship are those designated as beneficiaries in importing free of duty painted or stained glass windows, and they are so entitled whether incorporated or not. Perry, Ryer & Co. v. U. S. (1915) 6 Ct. Cust. App. 201.

Works of art.—The provision in Act 1897, par. 703, for "works of art," does not include fashion plate drawings, which, though possessing artistic merit, are for purely practical and utilitarian purposes. Harper & Bros. v. U. S. (C. C. 1909) 172 Fed. 289.

The term "works of art," in Act 1897, par. 703, held not to include a monument on which the only free sculpture is the cornice, a relief bust, and a garland of flowers, all covering only a very slight area of the whole surface. F. B. Vandegrift & Co. v. U. S. (C. C. 1908) 162 Fed. 1003.

Pen and ink drawings of an artistic character, of a proposed building, produced by an architect, are within paragraph 703, Act 1897, relating to "works of art, the production of American artists." Young v. Bohn (C. C. 1905) 141 Fed. 471.

Silk banners, embroidered by hand in designs specially prepared by an artist, made and imported expressly for presentation to an incorporated church society, to be used in connection with its service, and which derive their value from their artistic appearance, and not from the fact that they are embroidered, are "works of art," entitled to free entry, under paragraph 686, Act 1894, and are not dutiable as silk embroidery, under paragraph 301. In re Hempstead (C. C. 1899) 95 Fed. 969.

656. Works of art (except rugs and carpets), collections in illustration of the progress of the arts, works in bronze, marble, terra cotta, parian, pottery, or porcelain, artistic antiquities, and objects of art of ornamental character or educational value which shall have been produced more than one hundred years prior to the date of importation, but the free importation of such objects shall be subject to such regulations as to proof of antiquity as the Secretary of the Treasury may prescribe.

Notes of Decisions

Collection of antiquities.—A bronze statuette, imported to become part of a collection of antiquities, held not a collection of antiquities. See paragraph 652.

A single antique opal held not free of duty as a collection of antiquities. See paragraph 357.

Picture frame held not free as antiquity. See paragraph 176.

Where a known and acknowledged collection of antiquities was purchased abroad, and sent to this country, the fact that a single vase of such collection chanced to be sent with a separate invoice, and without its companions, does not disturb its character as a "collection of antiquities," admissible free of duty under Act 1890, par. 524. In re Glaenzer (1893) 55 Fed. 642, 5 C. C. A. 225, reversing judgment (C. C. 1892) 49 Fed. 730.

Four tapestries, of different sizes, each belonging to a period prior to 1700, and purchased for the purpose of being added to a collection of curiosities and bric-a-brac, constitute a "collection of antiquities," within Act 1890, par. 524. Id.

Several different antique articles, never assembled together in Europe, but imported in separate ships, under separate invoices, could not be entered free, under paragraph 524, Act 1890, as a "collection of antiquities," although the importer intended to add them to a collection in this country. Tiffany v. U. S. (C. C. 1895) 66 Fed. 729, followed Davis v. U. S. (C. C. 1896) 72 Fed. 49, judgment affirmed (1896) 77 Fed. 172, 23 C. C. A. 113.

A collection of antiquities produced prior to the year 1700 held entitled to free entry under Act 1890, par. 524, irrespective of the intention of the importer to sell the collection, or parts thereof, after its importation. Godwin v. U. S. (C. C. 1895) 66 Fed. 739.

Antique tapestries, produced prior to the year 1700, imported by dealers in antiquities, to be placed among like articles owned and kept by them in their trade, or for sale, are dutiable, under Act 1890, par. 392, and not entitled to free entry, under paragraph 524, as a collection of antiquities. In re Glaenzer (C. C. 1894) 67 Fed. 532.

The "collections of antiquities" which are made free of duty by Act 1890, par. 524, include only collections of such antique articles as are commonly recognized to be suitable for "cabinet

collections" according to the taste and usage of collectors of antiquarian and artistic curiosities. Id.

A painting on canvas, nine by three feet in dimensions, representing a mythological subject, and produced prior to the year 1700, which was imported, together with certain antique tapestries, by a dealer in antiquities, is not entitled to free entry, under paragraph 524, Act 1890, as part of a collection of antiquities. Id.

Two articles only, produced at a period prior to the year 1700, do not constitute a collection of antiquities, within the meaning of Act 1890, par. 524, entitling to entry, free of duty, "cabinets of old coins and medals, and other collections of antiquities." In re Stern (C. C. 1892) 49 Fed. 730, judgment reversed U. S. v. Glaenzer (1893) 55 Fed. 642, 5 C. C. A. 225.

Whether or not an article is within Tariff Act 1890, par. 524, does not depend upon the fact whether it has belonged to a collection of antiquities, or is imported to add to such a collection, but whether it is a part of such a collection when it is brought in. Id.

A portrait by an old master, imported by the owner of a collection of such portraits, who has purchased it for purpose of adding it to his collection, should be admitted free under Act 1883, par. 669, which places on the free list "cabinets of coins, medals, and all other collections of antiquities," although the portrait in question is the only one of the collection that is imported at the time. Marine v. Robson (C. C. 1891) 47 Fed. 34, appeal dismissed (1892) 12 Sup. Ct. 984, 145 U. S. 645, 36 L. Ed. 856.

The provision in the free list of the tariff act of 1883, for "cabinets of coins, medals, and all other collections of antiquities," does not cover antiquities which do not form a collection. Baumgarten v. Magone (C. C. 1890) 41 Fed. 770.

Curtains made of lace, the product of the sixteenth and seventeenth centuries, and rugs, the product of the sixteenth century, imported at different times as articles of merchandise, are not exempt from duty by virtue of the provision in the free list for "collection of antiquities," but are properly dutiable, under the provisions in the schedules for laces and rugs. Id.

R. S. § 2505, declares that, among other articles, "cabinets of coins, medals, and all other collections of antiquities," and "collections of antiquities especially imported, and not for sale," shall be exempt from duty. Held to give effect to the second clause, that only such collections are embraced in the first clause as are ejusdem generis with coins and medals. U. S. v. Terra Cotta Vases (C. C. 1883) 18 Fed. 508.

The item "antiquities," in the "free list," dating back to Act July 30, 1846 (9 Stat. 42), has ever since continued without change, and has the same meaning now as it had then. Sixty-Five Terra Cotta Vases (D. C. 1882) 10 Fed. 880.

Oriental rugs.—An antique oriental rug, owned by a third person, but imported by a dealer in antiquities, is free of duty, under Act 1890, par. 524. In re Glaenzer (C. C. 1894) 67 Fed. 532, following (1893) 55 Fed. 642, 5 C. C. A. 225.

A single oriental rug of the sixteenth century, bought in Paris, France, at nearly the same time with one other antique rug and three articles of antique tapestries and four other oriental rugs purchased in Constantinople by the same purchaser, for the purpose of being added to a collection of old furniture, bric-a-brac, etc., in the private house of the owner in New York, although not imported in the same vessel as the other articles, is duty free under Act 1883, par. 669. In re Godwin (C. C. 1891) 46 Fed. 361.

Proof of antiquity.—On entry certain merchandise was claimed as entitled to free entry. This claim was supported by an affidavit in which all the articles were not claimed to be free of duty, and the articles so omitted were withdrawn by counsel from consideration here. The evidence that the goods are artistic antiquities is too weak and confused to warrant the finding of the board that they are dutiable should be disturbed, based as this was on a thorough inspection of the goods by an examiner. Bowles v. U. S. (1913) 4 Ct. Cust. App. 474.

Section 2 of the Treasury Regulations governing the importation of artistic antiquities requires an "affidavit of the owner." The affidavit here was made by the consignee. By the terms of the tariff law, subsection 1 of section 28, the consignee is to be deemed the owner of the property consigned; and it will be assumed the Treasury Regulations were framed in view of this provision of law. Compliance was shown here as to the affidavit. Finman v. U. S. (1913) 4 Ct. Cust. App. 262.

It is not within the discretion of a collector to waive the production of proof of the facts going to show an article is an antique within the last provision of paragraph 717, Act 1909. The regulations governing the admission of antiques were in force at the time the lyre in a screen here was imported. These regulations unconditionally required that the specified papers in proof of antiquity should be filed on entry of the importation. The regulations were not complied with. Kronfeld, Saunders & Co. v. U. S. (1913) 4 Ct. Cust. App. 60.

It is a reasonable treasury regulation that requires an affidavit to be made by the importer of an antique showing why the article is regarded as

an antique; and that requires further a described kind of declaration by the foreign seller of the antique as to the character and history of this. That the importation was brought in as personal baggage does not exempt the owner from showing a compliance with this regulation, both as to the affidavit and the declaration. Bradley Martin, Jr., v. U. S. (1912) 3 Ct. Cust. App. 384.

The regulation in terms requires the affidavit and the declaration to be produced upon entry, and the fact that no objection was made before the collector that the declaration was wanting will not excuse the importer from showing, on appeal to the board of general appraisers, that the requirements had been complied with at the time of entry. Id.

Conformity to the treasury regulations governing the free entry of artistic antiques is a condition precedent to the right accruing under the statute. Conformity is here shown. U. S. v. Morris European & American Exp. Co. (1912) 3 Ct. Cust. App. 146. See, also, Same v. Dominici (1897) 78 Fed. 334, 24 C. C. A. 116.

The question is one of proper compliance with treasury regulations governing the admission duty free of works of art produced more than 100 years prior to the date of importation. The collector assessed the goods for duty. The character of the affidavits of record, ex parte as these are, and unsupported as they are, does not warrant a reversal of the collector's action, presumably correct, as this must be considered. U. S. v. Thomas (1912) 3 Ct. Cust. App. 142.

The regulations of the Secretary of the Treasury, duly promulgated, requiring an importer who desires to obtain the benefit of paragraph 717, Act 1909, to file at the time he makes entry of his merchandise certain affidavits, is a requirement applying to merchandise in a bonded warehouse at the time the act of 1909 went into effect; and as to merchandise of this description the regulations will be taken to refer to the time when the necessary steps were taken to withdraw the goods from bond, duty ascertained and liquidated, a delivery permit issued, and not to a later time. Gump Co. v. U. S. (1912) 3 Ct. Cust. App. 137.

By Act 1897, the Treasury Department was duly and lawfully authorized to prescribe regulations governing the allowance of exemptions from duty on works of art imported expressly for presentation; and the requirement in that act that there should be filed with the entry of such works of art an affidavit showing the importation to be of the kind contemplated by the statute must be taken to mean the affidavit so prescribed should have been filed at the time entry was made and not later. McBride v. U. S. (1911) 1 Ct. Cust. App. 293.

Works of art.—The importer here clearly limited himself in his protest to a claim under the 20-year clause, paragraph 717, Act 1909, and the question now presented is whether that paragraph confers an exclusive and final jurisdiction upon the Secretary of the Treasury to determine a particular importation is or is not a work of art of a described kind. The Secretary has asserted no such power, and properly, for the intention in the statute seems manifestly to have been to confer upon that official authority to prescribe rules and regulations according to which all questions as to the age of works of art are to be determined by the ordinary tribunals having jurisdiction in customs cases. Bowling Green Storage & Van Co. v. U. S. (1912) 3 Ct. Cust. App. 309.

Where the sole artistic feature of furniture was the carving on it, and this had been recently applied, it could not be admitted free. U. S. v. Morris European & American Express Co. (1912) 3 Ct. Cust. App. 146.

657. Zaffer. (38 Stat. 114. 39 Stat.)

This was the first section of the Underwood Tariff Act of 1913, cited above, entitled "An act to reduce tariff duties and to provide revenues for the Government, and for other purposes."

This section was amended, and portions thereof repealed, by Act April 27, 1916, c. 93, 39 Stat., and by Act Sept. 8, 1916, c. 463, §§ 500–502, 600. Said amendments and repeals are indicated by notes under the paragraphs of this section so amended or repealed.

Section II of said Underwood Tariff Act, imposing a tax upon incomes, was superseded by Act Sept. 8, 1916, c. 463, Title I, post, §§ 6319–6336.

Section III of said Underwood Tariff Act amending the Customs Administrative Act of June 10, 1890, c. 407, 26 Stat. 131, is set forth post, §§ 5519–5524, 5526–5528, 5529–5533, 5591, 5592, 5594–5602, 5656, 5718, 5791.

Provisions of section IV of said Underwood Tariff Act, relating to duties on imports, are set forth post, §§ 5292–5318; and other provisions of said section are set forth post, §§ 5668, 5672, 5673, 5724, 6137.

All laws affecting imports into the United States apply to articles, etc., coming from the Canal Zone, Isthmus of Panama, by Act March 2, 1905, c. 1311, post, § 5323.

Provisions for lower rates of duty on specified articles imported from Canada when Canada should impose reciprocal rates on specified articles imported

from the United States, and for exemption from duty of other articles imported from Canada when specified articles from the United States should be admitted to Canada free of duty, were made by Act July 26, 1911, c. 3, § 1, post, § 5326.

Grain brought, in wagons, etc., by Canadian farmers, to be ground in mills in the United States, was not to be deemed imported or liable to import duties, by Act Jan. 9, 1883, c. 17, post, § 5320.

Articles, live stock, or wild or other animals, sent out of the United States for exhibition at any public exposition, etc., held in a foreign country, may be returned to the United States without payment of customs duty, by Act May 18, 1896, c. 195, and Act March 3, 1899, c. 454, post, §§ 5321, 5322.

Other changes in the free list and in the dutiable list were made by Act Sept. 8, 1916, c. 463, §§ 500, 501, post, §§ 5291a, 5291b.

§ 5291a. (Act Sept. 8, 1916, c. 463, § 500.) Dyestuffs; free list; dutiable list.

On and after the day following the passage of this Act, except as otherwise specially provided for in this title, there shall be levied, collected, and paid upon the articles named in this section when imported from any foreign country into the United States or into any of its possessions, except the Philippine Islands and the islands of Guam and Tutuila, the rates of duties which are prescribed in this title, namely:

FREE LIST

Group I. Acenaphthene, anthracene having a purity of less than twenty-five per centum, benzol, carbazol having a purity of less than twenty-five per centum, cresol, cumol, fluorene, metacresol having a purity of less than ninety per centum, methylanthracene, methylnaphthalene, naphthalene having a solidifying point less than seventy-nine degrees centigrade, orthocresol having a purity of less than ninety per centum, paracresol having a purity of less than ninety per centum, pyridin, quinolin, toluol, xylol, crude coal tar, pitch of coal tar, dead or creosote oil, anthracene oil, all other distillates which on being subjected to distillation yield in the portion distilling below two hundred degrees centigrade a quantity of tar acids less than five per centum of the original distillate, and all other products that are found naturally in coal tar, whether produced or obtained from coal tar or other source, and not otherwise specially provided for in this title, shall be exempt from duty.

DUTIABLE LIST

Group II. Amidonaphthol, amidophenol, amidosalicylic acid, anilin oil, anilin salts, anthracene having a purity of twenty-five per centum or more, anthraquinone, benzoic acid, benzaldehyde, benzylchloride, benzidin, binitrobenzol, binitrochlorobenzol, binitronaphthalene, binitrotoluol, carbazol having a purity of twenty-five per centum or more, chlorophthalic acid, cumidin, dimethylanilin, dianisidin, dioxynaphthalene, diphenylaimin, metacresol having a purity of ninety per centum or more, methylanthraquinone, metanilic acid, naphthalene having a solidifying point of seventy-nine degrees centigrade or above, naphthylamin, naphthol, naphthylenediamin, nitrobenzol, nitrotoluol, nitronaphthalene, nitranilin, nitrophenylenediamin, nitrotoluylenediamin, orthocresol having a purity of ninety per centum or more, paracresol having a purity of ninety per centum or more, phenol, phthalic acid, phthalic anhydride, phenylenediamin, phenylnaphthylamin, resorcin, salicylic acid, sulphanilic acid, toluidin, tolidin, toluylenediamin, xylidin, or any sulphoacid or sulphoacid salt of any of the foregoing, all similar products obtained, derived, or manufactured in whole or in part from the products provided for in Group I, and all distillates which on being subjected to distillation yield in the portion distilling below two hundred degrees centigrade a quantity of tar acids equal to or more than five

per centum of the original distillate, all the foregoing not colors, dyes, or stains, photographic chemicals, medicinals, flavors, or explosives, and not otherwise provided for in this title, and provided for in the paragraphs of the Act of October third, nineteen hundred and thirteen, which are hereinafter specifically repealed by section five hundred and two, fifteen per centum ad valorem.

Group III. All colors, dyes, or stains whether soluble or not in water, color acids, color bases, color lakes, photographic chemicals, medicinals, flavors, synthetic phenolic resin, or explosives, not otherwise specially provided for in this title, when obtained, derived, or manufactured in whole or in part from any of the products provided for in Groups I and II, natural alizarin and indigo, and colors, dyes, or color lakes obtained, derived, or manufactured therefrom, thirty per centum ad valorem. (39 Stat.)

This section and the two sections next following constituted a part of "An act to increase the revenue and for other purposes," cited above. Section 900 of said act provides that if any part of the act is adjudged invalid, the invalidity of such part shall not affect the other portions of the act. Section 902 of such act provides that the act shall take effect on the day following its passage unless otherwise specially provided and repeals all inconsistent acts. Certain other sections of said act, amending and repealing portions of Act Oct. 3, 1913, c. 16, § 1, are incorporated therein in their proper places. See ante, § 5291. Other sections of said act are set forth post, under Chapter B of this Title, under Title XXXV, "Internal Revenue," and under Title LVI D, "Federal Trade Commission, and Prevention of Unfair Competition."

The words "this title," as used in this section, refer to Title V of said Act Sept. 8, 1916, c. 463, "Dyestuffs," which said Title consisted of this section and the two sections next following.

Notes of Decisions

See notes under § 5291, par. 1, ante.

§ 5291b. (Act Sept. 8, 1916, c. 463, § 501.) Articles dutiable, and rates of duty; schedules and free list.

On and after the day following the passage of this Act, in addition to the duties provided in section five hundred, there shall be levied, collected, and paid upon all articles contained in Group II a special duty of 2½ cents per pound, and upon all articles contained in Group III (except natural and synthetic alizarin, and dyes obtained from alizarin, anthracene, and carbazol; natural and synthetic indigo and all indigoids, whether or not obtained from indigo; and medicinals and flavors), a special duty of 5 cents per pound.

During the period of five years beginning five years after the passage of this Act such special duties shall be annually reduced by twenty per centum of the rate imposed by this section, so that at the end of such period such special duties shall no longer be assessed, levied, or collected; but if, at the expiration of five years from the date of the passage of this Act, the President finds that there is not being manufactured or produced within the United States as much as sixty per centum in value of the domestic consumption of the articles mentioned in Groups II and III of section five hundred, he shall by proclamation so declare, whereupon the special duties imposed by this section on such articles shall no longer be assessed, levied, or collected. (39 Stat.)

See notes to preceding section.

Notes of Decisions

See notes under § 5291, par. 1, ante.

§ 5291c. (Act Sept. 8, 1916, c. 463, § 502.) Articles dutiable; rates, schedules, and free list; repeal.

Paragraphs twenty, twenty-one, twenty-two, and twenty-three and the words "salicylic acid" in paragraph one of Schedule A of section one of an Act entitled "An Act to reduce tariff duties and

to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, and paragraphs three hundred and ninety-four, four hundred and fifty-two, and five hundred and fourteen, and the words "carbolic" and "phthalic," in paragraph three hundred and eighty-seven of the "free list" of section one of said Act, and so much of said Act or any existing law or parts of law as may be inconsistent with this title are hereby repealed. (39 Stat.)

See notes to § 5291a, ante. See, also, notes under the various paragraphs of § 5291a, indicating the amendments and repeals of said section by this section, and other sections of this act, and other acts.

Notes of Decisions

See notes under § 5291, pars. 1, 20–23, ante.

§ 5292. (Act Oct. 3, 1913, c. 16, § IV, A.) Negotiation by President of trade agreements with foreign nations authorized.

A. For the purpose of readjusting the present duties on importations into the United States and at the same time to encourage the export trade of this country, the President of the United States is authorized and empowered to negotiate trade agreements with foreign nations wherein mutual concessions are made looking toward freer trade relations and further reciprocal expansion of trade and commerce: Provided, however, That said trade agreements before becoming operative shall be submitted to the Congress of the United States for ratification or rejection. (38 Stat. 192.)

This and the 26 paragraphs next following were subdivisions A–J, L, and P–U, of section IV of the Underwood Tariff Act of 1913, cited above.

The provisions of other subdivisions of the section, K, M, N, subsec. 1, and O, relating to the collection of duties, are set forth post, §§ 5668, 5672, 5673, 5724.

Subsection 2 of subdivision N, providing for the manufacture of alcohol free of tax for denaturalization only, is set forth post, § 6137.

Notes of Decisions

In general.—Reciprocal commercial agreements made with foreign countries under the authority of section 3, Act 1897, cannot legally extend the scope of said section. U. S. v. Julius Wile Bro. & Co. (1904) 130 Fed. 331, 64 C. C. A. 577, affirming judgment (C. C. 1903) 124 Fed. 1023.

The question whether certain articles upon which a specific duty is imposed by name are, like certain other articles, within a treaty stipulation for nondiscriminating duties is exclusively for congress. Taylor v. Morton (C. C. 1855) Fed. Cas. No. 13,799.

The stipulation in a treaty with a foreign power, to the effect that no higher or other duties shall be imposed on the importation into the United States of any article, the produce or manufacture of the dominion of the treaty-making power, * * * than are or shall be payable on the like articles being the produce or manufacture of any other foreign country, held not to prevent congress from passing an act exempting from duty like products and manufactures imported from any particular foreign dominion it may see fit. Bartram v. Robertson (C. C. 1883) 15 Fed. 212, judgment affirmed (1887) 7 Sup. Ct. 1115, 122 U. S. 116, 30 L. Ed. 1118.

A stipulation in a treaty that "no higher or other duties shall be imposed on the importation into the United States of any article, the produce or manufacture of the dominion of the treaty-making power, * * * than are or shall be payable on the like articles, being the produce or manufacture of any other foreign country," does not prevent congress from passing an act exempting from duty like products and manufactures imported from any particular foreign dominion it may see fit. Whitney v. Robertson (C. C. 1884) 21 Fed. 566, judgment affirmed (1888) 8 Sup. Ct. 456, 124 U. S. 190, 31 L. Ed. 386.

Whether the territory from which goods are imported into the United States is an integral part of a foreign country with which the United States has a reciprocal trade agreement, so that the importation is governed by the provisions of such agreement, or a colony to which the agreement does not apply, is a judicial question for the courts, and not a political one upon which the determination of an executive department of the government is conclusive. Tartar Chemical Co. v. U. S. (C. C. 1902) 116 Fed. 726, judgment reversed U. S. v. Tartar Chemical Co. (1903) 127 Fed. 944, 62 C. C. A. 576.

In order to be entitled to the benefits of the reciprocal commercial agreements negotiated with foreign countries, under Act June 24, 1897, c. 11, § 3, importers must furnish satisfactory evidence that their importations were both produced in and exported from the country with which the agreement was made. Migliavacca Wine Co. v. U. S. (C. C. 1905) 148 Fed. 142.

The president has no power to issue the proclamation provided for in section 3, Act Oct. 1, 1890, to take effect in futuro, nor has he the power to reimpose duties on one or more of five articles enumerated in said section but not on the others. In the proclamation the particular country on whose products the duties are to be reimposed should be named. (1892) 20 Op. Atty. Gen. 290.

In case of conflict between a treaty and a subsequent statute, the latter governs. (1894) 21 Op. Atty. Gen. 80.

England.—By a convention of December 22, 1815, the terms of which, through subsequent agreements, remain in full force and effect, it was stipulated by and between the United States and his Britannic Majesty that "no higher or other duties shall be imposed on the importation into the United States of any article the growth, produce, or manufacture of his Britannic Majesty's territories in Europe * * * than are or shall be payable on the like articles being the growth, produce, or manufacture of any other foreign country." In pursuance of a provision contained in the tariff act of 1897, looking to the arrangement of commercial agreements in which reciprocal and equivalent concessions might be secured in favor of the products and manufactures of the United States, a commercial agreement between the United States and the republic of France was negotiated and proclaimed June 1, 1898, in which it was reciprocally agreed that during the life of the agreement certain articles named therein should be admitted at designated rates on importation from one of the countries to the other. Among the articles so designated brandies or other spirits manufactured or distilled from grain or other materials were to be subject to a duty of $1.75 per gallon. The appellants subsequent to the date of this trade agreement with France imported into the United States from England certain whiskies and other spirituous liquors, and assert here that the favored nation clause in the existing convention between this country and Great Britian applies and that they are entitled to an allowance on their importation from England of the same rate of duty they would be entitled to if their importation had been brought in from France, namely, $1.75 per gallon. The goods were assessed at the port of New York at $2.25 per proof gallon, under paragraph 292, Act 1897. Held, a reciprocity agreement is based on reciprocal considerations moving from each party thereto to the other, separate obligations being assumed in return for benefits granted; and other countries, not parties to the agreement, bearing in no sense the burden of the obligations, cannot properly be taken to share in the accruing benefits. It would be, in the case at bar, to concede to Great Britain without a consideration what was conceded to France only on a consideration if these goods were permitted entry at the rate fixed in the French agreement; and the consignment was dutiable as assessed under paragraph 292, Act 1897. Shaw v. U. S. (1911) 1 Ct. Cust. App. 426. See, also, Whitney v. Robertson (1888) 8 Sup. Ct. 456, 124 U. S. 190, 31 L. Ed. 386; Bartram v. Same (1887) 7 Sup. Ct. 1115, 122 U. S. 116, 30 L. Ed. 1118.

France.—In regard to the reciprocal commercial agreement between the United States and France, proclaimed May 30, 1898 (30 Stat. 1774), which provided for reduced rates of duty on merchandise "the product of the soil or industry of France," it was arranged by the governments of the two countries to settle the question whether Algeria was a part of France within the meaning of the agreement by an abandonment of the contention on the part of France that it was so included, together with an acceptance in lieu thereof of an additional agreement extending the provisions of the original agreement to Algeria. Held, that this arrangement is binding on the courts, and that merchandise from Algeria, imported into the United States before such arrangement was made, is not subject to the reduced rates of duty provided on such merchandise when imported from France proper. U. S. v. Tartar Chemical Co. (1903) 127 Fed. 944, 62 C. C. A. 576, reversing judgment Tartar Chemical Co. v. U. S. (C. C. 1902) 116 Fed. 726.

Article 1 of the agreement between the United States and France, proclaimed August 22, 1902, which was amendatory of and additional to the reciprocal commercial agreement proclaimed May 30, 1898 (30 Stat. 1774), and provided that the earlier agreement "shall apply also to Algeria," was intended to have a prospective operation only. Id.

Cordials are within the provision for "spirits manufactured or distilled from grain or other materials," in section 3, Act 1897, and, when imported from France, are subject to the reduced rate of duty provided for such spirits in the reciprocal commercial agreement with that country (30 Stat. 1774), negotiated under the authority of said section. U. S. v. Julius Wile Bro. & Co. (1904) 130 Fed. 331, 64 C. C. A. 577, affirming judgment (C. C. 1903) 124 Fed. 1023.

A bill of lading for certain merchandise was made out in Switzerland, but the invoice was certified by a United States consul in France, and the evi-

dence showed France to have been the country of production, and from which the merchandise was exported. Held, that the importation was within the reciprocal commercial agreement with France and the United States, May 30, 1898, negotiated under the authority of section 3, Act 1897. U. S. v. Luyties (1904) 130 Fed. 333, 64 C. C. A. 579, affirming judgment (C. C. 1903) 124 Fed. 977.

The reciprocal commercial agreement with France, negotiated under Act 1897, which allows a reduction of duty on "brandies or other spirits," held to supersede the provision of a different rate by Schedule G, § 1, par. 263, of said act, on the alcohol in excess of 10 per cent. found in fruit preserved in spirits. La Manna, Azema & Farnan v. U. S. (1906) 144 Fed. 683, 75 C. C. A. 485, judgment reversed U. S. v. La Manna, Azema & Farnan (1908) 166 Fed. 751, 92 C. C. A. 431.

The question whether Algeria is a part of France and within the scope of the president's proclamation of May 30, 1898, putting in force a reciprocal commercial agreement between France and the United States, as authorized by Act 1897, or is merely a colony, and not affected by such agreement, is one which must be determined solely by the laws of France, and when the French minister of foreign affairs and the diplomatic and consular representatives of that country in the United States unite in stating that since the decree of October, 1870, abolishing the colonial government of Algeria, dividing it into departments, and adding them to the departments of European France, it has been an integral part of the republic of France, their statement should be accepted as conclusive by a court of this country in the administration of its customs laws, and in giving effect to the agreement between the two nations, entered into in a spirit of amity, with desire to improve their commercial relations. Tartar Chemical Co. v. U. S. (C. C. 1902) 116 Fed. 726, judgment reversed U. S. v. Tartar Chemical Co. (1903) 127 Fed. 944, 62 C. C. A. 576.

The reciprocal commercial agreement entered into between the United States and France under section 3, Act 1897, and providing for a reduction in the duty on "brandies, or other spirits," was the result of negotiations, and representations had with reference, among other things to liqueurs and cordials, and the French copy of said agreement contains the word "liqueurs." Held, that merchandise known as "liqueurs" is included in the agreement. Nicholas v. U. S. (C. C. 1903) 122 Fed. 892.

The cordial known as "Chartreuse," imported from France, is a liqueur, and is included in the provision for a reduced rate of duty on "brandies, or other spirits," in the reciprocal commercial agreement between the United States and France (Proc. May 30, 1898, 30 Stat. 1774). Id.

Where it was proved that absinthe imported was manufactured in Pontarlier, France, the fact that the bill of lading was dated at Basle, Switzerland, the point of shipment, did not justify a finding that the consignment was not exported from France, and therefore not entitled to admission at reduced rates of duty, under the reciprocity treaty between France and the United States. U. S. v. Luyties (C. C. 1903) 124 Fed. 977, judgment affirmed (1904) 130 Fed. 333, 64 C. C. A. 579.

Absinthe is a liqueur within the French reciprocity agreement, providing for reduced duties on brandies and other spirits. Id.

With respect to merchandise alleged to be within the reciprocal commercial agreement with France as having been both produced in and exported from that country, held, that evidence of those facts should be furnished by a witness who knows them, or from his position may be presumed to know them, and that a deposition by an importer to the effect that he had ordered the goods through a New York agency and that they were consigned to him direct by the exporting establishment in France, but which did not show that he had any further personal knowledge, was incompetent. Migliavacca Wine Co. v. U. S. (C. C. 1905) 148 Fed. 142.

Neither the argols of Tunisian or Algerian origin imported from Marseilles are entitled, as products of France, to the benefit of the reciprocal commercial arrangement negotiated between France and the United States under section 3, Act 1897. (1899) 22 Op. Atty. Gen. 477.

Germany.—The reciprocal commercial agreement with Germany, negotiated under Act 1897, which allows a reduction of duty on "spirits," supersedes the provision of a different rate by Schedule G, § 1, par. 263, of said act, on the alcohol in excess of 10 per cent. found in fruit preserved in spirits. Mihalovitch, Fletcher & Co. v. U. S. (C. C. 1908) 160 Fed. 988.

Hawaii.—The treaty with the king of the Hawaiian Islands, and the act of congress giving it effect, by which molasses from those islands was admitted into the United States free of duty, did not operate upon the previous treaty with the Dominican republic, so as to establish a like exemption as to molasses imported from the latter country. Bartram v. Robertson (C. C. 1883) 15 Fed. 212, affirmed (1887) 7 Sup. Ct. 1115, 122 U. S. 116, 30 L. Ed. 1118; Whitney v. Same (C. C. 1884) 21 Fed. 566; Netherclift v. Same (C. C. 1886) 27 Fed. 737; Kelly v. Hedden (C. C. 1887) 31 Fed. 607.

The treaty with the king of the Hawaiian Islands, and the act giving it effect (19 Stat. 200), by which sugar from

those islands was admitted into the United States free of duty, did not operate upon the previous treaty with the Dominican republic, so as to establish a like exemption as to sugar imported from the latter country. Netherclift v. Robertson (C. C. 1886) 27 Fed. 737, writ of error dismissed (1891) 12 Sup. Ct. 986, 145 U. S. 649, 36 L. Ed. 847.

The treaty with the king of the Hawaiian Islands, and the act of congress giving it effect, by which molasses from those islands was admitted into the United States free of duty, did not operate upon the previous treaty with the Dominican republic, so as to establish a like exemption as to molasses imported from the latter country. Kelly v. Hedden (C. C. 1887) 31 Fed. 607.

Italy.—The provision for "statuary" in Act 1897, and in the reciprocal commercial agreement with Italy, negotiated under said section, has the same meaning as in section 1, Schedule N, par. 454, of said tariff act, where it is prescribed that the "term 'statuary' as used in this act shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone or alabaster, or from metal." Bronze statuary, not being covered by this definition, is therefore not covered by said reciprocal agreement. C. B. Richard & Co. v. U. S. (1907) 158 Fed. 1019, 86 C. C. A. 671, affirming judgment (C. C. 1907) 151 Fed. 954.

The tariff on statuary and other works of art (R. S. pp. 478, 479) considered in connection with the treaty of 1871 between the United States and Italy. (1881) 17 Op. Atty. Gen. 223.

That treaty makes no provision, in letter or spirit, as regards the importation, exportation, or prohibition of articles, the produce or manufacture of Italy, where dealt in by Italian citizens residing in Italy, excepting that such importations, etc., shall be upon as favorable a footing as like commerce by English, French, German, or other foreign citizens whatsoever. Id.

Portugal.—The second article of the treaty between the United States and Portugal, of August 26, 1840, provides that vessels of either country, arriving in the ports of the other, either laden or in ballast, shall be treated on their entrance, during their stay, and at their departure, upon the same footing as national vessels coming from the same place, with respect to the duties of tonnage, lighthouse duties, pilotage, port charges, fees of public officers, and all other duties and charges, of whatever kind or denomination, levied upon vessels of commerce. Held, that coffee imported in Portuguese vessels, directly from the place of its growth, was not exempt from duty, under the tariff act of July 30, 1846, as imported directly from the place of its growth in foreign vessels, entitled by reciprocal treaties to be exempted from discriminating duties, tonnage, and other charges. Oldfield v. Marriott (1850) 51 U. S. (10 How.) 146, 13 L. Ed. 364.

Prussia.—The "most favored nation clause" in the treaty of May 1, 1828, between the United States and the kingdom of Prussia is not violated by paragraph 608, Tariff Act Aug. 27, 1894 (28 Stat. 544), laying a discriminating duty on salt imported from a country which imposes a duty on salt exported from the United States. (1894) 21 Op. Atty. Gen. 80.

Paragraph 608, Tariff Act Aug. 27, 1894 (28 Stat. 544), imposing a discriminating duty on salt imported from a country which imposes a duty on salt exported from the United States, does not violate the "most favored nation clause" in the treaty of May 1, 1828, with Prussia. Id.

That treaty is to be taken as operative as respects so much of the German empire as constitutes the kingdom of Prussia. Id.

San Domingo.—Plaintiff imported centrifugal and molasses sugars, the produce and manufacture of San Domingo, similar to sugars produced in Hawaii, which are by treaty admitted free of duty, and contended that they should be admitted free, under article 9 of the treaty with the Dominican republic (15 Stat. 475), which provides that no higher or other duty shall be imposed on the importation into the United States of any article, the growth, produce, or manufacture of the Dominican republic, than on like articles, the growth, produce, or manufacture of any other foreign country. Held, that the treaty is a pledge that there shall be no discriminating legislation, against the importation of the articles mentioned, in favor of articles of like character imported from any other country, and, as it was never designed to prevent special concessions on sufficient considerations touching the importation of specific articles, plaintiff must pay duty. Whitney v. Robertson (1888) 8 Sup. Ct. 456, 457, 124 U. S. 190, 31 L. Ed. 386 (affirming judgment [C. C. 1884] 21 Fed. 566); Kelly v. Hedden (1888) 8 Sup. Ct. 459, 124 U. S. 196, 31 L. Ed. 389 (affirming judgment [C. C. 1887] 31 Fed. 607).

The act of congress under which duties on centrifugal and molasses sugars from San Domingo are collected, authorized their exaction, and was passed after the treaty with the Dominican republic, and, if there be any conflict between the stipulations of the treaty and the requirements of the law, the latter must control. Id.

The eleventh section of the tariff act of 1883, referring to the sanctity of treaty obligations, notwithstanding that act, was not intended to revive and set in motion the inert features of the treaty with the Dominican republic of February 8, 1867, by which sugar therefrom

was admitted free of duty, congress having subsequently to said treaty by various enactments imposed duties on all sugar from foreign countries. Netherclift v. Robertson (C. C. 1886) 27 Fed. 737, writ of error dismissed (1891) 12 Sup. Ct. 986, 145 U. S. 649, 36 L. Ed. 847.

§ 5293. (Act Oct. 3, 1913, c. 16, § IV, B.) Reciprocity treaty with Cuba of Dec. 11, 1902, and Act Dec. 17, 1903, c. 1, for execution thereof, not affected by this act, except as to proviso of treaty abrogated.

B. Nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on the eleventh day of December, nineteen hundred and two, or the provisions of the Act of Congress heretofore passed for the execution of the same except as to the proviso of article eight of said treaty, which proviso is hereby abrogated and repealed. (38 Stat. 192.)

The treaty of commercial reciprocity mentioned in this subdivision of section V, was a commercial convention set forth in 33 Stat. 2136.

The act for the execution of said treaty, also mentioned in this subdivision, was Act Dec. 17, 1903, c. 1, set forth post, §§ 5324, 5325.

Article 8 of said treaty, including the proviso annexed thereto, which was abrogated and repealed by the last clause of this subdivision of section IV, was set forth in 32 Stat. 2140, as follows:

"The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of this convention preferential in respect to all like imports from other countries, and, in return for said preferential rates of duty granted to the Republic of Cuba by the United States, it is agreed that the concession herein granted on the part of the said Republic of Cuba to the products of the United States shall likewise be, and shall continue, during the term of this convention, preferential in respect to all like imports from other countries. Provided, That while this convention is in force, no sugar imported from the Republic of Cuba and being the product of the soil or industry of the Republic of Cuba shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897, and no sugar, the product of any other foreign country, shall be admitted by treaty or convention into the United States, while this convention is in force, at a lower rate of duty than that provided by the tariff act of the United States approved July 24, 1897."

Notes of Decisions

In general.—See notes under § 5324, post.

§ 5294. (Act Oct. 3, 1913, c. 16, § IV, C.) Duties on articles coming from Philippine Islands; certain articles free of duty; certain articles from United States free of duty in Philippine Islands; taxes equal to internal-revenue taxes on articles coming into United States from Philippine Islands, and into Philippine Islands from United States; internal revenues collected in Philippine Islands to accrue to government thereof; repeal of provision authorizing export duties.

C. There shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries: Provided, That all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty: Provided, however, That in consideration of the exemptions aforesaid, all articles, the growth, product,

or manufacture of the United States, upon which no drawback of customs duties has been allowed therein, shall be admitted to the Philippine Islands from the United States free of duty: And provided further, That the free admission, herein provided, of such articles, the growth, product, or manufacture of the United States, into the Philippine Islands, or of the growth, product, or manufacture, as hereinbefore defined, of the Philippine Islands into the United States, shall be conditioned upon the direct shipment thereof, under a through bill of lading, from the country of origin to the country of destination: Provided, That direct shipment shall include shipments in bond through foreign territory contiguous to the United States: Provided, however, That if such articles become unpacked while en route by accident, wreck, or other casualty, or so damaged as to necessitate their repacking, the same shall be admitted free of duty upon satisfactory proof that the unpacking occurred through accident or necessity and that the merchandise involved is the identical merchandise originally shipped from the United States or the Philippine Islands, as the case may be, and that its condition has not been changed except for such damage as may have been sustained: And provided, That there shall be levied, collected and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands, a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps, to be provided by the Commissioner of Internal Revenue, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary of the Treasury, shall prescribe; and such articles, goods, wares, or merchandise, shipped from said islands to the United States, shall be exempt from the payment of any tax imposed by the internal-revenue laws of the Philippine Islands: And provided further, That there shall be levied, collected, and paid in the Philippine Islands, upon articles, goods, wares, or merchandise going into the Philippine Islands from the United States, a tax equal to the internal-revenue tax imposed in the Philippine Islands upon the like articles, goods, wares, or merchandise of Philippine Islands manufacture; such tax to be paid by internal-revenue stamps or otherwise, as provided by the laws in the Philippine Islands; and such articles, goods, wares, or merchandise going into the Philippine Islands from the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of the United States: And provided further, That in addition to the customs taxes imposed in the Philippine Islands, there shall be levied, collected, and paid therein upon articles, goods, wares, or merchandise imported into the Philippine Islands from countries other than the United States, the internal-revenue tax imposed by the Philippine Government on like articles manufactured and consumed in the Philippine Islands or shipped thereto for consumption therein, from the United States: And provided further, That from and after the passage of this Act all internal revenues collected in or for account of the Philippine Islands shall accrue intact to the general government thereof and be paid into the insular treasury: And provided further, That section thirteen of "An Act to raise revenue for the Philippine Islands, and for other purposes," approved August fifth, nineteen hundred and nine, is hereby repealed. (38 Stat. 192.)

Previous provisions relating to duties on articles coming from the Philippine Islands, and to the disposition of duties and taxes collected, of Act March 8, 1902, c. 140, §§ 2, 4, 5, 32 Stat. 54, were superseded by those of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 5, 36 Stat. 83. That section was superseded by these provisions, and was one of the sections repealed by section IV, S, of this act, post, § 5316.

Previous provisions, in the last proviso of section 2 of said Act March 8, 1902, c. 140, 32 Stat. 54, and in a proviso annexed to Act March 3, 1905, c. 1408, § 13, 33 Stat. 975, for reduction of or exemption from export duties on products of the Philippine Islands coming to the United States, were superseded by the provisions relating to that subject of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 5, repealed by this act, as stated above, and in section 13 of the Philippine Tariff Act of Aug. 5, 1909, c. 8, which was repealed by the last proviso annexed to these provisions.

Said section 13 of the Philippine Tariff Act of Aug. 5, 1909, c. 8, 36 Stat. 173, repealed by said last proviso above, was as follows:

"Sec. 13. That upon the exportation to any foreign country from the Philippine Islands, or the shipment thereof to the United States or any of its possessions, of the following articles, there shall be levied, collected and paid thereon the following export duties: Provided, however, That all articles the growth and product of the Philippine Islands coming directly from said islands to the United States or any of its possessions for use and consumption therein, shall be exempt from any export duties imposed in the Philippine Islands:

"352. Abaca (hemp), gross weight, one hundred kilos., seventy-five cents.

"353. Sugar, gross weight, one hundred kilos., five cents.

"354. Copra, gross weight, one hundred kilos., ten cents.

"355. Tobacco, gross weight:

"(a) Manufactured or unmanufactured, except as otherwise provided, one hundred kilos., one dollar and thirty cents.

"(b) Stems, clippings, and other wastes of tobacco, one hundred kilos., fifty cents."

Duties on all articles, goods, etc., entering the jurisdiction of the Philippine Islands from any place or places, including the United States and its possessions, were prescribed by said Philippine Tariff Act of Aug. 5, 1909, c. 8, 36 Stat. 130. That act superseded the previous act, which revised and amended the tariff laws of the Philippine Islands, Act March 3, 1905, c. 1408, 33 Stat. 928, amended by Act Feb. 26, 1906, c. 509, 34 Stat. 24.

Notes of Decisions

Effect of treaty of Paris.—The effect of the treaty of Paris, by which Spain ceded the Philippine Islands to the United States, and which took effect by the exchange of ratifications, and by the President's proclamation on April 11, 1899, was to repeal the existing tariff duties, so far as related to goods brought from such islands; and goods arriving at a port of entry of the United States from Philippine ports after its taking effect were not subject to duty, although they were shipped prior to said April 11th. American Sugar Refining Co. v. Bidwell (C. C. 1903) 124 Fed. 677.

Internal revenue tax.—Cigars and cigarettes brought into the United States from the Philippine Islands are subject to the internal revenue tax under section 5, Tariff Act Aug. 5, 1909 (36 Stat. 83), and internal revenue stamps in payment of such tax are required to be affixed to the packages containing the same. (1911) 29 Op. Atty. Gen. 77.

Military occupation.—The exaction of duties on importations into Porto Rico from the United States before the cession of the island by treaty was properly made, under the war power, by Gen. Miles' order of July 26, 1898, which merely extends the existing regulations, and by the tariffs of August 19, 1898, and February 1, 1899, prescribed by the president as commander in chief. Dooley v. U. S. (1901) 21 Sup. Ct. 762, 182 U. S. 222, 45 L. Ed. 1074; Armstrong v. Same (1901) 21 Sup. Ct. 827, 182 U. S. 243, 45 L. Ed. 1086.

The existence of an armed insurrection of the natives in the Philippine Islands after the ratification of the treaty of peace with Spain did not justify the exaction of duties on imports from the United States into Manila after that date, under an order of the President, issued during the Spanish-American war, that "on the occupation of any forts and places in the Philippine Islands by the forces of the United States" the duties shall be levied and collected "as a military contribution." Lincoln v. U. S. (1905) 25 Sup. Ct. 455, 197 U. S. 419, 49 L. Ed. 816, reversing judgment (1904) 40 Ct. Cl. 1.

Ratification of illegal collections.—The ratification by Congress by Act June 30, 1906, c. 3912, 34 Stat. 636, of the illegal collection of duties on imports to the Philippine Islands which were levied under the President's order of July 12, 1898, between the dates of the ratification of the treaty of peace with Spain and the passage of Act July 1, 1902, c. 1369, 32 Stat. 691, enacting a tariff of duties for those islands, does not deprive importers of their property without due process of law, in violation of Const. Amend. 5, even though they had commenced an action to recover the amount of the duties so collected before the ratifying statute was enacted. U. S. v. Heinszen (1907) 27 Sup. Ct. 742, 744, 206 U. S. 370, 51 L. Ed. 1098, 11 Ann. Cas. 688, reversing judgment Heinszen v. U. S. (1907) 42 Ct. Cl. 58.

Aside from any question of intervening rights, Congress could, by Act June 30, 1906, c. 3912, 34 Stat. 636, ratify the illegal collection of duties on imports to the Philippine Islands which were levied under the President's order of July 12, 1898, between the dates of the ratification of the treaty of peace with Spain and the passage of Act July 1, 1902, c. 1369, 32 Stat. 691, enacting a tariff of duties for those islands. Id.

What constitutes direct shipment.—Sponges were dispatched, freight prepaid, from Zamboanga via Hongkong and Tacoma, Wash., to Chicago. They were delivered by the agents on board a vessel lying in or off the port of Hongkong. The evidence to this effect makes a prima facie showing that the goods were shipped direct, and there being no evidence to show there was any delay in the course of the shipment, the consignment was entitled to free entry under section 5, Act 1909, governing articles the growth or product of the Philippine Islands. Rhodes v. U. S. (1911) 2 Ct. Cust. App. 100.

In the enactment of the provisions of the tariff act of 1909 that relate to Commerce between the United States proper and the Philippine Islands, the Congress will be presumed to have had in mind the actual requirements of trade in the Philippines, as these may call for transshipment of merchandise; and having in view, too, the recognized benevolent intent of legislation affecting the archipelago, that shipment must be deemed a direct shipment from the Philippines to the United States when the consignment was forwarded on a through bill of lading from Manila to New York, but by reason of a trade requirement was transshipped at Hongkong; and so the goods fell within section 5, Act 1909, making them free of duty. U. S. v. United Cigar Stores Co. (1911) 1 Ct. Cust. App. 450.

§ 5295. (Act Oct. 3, 1913, c. 16, § IV, D.) Exemption of articles going into Porto Rico from United States from internal-revenue taxes.

D. Articles, goods, wares, or merchandise going into Porto Rico from the United States shall be exempted from the payment of any tax imposed by the internal-revenue laws of the United States. (38 Stat. 193.)

See post, §§ 6338, 6338a.

§ 5296. (Act Oct. 3, 1913, c. 16, § IV, E.) Countervailing duty on articles on which bounty on exportation was paid.

E. Whenever any country, dependency, colony, province or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony, province or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties. (38 Stat. 193.)

Provisions in the same language as those of this subdivision were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 6, 36 Stat. 85, superseding similar provisions of previous tariff acts. That section was superseded by these provisions, and was repealed by section IV, S, post, § 5316.

The President was authorized, when satisfied that unjust discriminations were made by any foreign state against the importation or sale therein of any product of the United States, to direct that such products as he might deem proper of such foreign state be excluded from importation to the United States, by Act Aug. 30, 1890, c. 839, § 5, post, § 5319.

The importation and sale of articles in the United States at less than their market value abroad, plus transportation charges, with intent to restrain commerce, etc., or their importation under an agreement, with certain exceptions,

that the importer or other person shall be restricted to using or dealing in such goods, is prohibited, and the President is empowered to prohibit the importation of articles from countries which forbid importations from the United States, and under certain conditions, to deny clearance to vessels discriminating against citizens of the United States, by Act Sept. 8, 1916, c. 463, §§ 800–806, post, §§ 8836*l*–8836v.

Notes of Decisions

Validity of act.—The provision in Act 1890 for the payment of bounties to the sugar producers of the United States, is not so intimately connected with the provisions relating to duties on imports that its unconstitutionality would invalidate the whole statute. Field v. Clark (1892) 12 Sup. Ct. 495, 143 U. S. 649, 36 L. Ed. 294.

Construction of act in general.—Act 1897, which provides that whenever any country "shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article of merchandise from such country" which is dutiable under the act, an additional duty equal to such bounty or grant shall be collected thereon upon its importation into the United States, is a protective measure, and is intended to cover every case where by the laws of a foreign country the exporter is given, either directly or indirectly, a pecuniary benefit from the exportation, whether by way of a direct bounty paid from the public treasury, by the remission of taxes, or by exemption from taxes which would otherwise be imposed on the article. Downs v. U. S. (1902) 113 Fed. 144, 51 C. C. A. 100, decree affirmed (1903) 23 S. Ct. 222, 187 U. S. 496, 47 L. Ed. 275.

Conclusiveness of decision of secretary.—Under the provision of section 5 of Act 1897, that the net amount of any bounty or grant paid or bestowed by a foreign country on the exportation of an article of merchandise "shall be from time to time ascertained, determined, and declared by the secretary of the treasury," the decision of the secretary as to such amount is conclusive, and cannot be reviewed by the courts; but the question whether a country pays or bestows such bounty or grant, where it depends upon the construction of the laws of such country, is a judicial one, and, while it is to be decided primarily by the secretary, his decision thereon is reviewable. Downs v. U. S. (1902) 113 Fed. 144, 51 C. C. A. 100, decree affirmed (1903) 23 Sup. Ct. 222, 187 U. S. 496, 47 L. Ed. 275.

Where a published declaration by the Secretary of the Treasury as to the amount of sugar bounty, as authorized by Act 1897, § 5, was followed by another declaration, but there was nothing to indicate that the latter was issued for the purpose of correcting the former, evidence is not admissible to show that the former was wrong. The importer's only remedy is by appeal to the Secretary himself. Franklin Sugar Refining Co. v. U. S. (C. C. 1910) 178 Fed. 743.

A treasury declaration as to the amount of sugar bounty allowed by a foreign country, under Act 1897, § 5, which was properly issued, is presumably correct, and cannot be impeached or inquired into by the courts. Franklin Sugar Refining Co. v. U. S. (C. C. 1910) 178 Fed. 747.

Under the tariff act of 1897 the Secretary of the Treasury possessed full authority to assess and collect duties imposed by law to countervail foreign-paid bounties, and his determination, as of the date of the importation itself, of the amount of bounty granted on an exportation of raw beet sugar from Germany and imported here is not open to collateral attack and is final. Franklin Sugar Refining Co. v. U. S. (1911) 1 Ct. Cust. App. 242. See, also, Cramer v. Arthur (1880) 102 U. S. 612, 26 L. Ed. 259.

Rate of duty.—The countervailing duty assessed on account of sugar bounty under Act 1897, applies according to the rate in force at the time of importation; and the promulgation of a new rate between the time of importation and of liquidation does not affect the amount of countervailing duty applicable. Franklin Sugar Refining Co. v. U. S. (C. C. 1910) 178 Fed. 743.

Nature of bounty.—A bounty may be direct, as where a certain amount is paid upon the production or exportation of particular articles, or indirect, by the remission of taxes upon the exportation of articles which are subjected to a tax when sold or consumed in the country of their production. Downs v. U. S. (1903) 23 Sup. Ct. 222, 223, 187 U. S. 496, 47 L. Ed. 275.

What constitutes bounty.—The Russian laws regulating the production and exportation of sugar, under which an exporter of sugar is remitted the excise tax imposed on sugar sold in Russia, and obtains a certificate because of such exportation, which has a substantial market value, allow a bounty upon the exportation of sugar which, under Act 1897, § 5, subjects such sugar upon its importation into the United States to an additional duty equal to the entire amount of such bounty as ascertained and determined by the secretary of the treasury. Downs v. U. S. (1903) 23 Sup. Ct. 222, 229, 187 U. S. 496, 47 L. Ed. 275, affirming decree (1902) 113 Fed. 144, 51 C. C. A. 100.

When a tax is imposed upon all sugar produced, but is remitted upon all sugar

exported, then, by whatever process or in whatever manner, or under whatever name it is disguised, it is a bounty upon exportation. Id.

The laws of Russia bestow a bounty or grant upon the exportation of so-called "free sugar," so as to work a benefit or advantage to the exporter in two ways: (1) By remitting the excise tax due upon the sugar exported, and (2) by the issuance by the government to the exporter of a certificate of exportation, which authorizes the sale in the domestic market of an equal quantity of "free reserve or free surplus" sugar without the payment of the additional tax otherwise required to be paid thereon, and which certificate is transferable and has a substantial market value; and such sugar, when imported into the United States, is subject to the additional or countervailing duty imposed by section 5 of the tariff act of 1897. Downs v. U. S. (1902) 113 Fed. 144, 51 C. C. A. 100, decree affirmed (1903) 23 Sup. Ct. 222, 187 U. S. 496, 47 L. Ed. 275.

Where under Act 1897, § 5, providing that, when any country shall pay any bounty on the exportation of merchandise dutiable in this country, there shall be levied an additional duty equal to the bounty, Holland gives bounty for the production of sugar, to be deducted from the excise thereon, but such excise is remitted on exportation, the duty is a grant on the exportation, and should be added to the regular duty on importation of sugar from that country. U. S. v. Hills Bros. Co. (1901) 107 Fed. 107, 46 C. C. A. 167, reversing judgment Hills v. U. S. (C. C. 1900) 99 Fed. 425.

Change of condition.—The "additional" duty imposed by Act 1897, § 5, on articles of merchandise imported into the United States and upon which an export bounty has been paid by the country of production, and which it is provided shall be "equal to the net amount of such bounty," is leviable only upon the article or merchandise which enters the United States, and in case of merchandise dutiable by weight and as to which the bounty as declared by the Secretary of the Treasury is also by weight, such as sugar, where the quantity entered at the custom house as shown by the official weigher is less than that shown by the foreign invoice, the "additional" duty, like the regular duty, is assessable only on the quantity so entered, and the cause of the loss or shrinkage is immaterial. The mere diminution in the quantity of units of weight or measure of a commodity usually measured by such units is not such a change of condition "by remanufacture or otherwise," within the meaning of such section, as to authorize a resort to other than the usual means for ascertaining the amount of the additional duty. Franklin Sugar Refining Co. v. U. S. (1906) 142 Fed. 376, 73 C. C. A. 476, reversing decree (C. C. 1905) 137 Fed. 655.

A change in the weight of imported sugar resulting from natural evaporation only is not a change in its condition by "remanufacture or otherwise." U. S. v. Franklin Sugar Refining Co. (1911) 2 Ct. Cust. App. 116.

The Secretary of the Treasury was empowered by law to make all needful regulations for the assessment and collection of a countervailing duty imposed by the act of 1897 on sugar imported into this country from a country where a bounty had been paid and regardless of any possible change in the weight on a consignment of sugar from Germany after its importation, the established regulations of the Treasury Department then in force controlled the shipment, and the countervailing duty, accordingly, was properly assessed on the actual or landed weight. Id.

"Country."—The free zone in Hamburg is in the German customs union; it is not a "country" in the sense that term is employed in the proviso to paragraph 626, Act 1897, and in the matter of customs duties it is to be regarded as a part of the German Empire. Sonneborn Sons v. U. S. (1911) 1 Ct. Cust. App. 443.

§ 5297. (Act Oct. 3, 1913, c. 16, § IV, F, subsec. 1.) Articles to be marked to indicate country of origin; packages, to indicate country of origin and quantity of contents.

F. Subsection 1. All articles of foreign manufacture or production, which are capable of being marked, stamped, branded, or labeled, without injury, shall be marked, stamped, branded, or labeled in legible English words, in a conspicuous place that shall not be covered or obscured by any subsequent attachments or arrangements, so as to indicate the country of origin. Said marking, stamping, branding, or labeling shall be as nearly indelible and permanent as the nature of the article will permit.

All packages containing imported articles shall be marked, stamped, branded, or labeled so as to indicate legibly and plainly, in English words, the country of origin and the quantity of their contents, and until marked in accordance with the directions prescribed in this section no articles or packages shall be delivered to the importer.

Should any article or package of imported merchandise be marked, stamped, branded, or labeled so as not accurately to indicate the quantity, number or measurement actually contained in such article or package, no delivery of the same shall be made to the importer until the mark, stamp, brand, or label, as the case may be, shall be changed so as to conform to the facts of the case.

The Secretary of the Treasury shall prescribe the necessary rules and regulations to carry out the foregoing provision. (38 Stat. 194.)

Provisions in the same language as those of this subsection and subsection 2 of this subdivision, next following, were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, §§ 7, 8, 36 Stat. 85, 86, superseding similar provisions of previous tariff acts. Those sections were superseded by these provisions, and were repealed by section IV, S, of this act, post, § 5316.

Provisions of the Dingley Tariff Act of July 24, 1897, c. 11, § 11, 30 Stat. 207, which prohibited the importation of articles copying or simulating the name or trade-mark of any domestic manufacture or manufacturer, etc., were superseded by more comprehensive provisions of the same nature of the Trade-Mark Act of Feb. 20, 1905, c. 592, § 27, post, § 9513.

Notes of Decisions

Purpose of paragraph.—The purpose of section 11 of the tariff act of 1897 is twofold—to protect the domestic manufacturer against encroachment upon his trade-mark, and the public from the imposition of imported articles assuming domestic names. It is the simulation or counterfeit, and not reality or genuineness, at which the section is aimed. (1902) 24 Op. Atty. Gen. 551.

§ 5298. (Act Oct. 3, 1913, c. 16, § IV, F, subsec. 2.) Fraudulent violation of provisions relating to marking, etc., articles or packages, or defacing, etc., marks, etc.; punishment.

F. Subsection 2. If any person shall fraudulently violate any of the provisions of this Act relating to the marking, stamping, branding, or labeling of any imported articles or packages; or shall fraudulently deface, destroy, remove, alter, or obliterate any such marks, stamps, brands, or labels with intent to conceal the information given by or contained in such marks, stamps, brands, or labels, he shall upon conviction be fined in any sum not exceeding $5,000, or be imprisoned for any time not exceeding one year, or both. (38 Stat. 194.)

See notes to preceding subsection.

§ 5299. (Act Oct. 3, 1913, c. 16, § IV, G, subsec. 1.) Importation of obscene books, etc., or other articles, or of lottery tickets, etc., prohibited; seizure and forfeiture.

G. Subsection 1. All persons are prohibited from importing into the United States from any foreign country any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever for the prevention of conception or for causing unlawful abortion, or any lottery ticket or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles shall be proceeded against, seized, and forfeited by due course of law. All such prohibited articles and the package in which they are contained in the course of importation shall be detained by the officer of customs, and proceedings taken against the same as hereinafter prescribed, unless it appears to the satisfaction of the collector of customs that the obscene articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee: Provided, That

the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this section. (38 Stat. 194.)

Provisions in substantially the same language as those of this subsection and subsections 2 and 3 of this subdivision, next following, were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, §§ 9–11, 36 Stat. 86, superseding similar provisions of previous tariff acts. Those sections were superseded by these provisions, and were repealed by section IV, S, of this act, post, § 5316.

Photographic films imported under section 1 of this act were made subject to such censorship as may be imposed by the Secretary of the Treasury, by a proviso annexed to paragraph 380 of said section, ante, § 5291, par. 380.

Notes of Decisions

Forfeiture.—The provision of the tariff law of 1842, making the importation of indecent and obscene paintings cause for forfeiture of the entire invoice, is applicable, though the painting is not a distinct article, but is affixed to another article, such as a snuff box. U. S. v. Three Cases of Toys (D. C. 1843) Fed. Cas. No. 16,499.

Entire invoice is not exempted from confiscation by the fact that the owners thereof were unaware of the character of the paintings as obscene. Id.

Under Act March 2, 1857, c. 63, if an invoice or package of imported goods contains some articles which are indecent or obscene, and others which are not so, the whole are liable to forfeiture; the unlawful ones being destroyed, and the others sold. U. S. v. One Casé Stereoscopic Slides (D. C. 1859) Fed. Cas. No. 15,927.

Articles imported in boxes embellished with indecent and obscene prints are subject to forfeiture. Anonymous (D. C. 1865) Fed. Cas. No. 470.

§ 5300. (Act Oct. 3, 1913, c. 16, § IV, G, subsec. 2.) Aiding, etc., by officer, etc., in violation of provisions prohibiting importation, etc., of obscene publications, etc., or other articles, a misdemeanor; punishment.

G. Subsection 2. Whoever, being an officer, agent, or employee of the Government of the United States, shall knowingly aid or abet any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or means for preventing conception or procuring abortion, or other articles of indecent or immoral use or tendency, shall be deemed guilty of a misdemeanor, and shall for every offense be punishable by a fine of not more than $5,000, or by imprisonment at hard labor for not more than ten years, or both. (38 Stat. 195.)

See notes to preceding subsection.

The provision, in the same language as this subsection, of the Dingley Tariff Act of July 24, 1897, c. 11, § 17, 30 Stat. 209, and R. S. § 1785, which was in substantially the same language, were incorporated in the Criminal Code, § 102, post, § 10271, and were repealed by section 341 of said Code post, § 10515, which took effect Jan. 1, 1910.

§ 5301. (Act Oct. 3, 1913, c. 16, § IV, G, subsec. 3.) Proceedings for seizure, etc., of articles mentioned in two preceding subsections, for violation thereof.

G. Subsection 3. Any circuit or district judge of the United States, within the proper district, before whom complaint in writing of any violation of the two preceding sections is made, to the satisfaction of such judge, and founded on knowledge or belief, and if upon belief, setting forth the grounds of such belief, and supported by oath or affirmation of the complainant, may issue, conformably to the Constitution, a warrant directed to the marshal or any deputy marshal in the proper district, directing him to search for, seize, and take possession of any such article or thing mentioned in the two preceding sections, and to make due and immediate return thereof to the end that the same may be condemned and destroyed by proceedings, which shall be conducted in the same manner as other proceed-

ings in the case of municipal seizure, and with the same right of appeal or writ of error. (38 Stat. 195.)

See notes to preceding subsections of this subdivision.

Importation of opium in any form or of any preparation or derivative thereof, except for medicinal purposes only, was prohibited by Act Feb. 9, 1909, c. 100, post, §§ 8800, 8801.

The importation of tea inferior in purity, quality, and fitness for consumption to the standards provided, was prohibited by Act March 2, 1897, c. 358, post, §§ 8786–8796.

Importation of white phosphorus matches manufactured wholly or in part in any foreign country, was prohibited by a proviso annexed to paragraph 345 of section I of this act, ante, § 5291, par. 345, in accordance with Act April 9, 1912, c. 75, § 10, post, § 6280, which had prohibited the importation of such matches after January 1, 1913.

§ 5302. (Act Oct. 3, 1913, c. 16, § IV, H, subsec. 1.) Importation of neat cattle and hides thereof prohibited; suspension of prohibition, in part, authorized.

H. Subsection 1. The importation of neat cattle and the hides of neat cattle from any foreign country into the United States is prohibited: Provided, That the operation of this section shall be suspended as to any foreign country or countries, or any parts of such country or countries, whenever the Secretary of the Treasury shall officially determine, and give public notice thereof, that such importation will not tend to the introduction or spread of contagious or infectious diseases among the cattle of the United States; and the Secretary of the Treasury is hereby authorized and empowered, and it shall be his duty, to make all necessary orders and regulations to carry this section into effect, or to suspend the same as herein provided, and to send copies thereof to the proper officers in the United States and to such officers or agents of the United States in foreign countries as he shall judge necessary. (38 Stat. 195.)

Provisions in the same language as those of this subsection and subsection 2 of this subdivision, next following, were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, §§ 12, 13, 36 Stat. 86, 87, superseding similar provisions of previous tariff acts. Those sections were superseded by these provisions and were repealed by section IV, S, of this act, post, § 5316.

Notes of Decisions

Suspension of prohibition.—Under the provisions of Act March 6, 1866, c. 12, it is for the Secretary of the Treasury to determine whether a cattle disease prevailing in a foreign country is such that, if neat cattle or the hides of neat cattle are imported from thence into the United States, the importation will tend to the introduction or spread of contagious or infectious diseases among the cattle here. (1869) 13 Op. Atty. Gen. 158.

Should the Secretary determine that such importation will have that tendency, he can revoke, in whole or in part, the suspension of the said act heretofore made by him. Id.

§ 5303. (Act Oct. 3, 1913, c. 16, § IV, H, subsec. 2.) Violation of provisions of preceding subsection punishable.

H. Subsection 2. Any person convicted of a willful violation of any of the provisions of the preceding subsection shall be fined not exceeding $500, or imprisoned not exceeding one year, or both, in the discretion of the court. (38 Stat. 195.)

See note to preceding subsection.

Importation of eggs of game birds or eggs of birds not used for food, with some exceptions, was prohibited by a proviso annexed to paragraph 478 of section I of this act, ante, § 5291, par. 478.

Importation of aigrettes, egret plumes, or so-called osprey plumes and the feathers, etc., of wild birds, not for scientific or educational purposes, was prohibited by a proviso annexed to paragraph 347, of section I of this act, ante, § 5291, par. 347; but the provision was not to apply to the feathers or plumes of ostriches, or of domestic fowls. And the prohibition of the im-

portation of feathers was not to be construed as applying to artificial flies used for fishing, by a proviso annexed to paragraph 136 of section I of this act, ante, § 5291, par. 136.

§ 5304. (Act Oct. 3, 1913, c. 16, § IV, I.) Importation of goods manufactured by convict labor prohibited.

I. All goods, wares, articles, and merchandise manufactured wholly or in part in any foreign country by convict labor shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. (38 Stat. 195.)

Provisions in the same language as those of this subdivision were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 14, 36 Stat. 87, superseding similar provisions of previous tariff acts. That section was superseded by these provisions, and was repealed by section IV, S, of this act, post, § 5316.

The importation and sale of articles in the United States at less than their market value abroad, plus transportation charges, with intent to restrain commerce, etc., or their importation under an agreement, with certain exceptions, that the importer or other person shall be restricted to using or dealing in such goods, is prohibited, and the President is empowered to prohibit the importation of articles from countries which forbid importations from the United States, and, under certain conditions, to deny clearance to vessels discriminating against citizens of the United States, by Act Sept. 8, 1916, c. 463, §§ 800–806, post, §§ 8836l–8836v.

Notes of Decisions

"Foreign country."—The Philippine Islands are not a "foreign country" within the meaning of the above-mentioned section. (1910) 28 Op. Atty. Gen. 422.

§ 5305. (Act Oct. 3, 1913, c. 16, § IV, J, subsec. 1.) Discriminating duty on goods imported in foreign vessels.

J. Subsection 1. A discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States, or which being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country; but this discriminating duty shall not apply to goods, wares, or merchandise which shall be imported in vessels not of the United States entitled at the time of such importation by treaty or convention or Act of Congress to be entered in the ports of the United States on payment of the same duties as shall then be payable on goods, wares, and merchandise imported in vessels of the United States, nor to such foreign products or manufactures as shall be imported from such contiguous countries in the usual course of strictly retail trade. (38 Stat. 195.)

Provisions in the same language as those of this subsection were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 15, 36 Stat. 87, superseding similar provisions of previous tariff acts. That section was superseded by these provisions, and was repealed by section IV, S, of this act, post, § 5316.

So much of this subsection as imposed a discriminating duty on goods, etc., imported in a vessel owned by citizens of the United States, but not a vessel of the United States, was repealed by Act March 4, 1915, c. 171, § 1, 38 Stat. 1193, post, § 7812a, as to any such vessel which, after entering an American port, should, before leaving the same, be registered as a vessel of the United States.

See note under § 5304, ante.

Notes of Decisions

Importations from contiguous countries.—Diamonds imported into the United States from Canada, not in the usual course of strictly retail trade, which were the productions of a foreign country not contiguous to the United States, are subject to a discriminating duty of 10 per cent. under section 22 of the tariff act of July 24, 1897 (30 Stat. 209). (1897) 21 Op. Atty. Gen. 591.

In determining the liability of the dia-

monds to the discriminating duty, it is not necessary to ascertain the mode of conveyance used in transporting them into the United States from Canada. Id.

Operation of act.—The purpose of section 22 of the Dingley act was to secure to United States vessels the transportation of goods by sea by discriminating against transportation in other vessels to the United States, and also to prevent evasion to a contiguous country. (1897) 21 Op. Atty. Gen. 597.

To hold that there should be a discrimination by different duties upon importations, direct or indirect, under section 22 of the Dingley tariff act, would be to put a new purpose in the law and destroy its unity. This is not compelled by its language or any mischief intended to be remedied. Id.

The operation of section 22 of the Dingley tariff act commences with its passage and continues until it is suspended according to section 4228, R. S. section 7825, post, and again takes effect if the reciprocal exemptions of foreign nations be withdrawn. Id.

Section 22 of such act and section 4228, R. S., as amended (section 7825, post), are not coextensive in scope, therefore are complements of each other. Id.

Section 4228, R. S., section 7825, post, is in effect made a proviso to section 22 of the Dingley tariff act by the discriminating duties act of July 24, 1897 (30 Stat. 214), and as such is not repugnant to the latter section. Id.

§ 5306. (Act Oct. 3, 1913, c. 16, § IV, J, subsec. 2.) Importation only in vessels of United States or of country of origin of goods.

J. Subsection 2. No goods, wares, or merchandise, unless in cases provided for by treaty, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture, or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation. All goods, wares, or merchandise imported contrary to this section, and the vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship, or vessel, and cargo shall be liable to be seized, prosecuted, and condemned in like manner, and under the same regulations, restrictions, and provisions as have been heretofore established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws. (38 Stat. 196.)

Provisions in substantially the same language as those of this subsection and subsection 3 of this subdivision, next following, were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, §§ 16, 17, 36 Stat. 87, superseding similar provisions of previous tariff acts. Those sections were superseded by these provisions, and were repealed by section IV, S, of this act, post, § 5316.

So much of this subsection as provided for the forfeiture of any vessel owned by citizens of the United States, but not a vessel of the United States, with her cargo, etc., was repealed by Act March 4, 1915, c. 171, § 1, 38 Stat. 1193, post, § 7812a, as to any such vessel which, after entering an American port, should, before leaving the same, be registered as a vessel of the United States.

See note under § 5304, ante.

Notes of Decisions

Information of forfeiture.—In an information of forfeiture against a foreign-built vessel owned in the United States, under Act March 1, 1817, the exception in the proviso of the act must be negatived. U. S. v. The Mary Merritt (D. C. 1869) Fed. Cas. No. 15,-733.

Ownership of vessel.—Where a vessel built in the British province of Canada, but owned wholly by citizens of the United States, engaged in transporting the products of Canada into the ports of the United States, she might be forfeited, and in the absence of documents such as establish nationality, the vessel could not be deemed a British or Canadian vessel within the proviso, that the regulation shall not extend to vessels of any foreign nation which has not adopted a similar regulation. Murray v. U. S. (1873) 17 Wall. 582, 585, 21 L. Ed. 682.

Reciprocity Act March 1, 1817, c. 31, does not permit even an indirect

carrying trade by foreign ships. Belgian vessels carrying hides and wool from Buenos Ayres to Boston come within the prohibition of and are subject to the forfeitures denounced by it. (1842) 4 Op. Atty. Gen. 69.

§ 5307. (Act Oct. 3, 1913, c. 16, § IV, J, subsec. 3.) Restriction of preceding subsection to vessels, or goods, etc., imported in vessels, of foreign nations maintaining similar regulation.

J. Subsection 3. The preceding subsection shall not apply to vessels or goods, wares, or merchandise imported in vessels of a foreign nation which does not maintain a similar regulation against vessels of the United States. (38 Stat. 196.)

See note to preceding subsection and to § 5304, ante.

§ 5308. (Act Oct. 3, 1913, c. 16, § IV, J, subsec. 4.) Admission without payment of duty, under bond for exportation, of certain articles for purposes or uses specified, not for sale.

J. Subsection 4. Machinery or other articles to be altered or repaired, molders' patterns for use in the manufacture of castings intended to be and actually exported within six months from the date of importation thereof, models of women's wearing apparel imported by manufacturers for use as models in their own establishments, and not for sale, samples solely for use in taking orders for merchandise, articles intended solely for experimental purposes, and automobiles, motor cycles, bicycles, aeroplanes, airships, balloons, motor boats, racing shells, teams, and saddle horses, and similar vehicles and craft brought temporarily into the United States by nonresidents for touring purposes or for the purpose of taking part in races or other specific contests, may be admitted without the payment of duty under bond for their exportation within six months from the date of importation and under such regulations and subject to such conditions as the Secretary of the Treasury may prescribe: Provided, That no article shall be entitled to entry under this section that is intended for sale or which is imported for sale on approval. (38 Stat. 196.)

Provisions similar to some extent to those of this subsection were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 18, 36 Stat. 87, superseding similar provisions of previous tariff acts. That section was superseded by these provisions and was repealed by section IV, S, of this act, post, § 5316.

Notes of Decisions

Samples.—Samples for use of salesman held not free of duty as samples solely for use in taking orders. See section 5291, par. 329.

The merchandise consists of fashion plates made of surface-coated paper with samples of embroidered or appliquéd dress goods attached for use mainly in mail order business. These goods are not properly "samples," but are printed matter on surface-coated paper, coming into competition with like commercial articles produced and for sale in this country. They were not, accordingly, entitled to free entry. Gernet v. U. S. (1913) 4 Ct. Cust. App. 387.

§ 5309. (Act Oct. 3, 1913, c. 16, § IV, J, subsec. 5.) Importation in bond of materials for construction of naval vessels or certain other vessels, and of materials for building their machinery, and articles for their outfit and equipment; use thereof free of duty.

J. Subsection 5. All materials of foreign production which may be necessary for the construction of naval vessels or other vessels of the United States, vessels built in the United States for foreign account and ownership, or for the purpose of being employed in the foreign or domestic trade, and all such materials necessary for the building of their machinery, and all articles necessary for their outfit and equipment, may be imported in bond under such regulations as the Secretary of the Treasury may prescribe; and upon

proof that such materials have been used for such purposes no duties shall be paid thereon. (38 Stat. 196.)

Provisions similar to some extent to those of this subsection were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 19, 36 Stat. 88, superseding similar provisions of previous tariff acts. That section was superseded by these provisions and was repealed by section IV, S, of this act, post, § 5316.

Notes of Decisions

Drawback on fuel coal.—The provision, in Act 1883, allowing, as amended by Act June 19, 1886, a drawback of 75 cents per ton on imported coal used by United States vessels, was repealed by Act Oct. 1, 1890, § 25, merely imposing a duty of 75 cents per ton on imported coal; and the drawback was not continued in force by the provision in the latter act that there should be allowed, on the exportation of articles into which imported materials entered, a drawback equal in amount to the duties paid on such materials less 1 per centum thereof, and that the drawback on any article "allowed under existing law" should be continued "at the rate herein provided." U. S. v. Allen (1896) 16 Sup. Ct. 1071, 163 U. S. 499, 41 L. Ed. 242, reversing (1893) 58 Fed. 864, 7 C. C. A. 547.

Continuous customs custody is not essential to the allowance of drawback, under paragraph 415 of the tariff act of July 24, 1897 (30 Stat. 190), on coal imported into the United States and afterwards used for fuel on board of vessels registered under the laws of the United States, propelled by steam, and engaged in trade with foreign countries. (1908) 26 Op. Atty. Gen. 531.

Sections 2977, 2978, and 3025, R. S. sections 5663, 5664, 5729, post, relate exclusively to drawback or return of duties on exported merchandise, and have no application to the allowance of drawback on fuel coal under paragraph 415 of the tariff act of 1897. Id.

Sea stores.—See notes under section 5494, post.

Shipbuilding material. — Shipbuilding materials used in the construction of a vessel built for a foreign government, for use between ports in its own country, are not entitled to entry duty free. R. S. §§ 2513, 2514. Russell v. U. S. (C. C. 1878) Fed. Cas. No. 12,164.

Torpedoes.—Whitehead torpedoes, imported from Europe into the United States to be distributed among the torpedo boat destroyers of the United States, are dutiable under Tariff Act Aug. 5, 1909 (36 Stat. 11); but, until they are carried to a place where there is a port collector where they may be entered, and the duties ascertained and paid, no duty would become payable. (1911) 28 Op. Atty. Gen. 599.

§ 5310. (Act Oct. 3, 1913, c. 16, § IV, J, subsec. 6.) Withdrawal from bond, free of duty, of articles for repair of naval vessels or certain other vessels.

J. Subsection 6. All articles of foreign production needed for the repair of naval vessels of, or other vessels owned or used by, the United States and vessels now or hereafter registered under the laws of the United States may be withdrawn from bonded warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe. (38 Stat. 196.)

Provisions similar to some extent to those of this subsection were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 20, 36 Stat. 88, superseding similar provisions of previous tariff acts. That section was superseded by these provisions, and was repealed by section IV, S, of this act, post, § 5316.

Notes of Decisions

Coastwise trade.—A vessel sailing in ballast from Boston, by way of New York, to San Francisco, for a cargo to Europe, is not engaged in "coastwise" trade, within Act June 1, 1872, § 10; and articles withdrawn from bond, and used in repairing her, are exempt from duty. U. S. v. Patten (C. C. 1874) Fed. Cas. No. 16,007.

Trade between the Atlantic and Pacific ports of the United States is "foreign trade," and not "coastwise trade," within Act June 1, 1872, § 10. Id.

The provision of Act 1890, § 8, requiring the duty on materials imported in bond for use in the construction or equipment of vessels to be paid in case the vessel shall be employed in the coastwise trade of the United States for more than two months in any one year, must be given a reasonable construction in harmony with the general spirit and purpose of the exemption contained in the section, permitting the use of such materials free of duty when the vessel is to be employed in the foreign trade; and it cannot be held to require the payment of the duty before the vessel is permitted to engage in the coastwise trade after the material exempted has become worn out, or has ceased to be useful or serviceable for the purpose for which it was used. In re J. D. Spreckels & Bros. Co. (C. C. 1900) 104 Fed. 879.

§ 5311. (Act Oct. 3, 1913, c. 16, § IV, J, subsec. 7.) Discount on duties on goods, etc., imported in vessels registered under laws of United States.

J. Subsection 7. A discount of 5 per centum on all duties imposed by this Act shall be allowed on such goods, wares, and merchandise as shall be imported in vessels admitted to registration under the laws of the United States: Provided, That nothing in this subsection shall be so construed as to abrogate or in any manner impair or affect the provisions of any treaty concluded between the United States and any foreign nation. (38 Stat. 196.)

Notes of Decisions

Abrogation of treaties.—The Congress may abrogate a treaty made by the United States, and this may be accomplished either by legislation to that end or by legislation that by necessary implication results in abrogation. M. H. Pulaski Co. v. U. S. (1915) 6 Ct. Cust. App. 291.

It is clear the Congress intended to give present effect to the law, and by the named proviso, as was declared, intended that the paragraph in chief should not be held to abrogate the treaties in question or impair any rights thereunder. The treaties must be taken to forbid discrimination against merchandise imported in the vessels of a treaty nation. Whether the discriminations as forbidden relate primarily to the means or instrumentalities of transit and not to the products, reserved. Id.

Discount.—Held, in these cases—(a) That the merchandise involved, imported in the registered vessels of the United States, is entitled to the 5 per cent. discount, as held by the board, whose judgment relating thereto is hereby affirmed. (b) That as to the merchandise imported in the registered vessels of the said treaty nations, both that which was imported and entered for consumption subsequent to the taking effect of the tariff act of 1913, as well as that which was brought to our ports prior thereto and entered in bond for warehousing, subsequently withdrawn for consumption and duties paid, the 5 per cent. discount must be allowed, and with respect to such merchandise the judgment of the board of general appraisers is reversed. (c) That the merchandise imported in vessels of our registry before the tariff act of 1913 took effect which was entered in bond for warehousing, subsequently withdrawn and entered for consumption and duties paid, is entitled to the 5 per cent. discount thereon, and the judgment of the board with respect thereto is reversed. (d) That the merchandise from Cuba is entitled to the reduction of 20 per cent. ad valorem provided by the Cuban treaty and the further discount of 5 per cent. ad valorem from the amount so ascertained. As to such importations, the judgment of the board of general appraisers is affirmed. M. H. Pulaski Co. v. U. S. (1915) 6 Ct. Cust. App. 291.

§ 5312. (Act Oct. 3, 1913, c. 16, § IV, L.) Admission free of duty of merchandise from vessels sunk and abandoned.

L. Whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years, and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe. (38 Stat. 197.)

Provisions in the same language as those of this subdivision were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 22, 36 Stat. 88, superseding similar provisions of previous tariff acts. That section was superseded by these provisions and was repealed by section IV, S, of this act, post, § 5316.

Notes of Decisions

In general.—Goods saved from a wreck and brought within the United States were subject to import duties, under Acts April 20, 1818, and March 1, 1823. The Waterloo (D. C. 1830) Fed. Cas. No. 17,257.

The tackle, apparel, and furniture of a foreign vessel wrecked upon our shore, and landed and sold separate from the hull, held not subject to duty as imported articles. The Gertrude (D. C. 1841) Fed. Cas. No. 5,370.

§ 5313. (Act Oct. 3, 1913, c. 16, § IV, P.) Duty on articles reimported after exportation free of internal revenue tax.

P. Upon the reimportation of articles once exported, of the growth, product, or manufacture of the United States, upon which no internal tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the internal-revenue laws upon such articles, except articles manufactured in bonded warehouses and exported pursuant to law, which shall be subject to the same rate of duty as if originally imported, but proof of the identity of such articles shall be made under general regulations to be prescribed by the Secretary of the Treasury. (38 Stat. 201.)

Provisions in the same language as those of this subdivision were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 26, 36 Stat. 90, superseding similar provisions of previous tariff acts. That section was superseded by these provisions, and was repealed by section IV, S, of this act, post, § 5316.

Notes of Decisions

In general.—See, also, notes under paragraph 404, § 5291, ante.

"Article."—The word "article" in this section includes things partly or not at all manufactured, as well as those completely manufactured. Junge v. Hedden (1892) 13 Sup. Ct. 88, 89, 146 U. S. 233, 36 L. Ed. 953.

Liquor.—Act 1890, § 22, provides that on the reimportation of an article manufactured in the United States, and once exported without paying an internal revenue tax, it shall pay a duty equal to the internal revenue tax on such article. Section 50 declares that any merchandise deposited on bond before the date of the act may be withdrawn for consumption on payment of the duties in force before the act; when such duties are based upon the weight of the goods, the weight shall be taken at the time of the withdrawal. Held, that while, under the internal revenue laws, the proof of spirits is determined by weight, yet the tax is always assessed upon the gallon measurement, whether the spirits are above or below proof, and hence reimported whisky, when withdrawn from bond, must pay according to the number of gallons at the time of importation, and not at time of withdrawal. Louisville Public Warehouse Co. v. Collector of Customs (1892) 49 Fed. 561, 1 C. C. A. 371, affirming Same v. Surveyor of Port at Louisville (C. C. 1891) 48 Fed. 372.

Where a person has removed liquor from a bonded warehouse to Canada without paying the internal revenue tax, and landed it, and permitted it to remain there for a month, he is entitled to bring it back to the United States on payment of duty equal to such tax, as provided in R. S. § 2500, notwithstanding that he intended, when he sent it to Canada, to bring it back again. Kidd v. Flagler (C. C. 1893) 54 Fed. 367, judgment reversed Flagler v. Kidd (1897) 78 Fed. 341, 24 C. C. A. 123.

Certain liquors which had been manufactured in the United States, in a bonded manufacturing warehouse, out of both domestic and imported spirits that were removed to such warehouse without payment of either the internal revenue or customs duties, and which had been exported therefrom, were imported into New York and assessed with the duty prescribed by the statute, Schedule H (22 Stat. 504), as foreign liquors. Held that, the liquors being of the manufacture of the United States and once exported, section 2500, R. S., affords the rule under which to levy duties thereon. (1889) 19 Op. Atty. Gen. 243.

Sale of part of goods.—The right to reimport exported American products under Act 1799, § 47, is not affected by a sale of a part thereof in a foreign port. Kidd v. Swartwout (C. C. 1843) Fed. Cas. No. 7,756.

§ 5314. (Act Oct. 3, 1913, c. 16, § IV, Q.) Duties imposed by act applicable to goods, etc., previously imported but not entered, or entered without payment of duty and under bond.

Q. On and after the day when this Act shall go into effect all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to the duties imposed by this Act and to no other duty, upon the entry or the withdrawal thereof: Provided, That when duties are based upon the

1897, for "merchandise previously imported, for which no entry has been made," the word "entry" refers to an entry for consumption. John B. Ellison & Sons v. U. S. (C. C. 1905) 136 Fed. 969, judgment affirmed J. B. Ellison & Sons v. Same (1906) 142 Fed. 732, 74 C. C. A. 64, and writ of certiorari denied Ellison v. Same (1906) 26 Sup. Ct. 763, 202 U. S. 615, 50 L. Ed. 1172.

Entry implies the presence of the merchandise at the time entry is sought to be made and where a consignment of gin on board a mail steamer reached Key West August 3, 1909, and entries of the gin were presented by the importer on August 4th, the commodity itself remaining on board ship while the vessel proceeded to another destination, but, returning, called again at Key West on a later day and subsequently to the going into full force and effect of the tariff act of 1909. Section 29 of that act governed the entry of the gin August 10, 1909, and it was dutiable as entered of that day. U. S. v. Cordero (1910) 1 Ct. Cust. App. 107.

It is unnecessary to determine whether the absence of an inspector would validate on a later day a tender of entry made during the inspector's absence, it appearing here no actual tender of entry was made of certain horses it was desired to import on August 5, 1909, and that the tender of entry was made in fact on August 6, 1909. The horses were rightly held dutiable as of that date under the act in force that day. Van Treese v. U. S. (1911) 2 Ct. Cust. App. 288.

Goods which arrived in a port of the United States on the 30th of June, 1883, and from want of time to make other disposition of them remained on board ship until the next day, are to be regarded as in a public store or bonded warehouse within the meaning of section 10 of the act of March 3, 1883 (22 Stat. 525). (1884) 18 Op. Atty. Gen. 13.

Goods in bond.—The act of 1894 went into effect August 28, 1894. Section 1 provides that on and after August 1, 1894, there "shall" be levied the rates of duty prescribed, etc. Section 2 provides that on and after August 1, 1894, specified articles "shall" be exempt from duty. Section 72, in terms, repeals inconsistent acts and parts of acts, and keeps in force every right and liability of the government or of any person which had been incurred or had accrued prior to the passage of the act. Held, that on goods imported and withdrawn between August 1 and August 28, 1894, the rate of duty is that prescribed by Act Oct. 1, 1890, c. 1244, 26 Stat. 567, which was in force until repealed, Aug. 28, 1894. U. S. v. Burr (1895) 15 Sup. Ct. 1002, 1004, 159 U. S. 78, 40 L. Ed. 82, determined on certificate Burr v. U. S. (C. C. 1895) 66 Fed. 742.

The duty on imports withdrawn from bonded warehouses must be assessed on the basis of weight at the time of original entry, as prescribed by the proviso to Act 1897, § 33, notwithstanding the addition by Act Dec. 15, 1902, c. 1, of a proviso to section 20 of Customs Administrative Act June 10, 1890, c. 407, that the same rate of duty shall be collected upon such merchandise as may be imposed by law upon like articles imported at the time of withdrawal, since this provision refers to the rate of duty, and not to the date at which the weight is to be taken as the basis of such duty. U. S. v. G. Falk & Bro. (1907) 27 Sup. Ct. 191, 193, 204 U. S. 143, 51 L. Ed. 411.

The duty upon leaf tobacco which, when withdrawn from a bonded warehouse, has lost in weight through evaporation of moisture, must be assessed on the basis of weight at the time of the original entry, as prescribed by the proviso to Act 1897, § 33, which is general in its application, and not restricted to merchandise imported before the act took effect. Id.

Under Act June 30, 1864, all teas in warehouse on July 1, 1864, were dutiable at 25 cents a pound, when afterwards withdrawn for consumption. Smith v. Draper (C. C. 1865) Fed. Cas. No. 13,037.

The proper rate of duty on brandy warehoused December 1, 1866, and sold at auction after three years for nonpayment of duties, held to be the rate imposed by law at the expiration of three years from the date of the warehouse bond, and an additional duty equal to 10 per cent. thereof. U. S. v. Duvivier (C. C. 1875) Fed. Cas. No. 15,017.

Where the date of original importation of merchandise in bond was more than one year prior to August 1, 1890, the date when the act of June 10, 1890, went into effect, such merchandise is subject to the "additional duty of 10 per centum" imposed by section 2970, R. S., by virtue of the saving clause in section 29 of said act of June 10, 1890, which saves to the government all rights that existed in its behalf when that act took effect. (1890) 19 Op. Atty. Gen. 668.

Reimported whisky when withdrawn from bond is taxable according to the number of gallons at the time of importation. (1894) 20 Op. Atty. Gen. 722.

Weight of merchandise.—Congress, by enacting the proviso to Act 1897, § 33, which differs from the proviso to Act 1890, § 50, only in substituting the word "entry" for the word "withdrawal" as the date when the weight of merchandise withdrawn from bonded warehouses is to be taken as the basis of the duty, must be deemed to have adopted the construction given to the earlier proviso by the Attorney General and followed by the executive officers charged with the administration of the law, viz., that such proviso was general in its application, and not restricted to merchandise imported before the act took effect. U. S. v. G. Falk & Bro. (1907) 27 Sup. Ct.

191, 193, 204 U. S. 143, 51 L. Ed. 411, reversing judgment American Cigar Co. v. U. S. (1906) 146 Fed. 484, 77 C. C. A. 40.

The second proviso in section 50, Act 1890, providing that when duties are based upon the weight of merchandise deposited in any public or bonded warehouse, said duties shall be levied and collected upon the weight of said merchandise at the time of its withdrawal, applies to importations under the act generally upon which duties are levied by law, and not merely to importations made prior to the taking effect of the act. (1891) 20 Op. Atty. Gen. 80.

§ 5315. (Act Oct. 3, 1913, c. 16, § IV, R.) President to ascertain amount of imports and exports of articles enumerated in section I of act, and cause estimate to be made of amount of domestic production and consumption thereof, and advise Congress when imports amount to less than five per centum of domestic consumption.

R. The President shall cause to be ascertained each year, the amount of imports and exports of the articles enumerated in the various paragraphs in section one of this Act and cause an estimate to be made of the amount of the domestic production and consumption of said articles, and where it is ascertained that the imports under any paragraph amount to less than 5 per centum of the domestic consumption of the articles enumerated he shall advise the Congress as to the facts and his conclusions by special message, if deemed important in the public interest. (38 Stat. 201.)

§ 5316. (Act Oct. 3, 1913, c. 16, § IV, S.) Repeal of Act Aug. 5, 1909, c. 6, §§ 1–42, and of all inconsistent acts and parts of acts; limitations on operation of act and on effect of repeals of other acts thereby.

S. Except as hereinafter provided, sections one to forty-two both inclusive, of an Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, and all Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed: Provided, That nothing in this Act shall be construed to permit any oaths to be demanded or fees to be charged except as provided in this Act or in section twenty-eight hundred and sixty-two of the Revised Statutes of the United States, nor to repeal or in any manner affect the following numbered sections of the aforesaid Act approved August fifth, nineteen hundred and nine, viz: Subsection twenty-nine of section twenty-eight and subsequent laws and amendments relating to the establishment and continuance of a Customs Court, subsection thirty of section twenty-eight, providing for additional attorneys, subsection twelve of section twenty-eight and subsequent provisions establishing a Board of General Appraisers of merchandise, sections thirty, thirty-one, thirty-two, thirty-three, and thirty-five, imposing an internal revenue tax upon tobacco, section thirty-six, providing for a tonnage duty, section thirty-nine, authorizing the Secretary of the Treasury to borrow on the credit of the United States to defray expenditures on account of the Panama Canal, section forty, authorizing the Secretary of the Treasury to borrow to meet public expenditures: Provided further, That all excise taxes upon corporations imposed by section thirty-eight, that have accrued or have been imposed for the year ending December thirty-first, nineteen hundred and twelve, shall be returned, assessed, and collected in the same manner, and under the same provisions, liens, and penalties as if section thirty-eight continued in full force and effect: And provided further, That a special excise tax with respect to the carrying on or doing of business, equivalent to 1 per centum upon their entire net income, shall be levied, assessed, and collected upon corporations, joint stock companies or associations, and

insurance companies, of the character described in section thirty-eight of the Act of August fifth, nineteen hundred and nine, for the period from January first to February twenty-eighth, nineteen hundred and thirteen, both dates inclusive, which said tax shall be computed upon one-sixth of the entire net income of said corporations, joint stock companies or associations, and insurance companies, for said year, said net income to be ascertained in accordance with the provisions of subsection G of section two of this Act: Provided further, That the provisions of said section thirty-eight of the Act of August fifth, nineteen hundred and nine, relative to the collection of the tax therein imposed shall remain in force for the collection of the excise tax herein provided, but for the year nineteen hundred and thirteen it shall not be necessary to make more than one return and assessment for all the taxes imposed herein upon said corporations, joint stock companies or associations, and insurance companies, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in this Act; but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said repeal or modification; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. Any offenses committed and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted or punished in the same manner and with the same effect as if this Act had not been passed. No Acts of limitation now in force, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this Act shall be affected thereby so far as they affect any suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act, which may be commenced and prosecuted within the same time and with the same effect as if this Act had not been passed. (38 Stat. 201.)

§ 5317. (Act Oct. 3, 1913, c. 16, § IV, T.) Effect of invalidity of part of act on remainder thereof.

T. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. (38 Stat. 202.)

§ 5318. (Act Oct. 3, 1913, c. 16, § IV, U.) Time of taking effect of act.

U. Unless otherwise herein specially provided, this Act shall take effect on the day following its passage. (38 Stat. 202.)

§ 5319. (Act Aug. 30, 1890, c. 839, § 5.) Suspension of importation of products from countries making unjust discriminations.

Whenever the President shall be satisfied that unjust discriminations are made by or under the authority of any foreign state against the importation to or sale in such foreign state of any product of the United States, he may direct that such products of such foreign state so discriminating against any product of the United States as he may deem proper shall be excluded from importation to the United States; and in such case he shall make proc-

lamation of his direction in the premises, and therein name the time when such direction against importation shall take effect, and after such date the importation of the articles named in such proclamation shall be unlawful. The President may at any time revoke, modify, terminate, or renew any such direction as, in his opinion, the public interest may require. (26 Stat. 415.)

This section was part of an act providing for inspection of meats for exportation, prohibiting importation of adulterated articles of food and drink, etc.

Other sections of the act are set forth post, §§ 8682, 8683, 8685–8688, 8708.

A somewhat similar provision was made by Act Sept. 8, 1916, c. 463, § 804, post, § 8836p.

See, also, note to § 5304, ante.

§ 5320. (Act Jan. 9, 1883, c. 17.) Grain brought from Canada by farmers to be ground not subject to duty.

Grain brought into the United States in wagons or other ordinary road vehicles, by farmers residing in the Dominion of Canada, to be ground by mills owned by citizens of the United States, shall not be deemed to be imported or liable to import duties; Provided, That such grain shall be brought into the United States under such regulations as the Treasury Department may prescribe to prevent fraud and evasion, and shall be returned as in like manner provided by such regulations: And provided further, That entry shall be made of and duties paid upon all such grain as shall be taken or received by mill-owners as tolls for such grinding, under like regulations provided by the Treasury Department. (22 Stat. 402.)

This was an act entitled "An act to permit grain brought by Canadian farmers to be ground at mills in the United States adjacent to Canadian Territory, under such rules and regulations as may be prescribed by the Treasury Department."

§ 5321. (Act May 18, 1896, c. 195.) Return free of duty of articles or live-stock exported for exhibition.

Whenever any article or articles or live stock shall be sent out of the United States for temporary use or exhibition at any public exposition, fair, or conference, held in a foreign country, such articles shall be entitled to be returned to the United States, under such regulations as may be prescribed by the Secretary of the Treasury, without the payment of customs duty, whether they shall be of domestic or of foreign production: Provided, That the articles of foreign production have once paid duty in the United States and no drawback has been allowed thereon, and if any domestic articles are subject to internal-revenue tax, such tax shall be proved to have been paid before exportation and not refunded. (29 Stat. 122.)

This was an act entitled "An act to allow the return of duty of certain articles exported from the United States for exhibition purposes."

This act was amended to include in the privilege of free entry animals taken abroad temporarily for exhibition, by Act March 3, 1899, c. 454, post, § 5322.

Provisions for free importation of articles intended for foreign buildings and exhibits at the Panama-Pacific International Exposition, made by Act Sept. 18, 1913, c. 14, § 1, 38 Stat. 112, are omitted, as temporary merely.

§ 5322. (Act March 3, 1899, c. 454.) Return free of duty of animals taken abroad for exhibition.

The Act entitled "An Act to allow the return free of duty of certain articles exported from the United States for exhibition purposes," approved May eighteenth, eighteen hundred and ninety-six, is hereby amended so as to include in the privilege of free entry conferred thereby wild and other animals of foreign origin taken abroad temporarily for exhibition in connection with any circus or menagerie, subject, however, to the conditions and limitations prescribed in said Act: Provided, however, That the provision of this

amendment shall apply only in such cases as those of foreign-born animals taken abroad, and inventories of which are filed prior to their leaving the country with the collector of customs at the port of their departure. (30 Stat. 1372.)

Act May 18, 1896, c. 195, mentioned in and amended by this act, is set forth ante, § 5321.

§ 5323. (Act March 2, 1905, c. 1311.) Laws affecting imports of articles, etc., and entry of persons into United States from foreign countries to apply to articles, etc., and persons coming from Canal Zone, Isthmus of Panama.

All laws affecting imports of articles, goods, wares, and merchandise and entry of persons into the United States from foreign countries shall apply to articles, goods, wares, and merchandise and persons coming from the Canal Zone, Isthmus of Panama, and seeking entry into any State or Territory of the United States or the District of Columbia. (33 Stat. 843.)

This was an act entitled "An act fixing the status of merchandise coming into the United States from the Canal Zone, Isthmus of Panama."

Notes of Decisions

Importations from Canal Zone.—Importations into the United States from the Panama Canal Zone, since the cession of such territory to the United States, are dutiable. David Kaufman & Sons Co. v. Smith (C. C. 1909) 175 Fed. 887.

The Treasury Department's regulation of November 25, 1912, issued under section 5, Panama Canal Act, prescribing, as a prerequisite for admission free under said section, an exclusive method of proof that the importations conform to the description in the section, is unreasonable in that it requires the importer to produce the affidavit of persons over whom he has no control, and is, therefore, invalid. U. S. v. Conkey & Co. (1916) 6 Ct. Cust. App. 487, 492.

The Canal Zone is not one of the possessions of the United States within the meaning of the tariff act of 1909, but rather a place subject to the use, occupation, and control of the United States, for the purpose of constructing and maintaining a ship canal connecting the waters of the Atlantic and Pacific Oceans. (1909) 27 Op. Atty. Gen. 594.

§ 5324. (Act Dec. 17, 1903, c. 1, § 1.) Reduction of duties on products of Cuba authorized; limitation of reduction of duties on sugar; construction of act as to origin of acts changing customs duties.

Whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two, he is hereby authorized to issue his proclamation declaring that he has received such evidence, and thereupon on the tenth day after exchange of ratifications of such convention between the United States and the Republic of Cuba, and so long as the said convention shall remain in force, all articles of merchandise being the product of the soil or industry of the Republic of Cuba, which are now imported into the United States free of duty, shall continue to be so admitted free of duty, and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon, as provided by the tariff Act of the United States, approved July twenty-fourth, eighteen hundred and ninety-seven, or as may be provided by any tariff law of the United States subsequently enacted. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of said convention preferential in respect to all like imports from other countries: Provided, That while said convention is in force no sugar imported from the Republic of Cuba, and being the product

of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the tariff Act of the United States, approved July twenty-fourth, eighteen hundred and ninety-seven, and no sugar the product of any other foreign country shall be admitted by treaty or convention into the United States while this convention is in force at a lower rate of duty than that provided by the tariff Act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven: And provided further, That nothing herein contained shall be held or construed as an admission on the part of the House of Representatives that customs duties can be changed otherwise than by an Act of Congress, originating in said House. (33 Stat. 3.)

This section and the section next following were an act entitled "An act to carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two."

Nothing in the Payne-Aldrich Tariff Act of 1909 was to be construed to abrogate or impair or affect the provisions of the treaty mentioned in this act or the provisions of this act, by section 3 of said act, Act Aug. 5, 1909, c. 6, § 3, 36 Stat. 83.

Nothing in the Underwood Tariff Act of Oct. 3, 1913, was to be construed to abrogate or impair or affect the provisions of the treaty mentioned in this act, or the provisions of this act, except as to the proviso of Article VIII of said treaty, which proviso was abrogated and repealed, by section IV, B, of said act, ante, § 5293.

See notes to said Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, B, ante, § 5293.

Notes of Decisions

Time of taking effect.—The reciprocal commercial convention with Cuba (33 Stat. 2136) became operative on the date of its approval by Act Dec. 17, 1903, c. 1, 33 Stat. 1, rather than on the tenth day after its ratification. Franklin Sugar Refining Co. v. U. S. (C. C. 1906) 144 Fed. 563.

The treaty between Cuba and the United States, signed December 11, 1902, did not go into effect until December 27, 1903, the date proclaimed by the President, and imports from Cuba entered prior to that date were not entitled to the 20 per cent. reduction provided for therein from the duties imposed by Act 1897. M. J. Dalton Co. v. U. S. (C. C. 1907) 151 Fed. 143; U. S. v. M. J. Dalton Co., Id. 144.

Retroactive operation.—A retrospective operation will not be given to the provision of Act Dec. 17, 1903, c. 1, 33 Stat. 3, that the treaty with Cuba of December 11, 1902, shall become effective on the tenth day after the exchange of ratifications, because such ratifications had in fact been exchanged some time before the statute was enacted. U. S. v. American Sugar Refining Co. (1906) 26 Sup. Ct. 717, 719, 202 U. S. 563, 50 L. Ed. 1149, reversing judgment American Sugar Refining Co. v. U. S. (C. C. 1905) 136 Fed. 508.

Duties imposed by military government.—Merchandise imported into Cuba from the United States by an American citizen during the military occupation of the island, between March 31, 1900, and May 20, 1902, was not exempt from the payment of duties imposed and collected by the military government for necessary governmental purposes incident to the occupation of Cuba by the United States. Galban & Co. v. U. S. (1907) 28 Sup. Ct. 254, 207 U. S. 579, 52 L. Ed. 349, affirming judgment (1905) 40 Ct. Cl. 495.

Reduction of duties.—Imports from Cuba were not entitled, under the treaty of December 11, 1902, to the 20 per cent. reduction from the duties imposed by Act 1897, until December 27, 1903—the date proclaimed by the President of the United States and the President of the Cuban Republic for the commencement of the operation of the treaty. U. S. v. American Sugar Refining Co. (1906) 26 Sup. Ct. 717, 202 U. S. 563, 50 L. Ed. 1149, reversing order American Sugar Refining Co. v. U. S. (C. C. 1905) 136 Fed. 508; Franklin Sugar Refining Co. v. U. S. (1906) 26 Sup. Ct. 720, 721, 202 U. S. 580, 50 L. Ed. 1153.

Importations from Cuba are not free of duty. Downing v. U. S. (C. C. 1903) 116 Fed. 779, judgment affirmed (1903) 122 Fed. 445, 58 C. C. A. 427.

All articles of Porto Rican origin exported from Porto Rico to foreign countries after the passage of this act, may, since the proclamation of the President on July 25, 1901, doing away with the 15 per cent. duty imposed under this section, be imported into the United States free of duty under paragraph 483 of the tariff act of July 24, 1897 (30 Stat. 195), provided the articles have not been advanced in value or improved in condition by any process of manufac-

ture or other means. (1902) 24 Op. Atty. Gen. 55.

Tobacco grown in Porto Rico after the cession of that island to the United States and brought into this country for warehousing, and afterwards exported to Canada and thence returned to the United States, is within the benefits of paragraph 483 of the act of 1897, but subject to the internal revenue tax provisions of section 3 of the act of April 12, 1900. (1903) 24 Op. Atty. Gen. 612.

§ 5325. (Act Dec. 17, 1903, c. 1, § 2.) No additional fees or charges on products of Cuba; equal treatment of imports by both countries.

So long as said convention shall remain in force, the laws and regulations adopted, or that may be adopted by the United States to protect the revenues and prevent fraud in the declarations and proofs, that the articles of merchandise to which said convention may apply are the product or manufacture of the Republic of Cuba, shall not impose any additional charge or fees therefor on the articles imported, excepting the consular fees established, or which may be established, by the United States for issuing shipping documents, which fees shall not be higher than those charged on the shipments of similar merchandise from any other nation whatsoever; that articles of the Republic of Cuba shall receive, on their importation into the ports of the United States, treatment equal to that which similar articles of the United States shall receive on their importation into the ports of the Republic of Cuba; that any tax or charge that may be imposed by the national or local authorities of the United States upon the articles of merchandise of the Republic of Cuba, embraced in the provisions of said convention, subsequent to importation and prior to their entering into consumption into the United States, shall be imposed and collected without discrimination upon like articles whensoever imported. (33 Stat. 4.)

See notes to preceding section of this act, ante, § 5324.

§ 5326. (Act July 26, 1911, c. 3, § 1.) Duties on specified imports from Canada, when reciprocal rates are imposed by Canada on specified imports from United States, and exemption from duty of specified articles imported from Canada, when specified articles from United States are admitted into Canada free of duty.

There shall be levied, collected, and paid upon the articles hereinafter enumerated, the growth, product or manufacture of the Dominion of Canada, when imported therefrom into the United States or any of its possessions (except the Philippine Islands and the islands of Guam and Tutuila), in lieu of the duties now levied, collected, and paid, the following duties, namely:

Fresh meats: Beef, veal, mutton, lamb, pork, and all other fresh or refrigerated meats excepting game, one and one-fourth cents per pound.

Bacon and hams, not in tins or jars, one and one-fourth cents per pound.

Meats of all kinds, dried, smoked, salted, in brine, or prepared or preserved in any manner, not otherwise herein provided for, one and one-fourth cents per pound.

Canned meats and canned poultry, twenty per centum ad valorem.

Extract of meat, fluid or not, twenty per centum ad valorem.

Lard and compounds thereof, cottolene and cotton stearine, and animal stearine, one and one-fourth cents per pound.

Tallow, forty cents per one hundred pounds.

Egg yolk, egg albumen, and blood albumen, seven and one-half per centum ad valorem.

Fish (except shellfish) by whatever name known, packed in oil, in tin boxes or cans, including the weight of the package: (a) when weighing over twenty ounces and not over thirty-six ounces each, five cents per package; (b) when weighing over twelve ounces and

not over twenty ounces each, four cents per package; (c) when weighing twelve ounces each or less, two cents per package; (d) when weighing thirty-six ounces each or more, or when packed in oil, in bottles, jars, or kegs, thirty per centum ad valorem.

Tomatoes and other vegetables, including corn, in cans or other air-tight packages, and including the weight of the package, one and one-fourth cents per pound.

Wheat flour and semolina, and rye flour, fifty cents per barrel of one hundred and ninety-six pounds.

Oatmeal and rolled oats, including the weight of paper covering, fifty cents per one hundred pounds.

Corn meal, twelve and one-half cents per one hundred pounds.

Barley malt, forty-five cents per one hundred pounds.

Barley, pot, pearled, or patent, one-half cent per pound.

Buckwheat flour or meal, one-half cent per pound.

Split peas, dried, seven and one-half cents per bushel of sixty pounds.

Prepared cereal foods, not otherwise provided for herein, seventeen and one-half per centum ad valorem.

Bran, middlings, and other offals of grain used for animal food, twelve and one-half cents per one hundred pounds.

Macaroni and vermicelli, one cent per pound.

Biscuits, wafers, and cakes, when sweetened with sugar, honey, molasses, or other material, twenty-five per centum ad valorem.

Biscuits, wafers, cakes, and other baked articles, composed in whole or in part of eggs or any kind of flour or meal, when combined with chocolate, nuts, fruits, or confectionery; also candied peel, candied popcorn, candied nuts, candied fruits, sugar candy, and confectionery of all kinds, thirty-two and one-half per centum ad valorem.

Maple sugar and maple sirup, one cent per pound.

Pickles, including pickled nuts, sauces of all kinds, and fish paste or sauce, thirty-two and one-half per centum ad valorem.

Cherry juice and prune juice, or prune wine, and other fruit juices and fruit sirup, nonalcoholic, seventeen and one-half per centum ad valorem.

Mineral waters and imitations of natural mineral waters, in bottles or jugs, seventeen and one-half per centum ad valorem.

Essential oils, seven and one-half per centum ad valorem.

Grapevines; gooseberry, raspberry, and current bushes, seventeen and one-half per centum ad valorem.

Farm wagons and finished parts thereof, twenty-two and one-half per centum ad valorem.

Plows, tooth and disk harrows, harvesters, reapers, agricultural drills and planters, mowers, horserakes, cultivators; threshing machines, including windstackers, baggers, weighers, and self-feeders therefor and finished parts thereof imported for repair of the foregoing, fifteen per centum ad valorem.

Portable engines with boilers, in combination, horsepower and traction engines for farm purposes; hay loaders, potato diggers, fodder or feed cutters, grain crushers, fanning mills, hay tedders, farm or field rollers, manure spreaders, weeders, and windmills, and finished parts thereof imported for repair of the foregoing, except shafting, twenty per centum ad valorem.

Grindstones of sandstone, not mounted, finished or not, five cents per one hundred pounds.

Freestone, granite, sandstone, limestone, and all other monumental or building stone, except marble, breccia, and onyx, unmanufactured or not dressed, hewn, or polished, twelve and one-half per centum ad valorem.

Roofing slates, fifty-five cents per one hundred square feet.

Vitrified paving blocks, not ornamented or decorated in any manner, and paving blocks of stone, seventeen and one-half per centum ad valorem.

Oxide of iron, as a color, twenty-two and one-half per centum ad valorem.

Asbestos, further manufactured than ground; manufactures of asbestos or articles of which asbestos is the component material of chief value, including woven fabrics, wholly or in chief value of asbestos, twenty-two and one-half per centum ad valorem.

Printing ink, seventeen and one-half per centum ad valorem.

Cutlery, plated or not—pocketknives, penknives, scissors and shears, knives and forks for household purposes, and table steels, twenty-seven and one-half per centum ad valorem.

Bells and gongs, brass corners and rules for printers, twenty-seven and one-half per centum ad valorem.

Basins, urinals, and other plumbing fixtures, for bathrooms and lavatories; bathtubs, sinks, and laundry tubs of earthenware, stone, cement, or clay, or of other material, thirty-two and one-half per centum ad valorem.

Brass band instruments, twenty-two and one-half per centum ad valorem.

Clocks, watches, time recorders, clock and watch keys, clock cases, and clock movements, twenty-seven and one-half per centum ad valorem.

Printers' wooden cases and cabinets for holding type, twenty-seven and one-half per centum ad valorem.

Wood flour, twenty-two and one-half per centum ad valorem.

Canoes and small boats of wood, not power boats, twenty-two and one-half per centum ad valorem.

Feathers, crude, not dressed, colored, or otherwise manufactured, twelve and one-half per centum ad valorem.

Antiseptic surgical dressings, such as absorbent cotton, cotton wool, lint, lamb's wool, tow, jute, gauzes, and oakum, prepared for use as surgical dressings, plain or medicated; surgical trusses, pessaries, and suspensory bandages of all kinds, seventeen and one-half per centum ad valorem.

Plate glass, not beveled, in sheets or panes exceeding seven square feet each and not exceeding twenty-five square feet each, twenty-five per centum ad valorem.

Motor vehicles, other than for railways and tramways, and automobiles and parts thereof, not including rubber tires, thirty per centum ad valorem.

Iron or steel digesters for the manufacture of wood pulp, twenty-seven and one-half per centum ad valorem.

Musical instrument cases, fancy cases or boxes, portfolios, satchels, reticules, card cases, purses, pocketbooks, fly books for artificial flies, all the foregoing composed wholly or in chief value of leather, thirty per centum ad valorem.

Aluminum in crude form, five cents per pound.

Aluminum in plates, sheets, bars, and rods, eight cents per pound.

Laths, ten cents per one thousand pieces.

Shingles, thirty cents per thousand.

Sawed boards, planks, deals, and other lumber, planed or finished on one side, fifty cents per thousand feet, board measure; planed or finished on one side and tongued and grooved, or planed or finished on two sides, seventy-five cents per thousand feet, board measure; planed or finished on three sides, or planed and finished on two sides and tongued and grooved, one dollar and twelve and one-half cents per thousand feet, board measure; planed and finished on four sides,

one dollar and fifty cents per thousand feet, board measure; and in estimating board measure under this schedule no deduction shall be made on board measure on account of planing, tonguing, and grooving.

Iron ore, including manganiferous iron ore, and the dross or residuum from burnt pyrites, ten cents per ton: Provided, That in levying and collecting the duty on iron ore no deduction shall be made from the weight of the ore on account of moisture which may be chemically or physically combined therewith.

Coal slack or culm of all kinds, such as will pass through a half-inch screen, fifteen cents per ton.

Provided, That the duties above enumerated shall take effect whenever the President of the United States shall have satisfactory evidence and shall make proclamation that on the articles hereinafter enumerated, the growth, product, or manufacture of the United States, or any of its possessions (except the Philippine Islands and the islands of Guam and Tutuila), when imported therefrom into the Dominion of Canada, duties not in excess of the following are imposed, namely:

Fresh meats: Beef, veal, mutton, lamb, pork, and all other fresh or refrigerated meats excepting game, one and one-fourth cents per pound.

Bacon and hams, not in tins or jars, one and one-fourth cents per pound.

Meats of all kinds, dried, smoked, salted, in brine, or prepared or preserved in any manner, not otherwise herein provided for, one and one-fourth cents per pound.

Canned meats and canned poultry, twenty per centum ad valorem.

Extract of meat, fluid or not, twenty per centum ad valorem.

Lard, and compounds thereof, cottolene and cotton stearin, and animal stearin, one and one-fourth cents per pound.

Tallow, forty cents per one hundred pounds.

Egg yolk, egg albumen, and blood albumen, seven and one-half per centum ad valorem.

Fish (except shellfish), by whatever name known, packed in oil, in tin boxes or cans, including the weight of the package: (a) when weighing over twenty ounces and not over thirty-six ounces each, five cents per package; (b) when weighing over twelve ounces and not over twenty ounces each, four cents per package; (c) when weighing twelve ounces each or less, two cents per package; (d) when weighing thirty-six ounces each or more, or when packed in oil, in bottles, jars, or kegs, thirty per centum ad valorem.

Tomatoes and other vegetables, including corn, in cans or other air-tight packages, and including the weight of the package, one and one-fourth cents per pound.

Wheat flour and semolina; and rye flour, fifty cents per barrel of one hundred and ninety-six pounds.

Oatmeal and rolled oats, including the weight of paper covering, fifty cents per one hundred pounds.

Corn meal, twelve and one-half cents per one hundred pounds.

Barley malt, forty-five cents per one hundred pounds.

Barley, pot, pearled, or patent, one-half cent per pound.

Buckwheat flour or meal, one-half cent per pound.

Split peas, dried, seven and one-half cents per bushel of sixty pounds.

Prepared cereal foods, not otherwise provided for herein, seventeen and one-half per centum ad valorem.

Bran, middlings, and other offals of grain used for animal food twelve and one-half cents per one hundred pounds.

Macaroni and vermicelli, one cent per pound.

Biscuits, wafers, and cakes, when sweetened with sugar, honey, molasses, or other material, twenty-five per centum ad valorem.

Biscuits, wafers, cakes, and other baked articles, composed in whole or in part of eggs or any kind of flour or meal, when combined with chocolate, nuts, fruits, or confectionery; also candied peel, candied popcorn, candied nuts, candied fruits, sugar candy, and confectionery of all kinds, thirty-two and one-half per centum ad valorem.

Maple sugar and maple sirup, one cent per pound.

Pickles, including pickled nuts, sauces of all kinds, and fish paste or sauce, thirty-two and one-half per centum ad valorem.

Cherry juice and prune juice, or prune wine, and other fruit juices, and fruit sirup, nonalcoholic, seventeen and one-half per centum ad valorem.

Mineral waters and imitations of natural mineral waters, in bottles or jugs, seventeen and one-half per centum ad valorem.

Essential oils, seven and one-half per centum ad valorem.

Grapevines; gooseberry, raspberry, and currant bushes, seventeen and one-half per centum ad valorem.

Farm wagons, and finished parts thereof, twenty-two and one-half per centum ad valorem.

Plows, tooth and disk harrows, harvesters, reapers, agricultural drills and planters, mowers, horserakes, cultivators; thrashing machines, including windstackers, baggers, weighers, and self-feeders therefor, and finished parts thereof imported for repair of the foregoing, fifteen per centum ad valorem.

Portable engines with boilers, in combination, horsepower and traction engines, for farm purposes; hay loaders, potato diggers, fodder or feed cutters, grain crushers, fanning mills, hay tedders, farm or field rollers, manure spreaders, weeders, and windmills, and finished parts thereof imported for repair of the foregoing, except shafting, twenty per centum ad valorem.

Grindstones of sandstone, not mounted, finished or not, five cents per one hundred pounds.

Freestone, granite, sandstone, limestone, and all other monumental or building stone, except marble, breccia, and onyx, unmanufactured or not dressed, hewn or polished, twelve and one-half per centum ad valorem.

Roofing slates, fifty-five cents per one hundred square feet.

Vitrified paving blocks, not ornamented or decorated in any manner, and paving blocks of stone, seventeen and one-half per centum ad valorem.

Oxide of iron, as a color, twenty-two and one-half per centum ad valorem.

Asbestos further manufactured than ground: Manufactures of asbestos, or articles of which asbestos is the component material of chief value, including woven fabrics wholly or in chief value of asbestos, twenty-two and one-half per centum ad valorem.

Printing ink, seventeen and one-half per centum ad valorem.

Cutlery, plated or not: Pocketknives, penknives, scissors and shears, knives and forks for household purposes, and table steels, twenty-seven and one-half per centum ad valorem.

Bells and gongs, brass corners and rules for printers, twenty-seven and one-half per centum ad valorem.

Basins, urinals, and other plumbing fixtures for bathrooms and lavatories; bathtubs, sinks, and laundry tubs, of earthenware, stone, cement, or clay, or of other material, thirty-two and one-half per centum ad valorem.

Brass band instruments, twenty-two and one-half per centum ad valorem.

Clocks, watches, time recorders, clock and watch keys, clock cases, and clock movements, twenty-seven and one-half per centum ad valorem.

Printers' wooden cases and cabinets for holding type, twenty-seven and one-half per centum ad valorem.

Wood flour, twenty-two and one-half per centum ad valorem.

Canoes and small boats of wood, not power boats, twenty-two and one-half per centum ad valorem.

Feathers, crude, not dressed, colored or otherwise manufactured, twelve and one-half per centum ad valorem.

Antiseptic surgical dressings, such as absorbent cotton, cotton wool, lint, lamb's wool, tow, jute, gauzes, and oakum, prepared for use as surgical dressings, plain or medicated; surgical trusses, pessaries, and suspensory bandages of all kinds, seventeen and one-half per centum ad valorem.

Plate glass, not beveled, in sheets or panes exceeding seven square feet each, and not exceeding twenty-five square feet each, twenty-five per centum ad valorem.

Motor vehicles, other than for railways and tramways, and automobiles, and parts thereof, not including rubber tires, thirty per centum ad valorem.

Iron or steel digesters for the manufacture of wood pulp, twenty-seven and one-half per centum ad valorem.

Musical instrument cases, fancy cases or boxes, portfolios, satchels, reticules, card cases, purses, pocketbooks, fly books for artificial flies; all the foregoing composed wholly or in chief value of leather, thirty per centum ad valorem.

Cement, Portland, and hydraulic or water lime in barrels, bags, or casks, the weight of the package to be included in the weight for duty, eleven cents per one hundred pounds.

Trees: Apple, cherry, peach, pear, plum, and quince, of all kinds, and small peach trees known as June buds, two and one-half cents each.

Condensed milk, the weight of the package to be included in the weight for duty, two cents per pound.

Biscuits without added sweetening, twenty per centum ad valorem.

Fruits in air-tight cans or other air-tight packages, the weight of the cans or other packages to be included in the weight for duty, two cents per pound.

Peanuts, shelled, one cent per pound.

Peanuts, unshelled, one-half cent per pound.

Coal, bituminous, round and run of mine, including bituminous coal such as will not pass through a three-quarter inch screen, forty-five cents per ton.

That the articles mentioned in the following paragraphs, the growth, product, or manufacture of the Dominion of Canada, when imported therefrom into the United States or any of its possessions (except the Philippine Islands and the Islands of Guam and Tutuila), shall be exempt from duty, namely:

Live animals: Cattle, horses and mules, swine, sheep, lambs, and all other live animals.

Poultry, dead or alive.

Wheat, rye, oats, barley, and buckwheat, dried peas and beans, edible.

Corn, sweet corn, or maize.

Hay, straw, and cowpeas.

Fresh vegetables: Potatoes, sweet potatoes, yams, turnips, onions, cabbages, and all other vegetables in their natural state.

Fresh fruits: Apples, pears, peaches, grapes, berries, and all other edible fruits in their natural state, except lemons, oranges, limes, grapefruit, shaddocks, pomelos, and pineapples.

Dried fruits: Apples, peaches, pears, and apricots, dried, desiccated or evaporated.

Dairy products: Butter, cheese, and fresh milk and cream: Provided, That cans actually used in the transportation of milk or cream may be passed back and forth between the two countries free of duty, under such regulations as the respective Governments may prescribe.

Eggs of barnyard fowl, in the shell.

Honey.

Cottonseed oil.

Seeds: Flaxseed or linseed, cotton seed, and other oil seeds; grass seed, including timothy and clover seed; garden, field, and other seed not herein otherwise provided for, when in packages weighing over one pound each (not including flower seeds).

Fish of all kinds, fresh, frozen, packed in ice, salted, or preserved in any form, except sardines and other fish preserved in oil; and shellfish of all kinds, including oysters, lobsters, and clams in any state, fresh or packed, and coverings of the foregoing.

Seal, herring, whale, and other fish oil, including sod oil: Provided, That fish oil, whale oil, seal oil, and fish of all kinds, being the product of fisheries carried on by the fishermen of the United States, shall be admitted into Canada as the product of the United States, and, similarly, that fish oil, whale oil, seal oil, and fish of all kinds, being the product of fisheries carried on by the fishermen of Canada, shall be admitted into the United States as the product of Canada.

Salt.

Mineral waters, natural, not in bottles or jugs.

Timber, hewn, sided or squared otherwise than by sawing, and round timber used for spars or in building wharves.

Sawed boards, planks, deals, and other lumber, not further manufactured than sawed.

Paving posts, railroad ties, and telephone, trolley, electric-light, and telegraph poles of cedar or other woods.

Wooden staves of all kinds, not further manufactured than listed or jointed, and stave bolts.

Pickets and palings.

Plaster rock, or gypsum, crude, not ground.

Mica, unmanufactured or rough trimmed only, and mica, ground or bolted.

Feldspar, crude, powdered or ground.

Asbestos, not further manufactured than ground.

Fluorspar, crude, not ground.

Glycerine, crude, not purified.

Talc, ground, bolted, or precipitated, naturally or artificially, not for toilet use.

Sulphate of soda, or salt cake, and soda ash.

Extracts of hemlock bark.

Carbon electrodes.

Brass in bars and rods, in coil or otherwise, not less than six feet in length, or brass in strips, sheets, or plates, not polished, planished, or coated.

Cream separators of every description, and parts thereof imported for repair of the foregoing.

Rolled iron or steel sheets, or plates, number fourteen gauge or thinner, galvanized or coated with zinc, tin, or other metal, or not.

Crucible cast-steel wire, valued at not less than six cents per pound.

Galvanized iron or steel wire, curved or not, numbers nine, twelve, and thirteen wire gauge.

Typecasting and typesetting machines and parts thereof, adapted for use in printing offices.

Barbed fencing wire of iron or steel, galvanized or not.

Coke.

Rolled round wire rods in the coil, of iron or steel, not over three-eighths of an inch in diameter, and not smaller than number six wire gauge.

Provided, That the articles above enumerated, the growth, product, or manufacture of the Dominion of Canada, shall be exempt from duty when the President of the United States shall have satisfactory evidence and shall make proclamation that the following articles, the growth, product, or manufacture of the United States or any of its possessions (except the Philippine Islands and the Islands of Guam and Tutuila), are admitted into the Dominion of Canada free of duty, namely:

Live animals: Cattle, horses and mules, swine, sheep, lambs, and all other live animals.

Poultry, dead or alive.

Wheat, rye, oats, barley, and buckwheat; dried peas and beans, edible.

Corn, sweet corn, or maize (except into Canada for distillation).

Hay, straw, and cowpeas.

Fresh vegetables: Potatoes, sweet potatoes, yams, turnips, onions, cabbages, and all other vegetables in their natural state.

Fresh fruits: Apples, pears, peaches, grapes, berries, and all other edible fruits in their natural state.

Dried fruits: Apples, peaches, pears, and apricots, dried, desiccated, or evaporated.

Dairy products: Butter, cheese, and fresh milk and cream: Provided, That cans actually used in the transportation of milk or cream may be passed back and forth between the two countries free of duty, under such regulations as the respective Governments may prescribe.

Eggs of barnyard fowl, in the shell.

Honey.

Cottonseed oil.

Seeds: Flaxseed or linseed, cotton seed, and other oil seeds; grass seed, including timothy and clover seed; garden, field, and other seed not herein otherwise provided for, when in packages weighing over one pound each (not including flower seeds).

Fish of all kinds, fresh, frozen, packed in ice, salted or preserved in any form, except sardines and other fish preserved in oil; and shellfish of all kinds, including oysters, lobsters, and clams in any state, fresh or packed, and coverings of the foregoing.

Seal, herring, whale, and other fish oil, including sod oil: Provided, That fish oil, whale oil, seal oil, and fish of all kinds, being the product of fisheries carried on by the fishermen of the United States, shall be admitted into Canada as the product of the United States, and similarly that fish oil, whale oil, seal oil, and fish of all kinds, being the product of fisheries carried on by the fishermen of Canada, shall be admitted into the United States as the product of Canada.

Salt.

Mineral waters, natural, not in bottles or jugs.

Timber, hewn, sided or squared otherwise than by sawing, and round timber used for spars or in building wharves.

Sawed boards, planks, deals, and other lumber, not further manufactured than sawed.

Paving posts, railroad ties, and telephone, trolley, electric light, and telegraph poles of cedar or other woods.

Wooden staves of all kinds, not further manufactured than listed or jointed, and stave bolts.

Pickets and palings.

Plaster rock or gypsum, crude, not ground.

Mica, unmanufactured or rough trimmed only, and mica, ground or bolted.

Feldspar, crude, powdered or ground.

Asbestos not further manufactured than ground.

Fluorspar, crude, not ground.

Glycerine, crude, not purified.

Talc, ground, bolted or precipitated, naturally or artificially, not for toilet use.

Sulphate of soda, or salt cake, and soda ash.

Extracts of hemlock bark.

Carbon electrodes.

Brass in bars and rods, in coil or otherwise, not less than six feet in length, or brass in strips, sheets, or plates, not polished, planished, or coated.

Cream separators of every description, and parts thereof imported for repair of the foregoing.

Rolled iron or steel sheets or plates, number fourteen gauge or thinner, galvanized or coated with zinc, tin, or other metal, or not.

Crucible cast-steel wire, valued at not less than six cents per pound.

Galvanized iron or steel wire, curved or not, numbers nine, twelve, and thirteen wire gauge.

Typecasting and typesetting machines and parts thereof, adapted for use in printing offices.

Barbed fencing wire of iron or steel, galvanized or not.

Coke.

Rolled round wire rods in the coil, of iron or steel, not over three-eighths of an inch in diameter, and not smaller than number six wire gauge. (37 Stat. 4.)

This was the first section of an act entitled "An act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes."

This section was dependent for its legislative force upon ratification thereof by the Dominion of Canada. Such ratification has not been had, and this section must therefore, for the present at least, be regarded as inoperative.

Section 2 of the act provided for the admission of certain wood pulp described therein, and of paper and paper board manufactured from such wood pulp, imported from Canada, free of duty, on condition that no export duty, etc., or prohibition or restriction of the exportation thereof be imposed. It was superseded by the provisions of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § I, as amended by Act Sept. 8, 1916, c. 463, § 600, paragraphs 320–322 of which, ante, § 5291, pars. 320–322, imposed duties on certain pulp board, paper box board, etc., and on printing paper described, valued above 5 cents per pound, and paragraphs 567, 649, of which, ante, § 5291, pars. 567, 649, included in the Free List such printing paper valued at not above 5 cents per pound, and mechanically ground wood pulp, chemical wood pulp, unbleached or bleached, and rag pulp.

Section 3 of the act authorized the President to negotiate trade agreements with the Dominion of Canada, for the purpose of further readjusting duties on importations into the United States of articles the growth, product, or manufacture of Canada, and into Canada of articles the growth, product or manufacture of the United States. It was superseded by the more general provisions authorizing the President to negotiate trade agreements with foreign nations, made by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, A, ante, § 5292.

See Treasury Decisions (T. D. 36,116).

Notes of Decisions

Operation of section 2.—The sections of the Canadian reciprocity act are separable both in form and in character. The act contains no words that specifically or impliedly make the operation of section 1 dependent upon the operation of section 2 or the operation of section 2 dependent upon the operation of section 1 and section 2 is valid and in force. Cliff Paper Co. v. U. S. (1913) 4 Ct. Cust. App. 186.

CHAPTER B

The Tariff Commission

Sec.
5326a. United States tariff commission created; appointment, qualification and tenure of members; chairmen of commission; removal of members; vacancies.
5326b. Salary of commissioners; secretary and employés' compensation; application of civil service rules; expenditures on vouchers; rent of offices; furniture; principal office and place of doing business.
5326c. Investigations relating to customs and customs laws.
5326d. Furnishing information to President and Congress; reports.
5326e. Investigation as to tariff relations with foreign countries.
5326f. Cost of Production Division of Department of Commerce transferred to commission.
5326g. Commission to have access to documents and right to obtain copies for furthering investigations; summoning witnesses and taking testimony; compelling production of books, etc.; subpœnas, oaths, etc.; compelling obedience; mandamus to compel compliance with provisions of act; depositions, fees and mileage of witnesses; immunity to person giving incriminating testimony.
5326h. Commission shall act in co-operation with other departments.
5326i. Members of commission shall not divulge information received; penalty for violation; investigation of Paris Economy Pact and other organizations.
5326j. Continuing appropriation.

§ 5326a. (Act Sept. 8, 1916, c. 463, § 700.) United States tariff commission created; appointment, qualification and tenure of members; chairmen of commission; removal of members; vacancies.

A commission is hereby created and established, to be known as the United States Tariff Commission (hereinafter in this title referred to as the commission), which shall be composed of six members, who shall be appointed by the President, by and with the advice and consent of the Senate, not more than three of whom shall be members of the same political party. In making said appointments members of different political parties shall alternate as nearly as may be practicable. The first members appointed shall continue in office for terms of two, four, six eight, ten, and twelve years, respectively, from the date of the passage of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of twelve years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate annually the chairman and vice chairman of the commission. No member shall engage actively in any other business, function, or employment. Any member may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy shall not impair the right of the remaining members to exercise all the powers of the commission, but no vacancy shall extend beyond any session of Congress. (39 Stat.)

This section and sections 5326b–5326j, post, constituted a part of "An act to increase the revenue and for other purposes," cited above. Section 900 of such act, set forth post, § 6371a, provides that if any part of the act is adjudged invalid, the invalidity of such part shall not affect the other portions of the act. Section 902 of such act, set forth post, § 6371b, provides that the act shall take effect on the day following its passage unless otherwise specially provided and repeals all inconsistent acts. Certain other provisions of this act are incorporated, or set forth, in Chapter A of this Title, and certain others are set forth post, under Title XXXV, "Internal Revenue," and under Title LVI D, "Federal Trade Commission, and Prevention of Unfair Competition."

issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this title or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this title at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person, firm, copartnership, corporation, or association, may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission, as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, except employees of the commission, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States: Provided, That no person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpœna of the commission; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpœna and under oath, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying. (39 Stat.)

See note to § 5326a.

§ 5326h. (Act Sept. 8, 1916, c. 463, § 707.) Commission shall act in co-operation with other departments.

The said commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments, or independent establishments of the Government, and such departments and independent establishments of the Government shall cooperate fully with the commission for the purposes of aiding and assisting in its work, and, when directed by the President, shall furnish to the commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by said commission and shall detail, from time to time, such officials and employees to said commission as he may direct. (39 Stat.)

See note to § 5326a.

§ 5326i. (Act Sept. 8, 1916, c. 463, § 708.) Members of commission shall not divulge information received; penalty for violation; investigation of Paris Economy Pact and other organizations.

It shall be unlawful for any member of the United States Tariff

Commission, or for any employee, agent, or clerk of said commission, or any other officer or employee of the United States, to divulge, or to make known in any manner whatever not provided for by law, to any person, the trade secrets or processes of any person, firm, copartnership, corporation, or association embraced in any examination or investigation conducted by said commission, or by order of said commission, or by order of any member thereof. Any offense against the provisions of this section shall be a misdemeanor and be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both, in the discretion of the court, and such offender shall also be dismissed from office or discharged from employment. The commission shall have power to investigate the Paris Economy Pact and similar organizations and arrangements in Europe. (39 Stat.)

See note to § 5326a.

§ 5326j. (Act Sept. 8, 1916, c. 463, § 709.) Continuing appropriation.

There is hereby appropriated, for the purpose of defraying the expense of the establishment and maintenance of the commission, including the payment of salaries herein authorized, out of any money in the Treasury of the United States not otherwise appropriated, the sum of $300,000 for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for each fiscal year thereafter a like sum is authorized to be appropriated. (39 Stat.)

See note to § 5326a.

TITLE XXXIV

COLLECTION OF DUTIES UPON IMPORTS

Chap.		Sec.
1.	Collection-districts, ports, and officers	5327
2.	Qualifications, pay, and duties of officers	5347
3.	Revenue cutters and boats	5397
4.	Entry of merchandise	5462
5.	Unlading	5555
6.	Appraisal	5589
7.	The bond and warehouse system	5638
7A.	Immediate transportation in bond to inland ports	5695
8.	Payment	5710
9.	Drawback	5720
10.	Enforcement of duty-laws and punishment for violations	5760
11.	Provisions applying to commerce with contiguous countries	5807

CHAPTER ONE

Collection-Districts, Ports, and Officers

This chapter of the Revised Statutes included sections 2517–2612 thereof. Of these, sections 2517–2607 defined the customs collection districts, by describing the waters, shores, islands, etc., comprised in each or making other provisions as to their boundaries, with the ports of entry, subports of entry, and ports of delivery in the several districts, and also enumerated the officers authorized in each district, with some special provisions as to the duties, powers, etc., and compensation of certain officers in particular districts. Nearly all of these sections, and like provisions of acts subsequent to the Revised Statutes creating or making changes in collection districts or ports or offices therein, were superseded by the reorganization of the Customs Service made by the President pursuant to a provision of Act Aug. 24, 1912, c. 355, § 1, 37 Stat. 434, and communicated to Congress March 3, 1913, which, by said act, was to constitute, for the fiscal year 1914, and until otherwise provided by Congress, the permanent organization of the Customs Service.

This chapter includes said provision, authorizing the President to reorganize the Customs Service, of Act Aug. 24, 1912, c. 355, § 1, accompanied by the message of the President transmitting said plan of reorganization, etc., dated March 3, 1913, with such special provisions of the original chapter or of subsequent statutes, relating to particular districts, ports, or officers, as may be regarded as still in force.

Sec.

5327. Reorganization of Customs Service by President, to constitute permanent organization until otherwise provided.

5327a. President authorized to rearrange customs-collection districts and to discontinue ports of entry; limitation of number of districts and of ports of entry; designation of collector by number of district; President authorized to change location of headquarters of district; statement to Congress.

5327b. Act March 4, 1909, c. 314, § 1, not to prohibit Secretary of the Treasury from fixing pay of laborers.

5328. Port of Boston; town of Chelsea attached thereto.

5329. Port of Boston; employés in appraiser's office.

5330. Port of New York; extension of limits.

5331. Port of New York; examiners.

5332. Port of New York; employés in appraiser's office.

5333. Port of Philadelphia; employés in appraiser's office.

5333a. District of Florida; headquarters at Tampa.

5334. Port of New Orleans.

5335. Port of New Orleans; extension of limits.

5336. Port of New Orleans; extension of limits.

5337. Port of New Orleans; extension of limits.

5338. Port of New Orleans; temporary inspectors.

Sec.
5338a. District of Omaha; compensation of collector.
5339. District of Sabine; Port Arthur ship canal, etc., to be conveyed to United States; charges for use of docks, etc.
5340. Additional inspectors upon routes by which goods withdrawn from bonded warehouse may be exported to Mexico; reports by inspectors.
5341. Transshipment of goods transported in bond to Brownsville.
5342. Port of Portland, Oregon; extension of limits.
5343. Manifests of vessels bound for Portland.
5344. Manifests of vessels clearing from Portland.
5345. Vessels having merchandise for both Astoria and Portland.
5346. Port of Memphis; extension of limits.

§ 5327. (Act Aug. 24, 1912, c. 355, § 1.) Reorganization of Customs Service by President, to constitute permanent organization until otherwise provided.

The President is authorized to reorganize the customs service and cause estimates to be submitted therefor on account of the fiscal year nineteen hundred and fourteen bringing the total cost of said service for said fiscal year within a sum not exceeding $10,150,000 instead of $10,500,000, the amount authorized to be expended therefor on account of the current fiscal year nineteen hundred and twelve; in making such reorganization and reduction in expenses he is authorized to abolish or consolidate collection districts, ports, and subports of entry and delivery, to discontinue needless offices and employments, to reduce excessive rates of compensation below amounts fixed by law or Executive order, and to do all such other and further things that in his judgment may be necessary to make such organization effective and within the limit of cost herein fixed; such reorganization shall be communicated to Congress at its next regular session and shall constitute for the fiscal year nineteen hundred and fourteen and until otherwise provided by Congress the permanent organization of the customs service. (37 Stat. 434.)

This was a provision of the sundry civil appropriation act for the fiscal year 1913, cited above.

The plan of reorganization provided for by this act, with an estimate of the expenses of the same, was communicated by the President to Congress by Message dated March 3, 1913, as follows:

Message from the President of the United States, Transmitting Plan of Reorganization of the Customs Service and Detailed Estimate of Expenses of the Same

To the Senate and House of Representatives:

Whereas, by virtue of the provision of chapter 355 of the acts of 1912, approved August 24, 1912, being "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," I was authorized to reorganize the customs service and cause estimates to be submitted therefor on account of the fiscal year 1914, reducing the total cost of said service for said fiscal year by an amount not less than $350,000, and I was further authorized in making such reorganization and reduction in expenses to abolish or consolidate collection districts, ports and subports of entry and delivery, to discontinue needless offices and employments, to reduce excessive rates of compensation below amounts fixed by law or Executive order, and to do all such other and further things that in my judgment may be necessary to make such reorganization effective and within the said limit of cost; and

Whereas it was further provided that such reorganization should be communicated to Congress at its next regular session and should constitute for the fiscal year 1914, and until otherwise provided by Congress, the permanent organization of the customs service: Now, therefore,

It is hereby ordered and communicated that the following plan shall be the organization of the customs service for the said fiscal year 1914, and unless otherwise provided by Congress the permanent organization of the customs service:

Francisco, in which San Francisco (including Oakland), Eureka, and Port Hartford shall be ports of entry.

(29) The district of Oregon, to include all of the State of Oregon, with district headquarters at Portland, in which Portland, Astoria, Newport, and Empire shall be ports of entry.

(30) The district of Washington, to include all of the State of Washington, with district headquarters at Seattle, in which Seattle, Port Townsend, Aberdeen, Anacortes, Bellingham, Blaine, Chopaka, Danville, Everett, Ferry, Friday Harbor, Laurier, Molson, Northport, Port Angeles, Roche Harbor, South Bend, Spokane, Sumas, and Tacoma shall be ports of entry.

(31) The district of Alaska, to include all of the Territory of Alaska, with district headquarters at Juneau, in which Juneau, Eagle, Ketchikan, Cordova, Sulzer, St. Michael, Skagway, Unalaska, Wrangell, Fortymile, Fairbanks, and Nome shall be ports of entry.

(32) The district of Hawaii, to include all of the Territory of Hawaii, with district headquarters at Honolulu, in which Honolulu, Hilo, Kahului, Kaloa, and Mahukona shall be ports of entry.

(33) The district of Montana and Idaho, to include all of the States of Montana and Idaho, with district headquarters at Great Falls, in which Great Falls, Eastport, Port Hill, Plentywood, Sweetgrass, and Gateway shall be ports of entry.

(34) The district of Dakota, to include all of the States of North and South Dakota and the county of Kittsen in the State of Minnesota, with district headquarters at Pembina, in which Pembina, Noyes, St. Vincent, Portal, St. John, Hannah, Neche, Ambrose, Souris, Walhalla, Sarles, Sherwood, Hansboro, Crosby, and Antler shall be ports of entry.

(35) The district of Minnesota, to include all of the State of Minnesota lying south of 46° north latitude, with headquarters at St. Paul and Minneapolis, in which St. Paul and Minneapolis shall be the port of entry, which port shall include both of said cities.

(36) The district of Duluth and Superior, to include all of the State of Minnesota, except the county of Kittsen, lying north of 46° north latitude, and all of the State of Wisconsin lying north of said latitude, and the Island of Isle Royal in the State of Michigan, with district headquarters at Duluth and Superior, in which Duluth and Superior, International Falls, Warroad, Ranier, Two Harbors, Ashland, and Isle Royal shall be ports of entry. The port of Duluth and Superior shall include both of said cities and West Superior.

(37) The district of Wisconsin, to include all of the State of Wisconsin lying south of 46° north latitude, with district headquarters at Milwaukee, in which Milwaukee, Green Bay, Kenosha, Kewaunee, Manitowoc, Marinette (including Menominee), Racine, Sheboygan, and Sturgeon Bay shall be ports of entry.

(38) The district of Michigan, to include all of the State of Michigan, with district headquarters at Detroit, in which Detroit, Port Huron, Saginaw, Alpena, Bay City, Marine City, St. Clair, Grand Rapids, Grand Haven, Charlevoix, Ludington, Manistee, Manistique, Muskegon, St. Joseph, Petoskey, Sault Ste. Marie, Cheboygan, Mackinaw, Detour, Escanaba, Gladstone, Houghton, and Marquette shall be ports of entry.

(39) The district of Chicago, to include all of the State of Illinois lying north of 39° north latitude and all that part of the State of Indiana lying north of 41° of north latitude, with district headquarters at Chicago, in which Chicago, Peoria, and Michigan City shall be ports of entry.

(40) The district of Indiana, to include all of the State of Indiana lying south of 41° of north latitude, with district headquarters at Indianapolis, in which Indianapolis and Evansville shall be ports of entry.

(41) The district of Ohio, to include all of the State of Ohio and the county of Erie, in the State of Pennsylvania, with district headquarters at Cleveland, in which Cleveland, Conneaut, Ashtabula, Fairport, Lorain, Sandusky, Put-in-Bay, Toledo, Cincinnati, Columbus, and Dayton, Ohio, and Erie and Corry, Pa., shall be ports of entry.

(42) The district of Kentucky, to include all of the State of Kentucky, with district headquarters at Louisville, in which Louisville and Paducah shall be ports of entry.

(43) The district of Tennessee, to include all of the State of Tennessee, with district headquarters at Memphis, in which Memphis, Nashville, Chattanooga, and Knoxville shall be ports of entry.

(44) The district of Iowa, to include all of the State of Iowa, with district headquarters at Des Moines, in which Des Moines, Sioux City, and Dubuque shall be ports of entry.

(45) The district of St. Louis, to include all of the States of Missouri, Kansas, Arkansas, and Oklahoma, and all that part of the State of Illinois lying

south of 39° north latitude, with district headquarters at St. Louis, in which St. Louis (including East St. Louis), Kansas City and St. Joseph, Mo., and Cairo, Ill., shall be ports of entry.

(46) The district of Omaha, to include all of the States of Nebraska and Wyoming, with district headquarters at Omaha, in which Omaha and Lincoln shall be ports of entry.

(47) The district of Colorado, to include all of the State of Colorado, with district headquarters at Denver, in which Denver shall be the port of entry.

(48) The district of Utah and Nevada, to include all of the States of Utah and Nevada, with district headquarters at Salt Lake City, in which Salt Lake City shall be the port of entry.

(49) The district of Porto Rico. (This district is not affected by this reorganization for the reason that the expenses of the district are not payable from the appropriation "Expenses of collecting the revenue from customs.")

II

The use of the terms "port of delivery" and "subport of entry" is hereby discontinued, and all ports of entry, subports of entry, and ports of delivery not above specifically mentioned as ports of entry, are hereby abolished.

III

The privileges of the first and seventh sections of the act of June 10, 1880, commonly known as the "immediate transportation act" shall remain as heretofore existing with respect to the ports of entry above mentioned.

IV

There shall be one collector of customs for each of the customs collection districts above established, who shall receive the compensation hereafter set forth, which shall constitute all the compensation and emoluments to be received by him and which shall be in lieu of all fees, commissions, salaries, or other emoluments of any name or nature (including the right to charge for blank manifests and clearances under the provisions of section 2648 of the Revised Statutes) heretofore received by or allowed to him.

Maine and New Hampshire	$5,000	Eagle Pass	$4,000
Eastern Vermont	4,000	Arizona	3,500
Western Vermont	4,000	Southern California	5,000
Massachusetts	8,000	San Francisco	7,000
Rhode Island	4,500	Oregon	4,500
Connecticut	5,000	Washington	6,000
St. Lawrence	5,000	Alaska	4,000
Rochester	4,500	Hawaii	5,000
Buffalo	6,000	Montana and Idaho	3,500
New York	12,000	Dakota	3,500
Philadelphia	8,000	Minnesota	4,000
Pittsburgh	4,500	Duluth and Superior	4,000
Maryland	7,000	Wisconsin	4,500
Virginia	5,000	Michigan	6,000
North Carolina	2,500	Chicago	7,000
South Carolina	2,500	Indiana	4,000
Georgia	3,000	Ohio	6,000
Florida	6,000	Kentucky	3,500
Mobile	3,500	Tennessee	3,500
New Orleans	7,000	Iowa	3,000
Sabine	3,000	St. Louis	6,000
Galveston	5,000	Omaha	2,500
Laredo	3,500	Colorado	3,500
El Paso	4,500	Utah and Nevada	2,500

All moneys collected or received by such collectors of customs in their official capacities, whether as fees, storage, commissions, or from the sale of blank forms or otherwise, shall be covered into the Treasury.

V

Such collectors shall maintain their principal offices at the headquarters of their respective districts, with the exception of the collectors for the districts of Virginia, Minnesota, and Duluth and Superior, who shall maintain a principal office at both Newport News and Norfolk, and at both St. Paul and Minneapolis, and at both Duluth and Superior, respectively.

VI

The collector of customs or the surveyor of customs (if there be no collector) for any district heretofore existing in which the port above mentioned

as the headquarters of a district hereby created is located shall continue to hold office as the collector of customs for such new district under his existing commission, or if the port so designated as the headquarters of any district hereby created be an independent port of delivery the collector or surveyor (if there be no collector) shall continue to hold office as the collector of customs for such new district under his existing commission, and the terms of office of all other collectors of customs, and the terms of office of all other surveyors of customs, except the surveyors of customs at the ports of Portland, Me., Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., New Orleans, La., and San Francisco, Cal., shall cease and determine upon this reorganization going into effect.

VII

The Secretary of the Treasury may appoint a deputy collector to have charge of each port of entry, who shall perform such duties and receive such compensation as the Secretary of the Treasury shall determine.

VIII

The Secretary of the Treasury is hereby authorized to prescribe uniform blank forms to be used in connection with the entry and clearance of merchandise, and to cause such forms to be printed and to be kept on sale at the various ports of entry as he may direct, the net proceeds of such sales to be covered into the Treasury.

IX

Merchandise shall not be entered or delivered from customs custody elsewhere than at one of the ports of entry hereinbefore designated, except at the expense of the parties in interest, upon express authority from the Secretary of the Treasury and under conditions to be prescribed by him. When it shall be made to appear to the Secretary of the Treasury that the interests of commerce or the protection of the revenue so require, he may cause to be stationed at places in the various collection districts, though not named as ports of entry, officers or employees of the customs with authority to enter and clear vessels, to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws.

X

All persons now in the classified civil service whose employment may be discontinued by reason of this reorganization shall be retained upon the list of eligibles for appointment to fill any vacancies hereafter occurring in the customs service.

XI

The notice of dissatisfaction and protest provided for by subsections 13 and 14 of section 28 of the act approved August 5, 1909, shall be deemed to be finally abandoned and waived unless within 30 days from the date of filing thereof the person who filed such notice or protest shall deposit with the collector of customs a fee of $1 with respect to each appraisement, entry, or payment objected to. Such fee shall be deposited and accounted for as "Miscellaneous receipts," and in case the notice of dissatisfaction or protest in connection with which such fee was deposited shall be finally sustained in whole or in part, such fee shall be refunded to the importer, with the duties found to be collected in excess, from the appropriation for the refund to importers of excess of deposits.

Attached hereto is a detailed estimate of the expenses of the customs service under the reorganization above provided.

Done at Washington, D. C., this 3d day of March, 1913.

WM. H. TAFT.

DISTRICT OF MAINE AND NEW HAMPSHIRE

Collector	$ 5,000.00
Appraiser	3,000.00
Deputy collector	2,500.00
Deputy collector	2,000.00
Weigher	2,000.00
Deputy collector and inspector	1,600.00
Clerk	1,600.00
Deputy collector	1,400.00
Inspectors, 2 at $4	2,920.00
Inspector and assistant weigher, 1 at $4	1,460.00
Clerks, 2 at $1,400	2,800.00
Clerks, 3 at $1,200	3,600.00

Clerks, 2 at $1,100	$ 2,200.00
Clerks, 2 at $1,000	2,000.00
Storekeeper, 1 at $1,100 (d)	1,100.00
Inspectors, 9 at $3	9,855.00
Inspectors, 10 at $3 (o)	4,530.00
Clerk, 1 at $730	730.00
Boatmen, 2 at $2	1,460.00
Watchmen, 2 at $2	1,460.00
Watchmen, 2 at $2 (o)	604.00
Watchman and assistant storekeeper, 1 at $2 (d)	730.00
Laborer, 1 at $60 (g)	720.00
Deputy collector, 1 at $3	1,095.00
Deputy collector	1,800.00
Deputy collectors and inspectors, 2 at $4 (p)	2,920.00
Deputy collector and inspector, 1 at $4.50 (p)	1,642.50
Deputy collector and inspector, 1 at $3.50 (p)	1,277.50
Deputy collector, 1 at $1,400	1,400.00
Inspector, 1 at $3 (d)	1,095.00
Inspector, 1 at $3	1,095.00
Deputy collector, 1 at $4 (p)	1,460.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Deputy collector, 1 at $3.50	1,277.50
Deputy collector, 1 at $3.50 (p)	1,277.50
Deputy collectors, 2 at $3.50 (p)	2,555.00
Deputy collector, 1 at $3.50 (p)	1,277.50
Deputy collector, 1 at $3.50 (p)	1,277.50
Deputy collector, 1 at $3.50 (p)	1,277.50
Deputy collector	900.00
Deputy collector and inspector	700.00
Deputy collector and inspector, 1 at $1.65	602.25
Deputy collector, 1 at $2	730.00
Deputy collector	2,000.00
Deputy collector, 1 at $1,200	1,200.00
Deputy collector, 1 at $1,200	1,200.00
Deputy collector, 1 at $1,000	1,000.00
Inspectors, 6 at $3	6,570.00
Inspectors, 2 at $2.50	1,825.00
Inspector, 1 at $2.50 (n)	525.00
Deputy collector, 1 at $4	1,460.00
Deputy collectors, 3 at $3	3,285.00
Deputy collector and inspector, 1 at $3	1,095.00
Inspector, 1 at $2.50	912.50
Inspector, 1 at $2	730.00
Deputy collector, 1 at $2.50	912.50
Night inspector, 1 at $3 (m)	730.00
Deputy collector	1,800.00
Deputy collectors and inspectors, 2 at $3	2,190.00
Deputy collector and inspector, 1 at $2.50	912.50
Janitor	660.00
Deputy collector, 1 at $3	1,095.00
Deputy collectors and inspectors, 2 at $2.50	1,825.00
Deputy collector	1,800.00
Deputy collector and inspector, 1 at $4	1,460.00
Deputy collectors and inspectors, 6 at $3	6,570.00
Deputy collector, 1 at $2.50	912.50
Deputy collector, 1 at $3.50 (d)	1,277.50
Deputy collector	1,095.00
Deputy collectors, 2 at $3	2,190.00
Deputy collector, 1 at $3	1,095.00
Inspector, 1 at $2.50 (b)	230.00
Deputy collector, 1 at $4	1,460.00
Deputy collectors and inspectors, 3 at $3	3,285.00
Deputy collector, 1 at $0.70	255.50
Deputy collector, 1 at $2.50	912.50
Deputy collector, 1 at $500	500.00
Deputy collector, 1 at $3	1,095.00
Total	138,271.75
Compensation	138,271.75
Rents and contingent	8,123.00
Total	146,394.75

DISTRICT OF EASTERN VERMONT

Collector of customs	$ 4,000.00
Deputy collector	2,200.00
Deputy collector	1,500.00
Deputy collectors and inspectors, 2 at $4 (Quebec)	4,380.00
Deputy collector and inspector, 1 at $1,400	1,400.00
Deputy collector and inspector, 1 at $4 (Quebec)	1,460.00
Deputy collectors and inspectors, 2 at $1,200	2,400.00
Deputy collectors and inspectors, 3 at $3	3,760.00
Clerk, 1 at $1,000	1,000.00

Deputy collectors and inspectors, 4 at $840	$ 3,360.00
Clerk and messenger, 1 at $840	840.00
Deputy collectors, 2 at $3	2,190.00
Deputy collector, 1 at $1,500	1,500.00
Deputy collector and inspector, 1 at $1,200	1,200.00
Deputy collectors and inspectors, 7 at $3	7,665.00
Deputy collectors and inspectors, 4 at $840	3,360.00
Deputy collectors, 2 at $1,095	2,190.00
Deputy collector and inspector, 1 at $840	840.00
Deputy collector, 1 at $840	840.00
Total	51,085.00
Compensation	51,085.00
Rents and contingent	996.00
Total	52,081.00

DISTRICT OF WESTERN VERMONT

Collector	$ 4,000.00
Deputy collector	3,000.00
Deputy collector	2,000.00
Deputy collectors, 3 at $1,400	4,200.00
Deputy collector and inspector	1,200.00
Deputy collectors and inspectors, 11 at $3	12,045.00
Deputy collector and inspector, 1 at $3 (d)	1,095.00
Deputy collectors and inspectors, 2 at $3 (d)	2,190.00
Deputy collector and inspector and gauger	1,095.00
Deputy collector	1,000.00
Deputy collectors and inspectors, 3 at $840	2,520.00
Deputy collector and inspector, 1 at $840	840.00
Messenger, 1 at $600	600.00
Deputy collector	1,800.00
Deputy collector	1,000.00
Deputy collector and inspector, 1 at $1,095	1,095.00
Deputy collector	2,200.00
Deputy collectors and inspectors, 7 at $4	10,220.00
Deputy collector, 1 at $840	840.00
Deputy collector, 1 at $840	840.00
Deputy collector, 1 at $840	840.00
Deputy collector	1,400.00
Deputy collectors and inspectors, 8 at $3	8,760.00
Deputy collectors and inspectors, 2 at $840	1,680.00
Deputy collector and inspector, 1 at $840	840.00
Deputy collector	1,800.00
Deputy collector	1,200.00
Deputy collectors and inspectors, 5 at $3	5,475.00
Deputy collectors, 2 at $1,200	2,400.00
Deputy collector	1,200.00
Deputy collector and inspector	840.00
Total	80,215.00
Compensation	80,215.00
Rents and contingent	2,619.00
Total	82,834.00

DISTRICT OF MASSACHUSETTS

Collector	$ 8,000.00
Deputy collector	5,000.00
Deputy collector	3,500.00
Cashier	3,200.00
Deputy collectors, 6 at $3,000	18,000.00
Clerk, 1 at $2,500	2,500.00
Assistant cashier	2,400.00
Clerks, 6 at $2,250	13,500.00
Inspectors, 5 at $6	10,950.00
Clerks, 6 at $2,000	12,000.00
Weigher, 1 at $2,000	2,000.00
Gauger, 1 at $2,000	2,000.00
Inspectors, 30 at $5	54,750.00
Clerks, 19 at $1,800	34,200.00
Clerks, 27 at $1,600	43,200.00
Clerks (acting weigher), 3 at $1,600	4,800.00
Captain, 1 at $1,600	1,600.00
Assistant weighers, 31 at $4 per diem	45,260.00
Assistant gaugers, 4 at $4 per diem	5,840.00
Clerks, 25 at $1,400	35,000.00
Inspectors, 53 at $4	77,380.00
Storekeepers, 12 at $1,400 (d)	16,800.00
Lieutenants, 2 at $1,400	2,800.00
Clerks, 33 at $1,200	39,600.00

Storekeepers, 2 at $1,200 (d)	$ 2,400.00
Stenographer and typewriter	1,200.00
Clerk and stenographer	1,200.00
Roundsmen, 3 at $1,200	3,600.00
Messengers, 2 at $1,000	2,000.00
Storekeeper, 1 at $1,000 (d)	1,000.00
Watchman, 1 at $3	1,095.00
Stenographer and typewriter	1,000.00
Clerks, 37 at $1,000	37,000.00
Customs guards, 15 at $960	14,400.00
Stampers, 3 at $2.50	2,737.50
Inspectress	900.00
Attendants, 6 at $900	5,400.00
Openers and packers, 4 at $900	3,600.00
Messengers, 2 at $900	1,800.00
Clerks, 2 at $840	1,680.00
Laborers, 24 at $840	20,160.00
Messengers, 8 at $840	6,720.00
Customs guards, 18 at $840	15,120.00
Messengers, 15 at $720	10,800.00
Assistant storekeepers, 4 at $800 (d)	3,200.00
Customs guards, 37 at $720	26,640.00
Laborers, 18 at $700	12,600.00
Charwomen, 2 at $300	600.00
Janitor	660.00
Interpreter, 1 at 50 cents per hour	200.00
Naval officer	5,000.00
Deputy naval officer	3,000.00
Assistant deputy naval officer and clerk	2,000.00
Clerk	2,000.00
Clerks, 6 at $1,800	10,800.00
Clerks, 3 at $1,600	4,800.00
Clerk, 1 at $1,400	1,400.00
Clerks, 2 at $1,200	2,400.00
Clerks, 3 at $1,000	3,000.00
Clerk, 1 at $840	840.00
Messengers, 2 at $840	1,680.00
Surveyor	5,000.00
Deputy surveyor and clerks, 2 at $2,750	5,500.00
Clerk	2,400.00
Clerk	2,000.00
Clerks, 4 at $1,600	6,400.00
Clerks, 2 at $1,200	2,400.00
Messenger, 1 at $840	840.00
Messenger, 1 at $720	720.00
Appraiser	4,000.00
Assistant appraisers, 3 at $3,000	9,000.00
Special examiner of drugs, medicines, and chemicals, and assistant appraiser	3,000.00
Examiners, 2 at $2,200	4,400.00
Examiners, 3 at $2,000	6,000.00
Examiners, 6 at $1,800	10,800.00
Examiners, 8 at $1,600	12,800.00
Examiners, 6 at $1,400	8,400.00
Examiner	1,200.00
Clerk	1,600.00
Polariscopists, 2 at $1,400	2,800.00
Clerks, 2 at $1,400	2,800.00
Samplers, 6 at $1,200	7,200.00
Clerks, 3 at $1,200	3,600.00
Sampler, 1 at $1,000	1,000.00
Clerks, 10 at $1,000	10,000.00
Messenger, 1 at $1,000	1,000.00
Openers and packers, 31 at $900	27,900.00
Messengers, 6 at $840	5,040.00
Laborers, 4 at $840	3,360.00
Deputy collector	2,500.00
Deputy collector and inspector, 1 at $5	1,825.00
Opener and packer, 1 at $900	900.00
Laborer, 1 at $700	700.00
Deputy collector	2,000.00
Deputy collectors, 2 at $1,200	2,400.00
Clerk and inspector	1,000.00
Messenger and laborer	800.00
Storekeeper, 1 at $300 (d)	300.00
Deputy collector	1,200.00
Deputy collector, 1 at $2.50	915.50
Deputy collector	1,800.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Deputy collector and inspector, 1 at $3	1,095.00
Deputy collector	1,800.00
Deputy collector and inspectors, 2 at $3	2,190.00
Inspector, 1 at $3	1,095.00
Inspector, 1 at $3 (a i)	300.00
Deputy collector, 1 at $2	730.00
Deputy collector, 1 at $2.50	915.50

Deputy collector	$ 1,000.00
Deputy collector	2,000.00
Clerk	1,400.00
Inspectors, 7 at $4	10,220.00
Storekeeper, 1 at $1,000 (d)	1,000.00
Engineer, 1 at $75 (g)	900.00
Storekeeper, 1 at $700 (d)	700.00
Storekeeper, 1 at $300 (d)	300.00
Boatman, 1 at $40 (g)	480.00
Deputy collector, 1 at $4	1,460.00
Inspectors, 3 at $3	3,285.00
Boatman	540.00
Total	859,101.00
Compensation	859,101.00
Rents and contingent	141,912.00
Total	1,001,013.00

DISTRICT OF RHODE ISLAND

Collector	$ 4,500.00
Deputy collector and clerk	2,000.00
Examiner	1,800.00
Deputy collector and clerk	1,600.00
Deputy collectors and clerks, 2 at $1,400	2,800.00
Stenographer and typewriter	1,200.00
Deputy collectors and inspectors, 4 at $3.50	5,110.00
Examiner	1,000.00
Inspectors, 5 at $3 (b)	900.00
Storekeeper, 1 at $900	900.00
Opener and packer, 1 at $720	720.00
Boatman, 1 at $600	600.00
Laborer, 1 at $600	600.00
Deputy collector and clerk	1,800.00
Deputy collector and inspector, 1 at $2.50	912.50
Deputy collector and inspector, 1 at $1	365.00
Total	26,807.50
Compensation	26,807.50
Rents and contingent	6,187.00
Total	32,994.50

DISTRICT OF CONNECTICUT

Collector	$ 5,000.00
Deputy collector	2,000.00
Deputy collector	1,600.00
Deputy collector	1,200.00
Clerk, 1 at $1,200	1,200.00
Deputy collectors and inspectors, 2 at $1,000	2,000.00
Deputy collector and inspector, 1 at $700	700.00
Laborer, 1 at $720	720.00
Deputy collector	2,500.00
Deputy collectors, 2 at $1,600	3,200.00
Deputy collector, 1 at $1,200	1,200.00
Clerk, 1 at $840	840.00
Storekeeper, 1 at $600 (d)	600.00
Deputy collector, 1 at $1,400	1,400.00
Deputy collector	1,800.00
Deputy collector	1,200.00
Inspectors, 3 at $3	3,285.00
Inspectors, 2 at $3 (a b)	600.00
Deputy collector	1,200.00
Deputy collectors and inspectors, 3 at $3	3,285.00
Deputy collector	900.00
Total	36,430.00
Compensation	36,430.00
Rents and contingent	1,672.00
Total	38,102.00

DISTRICT OF ST. LAWRENCE

Collector	$ 5,000.00
Deputy collector	2,500.00
Deputy collector	1,800.00
Deputy collector	2,000.00
Deputy collectors, 2 at $1,400	2,800.00
Deputy collector	1,600.00

Deputy collectors and inspectors, 2 at $1,400	$ 2,800.00
Inspector, 1 at $3.50	1,277.50
Deputy collector	1,200.00
Deputy collector and inspector, 1 at $3.50 (d)	1,308.75
Deputy collectors and inspectors, 2 at $3.50	2,555.00
Inspectors, 7 at $3	7,655.00
Deputy collector and inspector, 1 at $2.50	912.50
Stenographer and typewriter, 1 at $1,000	1,000.00
Deputy collector and inspector, 1 at $1	12.00
Deputy collector and inspector, 1 at $1,500	1,500.00
Cashier	1,400.00
Deputy collector and inspector, 1 at $3 (c)	732.00
Deputy collectors, 3 at $300	900.00
Deputy collector	1,800.00
Deputy collector and inspector	1,400.00
Deputy collectors and inspectors, 5 at $3	5,475.00
Deputy collector and inspector, 1 at $3	1,095.00
Laborer, 1 at $2 (a)	730.00
Deputy collector	1,400.00
Deputy collector and inspector, 1 at $3	1,095.00
Deputy collectors and inspectors, 2 at $800	1,600.00
Janitor, 1 at $240	240.00
Deputy collector	1,800.00
Deputy collectors and inspectors, 5 at $3.50	6,387.50
Deputy collector, 1 at $900	900.00
Deputy collector	1,600.00
Deputy collector	1,200.00
Deputy collectors and inspectors, 2 at $3	2,190.00
Deputy collectors, 3 at $3	3,285.00
Deputy collector, 1 at $2	730.00
Deputy collector, 1 at $600	600.00
Deputy collector, 1 at $800	800.00
Deputy collector, 1 at $3	1,095.00
Deputy collector, 1 at $800	800.00
Inspectors, 3 at $3	3,285.00
Deputy collector, 1 at $2.50	912.50
Inspector, 1 at $3	1,095.00
Inspector, 1 at $3	1,095.00
Deputy collectors, 8 at $3	8,760.00
Deputy collectors and inspectors, 4 at $3	4,380.00
Laborer, 1 at $2	730.00
Deputy collectors, 2 at $3	2,190.00
	97,632.75
Compensation	97,632.75
Rents and contingent	4,777.00
Total	102,409.75

DISTRICT OF ROCHESTER

Collector	$ 4,500.00
Deputy collector	2,000.00
Deputy collector	1,600.00
Deputy collectors, 2 at $1,400	2,800.00
Deputy collector	1,200.00
Deputy collectors and inspectors, 4 at $1,200	4,800.00
Deputy collector and inspector, 1 at $3 (c)	456.00
Deputy collector and inspector, 1 at $3 (c)	730.00
Storekeeper, 1 at $900 (d)	900.00
Laborer, 1 at $2 (a)	730.00
Deputy collector and storekeeper, 1 at $300 (d)	300.00
Deputy collectors, 2 at $300	600.00
Deputy collector	2,000.00
Deputy collector	1,400.00
Deputy collector and inspector	1,200.00
Deputy collector, 1 at $3.50	1,277.50
Deputy collectors and inspectors, 2 at $1,200	2,400.00
Deputy collector and inspector, 1 at $3	1,095.00
Deputy collector, 1 at $3 (c)	730.00
Deputy collector, 1 at $3 (c)	730.00
Deputy collector	2,000.00
Deputy collector	1,400.00
Deputy collector and inspector	1,400.00
Deputy collector	1,200.00
Deputy collectors and inspectors, 4 at $3 (c)	2,920.00
Deputy collector and inspector, 1 at $50 (c g)	400.00
Deputy collectors, 2 at $4	2,920.00
Total	43,688.50
Compensation	43,688.50
Rents and contingent	2,232.00
Total	45,920.50

DISTRICT OF BUFFALO

Collector	$ 6,000.00
Deputy collector	2,500.00
Deputy collector	2,000.00
Clerk	1,800.00
Cashier	1,800.00
Deputy collector	1,600.00
Clerk	1,600.00
Deputy collectors, 2 at $4	2,920.00
Inspectors, 2 at $4 (d)	2,920.00
Deputy collectors, 2 at $1,200	2,400.00
Clerks, 2 at $1,400	2,800.00
Clerks, 2 at $1,200	2,400.00
Inspector, 1 at $3.50	1,277.50
Deputy collector, 1 at $3.50	1,277.50
Deputy collectors, 3 at $3	3,285.00
Inspectors, 18 at $3	19,710.00
Inspectors, 2 at $3 (d)	2,190.00
Inspectors, 9 at $3 (d)	2,538.00
Storekeepers, 4 at $1,100 (d)	4,400.00
Storekeeper, 1 at $1,100	1,100.00
Clerk, 1 at $1,100	1,100.00
Clerk, 1 at $1,100	1,100.00
Clerk, 1 at $1,095	1,095.00
Stenographer and typewriters, 2 at $1,000	2,000.00
Messenger, 1 at $800	800.00
Laborers, 2 at $720	1,440.00
Deputy collector and inspector, 1 at $25 (g)	300.00
Deputy collector, 1 at $300 (d)	300.00
Inspector, 1 at $300	300.00
Appraiser	3,000.00
Appraiser	1,600.00
Clerk, 1 at $1,200	1,200.00
Opener and packer, 1 at $900	900.00
Deputy collector	1,400.00
Deputy collector	1,300.00
Deputy collector	2,500.00
Deputy collector	1,600.00
Deputy collector and cashier	1,500.00
Deputy collector	1,400.00
Deputy collector and inspector	1,400.00
Storekeeper, 1 at $1,400 (d)	1,400.00
Deputy collector	1,200.00
Deputy collector and inspectors, 3 at $3.50	3,832.50
Storekeeper, 1 at $1,200 (d)	1,200.00
Deputy collector	1,200.00
Inspectors, 33 at $3	36,135.00
Inspectors, 6 at $3 (c)	4,392.00
Inspectors, 3 at $3 (d)	3,285.00
Inspector, 1 at $3 (c d)	732.00
Inspector, 1 at $3	270.00
Inspector, 1 at $3 (b)	309.00
Deputy collector and inspectors, 2 at $300	600.00
Inspectress, 1 at $900	900.00
Messenger, 1 at $840	840.00
Watchmen, 4 at $1	4.00
Deputy collector, 1 at $3	1,095.00
Deputy collector and inspector, 1 at $3	1,095.00
Deputy collector	730.00
Deputy collector, 1 at $3	1,095.00
Total	153,067.50
Compensation	153,067.50
Rent and contingent	5,264.00
Total	158,331.50

DISTRICT OF NEW YORK

Collector of customs	$ 12,000.00
Deputy collector	6,000.00
Deputy collector	5,000.00
Cashier	5,000.00
Deputy collectors, 7 at $3,500	24,500.00
Deputy collector, 1 at $3,300	3,300.00
Deputy collectors, 6 at $3,000	18,000.00
Chief liquidator	2,800.00
Liquidators, 2 at $2,600	5,200.00
Assistant chief liquidator	2,500.00
Clerks, 3 at $2,800	8,400.00
Clerks, 7 at $2,700	18,900.00
Clerks, 2 at $2,600	5,200.00

Clerks, 7 at $2,500	$ 17,500.00
Entry clerk	3,000.00
Entry clerk	2,900.00
Entry clerks, 3 at $2,800	8,400.00
Entry clerks, 15 at $2,600	39,000.00
Entry clerk	2,500.00
Entry clerk	2,250.00
Clerks, 8 at $2,400	19,200.00
Clerk	2,300.00
Clerks, 6 at $2,200	13,200.00
Liquidators, 16 at $2,200	35,200.00
Inspectors, 90 at $6	197,100.00
Inspectors, 6 at $5.50	12,045.00
Clerks, 26 at $2,000	52,000.00
Liquidators, 17 at $2,000	34,000.00
Gauger	2,000.00
Clerks, 26 at $1,800	46,800.00
Liquidators, 16 at $1,800	28,800.00
Clerk and acting weighers, 9 at $1,800	16,200.00
Inspectors, 216 at $5	394,200.00
Clerks, 27 at $1,600	59,200.00
Liquidators, 17 at $1,600	27,200.00
Storekeepers, 53 at $1,600 (d)	84,800.00
Clerk and acting weigher	1,600.00
Assistant weighers, 115 at $4	167,900.00
Assistant weighers, 3 at $4 (a)	4,380.00
Clerk and acting weighers, 6 at $4	8,760.00
Assistant gaugers, 13 at $4	18,980.00
Examiner of lumber, 1 at $1,500	1,500.00
Lieutenants, 3 at $1,500	4,500.00
Clerks, 5 at $1,500	7,500.00
Scale expert	1,500.00
Stenographer and typewriter	1,500.00
Inspectors, 113 at $4	164,980.00
Clerks, 39 at $1,400	54,600.00
Roundsmen, 3 at $1,400	4,200.00
Stenographer, 1 at $1,400	1,400.00
Inspectresses, 5 at $3.50	6,387.50
Clerks, 2 at $1,300	2,600.00
Roundsmen, 12 at $1,200	14,400.00
Clerks, 70 at $1,200	84,000.00
Clerk	1,150.00
Clerk	1,100.00
Clerks, 140 at $1,000	140,000.00
Guards, 87 at $1,095	95,265.00
Bookbinder	1,000.00
Foreman, 1 at $960	960.00
Attendants, 2 at $960	1,920.00
Customs guards, 93 at $960	89,280.00
Messengers, 6 at $960	5,760.00
Messengers, 2 at $940	1,880.00
Attendant, 1 at $900	900.00
Messenger	900.00
Marine engineer	900.00
Customs guards, 140 at $840	117,600.00
Messengers, 14 at $840	11,760.00
Stampers, 35 at $840	29,400.00
Laborers, 2 at $720	1,440.00
Inspectors, 4 at $3	720.00
Messenger boys, 5 at $600	3,000.00
Messenger boys, 3 at $480	1,440.00
Messenger boys, 11 at $360	3,960.00
Chartmen, 6 at $0.05	109.50
Laborers, 225 at $840	189,000.00
Laborers, 190 at $2.50 (a)	173,375.00
Deputy collector, 1 at $200	200.00
Laborers, 18 at $660	11,880.00
Inspector, 1 at $1	1.00
Naval officer	8,000.00
Deputy naval officer	2,500.00
Private secretary	2,500.00
Clerk	4,000.00
Clerks, 4 at $3,000	12,000.00
Clerk	2,750.00
Clerk	2,700.00
Clerks, 2 at $2,600	5,200.00
Clerks, 4 at $2,500	10,000.00
Clerks, 13 at $2,400	31,200.00
Clerks, 2 at $2,300	4,600.00
Clerk, 1 at $2,200	2,200.00
Liquidators, 14 at $2,200	30,800.00
Liquidators, 10 at $2,000	20,000.00
Clerks, 3 at $2,000	6,000.00
Clerks, 3 at $1,800	5,400.00
Liquidators, 9 at $1,800	16,200.00

Liquidators, 12 at $1,600	$ 19,200.00
Clerks, 8 at $1,600	12,800.00
Clerks, 5 at $1,400	7,000.00
Liquidators, 9 at $1,400	12,600.00
Liquidators, 6 at $1,200	7,200.00
Clerks, 12 at $1,200	14,400.00
Clerks, 34 at $1,000	34,000.00
Clerks, 2 at $840	1,680.00
Liquidators, 7 at $840	5,880.00
Messengers, 2 at $840	1,680.00
Messenger boys, 2 at $600	1,200.00
Messenger boys, 3 at $360	1,080.00
Surveyor	8,000.00
Clerk	4,000.00
Clerks, 2 at $3,500	7,000.00
Clerk, 1 at $3,000	3,000.00
Deputy surveyors, 2 at $3,000	6,000.00
Clerks, 2 at $2,500	5,000.00
Clerks, 2 at $2,400	4,800.00
Clerks, 17 at $2,200	37,400.00
Clerks, 4 at $2,000	8,000.00
Inspectors, 6 at $5 per diem	10,850.00
Stenographers and typewriters, 3 at $1,800	5,400.00
Clerks, 2 at $1,800	3,600.00
Clerks, 8 at $1,600	12,800.00
Clerks, 4 at $1,400	5,600.00
Clerks, 8 at $1,200	9,600.00
Stenographer and typewriter	1,200.00
Clerk	1,100.00
Stenographers and typewriters, 5 at $1,000	5,000.00
Clerks, 29 at $1,000	29,000.00
Clerks and typewriters, 5 at $1,000	5,000.00
Messenger	950.00
Messengers, 4 at $840	3,360.00
Clerks, 4 at $840	3,360.00
Messenger boys, 2 at $600	1,200.00
Messenger boys, 3 at $480	1,440.00
Messenger boys, 2 at $360	720.00
Appraiser	8,000.00
Assistant appraisers, 3 at $4,000	12,000.00
Assistant appraisers, 6 at $3,500	21,000.00
Chief clerk	3,000.00
Clerk	2,700.00
Clerk	2,500.00
Examiners, 4 at $3,000	12,000.00
Examiners, 8 at $2,800	22,400.00
Examiners, 12 at $2,700	32,400.00
Examiners, 2 at $2,600	5,200.00
Metallurgical chemist and assayer	2,500.00
Examiners, 21 at $2,500	52,500.00
Examiners, 22 at $2,400	52,800.00
Examiner, 1 at $2,300	2,300.00
Examiners, 13 at $2,200	28,600.00
Examiners, 2 at $2,100	4,200.00
Examiners, 11 at $2,000	22,000.00
Assayer, 1 at $2,400	2,400.00
Clerks, 2 at $2,200	4,400.00
Superintendent of laborers	2,000.00
Polariscopist	2,200.00
Chemist and polariscopist	2,000.00
Examiners, 4 at $1,900	7,600.00
Chemists and polariscopists, 4 at $1,800	7,200.00
Examiner	1,800.00
Examiners, 14 at $1,800	25,200.00
Clerk	1,800.00
Polariscopist	1,800.00
Stenographer and typewriter	1,600.00
Examiners, 10 at $1,600	16,000.00
Clerks, 11 at $1,600	17,600.00
Examiner of yachts, 1 at $15 (a)	600.00
Superintendent of samplers	1,500.00
Assistant superintendent of sugar samplers	1,500.00
Examiners, 9 at $1,400	12,600.00
Assistant analyst	1,400.00
Clerks, 14 at $1,400	19,600.00
Foreman of carpenters	1,400.00
Assistant analysts, 2 at $1,200	2,400.00
Examiners, 2 at $1,200	2,400.00
Clerk and examiner	1,200.00
Skilled mechanic	1,200.00
Sugar samplers, 54 at $1,350	72,900.00
Clerks, 80 at $1,200	96,000.00
Samplers, 20 at $1,200	24,000.00
Stenographers and typewriters, 3 at $1,200	3,600.00
Foremen, 8 at $1,200	9,600.00

Elliott-Fisher machine operator	$ 1,200.00
Carpenters, 2 at $1,200	2,400.00
Accountant and statistician	1,200.00
Foreman	1,100.00
Foremen, 2 at $1,095	2,190.00
Clerk	1,150.00
Customs guard	1,095.00
Firemen, 3 at $3	2,043.00
Clerks, 60 at $1,000	60,000.00
Foreman, 6 at $1,000	6,000.00
Stenographers and typewriters, 2 at $1,000	2,000.00
Opener and packer	1,000.00
Skilled mechanic	1,000.00
Customs guards, 28 at $960	26,880.00
Foremen, 2 at $960	1,920.00
Messengers, 2 at $960	1,920.00
Clerks, 3 at $900	2,700.00
Carpenter	900.00
Openers and packers, 205 at $900	184,500.00
Stenographer and typewriter	900.00
Clerks, 3 at $840	2,520.00
Elliott-Fisher machine operators, 9 at $840	7,560.00
Elevator conductors, 10 at $900	9,000.00
Customs guards, 5 at $840	4,200.00
Messengers, 13 at $840	10,920.00
Foremen, 8 at $840	6,720.00
Laborers, 168 at $840	141,120.00
Messenger boy	600.00
Messenger boy	480.00
Messenger boys, 4 at $360	1,440.00
Laborers, 25 at $2.50 (a)	19,500.00
Deputy collector	2,500.00
Deputy collectors and inspectors, 5 at $4	7,300.00
Deputy collector and inspector, 1 at $1,200	1,200.00
Inspectors, 3 at $3 (b)	1,233.00
Clerk and stenographer	1,000.00
Deputy collector	300.00
Deputy collector	2,500.00
Deputy collector, 1 at $3	1,095.00
Deputy collector, 1 at $1,095	1,095.00
Deputy collectors, 2 at $1,000	2,000.00
Inspectors, 6 at $3	1,500.00
Clerk, 1 at $840	840.00
Storekeeper, 1 at $4 (d)	1,460.00
Storekeeper, 1 at $1,200 (d)	1,200.00
Deputy collector, 1 at $1 (g)	12.00
Deputy collectors and inspectors, 3 at $3 (b)	1,164.00
Deputy collector	300.00
Deputy collector	2,500.00
Deputy collector and inspector, 1 at $3	1,095.00
Clerk and inspector, 1 at $3	1,095.00
Inspectors, 2 at $1,000	2,000.00
Storekeeper, 1 at $4 (d)	1,460.00
	4,301,040.00
Compensation	4,301,040.00
Rents and contingent	277,737.00
Total	4,578,777.00

DISTRICT OF PHILADELPHIA

Collector	$ 8,000.00
Deputy collectors, 3 at $3,500	10,500.00
Cashier	3,000.00
Assistant cashier	2,750.00
Assistant cashier	2,500.00
Clerk	2,400.00
Clerks, 2 at $2,200	4,400.00
Chief of division, 1 at $2,200	2,200.00
Weigher, 1 at $2,000	2,000.00
Clerks, 9 at $2,000	18,000.00
Clerks, 10 at $1,800	18,000.00
Deputy collector and inspector	1,800.00
Superintendent night inspectors	1,600.00
Clerks, 15 at $1,600	24,000.00
Assistant gauger	1,600.00
Clerk	1,460.00
Clerks, 13 at $1,400	18,200.00
Inspectors, 64 at $4	93,440.00
Deputy collector and inspector, 1 at $4	1,460.00
Assistant weigher, 1 at $4	1,460.00
Clerks, 4 at $1,200	4,800.00
Storekeepers, 14 at $1,200 (d)	16,200.00

Assistant weighers, 31 at $1,200	$ 37,200.00
Inspector	1,095.00
Clerk	1,000.00
Night inspectors, 32 at $3	35,040.00
Attendant	1,000.00
Foreman	1,000.00
Messengers, 2 at $900	1,800.00
Foreman, 1 at $900	900.00
Watchmen, 9 at $840	7,560.00
Messengers, 4 at $840	3,360.00
Watchman, 1 at $720	720.00
Laborers, 9 at $840	7,560.00
Laborers, 25 at $720	18,000.00
Laborers, 65 at $600	39,000.00
Clerks, 3 at $840	2,520.00
Naval officer	5,000.00
Deputy naval officer	2,500.00
Clerks, 2 at $1,800	3,600.00
Clerks, 2 at $1,600	3,200.00
Clerk, 1 at $1,400	1,400.00
Clerks, 5 at $1,200	6,000.00
Messenger, 1 at $900	900.00
Surveyor	5,000.00
Deputy surveyor	2,500.00
Clerk	2,500.00
Clerk	2,000.00
Clerk	1,800.00
Clerks, 2 at $1,600	3,200.00
Clerk, 1 at $1,000	1,000.00
Messengers, 2 at $840	1,680.00
Appraiser	4,000.00
Assistant appraisers, 2 at $2,500	5,000.00
Examiner of drugs	1,800.00
Examiners, 4 at $2,200	8,800.00
Examiners, 3 at $2,000	6,000.00
Chemist in charge	2,000.00
Examiners, 2 at $1,800	3,600.00
Clerks, 2 at $1,800	3,600.00
Chemist	1,800.00
Examiner	1,600.00
Clerk	1,400.00
Clerk	1,200.00
Analytical chemist	1,200.00
Superintendent	1,000.00
Clerks, 2 at $1,000	2,000.00
Samplers, 8 at $1,000	8,000.00
Sugar samplers, 4 at $1,000	4,000.00
Messengers, 2 at $840	1,680.00
Openers and packers, 17 at $840	14,280.00
Laborers, 2 at $840	1,680.00
Laborers, 25 at $720	18,000.00
Deputy collector, 1 at $500	500.00
Inspectors, 4 at $4 (b)	1,460.00
Deputy collector	300.00
Deputy collector	1,200.00
Deputy collector and inspector	150.00
Deputy collector	1,800.00
Deputy collector, 1 at $3.50	1,277.50
Inspector, 1 at $3	1,095.00
Deputy collector, 1 at $2.75	1,003.75
Deputy collector and inspector, 1 at $300	300.00
	541,531.25
Compensation	541,531.25
Rents and contingent	24,056.00
Total	565,587.25

DISTRICT OF PITTSBURGH

Collector of customs	$ 4,500.00
Deputy collector	1,800.00
Deputy collector, 1 at $4	1,460.00
Deputy collector and cashier	1,460.00
Deputy collector and inspector	1,200.00
Clerk	1,200.00
Deputy collector and clerk	1,100.00
Inspectors, 2 at $3	2,190.00
Appraiser	3,000.00
Weigher and gauger, 1 at $3	1,095.00
Examiner, 1 at $1,800	1,800.00
Clerk, 1 at $1,200	1,200.00
Clerk, 1 at $3	1,095.00
Opener and packer, 1 at $720	720.00

Laborer, 1 at $720	$ 720.00
Deputy collector	912.50
Storekeeper, 2 at $720 (d)	1,440.00
Total	26,832.50
Compensation	26,832.50
Rents and contingent	2,748.00
Total	29,580.50

DISTRICT OF MARYLAND

Collector of customs	$ 7,000.00
Deputy collector	300.00
Deputy collectors, 2 at $3,000	6,000.00
Clerk, 1 at $2,500	2,500.00
Cashier, 1 at $2,500	2,500.00
Weigher, 1 at $2,000	2,000.00
Clerks, 3 at $2,000	6,000.00
Clerks, 8 at $1,800	14,400.00
Chief inspector, 1 at $1,800	1,800.00
Clerks, 5 at $1,600	8,000.00
Clerks, 6 at $1,400	8,400.00
Inspectors, 33 at $4	48,180.00
Inspector, 1 at $4 (a d)	1,460.00
Inspectors, 8 at $4 (b)	2,944.00
Assistant weighers, 10 at $1,200	12,000.00
Clerks, 7 at $1,200	8,400.00
Foreman, 1 at $3.50	1,277.50
Storekeepers, 3 at $1,200 (d)	3,600.00
Clerks, 6 at $1,000	6,000.00
Night inspectors, 21 at $3	22,995.00
Inspectress	1,095.00
Stenographers and typewriters, 2 at $1,000	2,000.00
Messengers, 10 at $840	8,400.00
Laborers, 9 at $840	7,560.00
Laborers, 9 at $820	7,380.00
Laborers, 17 at $720	12,240.00
Surveyor	4,500.00
Deputy surveyor	2,500.00
Clerk	2,000.00
Stenographer and typewriter and clerk	1,200.00
Stenographer and typewriter	1,000.00
Messenger	840.00
Appraiser	3,000.00
Assistant appraiser	2,500.00
Clerk	1,800.00
Examiners, 4 at $1,800	7,200.00
Analytical chemist	1,800.00
Clerk	1,400.00
Samplers, 2 at $1,000	2,000.00
Openers and packers, 9 at $840	7,560.00
Messenger, 1 at $840	840.00
Naval officer	5,000.00
Deputy naval officer	2,500.00
Clerks, 2 at $1,800	3,600.00
Clerks, 2 at $1,600	3,200.00
Clerk	1,400.00
Clerk	1,200.00
Clerk	1,000.00
Messenger	840.00
Clerk, 1 at $1,200 (n o)	1,200.00
Deputy collector	1,000.00
Deputy collector and inspector	300.00
Examiner	2,400.00
Electrical engineer	2,250.00
Supervising tea examiner	2,500.00
Deputy collector and examiner	2,000.00
Deputy collector and inspector	1,800.00
Deputy collector and inspector	1,600.00
Deputy collector and inspector	1,400.00
Deputy collector and inspector	1,200.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Inspector, 1 at $3 (b)	582.00
Watchman, 1 at $60 (g)	720.00
Clerk	1,000.00
Laborer	720.00
Deputy collector	300.00
	285,561.00
Compensation	285,561.00
Rents and contingent	14,041.00
Total	299,502.00

DISTRICT OF VIRGINIA

Collector of customs	$ 5,000.00
Deputy collector	2,000.00
Engineer, 1 at $75 (g)	900.00
Boatman, 1 at $60 (g)	720.00
Dock hand, 1 at $40 (g)	480.00
Boarding officer (deputy collector), 1 at $3.50	1,277.50
Deputy collector	2,000.00
Deputy collector	1,600.00
Deputy collector and cashier	1,600.00
Deputy collector	1,460.00
Deputy collectors and inspectors, 2 at $1,400	2,800.00
Deputy collectors and inspectors, 3 at $1,200	3,600.00
Inspectors, 4 at $3	4,380.00
Inspector, 1 at $3	1,095.00
Clerk, 1 at $900	900.00
Openers and packers, 2 at $720	1,440.00
Inspector and messenger, 1 at $720	720.00
Watchman, 1 at $720	720.00
Deputy collector and inspector, 1 at $200	200.00
Laborers, 2 at $480	960.00
Deputy collector	1,800.00
Deputy collector	1,500.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Inspectors, 3 at $3	3,285.00
Deputy collector	2,000.00
Deputy collector and clerk	1,500.00
Deputy collector and inspector	1,460.00
Deputy collector and inspector	1,095.00
Deputy collector and inspector, 1 at $240 (West Point)	240.00
Storekeeper, 1 at $720 (d)	720.00
Deputy collector	1,800.00
Deputy collector and clerk	1,400.00
Deputy collector and inspector	1,095.00
Storekeeper, 1 at $1,000 (d)	1,000.00
Storekeeper, 1 at $1,100 (d)	1,100.00
Deputy collector	240.00
Deputy collector	300.00
Deputy collector (Chincoteague)	200.00
Total	55,875.00
Compensation	55,875.00
Rents and contingent	6,078.00
Total	61,953.00

DISTRICT OF NORTH CAROLINA

Collector	$ 2,500.00
Deputy collector	1,600.00
Deputy collector and inspector	1,400.00
Inspector and clerk, 1 at $3	1,095.00
Deputy collector	300.00
Deputy collector	300.00
Deputy collector and inspector	300.00
Deputy collector and inspector	240.00
Total	7,735.00
Compensation	7,735.00
Rents and contingent	459.00
Total	8,194.00

DISTRICT OF SOUTH CAROLINA

Collector	$ 2,500.00
Deputy collector	2,000.00
Deputy collector	1,800.00
Deputy collector	1,300.00
Inspector, 1 at $4	1,460.00
Inspector	1,200.00
Inspector, 1 at $3	1,095.00
Inspector, 1 at $3 (a d)	1,095.00
Clerks, 2 at $900	1,800.00
Clerk, 1 at $720	720.00
Boatman, 1 at $40 (g)	480.00
Engineer	720.00

Deputy collector	$ 500.00
Deputy collector	300.00
Total	16,970.00
Compensation	16,970.00
Rents and contingent	782.00
Total	17,752.00

DISTRICT OF GEORGIA

Collector of customs	$ 3,000.00
Deputy collector	2,000.00
Deputy collector	1,500.00
Inspector, 1 at $4	1,460.00
Inspector, 1 at $3	1,095.00
Inspector, 1 at $3 (a)	300.00
Stenographer	1,000.00
Storekeeper, 1 at $1,100 (a d e)	300.00
Messenger, 1 at $720	720.00
Deputy collector	2,000.00
Deputy collectors and inspectors, 2 at $3	2,190.00
Deputy collector	1,200.00
Deputy collector and inspector, 1 at $3	1,095.00
Deputy collector, 1 at $240	240.00
Total	18,100.00
Compensation	18,100.00
Rents and contingent	578.00
Total	18,678.00

DISTRICT OF FLORIDA

Collector of customs	$ 6,000.00
Deputy collector	2,500.00
Deputy collector	1,800.00
Deputy collector	1,600.00
Deputy collector	1,400.00
Deputy collector and inspector	1,500.00
Cashier	1,600.00
Clerk and inspector	1,300.00
Deputy collector and inspector, 1 at $4	1,460.00
Clerk and inspector	1,200.00
Deputy collector	1,300.00
Inspector, 1 at $3.50	1,277.50
Clerk, 1 at $1,000	1,000.00
Weigher and gauger	1,200.00
Storekeepers, 2 at $1,200 (d)	2,400.00
Clerk	1,100.00
Inspectors, 2 at $3	2,190.00
Night inspectors, 3 at $2	2,190.00
Storekeeper, 1 at $900 (d)	900.00
Boatman, 1 at $2	730.00
Engineer, 1 at $60 (g)	720.00
Messenger, 1 at $60 (g)	720.00
Appraiser	2,000.00
Tobacco examiner	2,100.00
Examiner	1,500.00
Openers and packers, 4 at $2	2,920.00
Deputy collector	2,500.00
Deputy collector	1,800.00
Tobacco examiner	1,800.00
Cashier	1,400.00
Storekeeper, 1 at $1,400 (b)	1,400.00
Clerk	1,200.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Deputy collectors and inspectors, 2 at $3	2,190.00
Inspectors, 2 at $3 (d a)	2,190.00
Inspectors, 2 at $3	2,190.00
Weigher, 1 at $3	1,095.00
Night inspectors, 3 at $2.50	2,737.50
Messenger	800.00
Engineer, 1 at $70 (g)	840.00
Assistant storekeeper, 1 at $600 (d)	600.00
Boatman, 1 at $60 (g)	720.00
Inspector, 1 at $2 (a)	730.00
Laborers, 4 at $60 (g)	2,880.00
Laborer, 1 at $50 (g)	600.00
Laborer, 1 at $400	400.00
Deputy collector and inspector	1,800.00
Clerk and inspector, 1 at $4	1,460.00
Inspectors, 2 at $3	2,190.00

Deputy collector and inspector	$ 900.00
Deputy collector	1,800.00
Deputy collectors, 2 at $1,400	2,800.00
Clerk	1,200.00
Inspector, 1 at $3	1,095.00
Inspectors, 3 at $2.50	2,737.50
Night inspectors, 2 at $2	1,460.00
Deputy collector, 1 at $3 (b)	273.00
Deputy collector	900.00
Deputy collector	1,000.00
Boatman, 1 at $30 (g)	360.00
Deputy collector, 1 at $500	500.00
Deputy collector, 1 at $15 (g)	180.00
Deputy collector, 1 at $900	900.00
Janitor, 1 at $5 (g)	60.00
Deputy collector, 1 at $900	900.00
Deputy collector	300.00
Deputy collector	730.00
Deputy collector	912.50
Inspector	547.50
Inspectors, 2 at $8 (k)	5,840.00
Total	104,903.00
Compensation	104,903.00
Rents and contingent	6,167.00
Total	111,070.00

DISTRICT OF MOBILE

Collector	$ 3,500.00
Deputy collector and clerk	1,800.00
Deputy collector and clerk	1,400.00
Clerks, 2 at $1,200	2,400.00
Clerk and stenographer, 1 at $1,000	1,000.00
Inspectors, 2 at $3	2,190.00
Inspector, 1 at $3 (a b)	366.00
Inspectors and clerks, 2 at $3	2,190.00
Inspector, 1 at $2.50	912.50
Inspector, 1 at $2.50 (a)	912.50
Night inspectors, 3 at $2	2,190.00
Boatmen, 2 at $4.80	960.00
Deputy collector and inspector	1,400.00
Deputy collector and inspector	1,400.00
Deputy collector and inspector, 1 at $3	1,095.00
Deputy collector and inspector, 1 at $3	1,095.00
Total	24,811.00
Compensation	24,811.00
Rents and contingent	2,692.00
Total	27,503.00

DISTRICT OF NEW ORLEANS

Collector of customs	$ 7,000.00
Deputy collectors, 3 at $3,000	9,000.00
Deputy collector	2,500.00
Cashier	2,500.00
Deputy collector	2,200.00
Weigher	2,000.00
Deputy collector and storekeeper	2,000.00
Clerk	2,000.00
Chief inspector	2,000.00
Clerks, 2 at $1,800	3,600.00
Deputy collector, 1 at $1,800	1,800.00
Clerk, 1 at $1,700	1,700.00
Clerks, 11 at $1,600	17,600.00
Deputy collector and inspector	1,600.00
Clerk	1,500.00
Inspectors, 10 at $5.50	18,250.00
Inspectors, 23 at $4	33,580.00
Storekeepers, 4 at $1,400 (d)	5,600.00
Assistant gauger	1,400.00
Clerks, 9 at $1,400	12,600.00
Clerk, 1 at $1,300	1,300.00
Clerks, 5 at $1,200	6,000.00
Assistant weighers, 16 at $1,200	19,200.00
Assistant weighers, 3 at $1,200 (a)	3,600.00
Night inspectors, 23 at $3	25,185.00
Clerks, 2 at $1,100	2,200.00
Inspectors, 18 at $3	19,710.00
Clerks, 6 at $1,000	6,000.00

Stenographers and typewriters, 3 at $1,000	$ 3,000.00
Keeper of scales, 1 at $1,000	1,000.00
Inspectresses, 2 at $1,000	2,000.00
Foreman, 1 at $1,000	1,000.00
Clerk, 1 at $900	900.00
Boatman, 1 at $840	840.00
Opener and packer, 1 at $840	840.00
Clerk, 1 at $840	840.00
Messengers, 5 at $720	3,600.00
Elevator conductor, 1 at $720	720.00
Laborers, 4 at $720	2,880.00
Laborers, 9 at $600	5,400.00
Naval officer	5,000.00
Deputy naval officer	2,500.00
Clerks, 3 at $1,800	5,400.00
Clerks, 2 at $1,600	3,200.00
Clerk, 1 at $1,000	1,000.00
Messenger, 1 at $720	720.00
Appraiser	3,000.00
Assistant appraisers, 2 at $2,500	5,000.00
Examiner of drugs	1,000.00
Examiner	2,000.00
Examiner, 1 at $1,900	1,900.00
Assistant examiner of drugs, 1 at $1,800	1,800.00
Examiners, 4 at $1,800	7,200.00
Examiner, 1 at $1,400	1,400.00
Clerk, 1 at $1,800	1,800.00
Clerk, 1 at $1,500	1,500.00
Stenographer and typewriter	1,200.00
Clerks, 3 at $1,000	3,000.00
Samplers, 2 at $1,000	2,000.00
Openers and packers, 8 at $840	6,720.00
Sugar samplers, 20 at $840	9,800.00
Messengers, 2 at $720	1,440.00
Laborers, 4 at $720	2,880.00
Laborers, 8 at $600	4,800.00
Deputy collector, 1 at $1.50	300.00
Deputy collector	1,000.00
Surveyor	3,500.00
Deputy surveyor	2,500.00
Clerk	1,800.00
Clerk	1,500.00
Messengers, 2 at $720	1,440.00
	324,955.00
Compensation	324,955.00
Rents and contingent	25,142.00
Total	350,097.00

DISTRICT OF SABINE, TEX.

Collector	$ 3,000.00
Deputy collector and inspector	1,800.00
Deputy collector	1,400.00
Deputy collector and inspector, 1 at $3	1,095.00
Inspectors, 2 at $3	2,190.00
Boatman, 1 at $900	900.00
	10,385.00
Compensation	10,385.00
Rents and contingent	797.00
Total	11,182.00

DISTRICT OF GALVESTON, TEX.

Collector	$ 5,000.00
Deputy collector	3,000.00
Deputy collector	2,250.00
Cashier	2,250.00
Chief inspector, 1 at $5.50 (f)	2,007.00
Clerks, 3 at $1,800	5,400.00
Examiner, 1 at $4.50	1,642.50
Clerk	1,600.00
Deputy collector and inspector, 1 at $4.50	1,642.50
Inspectors, 10 at $4	1,460.00
Assistant weigher and admeasurer, 1 at $4	1,460.00
Examiner, 1 at $4	1,460.00
Storekeeper, 1 at $1,400 (d)	1,400.00
Clerks, 2 at $1,400	2,800.00
Inspectors, 10 at $3	10,950.00
Night inspectors, 8 at $3	8,760.00

Night inspector, 1 at $3 (a)	$ 1,095.00
Captain-boatman, 1 at $90 (g)	1,080.00
Boatman and searcher, 1 at $3	1,095.00
Clerk and inspectress, 1 at $1,000	1,000.00
Clerk and inspectress, 1 at $900	900.00
Engineer-boatman, 1 at $75 (g)	900.00
Opener and packer, 1 at $840	840.00
Deputy collector	1,600.00
Deputy collector, 1 at $1 (g)	12.00
Deputy collector	1,600.00
Mounted inspector, 1 at $4 (e)	1,460.00
Clerk and storekeeper, 1 at $1,200	1,200.00
Clerk and inspector, 1 at $1,200	1,200.00
Deputy collector, 1 at $1,500	1,500.00
Night inspector, 1 at $3	1,095.00
Deputy collector, 1 at $1,200	1,200.00
Total	70,919.50
Compensation	70,919.50
Rents and contingent	9,751.00
Total	80,670.50

DISTRICT OF LAREDO, TEX.

Collector	$ 3,500.00
Deputy collector	1,800.00
Cashier	1,200.00
Inspectors, 6 at $3	6,570.00
Deputy collectors and inspectors, 2 at $3	2,190.00
Inspector, 1 at $3	1,095.00
Janitor and messenger, 1 at $2	730.00
Mounted inspectors, 4 at $4 (e)	5,840.00
Deputy collectors, 2 at $1,800	3,600.00
Mounted inspectors, 6 at $4 (e)	8,760.00
Clerk, 1 at $1,200	1,200.00
Inspectress, 1 at $3	1,095.00
Inspector, 1 at $3 (d)	1,095.00
Clerk, 1 at $1,000	1,000.00
Deputy collector, 1 at $1,800	1,800.00
Mounted inspectors, 10 at $4 (e)	14,600.00
Deputy collector and inspector, 1 at $4 (e)	1,460.00
Deputy collector	1,200.00
Inspectors, 2 at $3	2,190.00
Deputy collectors and inspectors, 2 at $3	2,190.00
Stenographer and typewriter	1,000.00
Messenger	900.00
Inspectresses, 3 at $2	2,190.00
Mounted inspectors, 4 at $4 (e)	5,840.00
Deputy collector and inspector, 1 at $4 (e)	1,460.00
Mounted inspector, 1 at $4 (e)	1,460.00
Deputy collector, 1 at $4 (e)	1,460.00
Mounted inspectors, 3 at $4 (e)	4,380.00
Deputy collector, 1 at $4 (e)	1,460.00
Mounted inspectors, 2 at $4 (e)	2,920.00
Deputy collector, 1 at $4 (e)	1,460.00
Total	87,645.00
Compensation	87,645.00
Rents and contingent	1,532.00
Total	89,177.00

DISTRICT OF EL PASO, TEX.

Collector	$ 4,500.00
Deputy collector	2,200.00
Inspector and examiner	1,800.00
Deputy collector	1,600.00
Cashier	1,500.00
Mounted inspectors, 18 at $4 (e)	26,280.00
Inspector, 1 at $4	1,460.00
Clerks, 3 at $1,400	4,200.00
Superintendent of inspectors, 1 at $4.50 (e)	1,642.50
Deputy collector and inspector, 1 at $1,400	1,400.00
Storekeeper, 1 at $1,400 (d)	1,400.00
Sampler and assistant storekeeper, 1 at $1,400 (d)	1,400.00
Ore sampler, 1 at $1,400 (d)	1,400.00
Inspector and assistant examiner, 1 at $1,400	1,400.00
Storekeeper, 1 at $1,200 (d)	1,200.00
Ore sampler, 1 at $1,200 (d)	1,200.00
Stenographer and typewriter, 1 at $1,200	1,200.00

Inspectors, 9 at $3	$ 9,855.00
Night inspectors, 2 at $3	2,190.00
Clerk, 1 at $1,000	1,000.00
Inspectresses, 2 at $3	2,190.00
Opener and packer, 1 at $720	720.00
Deputy collector, 1 at $4 (e)	1,460.00
Mounted inspectors, 4 at $4 (e)	5,840.00
Total	79,037.50
Compensation	79,037.50
Rents and contingent	2,626.00
Total	81,663.50

DISTRICT OF EAGLE PASS, TEX.

Collector	$ 4,000.00
Deputy collector	1,800.00
Deputy collector and inspector, 1 at $4 (d)	1,460.00
Mounted inspectors, 9 at $4 (d)	13,140.00
Cashier, 1 at $1,400	1,400.00
Clerk and storekeeper, 1 at $3	1,095.00
Inspectors, 5 at $5	5,475.00
Messenger, 1 at $1.50	547.50
Laborer, 1 at $1.50	547.50
Mounted inspectors, 4 at $4 (e)	5,840.00
Deputy collector, 1 at $4 (e)	1,460.00
Mounted inspectors, 2 at $4 (e)	2,920.00
Deputy collector, 1 at $4 (e)	1,460.00
Total	41,145.00
Compensation	41,145.00
Rents and contingent	2,854.00
Total	43,999.00

DISTRICT OF ARIZONA

Collector	$ 3,500.00
Deputy collector	1,800.00
Cashier	1,400.00
Deputy collector and clerk	1,200.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Stenographer and clerk	1,200.00
Inspectors, 4 at $3	4,380.00
Mounted inspectors, 5 at $4 (e)	7,300.00
Watchman-inspectors, 3 at $3	3,285.00
Janitor, 1 at $60 (g)	720.00
Inspectress, 1 at $2	730.00
Deputy collector	1,400.00
Clerk	1,200.00
Mounted inspectors, 2 at $4 (e)	2,920.00
Deputy collector and inspector, 1 at $4 (e)	1,460.00
Mounted inspector, 1 at $4	1,460.00
Deputy collector and inspector, 1 at $3.50 (f)	1,277.50
Mounted inspector, 1 at $4 (e)	1,460.00
Deputy collector and inspector, 1 at $1,400	1,400.00
Clerk	1,200.00
Watchman-inspector, 1 at $3.50	1,277.50
Mounted inspector, 2 at $4 (e)	2,920.00
Total	44,767.50
Compensation	44,767.50
Rents and contingent	3,426.00
Total	48,193.50

DISTRICT OF SOUTHERN CALIFORNIA

Collector of customs	$ 5,000.00
Deputy collector	2,000.00
Chief examiner	1,800.00
Examiner	1,600.00
Deputy collector and clerk	1,400.00
Weigher and gauger, 1 at $3.50	1,277.50
Deputy collectors and clerks, 3 at $1,200	3,600.00
Clerks, 2 at $1,200	2,400.00
Storekeepers, 2 at $1,200 (d)	2,400.00
Examiner, 1 at $1,200	1,200.00
Clerks, 2 at $1,100	2,200.00
Clerks, 2 at $1,000	2,000.00
Inspectors, 7 at $3	7,665.00

Inspector, 1 at $3 (a)	$ 1,095.00
Assistant weigher and gauger, 1 at $3	1,095.00
Clerk and sampler, 1 at $1,000	1,000.00
Sampler, 1 at $900	900.00
Openers and packers, 2 at $1,840	1,680.00
Messenger, 1 at $840	840.00
Night inspectors, 2 at $840	1,680.00
Inspector, 1 at $1 per month	12.00
Deputy collector and clerk	1,200.00
Inspector, 1 at $3	1,095.00
Deputy collector	2,000.00
Deputy collector and inspector	1,400.00
Clerk	1,400.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Deputy collectors and inspectors, 2 at $1,200	2,400.00
Inspectors, 3 at $3 (a)	3,285.00
Watchmen, 3 at $3	3,285.00
Boatman, 1 at $60 per month	720.00
Deputy collector, 1 at $4 (e)	1,460.00
Mounted inspectors, 2 at $4 (e)	2,920.00
Deputy collector and inspector (train), 1 at $3	1,095.00
Deputy collectors and inspectors, 2 at $4 (e)	2,920.00
Deputy collectors and inspectors, 2 at $4 (e)	2,920.00
Inspectress, 1 at $3	1,095.00
Deputy collector and inspector, 1 at $4	1,460.00
Total	74,777.00
Compensation	74,777.00
Rents and contingent	9,356.00
Total	84,133.00

DISTRICT OF SAN FRANCISCO

Collector	$ 7,000.00
Deputy collectors, 2 at $3,500	7,000.00
Deputy collector, 1 at $3,000	3,000.00
Deputy collector	3,500.00
Clerk	2,500.00
Clerk	2,400.00
Cashier	2,250.00
Clerks, 2 at $2,200	4,400.00
Clerks, 5 at $2,000	10,000.00
Gauger, 1 at $2,000	2,000.00
Weigher, 1 at $2,000	2,000.00
Inspectors, 20 at $5	36,500.00
Clerks, 12 at $1,800	21,600.00
Clerks, 8 at $1,600	12,800.00
Inspectors, 21 at $4	30,660.00
Assistant gauger, 1 at $1,400	1,400.00
Assistant weighers, 25 at $4	36,500.00
Clerks, 9 at $1,400	12,600.00
Deputy collector, 1 at $1,400	1,400.00
Storekeepers, 7 at $1,400 (d)	9,800.00
Storekeeper, 1 at $1,400 (a d)	1,400.00
Clerks, 7 at $1,200	8,400.00
Deputy collector and clerk	1,200.00
Stenographer and typewriter	1,200.00
Assistant chemist	1,200.00
Clerks, 3 at $1,000	3,000.00
Clerk and messenger	1,000.00
Inspectors, 24 at $3	26,280.00
Inspectresses, 2 at $3	2,190.00
Customs guards, 20 at $960	19,200.00
Messenger, 1 at $900	900.00
Opener and packers, 2 at $840	1,680.00
Customs guards, 18 at $840	15,120.00
Clerks, 4 at $840	3,360.00
Laborers, 46 at $840	38,640.00
Messengers, 6 at $840	5,040.00
Customs guards, 2 at $780	1,560.00
Laborers, 29 at $0.40 (a g)	24,360.00
Customs guards, 10 at $720	7,200.00
Naval officer	5,000.00
Deputy Naval officer	3,000.00
Clerk, 1 at $1,800	1,800.00
Clerks, 6 at $1,600	9,600.00
Clerks, 3 at $1,400	4,200.00
Clerks, 2 at $1,200	2,400.00
Clerk, 1 at $1,000	1,000.00
Surveyor	5,000.00
Deputy surveyor	2,700.00
Clerk	2,200.00
Clerk, 1 at $1,800	1,800.00

Clerk, 1 at $1,460	$ 1,460.00
Clerk and stenographer, 1 at $1,200	1,200.00
Appraiser	4,000.00
Assistant appraisers, 2 at $2,500	5,000.00
Special examiner of drugs	2,500.00
Chief examiner, 1 at $2,500	2,500.00
Examiner, 1 at $2,400	2,400.00
Examiners, 2 at $2,200	4,400.00
Examiners, 2 at $2,000	4,000.00
Clerk, 1 at $2,000	2,000.00
Examiners, 3 at $1,800	5,400.00
Examiners, 4 at $1,600	6,400.00
Chemist, 1 at $1,400	1,400.00
Examiners, 2 at $1,400	2,800.00
Clerks, 2 at $1,200	2,400.00
Stenographer and typewriter, 1 at $1,200	1,200.00
Samplers, 2 at $1,200	2,400.00
Foreman, 1 at $1,100	1,100.00
Classified employee, 1 at $840	840.00
Elevator conductor, 1 at $840	840.00
Laborers, 18 at $840	15,120.00
Messenger, 1 at $840	840.00
Openers and packers, 9 at $840	7,560.00
Deputy collector	1,400.00
Deputy collector and inspector, 1 at $3	1,095.00
Total	491,195.00
Compensation	491,195.00
Rents and contingent	47,557.00
Total	538,752.00

DISTRICT OF OREGON

Collector	$ 4,500.00
Deputy collector	3,000.00
Cashier	2,200.00
Inspector, 1 at $5	1,825.00
Deputy collectors, 2 at $1,600	3,200.00
Clerk	1,500.00
Assistant weighers, 2 at $4	2,920.00
Clerk	1,200.00
Stenographer	1,200.00
Inspectors, 7 at $3.50	8,942.50
Inspectors, 4 at $3.50 (a)	5,110.00
Messenger	1,000.00
Night inspectors, 5 at $3	5,475.00
Night inspectors, 2 at $3 (a)	2,190.00
Engineer	900.00
Opener and packer, 1 at $840	840.00
Laborers, 3 at $840	2,460.00
Stenographer and typewriter, 1 at $840	840.00
Appraiser	3,000.00
Chief examiner	1,800.00
Examiner	1,500.00
Examiner	1,200.00
Openers and packers, 2 at $840	1,680.00
Laborers, 2 at $720	1,440.00
Deputy collector	1,800.00
Deputy collector and inspector	1,400.00
Inspectors, 2 at $3.50	2,555.00
Inspectors, 2 at $3.50 (a)	2,555.00
Wheelman, 1 at $1,200	1,200.00
Engineer, 1 at $1,200	1,200.00
Fireman, 1 at $720	720.00
Deck hand, 1 at $720	720.00
Deputy collectors, 2 at $300	600.00
Total	72,672.50
Compensation	72,672.50
Rents and contingent	4,986.00
Total	77,658.50

DISTRICT OF WASHINGTON

Collector	$ 6,000.00
Deputy collector	3,000.00
Deputy collector	2,200.00
Cashier	2,000.00
Deputy collector and examiner	1,800.00
Clerk	1,800.00
Clerk	1,600.00

Deputy collector and inspector	$ 1,600.00
Deputy collector and examiner	1,600.00
Examiner	1,600.00
Clerk	1,500.00
Examiners, 2 at $1,500	3,000.00
Deputy collectors and inspectors, 2 at $1,400	2,800.00
Clerk	1,400.00
Deputy collectors, 2 at $1,400	2,800.00
Deputy collector	1,300.00
Clerk	1,300.00
Deputy collectors, 2 at $1,300	2,600.00
Clerk	1,200.00
Inspectors, 2 at $3.50	2,555.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Clerk, 1 at $3.50	1,277.50
Inspectors, 10 at $3.50	12,775.00
Clerk, 1 at $1,200	1,200.00
Storekeeper, 1 at $1,200 (d)	1,200.00
Night inspectors, 9 at $3	9,855.00
Openers and packers, 4 at $840	3,360.00
Messenger, 1 at $840	840.00
Night inspectors, 11 at $3 (not to exceed $300)	3,300.00
Inspectress, 1 at $3 (not to exceed $300)	300.00
Laborers, 2 at $720	1,440.00
Deputy collector	1,600.00
Deputy collector and inspector	1,400.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Inspector, 1 at $3.50	1,277.50
Boatmen, 2 at $900	1,800.00
Night inspector, 1 at $3	1,095.00
Deputy collector, 1 at $3.50	1,277.50
Inspectors, 3 at $3	3,285.00
Deputy collector	3,000.00
Tea examiner	1,800.00
Deputy collector	1,500.00
Deputy collectors, 2 at $1,400	2,800.00
Deputy collectors and inspectors, 2 at $1,400	2,800.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Inspectors, 7 at $3.50	8,942.50
Night inspectors, 6 at $3	6,570.00
Night inspector, 1 at $2.50	912.50
Opener and packer, 1 at $840	840.00
Night inspectors, 5 at $3 (not to exceed $300)	1,500.00
Deputy collector	1,600.00
Inspector, 1 at $3.50	1,277.50
Deputy collector, 1 at $3.50	1,277.50
Deputy collector, 1 at $4	1,460.00
Deputy collector	300.00
Deputy collector	1,600.00
Deputy collector	1,300.00
Inspectors, 3 at $3.50	3,832.50
Night inspectors, 3 at $3	3,285.00
Deputy collector, 1 at $4	1,460.00
Deputy collector, 1 at $3.50	1,277.50
Deputy collector	1,400.00
Deputy collector and inspector, 1 at $3.50	1,095.00
Deputy collector	1,400.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Inspectors, 4 at $3.50	5,110.00
Deputy collector	1,400.00
Deputy collector	1,400.00
Night inspectors, 3 at $3	3,285.00
Deputy collector	1,400.00
Inspector, 1 at $3.50	1,277.50
Deputy collector, 1 at $3.50	1,277.50
Deputy collector, 1 at $3.50	1,277.50
Deputy collector, 1 at $3.50	1,277.50
Deputy collector, 1 at $3.50	1,277.50
Deputy collector	1,000.00
Deputy collector, 1 at $3.50	1,277.50
Deputy collector, 1 at $3.50	1,277.50
Deputy collector, 1 at $1,200	1,200.00
Total	173,015.00
Compensation	173,015.00
Rents and contingent	18,025.00
Total	191,040.00

DISTRICT OF ALASKA

Collector of customs	$ 4,000.00
Deputy collector and inspector	2,500.00
Deputies, 2 at $2,200	4,400.00
Deputies, 2 at $6 (a c)	2,978.00

Deputy, 1 at $6 (a c d)	$ 1,464.00
Deputy, 1 at $6 (c)	1,464.00
Deputies, 5 at $2,000	10,000.00
Deputies, 3 at $1,800	5,400.00
Stenographer and typewriter, 1 at $1,800	1,800.00
Deputy collectors and inspectors, 2 at $1,600	3,200.00
Deputy, 1 at $1,400	1,400.00
Deputies, 10 at $4 (a c)	9,760.00
Deputy, 1 at $4 (a c d)	976.00
Deputies, 9 at $4 (a i)	2,700.00
Deputy, 1 at $3.50 (a b)	300.00
Deputy, 1 at $300 (c)	200.00
Deputy, 1 at $1	1.00
Total	52,493.00
Compensation	52,493.00
Rents and contingent	9,297.00
Total	61,790.00

DISTRICT OF HAWAII

Collector	$ 5,000.00
Chief examiner	3,500.00
Deputy collector	3,000.00
Examiner and gauger	2,400.00
Clerk	2,200.00
Deputy collector and cashier	2,000.00
Deputy collectors, 3 at $1,800	5,400.00
Examiners, 3 at $1,800	5,400.00
Deputy collector, 1 at $1,800	1,800.00
Clerk, 1 at $1,600	1,600.00
Deputy collectors, 2 at $1,500	3,000.00
Examiners, 2 at $1,500	3,000.00
Stenographer and typewriter, 1 at $1,400	1,400.00
Weigher, 1 at $4	1,460.00
Clerk, 1 at $1,500	1,500.00
Clerks, 2 at $1,400	2,800.00
Deputy collectors, 2 at $1,400	2,800.00
Deputy collector and inspector, 1 at $4	1,460.00
Inspectors, 11 at $4	16,060.00
Clerks, 3 at $1,200	3,600.00
Sampler, 1 at $1,200	1,200.00
Assistant gauger, 1 at $1,200	1,200.00
Inspectress, 1 at $1,200	1,200.00
Night inspectors, 14 at $3	15,330.00
Deputy collector, 1 at $900	900.00
Deputy collector and inspector, 1 at $900	900.00
Messenger, 1 at $840	840.00
Foreman of laborers, 1 at $720	720.00
Laborers, 11 at $480	5,280.00
Total	96,950.00
Compensation	96,950.00
Rents and contingent	4,688.00
Total	101,638.00

DISTRICT OF MONTANA AND IDAHO

Collector	$ 3,500.00
Deputy collector	2,000.00
Clerk	1,400.00
Clerk	1,200.00
Stenographer and typewriter	1,000.00
Deputy collector and inspector, 1 at $4	1,460.00
Mounted inspector, 1 at $3.50 (f)	1,277.50
Inspector, 1 at $3	1,095.00
Mounted inspector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $3.50	1,277.50
Mounted inspector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $4	1,460.00
Deputy collector, 1 at $4	1,460.00
Mounted inspectors, 2 at $3.50 (f)	2,555.00
Deputy collector, 1 at $4	1,460.00
Mounted inspector, 1 at $3.50 (f)	1,277.50
Mounted inspector, 1 at $3.50 (f)	1,277.50
Mounted inspector, 1 at $3.50 (f)	1,277.50
	27,532.50
Compensation	27,532.50
Rents and contingent	2,760.00
Total	30,292.50

DISTRICT OF DAKOTA

Collector of customs	$ 3,500.00
Deputy collector	1,600.00
Deputy collector and inspector, 1 at $3 (a)	1,095.00
Deputy collectors and inspectors, 4 at $3	4,380.00
Deputy collectors, 2 at $3.50	2,555.00
Deputy collector, 1 at $3	1,095.00
Inspector, 1 at $3	1,095.00
Deputy collector, 1 at $4	1,460.00
Deputy collectors and inspectors, 2 at $3.50 (f)	2,555.00
Deputy collector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $3.50 (f)	1,277.50
Deputy collector, 1 at $3.50 (f)	1,277.50
Total	33,387.50
Compensation	33,387.50
Rents and contingent	1,796.00
Total	35,183.50

DISTRICT OF MINNESOTA

Collector	$ 4,000.00
Deputy collector	2,500.00
Deputy collector	2,000.00
Deputy collectors, 2 at $1,600	3,200.00
Tea examiner	1,500.00
Clerk, 1 at $1,500	1,500.00
Inspector, 1 at $4	1,460.00
Deputy collector and inspector, 1 at $4 (f)	1,460.00
Clerk, 1 at $1,200	1,200.00
Deputy collector	1,200.00
Deputy collectors and inspectors, 2 at $3.50 (f)	2,555.00
Inspector, 1 at $3	1,095.00
Storekeeper, 1 at $3 (d)	1,095.00
Clerks, 2 at $1,000	2,000.00
Storekeeper, 1 at $2.50 (d)	912.50
Watchman, 1 at $660	660.00
Deputy collector	2,400.00
Deputy collector	1,600.00
Clerk	1,500.00
Deputy collector, 1 at $4	1,460.00
Deputy collector	1,400.00
Deputy collector, 1 at $3.50	1,277.50
Inspectors, 2 at $3	2,190.00
Storekeeper, 1 at $2.50 (d)	912.50
Laborer, 1 at $2	730.00
Total	41,807.50
Compensation	41,807.50
Rents and contingent	4,859.00
Total	46,666.50

DISTRICT OF DULUTH AND SUPERIOR

Collector of customs	$ 4,000.00
Deputy collector	1,800.00
Deputy collector and inspector	1,277.50
Deputy collector, 1 at $3.50	1,277.50
Deputy collectors and inspectors, 2 at $3 (c)	1,260.00
Deputy collectors and inspectors, 2 at $3	2,190.00
Inspector, 1 at $3 (b)	276.00
Storekeepers, 2 at $3 (d)	2,190.00
Storekeepers and inspectors, 4 at $3 (d)	4,380.00
Deputy collector and storekeeper, 1 at $75 (c d g)	525.00
Deputy collectors and storekeepers, 2 at $65 (c d g)	715.00
Inspector and engineer, 1 at $65 (b g)	195.00
Deputy collector and inspector, 1 at $1 (c g)	7.00
Deputy collector	1,800.00
Deputy collectors, 2 at $3 (d)	2,190.00
Deputy collectors and inspectors, 2 at $3	2,190.00
Inspectress, 1 at $2	730.00

Deputy collectors, 3 at $3 (d)	$ 3,285.00
Deputy collector, 1 at $3.50	1,277.50
Deputy collector, 1 at $3.50	1,277.50
Deputy collector and inspector, 1 at $3	1,095.00
Inspector, 1 at $3	1,095.00
Deputy collectors, 2 at $3.50	2,555.00
Deputy collector, 1 at $3	1,095.00
Inspector, 1 at $3	1,095.00
Deputy collector, 1 at $3.50	1,277.50
Inspector (Lake of Woods), 1 at $50 (c d g)	350.00
Deputy collector, 1 at $3	1,095.00
Deputy collector and inspector, 1 at $3	1,277.50
Deputy collector, 1 at $1 (c g)	7.00
Deputy collector and inspector, 1 at $2.50 (c)	525.00
Deputy collector, 1 at $3	1,095.00
Inspector, 1 at $3	1,095.00
Inspector, 1 at $3	1,095.00
	47,595.00
Compensation	47,595.00
Rents and contingent	4,142.00
Total	51,737.00

DISTRICT OF WISCONSIN

Collector	$ 4,500.00
Deputy collector	2,500.00
Deputy collectors, 2 at $1,800	3,600.00
Deputy collector	1,800.00
Weigher and gauger	1,500.00
Deputy collector	1,400.00
Deputy collector	1,400.00
Deputy collector, 1 at $4	1,460.00
Inspector, 1 at $3.50	1,277.50
Deputy collectors and inspectors, 3 at $3.50	3,832.50
Deputy collector, 1 at $3.50	1,277.50
Inspector, 1 at $3	1,095.00
Storekeeper, 1 at $1,000	1,000.00
Deputy collector	1,000.00
Clerk	1,000.00
Opener and packer	840.00
Laborer, 1 at $60 (g)	720.00
Deputy collector	300.00
Deputy collector	300.00
Deputy collector	250.00
Deputy collector	250.00
Deputy collector	300.00
Deputy collector	300.00
Deputy collector	300.00
Deputy collector	300.00
Total	32,502.50
Compensation	32,502.50
Rents and contingent	1,158.00
Total	33,660.50

DISTRICT OF MICHIGAN

Collector of customs	$ 6,000.00
Deputy collector	2,750.00
Cashier	1,800.00
Deputy collectors, 2 at $1,600	3,200.00
Deputy collector, 1 at $1,400	1,400.00
Deputy collector, 1 at $1,400	1,400.00
Deputy collectors, 3 at $1,300	3,900.00
Clerks, 3 at $1,300	3,900.00
Stenographer	1,200.00
Deputy collector, 1 at $1,200	1,200.00
Deputy collector	1,200.00
Deputy collector, 1 at $1,200 (d)	1,200.00
Deputy collectors, 2 at $3	2,190.00
Storekeeper, 1 at $1,100 (d)	1,100.00
Clerk, 1 at $3 (c)	825.00
Deputy collectors, 36 at $3	39,420.00
Deputy collectors, 2 at $3 (b)	540.00
Deputy collectors and inspectors, 4 at $3	4,380.00
Deputy collector and inspector, 1 at $3 (b)	540.00
Inspector, 1 at $3 (c)	825.00
Inspectors, 6 at $3	6,570.00
Inspector, 1 at $3 (d)	1,095.00
Inspector, 1 at $3 (c d)	825.00

Stenographer and typewriter	$ 1,000.00
Clerk, 1 at $2	840.00
Messenger, 1 at $730	730.00
Inspectress, 1 at $2	730.00
Laborer, 1 at $25 (g)	300.00
Appraiser	3,000.00
Examiner, 1 at $1,800	1,800.00
Examiner, 1 at $1,600	1,600.00
Examiner, 1 at $1,400	1,400.00
Clerk, 1 at $1,200	1,200.00
Clerk, 1 at $1,100	1,100.00
Opener and packer	840.00
Laborer	720.00
Deputy collector, 1 at $0.50 (c)	122.00
Deputy collector, 1 at $1 (c)	244.00
Deputy collector, 1 at $0.50 (c)	122.00
Deputy collector, 1 at $1.50	547.00
Deputy collector and inspector, 1 at $1.20	438.00
Deputy collector, 1 at $0.50 (c)	122.00
Deputy collector, 1 at $1.50	547.50
Deputy collector, 1 at $0.75 (c)	183.00
Deputy collector, 1 at $0.50 (c)	122.00
Deputy collector, 1 at $1.10	401.50
Deputy collector, 1 at $0.50 (c)	122.00
Deputy collector	2,000.00
Deputy collector, 1 at $4	1,460.00
Deputy collectors and inspectors, 4 at $4	5,840.00
Deputy collector, 1 at $1,400	1,400.00
Deputy collectors and inspectors, 3 at $3.50	3,382.50
Deputy collector, 1 at $3	1,095.00
Deputy collectors and inspectors, 3 at $3	3,285.00
Inspector, 1 at $3	1,095.00
Inspectress, 1 at $3	1,095.00
Opener and packer, 1 at $2.50	912.50
Clerk, 1 at $2	730.00
Deputy collector and inspector, 1 at $5 (c d g)	45.00
Deputy collector and inspector, 1 at $1 (d g)	12.00
Deputy collector, 1 at $5 (d g)	60.00
Deputy collector, 1 at $5 (c d g)	45.00
Janitress, 1 at $15 (g)	180.00
Deputy collector, 1 at $3	1,095.00
Opener and packer, 1 at $2.50 (c)	685.00
Deputy collector, 1 at $0.80 (c)	219.20
Deputy collector, 1 at $3 (c)	822.00
Deputy collector, 1 at $1 (c)	274.00
Deputy collector, 1 at $2	730.00
Deputy collector, 1 at $0.75 (c)	205.00
Deputy collector, 1 at $3	1,095.00
Deputy collector and inspector, 1 at $1 (g)	12.00
Deputy collector, 1 at $0.50 (c)	137.00
Deputy collector, 1 at $0.40 (c g)	360.00
Deputy collectors and inspectors, 3 at $1 (c d g)	24.00
Deputy collector, 1 at $900	900.00
Deputy collector, 1 at $1	365.00
Deputy collector, 1 at $50 (c g)	450.00
Deputy collector, 1 at $900	900.00
Deputy collector, 1 at $900	900.00
Deputy collector and inspector, 1 at $840 (d)	840.00
Deputy collector	1,800.00
Deputy collector	1,200.00
Deputy collector and inspector	1,000.00
Deputy collector	1,400.00
Deputy collector	1,200.00
Deputy collector and inspector, 1 at $3.50 (b)	290.50
Deputy collector and inspector, 1 at $840	840.00
Deputy collector	2,500.00
Deputy collector	1,600.00
Examiner	1,600.00
Deputy collectors, 5 at $1,400	7,000.00
Deputy collectors, 2 at $1,200	2,400.00
Deputy collectors, 25 at $3	27,350.00
Deputy collectors, 3 at $3 (c)	2,160.00
Deputy collectors, 2 at $3 (d)	2,190.00
Deputy collector, 1 at $3 (b)	198.00
Deputy collectors and inspectors, 2 at $3 (a)	2,190.00
Storekeeper, 1 at $1,100 (d)	1,100.00
Stenographer	900.00
Messenger, 1 at $730	730.00
Deputy collectors, 2 at $600	1,200.00
Deputy collector, 1 at $300 (c)	200.00
Inspectress, 1 at $240	240.00
Deputy collector, 1 at $25 (c g)	200.00
Deputy collector	2,000.00
Deputy collector	1,200.00
Deputy collector, 1 at $3	1,095.00
Deputy collector and storekeeper, 1 at $3 (d)	1,095.00

Storekeeper, 1 at $3 (d)	$ 1,095.00
Inspectress, 1 at $3	1,095.00
Deputy collector and inspector, 1 at $50 (c g)	450.00
Deputy collectors and inspectors, 2 at $1 (c)	548.00
Inspector, 1 at $10 (c g)	90.00
Deputy collector	1,600.00
Deputy collector and inspector, 1 at $3.50	1,277.00
Deputy collector, 1 at $50 (c g)	450.00
Deputy collector and inspector, 1 at $600	600.00
Deputy collector, 1 at $425	425.00
Deputy collector, 1 at $3	1,095.00
Total	214,395.70
Compensation	214,395.70
Rents and contingent	6,897.00
Total	221,292.70

DISTRICT OF CHICAGO

Collector	$ 7,000.00
Deputy collector	3,500.00
Deputy collector	3,000.00
Deputy collector	3,200.00
Deputy collector	2,600.00
Cashier	2,500.00
Deputy collector	2,500.00
Deputy collector	2,500.00
Deputy collector	2,000.00
Clerks, 3 at $2,000	6,000.00
Deputy collector and storekeeper	1,800.00
Deputy collectors, 3 at $1,800	5,400.00
Clerks, 4 at $1,800	7,200.00
Clerks, 6 at $1,600	9,600.00
Deputy collectors, 4 at $1,600	6,400.00
Deputy collector, 1 at $1,400	1,400.00
Clerks, 7 at $1,400	9,800.00
Deputy collectors and inspectors, 2 at $4	2,920.00
Deputy collectors and inspectors, 5 at $4 (c)	5,500.00
Gaugers, 2 at $4	2,920.00
Storekeepers, 4 at $1,400 (d)	5,600.00
Weighers, 2 at $4	2,920.00
Inspectors, 26 at $4	37,960.00
Inspectors, 2 at $4 (c)	2,200.00
Clerks, 9 at $1,200	10,800.00
Deputy collector	1,200.00
Clerks, 3 at $1,000	3,000.00
Messenger, 1 at $1,000	1,000.00
Messenger, 1 at $840	840.00
Storekeeper, 1 at $1,000 (d)	1,000.00
Clerks, 8 at $840	6,720.00
Storekeeper, 1 at $840 (d)	840.00
Watchmen, 4 at $2	2,920.00
Deputy collector and inspector, 1 at $25 (g)	300.00
Deputy collector, 1 at $300 (c)	300.00
Deputy collector, 1 at $25 (c g)	225.00
Deputy collector, 1 at $300	300.00
Laborers, 12 at $840	10,080.00
Laborers, 17 at $700	11,900.00
Naval officer	5,000.00
Deputy naval officer	2,500.00
Chief clerk	2,500.00
Clerk	2,000.00
Clerks, 2 at $1,800	36,000.00
Cashier and auditor	1,000.00
Clerks, 3 at $1,600	4,800.00
Clerk, 1 at $1,400	1,000.00
Clerk, 1 at $1,200	1,200.00
Appraiser	4,500.00
Chief examiner	2,500.00
Examiners, 5 at $2,200	11,000.00
Tea examiner, 1 at $2,000	2,000.00
Examiner and chemist, 1 at $1,800	1,800.00
Examiners, 5 at $1,800	9,000.00
Tobacco examiner, 1 at $1,600	1,600.00
Examiners, 5 at $1,600	8,000.00
Clerks, 2 at $1,400	2,800.00
Assistant chemist	1,400.00
Sampler	1,400.00
Clerks, 4 at $1,200	4,800.00
Foreman opener and packer	1,200.00
Openers and packers, 8 at $3	8,760.00
Openers and packers, 21 at $2.50	19,162.00
Openers and packers, 3 at $900	2,700.00
Opener and packer, 1 at $840	840.00

Clerks, 2 at $840	$ 1,680.00
Messenger, 1 at $840	840.00
Deputy collector	300.00
Deputy collector	1,200.00
Deputy collector and inspector	900.00
Deputy collector	350.00
Total	286,077.50
Compensation	286,077.50
Rents and contingent	13,248.00
Total for district	299,325.50

DISTRICT OF INDIANA

Collector	$ 4,000.00
Deputy collector	2,000.00
Deputy collectors, 2 at $1,400	2,800.00
Cashier	1,000.00
Opener and packer	720.00
Deputy collector	1,800.00
Deputy collector	1,000.00
Inspector, 1 at $3 (c)	550.00
Total	13,870.00
Compensation	13,870.00
Rents and contingent	703.00
Total	14,573.00

DISTRICT OF OHIO

Collector	$ 6,000.00
Deputy collector	2,500.00
Deputy collector	1,800.00
Deputy collector	1,600.00
Deputy collector	1,500.00
Deputy collectors, 2 at $1,400	2,800.00
Clerk-collectors, 2 at $1,200	2,400.00
Deputy collector and inspector	1,200.00
Deputy collectors, 3 at $1,200	3,600.00
Deputy collector and storekeeper, 1 at $1,200	1,200.00
Deputy collector, 1 at $3	1,095.00
Inspectors, 2 at $3	2,190.00
Stenographer and typewriter, 1 at $1,000	1,000.00
Deputy collector, 1 at $900	900.00
Laborer, 1 at $2.50	912.50
Laborers, 2 at $2	1,460.00
Watchman, 1 at $720	720.00
Deputy collector, 1 at $1 (d g)	12.00
Appraiser	3,000.00
Examiner	1,800.00
Examiners, 2 at $1,400	2,800.00
Clerk, 1 at $1,200	1,200.00
Clerk, 1 at $1,000	1,000.00
Opener and packer, 1 at $1,000	1,000.00
Opener and packer, 1 at $2.50	912.50
Deputy collector	1,600.00
Deputy collector and inspector	1,400.00
Deputy collector and inspector	1,200.00
Deputy collector and inspector, 1 at $3 (c)	825.00
Deputy collector and inspector, 1 at $3	1,095.00
Deputy collector	3,000.00
Deputy collector	2,000.00
Deputy collector	1,500.00
Gauger and storekeeper	1,400.00
Clerks, 2 at $1,400	2,800.00
Clerks, 2 at $1,200	2,400.00
Inspector, 1 at $3.50 (b)	315.00
Inspectors, 3 at $3.50	3,832.50
Inspector, weigher, and assistant gauger	1,277.50
Storekeeper, 1 at $1,100 (d)	1,100.00
Laborers, 2 at $720	1,440.00
Laborer, 1 at $600	600.00
Appraiser	3,000.00
Examiner, 1 at $1,800	1,800.00
Clerk, 1 at $1,200	1,200.00
Opener and packer, 1 at $840	840.00
Examiner, 1 at $500	500.00
Deputy collector	1,600.00
Deputy collector and inspector, 1 at $3 (a)	1,095.00
Deputy collector and inspector, 1 at $75 (c g)	675.00
Deputy collector, 1 at $2 (c)	430.00
Deputy collector, 1 at $2.50	912.00

Deputy collector, 1 at $3 (c)	$ 825.00
Deputy collector, 1 at $2 (c)	430.00
Deputy collector, 1 at $3 (c)	825.00
Deputy collector, 1 at $2 (c)	430.00
Deputy collector, 1 at $2.50 (c)	525.00
Deputy collector, 1 at $1,800	1,800.00
Deputy collector and inspector, 1 at $3.50	1,277.50
Clerk, 1 at $1,000	1,000.00
Deputy collector	1,400.00
Deputy collector and inspector, 1 at $3	1,095.00
Deputy collector	900.00
Deputy collector	1,400.00
Deputy collector and inspector, 1 at $3	825.00
Deputy collector and inspector, 1 at $5 (d g)	60.00
Deputy collector and inspector, 1 at $5	17.50
Deputy collector, 1 at $1	132.50
Deputy collector, 1 at $1	132.50
Deputy collector	316.20
Deputy collector	304.00
Deputy collector	255.20
Total	98,389.90
Compensation	98,389.90
Rents and contingent	4,852.00
Total	103,241.90

DISTRICT OF KENTUCKY

Collector	$ 3,500.00
Deputy collector	2,000.00
Deputy collector	1,800.00
Deputy collector	[1] 1,620.00
Deputy collector	1,460.00
Clerk	1,200.00
Inspector, 1 at $3.50	1,095.00
Inspectors, 2 at $3.50 (b)	744.00
Opener and packer, 1 at $2.50 (a)	912.00
Clerk, 1 at $900	900.00
Deputy collector	500.00
Inspector, 1 at $3 (b)	405.00
Total	16,136.50
Compensation	16,136.50
Rents and contingent	295.00
Total	16,431.50

DISTRICT OF TENNESSEE

Collector	$ 3,500.00
Deputy collector	1,800.00
Deputy collector and inspector	1,200.00
Deputy collector and inspector, 1 at $3	1,095.00
Inspector, 1 at $3	1,095.00
Deputy collector	1,000.00
Deputy collector	1,000.00
Deputy collector and storekeeper (ad i)	300.00
Deputy collector	1,200.00
Inspector, 1 at $——	1,095.00
Total	13,285.00
Compensation	13,285.00
Rents and contingent	1,635.00
Total	14,920.00

DISTRICT OF IOWA

Collector	$ 3,000.00
Deputy collector	1,400.00
Deputy collector	1,200.00
Deputy collector	1,200.00
Total	6,800.00
Compensation	6,800.00
Rents and contingent	196.00
Total	6,996.00

[1] $720 of which is reimbursable.

DISTRICT OF OMAHA

Collector of customs	$ 2,500.00
Deputy collector	1,800.00
Deputy collector and clerk	1,600.00
Deputy collector and clerk	1,200.00
Deputy collector	1,400.00
Total	8,500.00
Compensation	8,500.00
Rents and contingent	721.00
Total	9,221.00

DISTRICT OF ST. LOUIS

Collector	$ 6,000.00
Deputy collector	2,500.00
Cashier	1,800.00
Clerk	1,600.00
Deputy collector	1,600.00
Deputy collectors, 2 at $1,500	3,000.00
Clerks, 2 at $1,400	2,800.00
Clerk, 1 at $1,300	1,300.00
Clerks, 4 at $1,200	4,800.00
Storekeeper, 1 at $1,300	1,300.00
Inspector, 1 at $3.50	1,277.50
Deputy collector and inspector, 1 at $3.50	1,277.50
Deputy collectors and inspectors, 2 at $1,200	2,400.00
Weighers and gaugers, 2 at $1,200	2,400.00
Clerk	1,100.00
Clerk	1,000.00
Inspectors, 6 at $3	6,570.00
Watchmen, 2 at $720	1,440.00
Laborers, 7 at $720	5,040.00
Laborers, 2 at $0.25 (a j)	1,460.00
Messenger, 1 at $600	600.00
Appraiser	3,000.00
Examiner, 1 at $2,000	2,000.00
Examiner, 1 at $1,700	1,700.00
Examiner, 1 at $1,500	1,500.00
Examiner, 1 at $1,400	1,400.00
Clerk, 1 at $1,200	1,200.00
Clerk, 1 at $1,000	1,000.00
Openers and packers, 3 at $840	2,520.00
Deputy collector	2,000.00
Deputy collector and inspector, 1 at $3	1,095.00
Deputy collector	2,500.00
Assayer	2,000.00
Deputy collector	1,800.00
Cashier	1,600.00
Assistant assayer	1,400.00
Deputy collector and inspector	1,400.00
Deputy collector and inspector	1,200.00
Deputy collector and inspector	1,200.00
Storekeepers, 2 at $1,200 (d)	2,400.00
Storekeeper and inspector, 1 at $1,200 (d)	1,200.00
Deputy collector and inspector	1,000.00
Inspector, 1 at $3	1,095.00
Inspector and storekeeper, 1 at $1,000 (d)	1,000.00
Inspector and storekeeper, 1 at $900 (d)	900.00
Clerk	900.00
Assayer's helpers, 2 at $900	1,800.00
Clerk and inspector	840.00
Opener and packer	720.00
Deputy collector	300.00
Total	93,935.00
Compensation	93,935.00
Rents and contingent	5,502.00
Total	99,437.00

DISTRICT OF COLORADO

Collector	$ 3,500.00
Deputy collector	2,000.00
Deputy collector and examiner	1,800.00
Deputy collector and clerk	1,200.00

Inspector, 1 at $3	$ 1,095.00
Inspector and storekeeper, 1 at $900 (a d)	900.00
Total	10,495.00
Compensation	10,495.00
Rents and contingent	1,148.00
Total	11,643.00

DISTRICT OF UTAH AND NEVADA

Collector	$ 2,500.00
Deputy collector	900.00
Total	3,400.00
Compensation	3,400.00
Rents and contingent	466.00
Total	3,866.00

BOARD OF GENERAL APPRAISERS

General appraisers, 9 at $9,000	$ 81,000.00
Clerk, 1 at $2,750	2,750.00
Clerks, 2 at $2,400	4,800.00
Clerks, 2 at $2,200	4,400.00
Clerks, 7 at $2,000	14,000.00
Private secretary, 1 at $1,800	1,800.00
Clerks, 5 at $1,800	9,000.00
Clerks, 9 at $1,600	14,400.00
Stenographer and typewriter, 1 at $1,600	1,600.00
Clerks, 7 at $1,400	9,800.00
Stenographer, 1 at $1,400	1,400.00
Clerks, 4 at $1,200	4,800.00
Clerks, 2 at $1,000	2,000.00
Opener and packer, 1 at $3 (a)	939.00
Messengers, 3 at $960	2,880.00
Opener and packer, 1 at $2.75 (a)	860.75
Laborer, 1 at $840	840.00
Messenger boys, 2 at $480	960.00
Total	158,229.75
Compensation	158,229.75

Rents and contingent expenses included in rents and contingent expenses of New York.

SUMMARY

For compensation	$ 9,597,017.10
For rents and contingent expenses	699,132.00
Salaries and expenses of special agents, special inspectors, customs agents, and confidential agents	318,616.91
Printing and stationery	37,000.00
Witnesses before Board of General Appraisers	5,000.00
Miscellaneous expenses on direct settlement	25,000.00
	10,681,766.01
Deduct for difference between detailed estimates and actual expenditures by reason of vacancies, suspensions, etc.[2]	300,000.00
	10,381,766.01

Provisions similar to those of article XI of the foregoing plan of reorganization were made by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, M, N, post, §§ 5594, 5595.

Act June 19, 1906, c. 3436, § 1, mentioned in section I, subsec. 21, of the foregoing plan of reorganization, as creating the district of Sabine, is set forth post, § 5339.

For the district of Porto Rico, which was not included in the foregoing plan of reorganization, as stated in section I, subsec. 49, thereof, the Secretary of the Treasury was authorized to designate ports of entry to make regulations for the collection of customs duties, and to appoint necessary agents, by Act April 12, 1900, c. 191, § 4, ante, § 3752. The ports of entry so designated were, on July 1, 1913, as follows:

District of Porto Rico: Ports of entry—San Juan, Aguadilla, Arecibo, Arroyo, Fajardo, Guanica, Humacao, Mayaguez, Ponce.

The President was authorized to rearrange, by consolidation or otherwise, the customs-collection districts, and to discontinue ports of entry by abolish-

[2] The difference between the detailed estimates and the actual expenditures for the past three years has averaged, approximately, $300,000 per year.

ing the same or by establishing others in their stead, by a provision of Act Aug. 1, 1914, c. 223, § 1, post, § 5327a. Said provision also limited the number of customs-collection districts and ports of entry, provided that the collectors of customs should be designated by the number of the districts for which they were appointed, not by the name of the port where the headquarters are situated, authorized changes in the location of headquarters in customs-collection districts, and required the President to report to Congress at the beginning of each regular session changes made by him in the customs-collection districts, etc.

The headquarters of the customs district of Florida was changed to Tampa by Act Sept. 24, 1914, c. 309, post, § 5333a.

The compensation of the collector of customs for the district of Omaha was increased to $3,500 per annum by Act Dec. 28, 1914, c. 3, post, § 5338a.

Notes of Decisions

Historical.—As to history and effect of early legislation, see U. S. v. Heth (1806) 3 Cranch, 399, 407, 2 L. Ed. 479.

Boundaries of collection districts.—The acts and decisions of the secretary of the treasury upon the question of boundaries of collection districts are not conclusive upon the courts, unless made so by statute. U. S. v. McNelly (D. C. 1885) 28 Fed. 609.

In defining collection districts, it is the policy of the government, in cases of small bodies of water, not to divide the jurisdiction, by locating one side of the water in one district and the other side in another. Id.

Decisions under superseded acts—In general.—(1877) 15 Op. Atty. Gen. 286; (1889) 19 Op. Atty. Gen. 401.

—— **Appraisers.**—(1878) 15 Op. Atty. Gen. 449; (1879) 16 Op. Atty. Gen. 266; (1903) 24 Op. Atty. Gen. 613.

—— **Collectors.**—(1856) 8 Op. Atty. Gen. 46; U. S. v. Collier (C. C. 1855) Fed. Cas. No. 14,833; Same v. Lawson (1879) 101 U. S. 164, 25 L. Ed. 860 (affirming [1878] 14 Ct. Cl. 332); Same v. Ellsworth (1879) 101 U. S. 170, 25 L. Ed. 862; Same v. Ballard (1871) 81 U. S. (14 Wall.) 457, 20 L. Ed. 845; Same v. Walker (1859) 63 U. S. (22 How.) 299, 16 L. Ed. 382; Same v. Macdonald (1886) 72 U. S. (5 Wall.) 647, 18 L. Ed. 512; Same v. Heth (1806) 7 U. S. (3 Cranch) 399, 2 L. Ed. 479; Same v. Shoemaker (1868) 74 U. S. (7 Wall.) 338, 19 L. Ed. 80; Stewart v. U. S. (1854) 58 U. S. (17 How.) 116, 15 L. Ed. 65; Hoyt v. Same (1850) 51 U. S. (10 How.) 109, 13 L. Ed. 348; Same v. Curtis (C. C. 1844) Fed. Cas. No. 6,808; U. S. v. Saunders (1899) 98 Fed. 196, affirmed (1902) 114 Fed. 42, 51 C. C. A. 668; (1887) 18 Op. Atty. Gen. 591; Donovan v. U. S. (C. C. 1874) Fed. Cas. No. 3,994; U. S. v. Converse (C. C. 1858) Fed. Cas. No. 14,848; Bates v. Drury (C. C. 1825) Fed. Cas. No. 1,100.

—— **Inspectors.**—U. S. v. Garlinger (1898) 18 Sup. Ct. 364, 169 U. S. 316, 42 L. Ed. 762; Adams v. U. S. (1885) 20 Ct. Cl. 115; (1889) 19 Op. Atty. Gen. 420.

—— **Surveyors.**—Donovan v. U. S. (1874) 90 U. S. (23 Wall.) 383, 23 L. Ed. 104, affirming (C. C. 1874) Fed. Cas. No. 3,994; Ayer v. Thacher (C. C. 1823) Fed. Cas. No. 684; U. S. v. Sherlock (C. C. 1873) Fed. Cas. No. 16,277; McLean v. U. S. (1872) 8 Ct. Cl. 217; Bachelor v. Same (1872) 8 Ct. Cl. 235; Luce v. Same (1874) 10 Ct. Cl. 229.

—— **Weighers.**—Pray v. U. S. (1883) 106 U. S. 594, 1 Sup. Ct. 483, 27 L. Ed. 265 (affirming [1878] 14 Ct. Cl. 256); (1889) 19 Op. Atty. Gen. 463.

—— **Deputies.**—(1877) 15 Op. Atty. Gen. 286, 356; (1890) 19 Op. Atty. Gen. 629.

—— **Expenses.**—Wentworth v. U. S. (C. C. 1843) Fed. Cas. No. 17,414; (1840) 3 Op. Atty. Gen. 563.

Cited without definite application, The Toronto (D. C. 1908) 168 Fed. 386.

§ 5327a. (Act Aug. 1, 1914, c. 223, § 1.) President authorized to rearrange customs-collection districts and to discontinue ports of entry; limitation of number of districts and of ports of entry; designation of collector by number of district; President authorized to change location of headquarters of district; statement to Congress.

The President is authorized from time to time, as the exigencies of the service may require, to rearrange, by consolidation or otherwise, the several customs-collection districts and to discontinue ports of entry by abolishing the same or establishing others in their stead: Provided, That the whole number of customs-collection districts, ports of entry, or either of them, shall at no time be made to exceed those now established and authorized except as the same may hereafter be provided by law: Provided further, That, hereafter, the collector of customs of each customs-collection

district shall be officially designated by the number of the district for which he is appointed and not by the name of the port where the headquarters are situated and the President is authorized from time to time to change the location of the headquarters in any customs-collection district as the needs of the service may require: And provided further, That the President shall, at the beginning of each regular session, submit to Congress a statement of all acts, if any, done hereunder and the reasons therefor. (38 Stat. 623.)

This was a provision of the sundry civil appropriation act for the fiscal year 1915, cited above.

See ante, § 5327, and notes thereunder.

§ 5327b. (Act Sept. 8, 1916, c. 464.) Act March 4, 1909, c. 314, § 1, not to prohibit Secretary of the Treasury from fixing pay of laborers.

Section one of the Act entitled "An Act fixing the compensation of certain officials in the customs service, and for other purposes," approved March fourth, nineteen hundred and nine, shall not prohibit the Secretary of the Treasury from fixing the pay of laborers in the customs service at a rate not exceeding $2.50 per day if in so doing the aggregate amount paid to any person in any month does not exceed $70. (39 Stat.)

This was a provision of the deficiency appropriation act for the fiscal year 1917, cited above.

Act March 4, 1909, c. 314, § 1, 35 Stat. 1065, mentioned in this section, was superseded by the reorganization of the customs service by the President, as authorized by Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

See notes under said § 5327, ante.

(R. S. §§ 2517–2526. Superseded.)

See note at the beginning of this chapter.

§ 5328. (R. S. § 2527, subsec. 5.) Port of Boston; town of Chelsea attached thereto.

And the town of Chelsea shall be attached to and made a part of the port of entry and collection district of Boston and Charlestown.

Act Sept. 28, 1850, c. 79, § 13, 9 Stat. 511.

This provision was part of subsection 5 of R. S. § 2527, preceding provisions of which described the district of Boston and Charlestown, not including the town of Chelsea, in which Boston was the port of entry. Said provisions were superseded by the reorganization of the Customs Service pursuant to Act Aug. 24, 1912, c. 355, § 1, ante, § 5327, which established the district of Massachusetts, to include all of the State of Massachusetts, in which Boston was to be a port of entry.

(R. S. §§ 2528, 2529. Superseded.)

See note at the beginning of this chapter.

§ 5329. (R. S. § 2530, as amended, Act Feb. 27, 1877, c. 69, § 1.) Port of Boston; employés in appraiser's office.

The clerks and other persons employed in the appraiser's office at the port of Boston shall be appointed by the principal appraisers, and their number and compensation shall be fixed by the Secretary of the Treasury.

Act May 28, 1830, c. 147, § 6, 4 Stat. 411. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 245.

This section, as enacted in the Revised Statutes, provided that the clerks, etc., mentioned should be appointed by "the principal appraiser."

It was amended, by striking out the word "appraiser" and inserting the word "appraisers," to read as set forth here, by Act Feb. 27, 1877, c. 69, § 1, last cited above.

On the reorganization of the Customs Service, pursuant to Act Aug. 24, 1912, c. 355, § 1, ante, § 5327, the estimate for the district of Massachusetts included one appraiser only, and assistant appraisers.

(R. S. §§ 2531–2537. Superseded.)

See note at the beginning of this chapter.

§ 5330. (Act May 7, 1894, c. 71.) Port of New York; extension of limits.

That the limits of the port of New York, in the State of New York, be, and the same are hereby, extended so as to include the city of Yonkers, Westchester County, in said State. (28 Stat. 73.)

This was an act entitled "An act to extend the limits of the port of New York."

§ 5331. (R. S. § 2538.) Port of New York; examiners.

The Secretary of the Treasury may, on the nomination of the appraiser, appoint such number of examiners at the port of New York as the Secretary may in writing determine to be necessary, to aid each of the assistant appraisers in the examination, inspection, and appraisement of merchandise.

Act July 27, 1866, c. 284, § 4, 14 Stat. 303.

The provisions of this section relating to the number of examiners, and of R. S. § 2539, next following, relating to the number of clerks and other employés specified were superseded by the reorganization of the Customs Service, pursuant to act Aug. 24, 1912, c. 355, § 1, and the estimate for the district of New York accompanying the plan of reorganization, ante, § 5327.

§ 5332. (R. S. § 2539.) Port of New York; employés in appraiser's office.

The Secretary of the Treasury shall also appoint, on the nomination of the appraiser at the port of New York, the clerks, verifiers, samplers, openers, packers, and messengers employed in the appraiser's office, or in any of the departments thereof, and shall limit and fix their number.

Act July 27, 1866, c. 284, § 4, 14 Stat. 303.

See note to preceding section.

(R. S. §§ 2540–2544. Superseded.)

See note at the beginning of this chapter.

§ 5333. (R. S. § 2545, as amended, Act Feb. 27, 1877, c. 69, § 1.) Port of Philadelphia; employés in appraiser's office.

The clerks and other persons employed in the appraiser's office at the port of Philadelphia shall be appointed by the principal appraisers, and their number and compensation shall be fixed by the Secretary of the Treasury.

Act May 28, 1830, c. 147, § 6, 4 Stat. 411. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 245.

This section, as enacted in the Revised Statutes, provided for the appointment of the clerks, etc., mentioned, by "the principal appraiser." It was amended by striking out the word "appraiser," and inserting in lieu thereof, the word "appraisers," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, last cited above.

The provisions of this section relating to the number and compensation of clerks, etc., were superseded by the reorganization of the Customs Service, pursuant to Act Aug. 24, 1912, c. 355, § 1, and the estimate for the District of Philadelphia accompanying the plan of reorganization, ante, § 5327.

(R. S. §§ 2546–2567. Superseded.)

See note at the beginning of this chapter.

§ 5333a. (Act Sept. 24, 1914, c. 309.) District of Florida; headquarters at Tampa.

Hereafter the headquarters of the customs district of Florida shall be at Tampa, in said State. (38 Stat. 716.)

This was an act entitled "An act to relocate the headquarters of the customs district of Florida," cited above.

The headquarters of the district of Florida were formerly at Jacksonville, and were so fixed by the President in reorganizing the customs service. See ante, § 5327, note, subdivision I, par. 18.

§ 5334. (R. S. § 2568, subsec. 1.) Port of New Orleans.

First. The district of New Orleans; * * in which New Orleans shall be the port of entry, to include the parish of Orleans, and that

portion of the parish of Jefferson lying between the Mississippi River and Lake Pontchartrain, and between the upper line of the parish of Orleans, left bank, and a line running parallel thereto, commencing at the Mississippi River, at the upper line of the city of Carrollton, and extending to Lake Pontchartrain.

Act March 2, 1799, c. 22, § 17, 1 Stat. 639. Act Feb. 24, 1804, c. 13, § 4, 2 Stat. 252. Act June 15, 1844, c. 51, § 3, 5 Stat. 664. Res. Feb. 2, 1870, No. 7, 16 Stat. 368.

This provision defining the port of New Orleans was part of subsection 1 of R. S. § 2568, other provisions of which described the district of New Orleans, and the ports of delivery therein, etc.

Subsequent provisions for the extension of the limits of the port were made by Act July 23, 1888, c. 692, Act March 20, 1896, c. 62, and Act Aug. 24, 1912, c. 372, post, §§ 5335–5337.

§ 5335. (Act July 23, 1888, c. 692.) Port of New Orleans; extension of limits.

That the limits of the port of entry of New Orleans, Louisiana, shall be, and the same are hereby, extended so as to include that portion of the Parish of Jefferson lying between the Mississippi River, Lake Pontchartrain, the upper line of the Parish of Orleans, left bank, and a line running parallel thereto, commencing at the Mississippi River at a point two miles above the upper line of the said Parish of Orleans and extending to Lake Pontchartrain. (25 Stat. 339.)

This was an act entitled "An act to extend the limits of the port of New Orleans."

Subsequent provisions for the extension of the limits of the port were made by Act March 20, 1896, c. 62, and Act Aug. 24, 1912, c. 372, post, §§ 5336, 5337.

§ 5336. (Act March 20, 1896, c. 62.) Port of New Orleans; extension of limits.

That the limits of the port of entry of New Orleans shall be, and the same are hereby, extended so as to include that portion of the parish of Jefferson on the west bank of the Mississippi River lying between the upper line of the parish of Orleans, west bank, the west bank of the said river to a point opposite the upper boundary line of the parish of Orleans, east bank, a line drawn thence back four thousand feet, perpendicular to said river, and a line drawn thence parallel to the Mississippi River until it intersects said upper parish boundary line, west bank; and so as further to include that portion of the parish of Saint Bernard lying between the lower boundary line of the parish of Orleans, east bank, the east bank of the Mississippi River to a point three miles below said lower boundary, a line drawn thence back four thousand feet parallel to said lower boundary line, and a line drawn thence parallel to the Mississippi River, until it intersects said lower boundary line of the parish of Orleans. (29 Stat. 72.)

This was an act entitled "An act to extend the limits of the port of entry of New Orleans."

A subsequent provision for the extension of the limits of the port was made by Act Aug. 24, 1912, c. 372, post, § 5337.

§ 5337. (Act Aug. 24, 1912, c. 372.) Port of New Orleans; extension of limits.

That the limits of the port of entry of New Orleans, Louisiana, be, and the same are hereby, extended to include that portion of the parish of Saint Bernard within the following boundaries: Beginning at a point where the boundary line between the parishes of Orleans and Saint Bernard intersect the east bank of the Mississippi River; thence along said east bank to where the boundary line between lots sixteen and seventeen of the Corinne and Myrtle Grove plantations (according to a plan by A. C. Bell, civil engineer, July eleventh, eighteen hundred and ninety-three, and annexed to an act of sale by A.

L. Richardson to Jules Mereaux, passed before Charles T. Soniat, esquire, notary public in the parish of Orleans, January second, eighteen hundred and ninety-four) intersects said east bank, said point of intersection being at a distance of four miles and four thousand two hundred and eighty feet below the point at which the boundary between the parishes of Orleans and Saint Bernard intersects said east bank; thence along said boundary between said lots sixteen and seventeen a distance of four thousand feet; thence along a line parallel to the Mississippi River to the point where said boundary line intersects the boundary between the parishes of Orleans and Saint Bernard; thence along said boundary line to the point of beginning. (37 Stat. 499.)

This was an act entitled "An act to extend the limits of the port of entry of New Orleans, Louisiana."

(R. S. §§ 2569–2575. Superseded.)

See note at the beginning of this chapter.

§ 5338. (R. S. § 2576.) Port of New Orleans; temporary inspectors.

The collector for the district of New Orleans may, when the public service requires, with the approval of the Secretary of the Treasury, appoint, in addition to the inspectors otherwise authorized by law, temporary inspectors, not exceeding twenty in number. But this section shall not be deemed to authorize the whole number of inspectors employed at the port of New Orleans to be at any time greater than the actual number of vessels from foreign ports, having cargoes to be discharged, then lying in the port.

Res. March 3, 1845, No. 15, 5 Stat. 801. Act Sept. 28, 1850, c. 79, § 20, 9 Stat. 512.

The provisions of this section prescribing the number of inspectors were superseded by the reorganization of the Customs Service, pursuant to Act Aug. 24, 1912, c. 355, § 1, and the estimate for the District of New Orleans accompanying the plan of reorganization, ante, § 5327.

R. S. § 2577, authorized the collector at the port of New Orleans to appoint, with the approbation of the Secretary of the Treasury, three head gaugers for the port. It is omitted, as likewise superseded by said reorganization.

§ 5338a. (Act Dec. 28, 1914, c. 3.) District of Omaha; compensation of collector.

The compensation of the collector of customs for the customs collection district of Omaha shall be increased from $2,500 per annum, as provided in the plan of reorganization of the customs service promulgated by the President on March third, nineteen hundred and thirteen, to $3,500 per annum, and that compensation at the said rate of $3,500 per annum shall be paid to the said collector of customs from and after June thirtieth, nineteen hundred and thirteen. (38 Stat. 790.)

This was an act entitled "An act to increase and fix the compensation of the collector for the customs collection district of Omaha," cited above.

The compensation of the collector at Omaha was formerly $2,500 per year, and was so fixed by the President in reorganizing the customs service. See ante, § 5327, note, subdivision IV.

§ 5339. (Act June 19, 1906, c. 3436, § 1.) District of Sabine; Port Arthur ship canal, etc., to be conveyed to United States; charges for use of docks, etc.

An additional collection district in the State of Texas shall be, and is hereby, established, to be known as the district of Sabine, to comprise all of that portion of the State of Texas formerly embraced in the district of Galveston and now hereby detached therefrom, beginning on the Gulf of Mexico at the center of the stream of Sabine Pass; thence, north with the center of the stream of Sabine Pass to Sabine Lake; thence with the center of the stream

of Sabine Lake to a point directly opposite to the Sabine River; thence north with the east shores of the Sabine River to the north boundary line of Shelby County, Texas; thence west to the Neches River; thence down said river with its west shores to a north boundary line of Jefferson County; thence in a westerly direction with the said north boundary line to the east boundary line of Liberty County, Texas; thence south to the Gulf of Mexico; thence in an easterly direction along the Gulf shores to the place of beginning; that Port Arthur, in the county of Jefferson, shall be the port of entry for said district, and Sabine, in the county of Jefferson, shall be a subport of entry: Provided, That there shall be conveyed to the United States, free of cost, a valid title to the line of water communication between Taylors Bayou and Sabine Pass, known as the Port Arthur Ship Canal, together with a valid title to the existing turning basin and to the artificial slip on which the lumber dock of the Port Arthur Canal and Dock Company is built; and the Secretary of War is hereby authorized to accept the said waterways as the property of the United States upon the delivery to him of a clear and indefeasible title thereto; and the said waterways shall thereupon become free public waters of the United States, and be subject to the laws heretofore enacted and that may be hereafter enacted by Congress for the maintenance, preservation, protection, and regulation of navigable waters: Provided further, That the company or corporation conveying title to said canal as aforesaid shall also convey to the United States, free of cost, the fee to a strip of land one hundred and fifty feet wide along the westerly margin of the canal, except that where the right of way of the Southern Pacific Railroad Company prevents the transfer of such strip of land along the westerly margin of said canal there shall be conveyed such strip on the easterly margin thereof as may be necessary to make up such one hundred and fifty feet of width, with the reservation that until Congress shall have authorized and provided for the enlargement and widening of said canal the said company or corporation, its successors or assigns, shall have the right to control, occupy, and use the said strip of land and every part thereof in the same manner and to the same extent as before the execution and delivery of the conveyance, and also the right to transfer, lease, sell, quitclaim, or otherwise dispose of said property and every part thereof, subject to the grant made to the United States: And provided further, That this Act shall take effect only when the foregoing requirements shall have been fully complied with to the satisfaction of the Secretary of War. And the charges for the use of said docks and wharves shall be just and reasonable and shall not be greater than charges for similar services at other ports of the United States on the Gulf of Mexico. (34 Stat. 302.)

This was the first section of an act entitled "An act to establish an additional collection district in the state of Texas, and for other purposes."

The district of Sabine, as established by this section, was retained in the reorganization of the Customs Service, pursuant to Act Aug. 24, 1912, c. 355, § 1, ante, § 5327, because of the express provisions of this act creating the district in consideration of the conveyance to the government of the Port Arthur ship canal and other water ways described in the act.

Section 2 of the act provided for the appointment, office, etc., and compensation of a collector for the district of Sabine. It was superseded by said Plan of Reorganization of the Customs Service, pursuant to Act Aug. 24, 1912, c. 355, § 1, and the estimate for the district of Sabine accompanying the plan of reorganization, ante, § 5327.

Section 3 of the act made Sabine a subport of entry and delivery in the district, with privileges of immediate transportation, etc., and provided for the appointment, duties, etc., of a deputy collector for the subport, and for other officers. It also was superseded by said reorganization of the customs service, pursuant to Act Aug. 24, 1912, c. 355, § 1, ante, § 5327, in which Port Arthur and Sabine were made ports of entry in the district of Sabine, by section 1, subsection 21, of said plan of reorganization.

(R. S. §§ 2577–2579. Superseded.)

See note at the beginning of this chapter.

§ 5340. (R. S. § 2580.) Additional inspectors upon routes by which goods withdrawn from bonded warehouse may be exported to Mexico; reports by inspectors.

The Secretary of the Treasury shall appoint inspectors of the customs to reside at San Antonio, Eagle Pass, the Presidio del Norte, and San Elizario, or at such other points as he may designate, not exceeding four in number, upon the routes by which goods entered and bonded and withdrawn from warehouse may, in pursuance of law, be exported to Mexico; and such inspectors shall make a report semiannually to the Secretary of the Treasury of all the trade that passes under inspection, stating the number of packages, description of goods, their value, and the names of the exporters.

Act Aug. 30, 1852, c. 96, § 3, 10 Stat. 38.

The appointment of inspectors to enforce the customs laws along the boundary between Mexico and the counties of San Diego and San Bernardino, California, was authorized by amendment of R. S. § 2607, by Act June 16, 1882, c. 223, 22 Stat. 105.

The withdrawal of imported merchandise from warehouse without payment of duties for immediate transportation to designated points in Mexico, through the ports of Lavaca and Eagle Pass, was authorized by R. S. §§ 3003, 3004, as amended by Act Sept. 25, 1890, c. 917, § 2, incorporated into R. S. § 3004, post, §§ 5688, 5689.

§ 5341. (R. S. § 2581.) Transshipment of goods transported in bond to Brownsville.

All merchandise transported in bond to the port of Brownsville from any other port of the United States, by Brazos Harbor, may, on arrival in that harbor, be transshipped under such regulations, not inconsistent with law, as the Secretary of the Treasury may prescribe, in other vessels for transportation by the Rio Grande to Brownsville; and all merchandise imported into the district by Brazos Harbor, from any foreign country, may in like manner be transshipped to Brownsville as provided for goods, wares, and merchandise transshipped in bond.

Act June 16, 1860, c. 134, § 4, 12 Stat. 40.

The withdrawal of imported merchandise entered and bonded at Brownsville, or rewarehoused at said port, without the payment of the duties, for immediate transportation to points in Mexico, was authorized by R. S. § 3002, post, § 5687.

§ 5342. (Act March 1, 1889, c. 309.) Port of Portland, Oregon; extension of limits.

That the limits of the port of Portland, in the State of Oregon, as a port of entry, be, and the same are hereby, extended so as to include all that portion of the east bank of the Willamette River lying opposite to the city of Portland, for a distance of one mile in width, and extending from the south boundary-line of the corporate limits of the city of Portland down said east bank of said river to a point directly opposite to the lower end of Swan Island, in said river. (25 Stat. 750.)

This was an act entitled "An act to extend the limits of the port of Portland as a port of entry."

(R. S. §§ 2582–2587. Superseded.)

See note at the beginning of this chapter.

§ 5343. (R. S. § 2588.) Manifests of vessels bound for Portland.

The master of every vessel entering the Columbia River from the sea, and bound for Portland, in the district of Willamette, shall exhibit his papers to the collector of the port of Astoria, and deposit with him a sworn copy of the manifest of cargo. If the vessel is laden with domestic merchandise or merchandise in bond for Port-

land, the collector at Astoria shall permit her to proceed to her place of destination; but if she has dutiable merchandise on board not bonded, he shall cause a customs officer to proceed on board the vessel to Portland, who shall see that no goods are landed from such vessel before her arrival and entry at the latter port. The necessary expenses, including the per diem of such officer and the expense of his return to Astoria, shall be paid by the master of such vessel to the collector of customs at Portland, for the use of the United States, before permit shall be given to unload.

Act June 14, 1870, c. 127, § 2, 16 Stat. 151.

§ 5344. (R. S. § 2589.) Manifests of vessels clearing from Portland.

All vessels clearing from Portland, in the district of Willamette, and bound to sea, shall, on arrival at Astoria, in the district of Oregon, report to the collector; and the master of every vessel so reporting shall leave a copy of his manifest, including any additional cargo taken on board after leaving Portland, with the collector at Astoria, and thereupon shall be allowed to proceed to sea. The master or other person in charge or command of any vessel entering the Columbia River from the sea, or clearing from Portland and bound to sea as described in this section, who shall neglect to exhibit his papers, or to report to the collector, or to deposit his manifest, as herein required, shall be liable to a penalty of one hundred dollars.

Act June 14, 1870, c. 127, § 3, 16 Stat. 151.

§ 5345. (R. S. § 2590.) Vessels having merchandise for both Astoria and Portland.

When a vessel shall arive at Astoria, in the district of Oregon, from sea, having merchandise on board for that place and also for Portland, in the district of Willamette, such vessel shall enter at Astoria and discharge such portion of her cargo as is destined for that place, whereupon the collector shall cause her hatches to be closed and sealed, and shall then permit her to proceed to Portland in charge of a customs officer.

Act June 14, 1870, c. 127, § 4, 16 Stat. 151.

(R. S. §§ 2591–2607. Superseded.)

See note at the beginning of this chapter.

§ 5346. (Act March 2, 1889, c. 358.) Port of Memphis; extension of limits.

That the limits of the present port of Memphis, Tennessee, be extended from Beale street southward to Jackson street, and that the east line of the present port be extended southward until it intersects said Jackson street. (25 Stat. 790.)

This was an act entitled "An act to extend the limits of the port of Memphis, Tennessee."

(R. S. § 2608. Repealed.)

This section provided for the appointment of four appraisers of merchandise, to be employed in visiting ports of entry under the direction of the Secretary of the Treasury, and to assist in the appraisement of merchandise as might be deemed necessary by the Secretary to protect and insure uniformity in the collection of the revenue from customs. It was repealed by Act June 10, 1890, c. 407, § 29, 26 Stat. 141.

(R. S. §§ 2609, 2610. Superseded.)

R. S. § 2609, provided for the appointment of merchant appraisers whenever an appraisement of imported merchandise was to be made at any port for which no appraiser was provided. R. S. § 2610, made every merchant refusing to serve as such appraiser liable to a penalty. Both sections were superseded by the provisions relating to appraisers and appraisements of the Customs Administrative Act of June 10, 1890, c. 407, 26 Stat. 131, which was amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36

Stat. 91, and again amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, making the provisions regarding appraisal read as set forth post, §§ 5591, 5592, 5594–5602.

R. S. § 2945, which contained a provision similar to that of R. S. § 2610, was repealed, without mention of section 2610, by said Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141. Said provision was originally enacted by Act March 1, 1823, c. 21, § 19, 3 Stat. 736, which was incorporated into both said sections 2610 and 2945 of the Revised Statutes.

(R. S. §§ 2611, 2612. Transferred to Chapter 2 of this Title.)

R. S. § 2611, required special examiners of drugs, etc., to take and subscribe an oath as prescribed therein.

R. S. § 2612, provided for instructions to collectors of districts for which an examiner of drugs, etc., was not provided by law, to prevent the importation of adulterated and spurious drugs and medicines.

Both sections are placed, with other provisions relating to the qualifications of and duties of officers of the customs, under chapter 2 of this Title, post, §§ 5355, 5356.

CHAPTER TWO

Qualifications, Pay, and Duties of Officers

Customs-collection districts with headquarters and ports of entry, in lieu of existing districts and ports, were established by the reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327, which section provided that such reorganization "should constitute for the fiscal year 1914, and until otherwise provided by Congress, the permanent organization of the Customs Service."

The reorganization limited the expense of the Customs Service, prescribed the number of collectors, naval officers, surveyors, and other customs officers and employés for each district, and their compensation, required all moneys collected, "whether as fees, storage, commissions or from the sale of blank forms or otherwise," to be "covered into the Treasury," and authorized the Secretary of the Treasury to "appoint a deputy collector to have charge of each port of entry, who shall perform such duties and receive such compensation as the Secretary of the Treasury shall determine," and to "cause to be stationed at places in the various collection districts, though not named as ports of entry, officers or employés of the customs, with authority to enter and clear vessels, to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws." Thereby many sections of this chapter of the Revised Statutes and subsequent provisions relating to salaries, fees, etc., of various officers were superseded, as stated more particularly in the notes under said sections, respectively.

Sec.
5347. Term of office of collectors, naval officers, etc.
5348. Appraiser's oath of office.
5349. Oath of assistant appraisers.
5350. Oath of office of customs officers.
5351. Who may administer oath of office.
5352. Certification, etc., of oath.
5353. Oath of subordinate customs officers; before whom and how taken; certification, etc.; penalty for default.
5354. Custody of oaths of subordinate customs officers.
5355. Oath of special examiners of drugs.
5356. Instructions to prevent importation of adulterated drugs.
5357. Bonds of collectors, naval officers, and surveyors.
5358. Bonds, how approved and filed.
5359. Duties of collector where naval officers and surveyors are appointed.
5360. Collectors and special deputies may administer oaths.
5361. Duties of collector where no naval officer is appointed.
5362. Duties of collector where a collector only is appointed.
5363. Performance of collector's duties in case of disability.
5364. Duties of naval officers.
5365. Duties of surveyors where collectors and naval officers are appointed.
5366. Duties of surveyor where surveyor only is appointed.
5367. Performance of surveyor's duties in case of disability.
5368. Deputy collectors.
5369. Additional deputy collectors and other officers; duties; bonds.
5370. In case of sickness or absence, collectors and surveyors may authorize some officer or clerk to act.

Sec.
5371. Deputies of naval officers and surveyors.
5372. When deputies may be clothed with powers of collectors.
5373. Neglect or minor delinquency of customs officers or employés.
5374. Leave of absence of customs employés.
5375. Rules and regulations to carry act into effect.
5376. Table of fees to be kept posted up.
5377. Penalty for extortion by customs officers.
5378. Penalty for extortion by inspectors, weighers, gaugers, or measurers.
5379. Customs officers, etc., not to own vessels or engage in importation.
5380. Collectors, naval officers, and surveyors must keep and render accounts.
5381. Their duty in respect to accounts, and the penalty for omission.
5382. Accounts must include all emoluments as well as expenses.
5383. List of clerks and account of expenditures for stationery, etc., to be furnished.
5384. Accounts of collectors upon northern, etc., frontiers; monthly estimate in advance.
5385. Accounts to be rendered quarterly.
5386. Books to be furnished to customs officers.
5387. Quarterly account of collection of fines, etc., required.
5388. Blanks.
5389. Special agents to examine books, accounts, etc., of collectors, etc.
5390. Supervising agent and special agents to examine books, accounts, etc., of collectors; number and compensation.
5391. Regulations for special agents, and limitations on their number and compensation.
5392. Customs officers to follow instructions and decisions of Secretary of Treasury.
5393. Fees of collectors.
5394. Apportionment of compensation for part of a year's service.
5395. Performance of duties of appraiser during vacancy in office.
5396. Performance of duties of appraiser or assistant appraiser, during his sickness, disability or absence.

§ 5347. (R. S. § 2613.) Term of office of collectors, naval officers, etc.

Collectors of the customs, naval officers, and surveyors of the customs shall be appointed for the term of four years.

Act May 15, 1820, c. 102, § 1, 3 Stat. 582.

Notes of Decisions

Term of office.—On the ground of public necessity, naval and other administrative officers mentioned must be considered, in contemplation of law, as holding their offices until their successors are duly appointed and qualified. (1835) 2 Op. Atty. Gen. 713. See, also, Parsons v. U. S. (1897) 17 Sup. Ct. 880, 167 U. S. 324, 338, 42 L. Ed. 185; (1873) 14 Op. Atty. Gen. 259, 263; (1877) 15 Op. Atty. Gen. 214; (1882) 17 Op. Atty. Gen. 476.

Removal—Effect.—A collector of the revenue has no power to collect after he is removed from office. Sthreshley v. U. S. (1807) 8 U. S. (4 Cranch) 169, 2 L. Ed. 584.

Cited without definite application, U. S. v. Irving (1843) 1 How. 250, 258, 11 L. Ed. 120.

§ 5348. (R. S. § 2614.) Appraiser's oath of office.

The appraiser at New York, before he enters upon the duties of his office, shall take and subscribe an oath faithfully to direct and supervise the examination, inspection, and appraisement according to law, of such merchandise as the collector may direct pursuant to law, and to cause to be duly reported to the collector the true value thereof, as required by law. All other appraisers, [and all resident merchants appointed according to law to act as appraisers,] shall severally take and subscribe an oath diligently and faithfully to examine and inspect such merchandise as the collector may direct, and truly to report, to the best of their knowledge and belief, the true value thereof.

Act March 1, 1823, c. 21, § 16, 3 Stat. 735. Act July 27, 1866, c. 284, § 1, 14 Stat. 302. Act July 14, 1870, c. 255, §§ 34, 36, 16 Stat. 271.

The words of this section "and all resident merchants appointed according to law to act as appraisers," inclosed in brackets, were superseded by the provisions relating to appraisers of the Customs Administrative Act of June

10, 1890, c. 407, § 13, 26 Stat. 136, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, §§ 28, 36, 99, and again amended and re-enacted by the Underwood Tariff Act of Oct. 3, 1913, c. 16, III, M, post, § 5594.

Notes of Decisions

De facto appraisers.—The acts of a de facto appraiser are valid. Gibb v. Washington (C. C. 1858) Fed. Cas. No. 5,380.

Right to produce witnesses.—This and other named sections held not to give importer right to produce witnesses, etc., before appraisers. (1886) 18 Op. Atty. Gen. 360.

Cited without definite application, Greely v. Thompson (1850) 10 How. 225, 235, 13 L. Ed. 397; U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, 778 (affirmed Browne v. U. S. [1905] 145 Fed. 1, 76 C. C. A. 31); Curnen & Stiner v. U. S. (C. C. 1904) 136 Fed. 807, 808, 809.

§ 5349. (R. S. § 2615.) Oath of assistant appraisers.

Each of the assistant appraisers at the port of New York, before entering upon the duties of his office, shall take and subscribe an oath diligently and faithfully to examine and inspect such goods, wares, and merchandise as the appraiser may direct, and truly to report to him the true value thereof, according to law. Such report shall be subject to revision and correction by the appraiser, and when approved by him shall be transmitted to the collector, and shall be deemed an appraisement by the United States local appraiser of the district of such merchandise required by law. The assistant appraisers at Boston, Philadelphia, and San Francisco, shall take and subscribe an oath diligently and faithfully to examine and inspect such merchandise as the principal appraisers may direct, and truly to report to them the true value thereof, according to law.

Act May 28, 1830, c. 147, § 2, 4 Stat. 409. Act July 27, 1866, c. 284, § 2, 14 Stat. 302. Act July 14, 1870, c. 255, §§ 34–36, 16 Stat. 271.

Notes of Decisions

Reports.—A report in regard to valuation of imported merchandise signed by an examiner or clerk appointed pursuant to section 5629, post, and approved by the appraiser, is not in compliance with the requirement of this section that the assistant appraiser make such report. (1894) 20 Op. Atty. Gen. 731.

Right to produce witnesses.—This and other named sections held not to give importer the right to produce witnesses, etc., before appraisers. (1886) 18 Op. Atty. Gen. 360.

Cited without definite application, U. S. v. Curnen & Stiner (1906) 146 Fed. 45, 48, 76 C. C. A. 503; U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, 778 (affirmed Browne v. U. S. [1905] 145 Fed. 1, 76 C. C. A. 31).

§ 5350. (R. S. § 2616.) Oath of office of customs officers.

Every officer, clerk, or employé appointed under this Title shall, before entering upon his duties, take and subscribe an oath in addition to the oath of office prescribed by section seventeen hundred and fifty-six or section seventeen hundred and fifty-seven, Title "Provisions applying to several classes of officers," that he will use his best endeavors to prevent and detect frauds against the laws of the United States imposing duties upon imports.

Act March 2, 1799, c. 22, § 20, 1 Stat. 641. Act March 3, 1817, c. 109, § 7, 3 Stat. 397. Act July 30, 1846, c. 74, § 9, 9 Stat. 44. Act May 9, 1848, c. 40, 9 Stat. 220. Act June 26, 1848, c. 70, § 6, 9 Stat. 239.

R. S. § 1756, one of the sections mentioned in this section as prescribing an oath of office, was repealed by Act May 13, 1884, c. 46, § 2, ante, § 3216.

Provisions authorizing the collectors of customs to administer the oath required by this section, providing for the filing of duplicates thereof, and imposing a penalty for failure to comply therewith, were made by Act Feb. 8, 1875, c. 36, § 11, post, § 5353.

Notes of Decisions

Presumption.—An officer of the customs, duly commissioned, and acting in the duties of his office, is presumed to have taken the regular oaths. U. S. v. Bachelder (C. C. 1814) Fed. Cas. No. 14,490.

§ 5351. (R. S. § 2617.) Who may administer oath of office.

The oath of office required by law to be taken by a collector may be taken before any magistrate authorized to administer oaths within the district to which such collector belongs. The oath required to be taken by any other person appointed to any office under this Title shall be taken before the collector of his district.

Act March 2, 1799, c. 22, § 20, 1 Stat. 641. Act July 30, 1846, c. 74, § 9, 9 Stat. 44. Act June 26, 1848, c. 70, § 6, 9 Stat. 239.

Similar provisions for taking the required oath before the collector or other officer were made by Act Feb. 8, 1875, c. 36, § 11, post, § 5353.

The officers authorized to administer the oath of office were designated in R. S. § 1758, ante, § 3220.

§ 5352. (R. S. § 2618.) Certification, etc., of oath.

The oath of office administered to any person appointed to any office under this Title shall be certified under the hand and seal of the person by whom the same shall have been administered, and shall, within three months thereafter, be transmitted to the [Commissioner of Customs]. In default of taking such oath, or of transmitting a certificate thereof, the person failing shall be liable to a penalty of two hundred dollars.

Act March 2, 1799, c. 22, § 20, 1 Stat. 641, 642.

Provisions similar to those of this section were made by Act Feb. 8, 1875, c. 36, § 11, post, § 5353.

The words of this section, "Commissioner of Customs," inclosed in brackets, were superseded by the abolition of the office and the transfer of the powers and duties thereof to the Comptroller of the Treasury, by the Dockery Act of July 31, 1894, c. 174, § 4, ante, § 402. All provisions of law not inconsistent with said act, in any way relating to the Commissioner of Customs, are held by said section 4, to relate to the Comptroller of the Treasury.

The copy of the oath of subordinate customs officers was required to be transmitted to the Secretary of the Treasury by a provision of Act March 2, 1895, c. 177, § 5, post, § 5354. And the duties of the Comptroller of the Treasury in regard to customs officers' bonds were transferred to the Secretary of the Treasury by a further provision of said section 5, set forth ante, § 3288.

§ 5353. (Act Feb. 8, 1875, c. 36, § 11.) Oath of subordinate customs officers; before whom and how taken; certification, etc.; penalty for default.

The oaths now required to be taken by subordinate officers of the customs may be taken before the collector of the customs in the district in which they are appointed, or before any officer authorized to administer oaths generally; and the oaths shall be taken in duplicate, one copy to be transmitted to the [Commissioner of Customs], and the other to be filed with the collector of customs for the district in which the officer appointed acts. And in default of taking such oath, or transmitting a certificate thereof, or filing the same with the collector, the party failing shall forfeit and pay the sum of two hundred dollars, to be recovered, with cost of suit, in any court of competent jurisdiction, to the use of the United States. (18 Stat. 309.)

The words of this section, "Commissioner of Customs," inclosed in brackets, were superseded by the abolition of the office by the Dockery Act of July 31, 1894, c. 174, § 4, ante, § 402, and subsequent provisions for transmission of a copy of the oath to the Secretary of the Treasury by Act March 2, 1895, c. 177, § 5, post, § 5354.

Officers and employés in the customs service were required, as a condition precedent to payment of compensation for their services, to make oath that they had not received improper consideration for official services, by R. S. § 1790, ante, § 3265.

Officers of the revenue-cutters were to be deemed officers of the customs by R. S. § 2760, post, § 5448.

The oath required by R. S. § 1790, ante, § 3265, to be administered to the customs officers and employés was authorized to be administered by the collectors and their special deputies by Act March 15, 1898, c. 68, post, § 5360.

Cited without definite application,
U. S. v. Dominici (1897) 78 Fed. 334, 336, 24 C. C. A. 116.

§ 5354. (Act March 2, 1895, c. 177, § 5.) Custody of oaths of subordinate customs officers.

Hereafter the copy of the oath of office of subordinate officers of the customs, required to be transmitted to the [Commissioner of Customs] by section eleven of the "Act to amend existing customs and internal revenue laws, and for other purposes," approved February eighth, eighteen hundred and seventy-five, shall be transmitted to the Secretary of the Treasury. (28 Stat. 807.)

This provision was part of section 5 of the legislative, executive, and judicial appropriation act of 1895, cited above. The remaining provisions of the section, relating to official bonds, are set forth ante, §§ 3288–3290.

Provisions as to the custody of oaths of office in general were made by R. S. § 1759, ante, § 3223.

The words of this section, "Commissioner of Customs," inclosed in brackets, were superseded by the abolition of the office and the transfer of the powers and duties thereof to the Comptroller of the Treasury, by the Dockery Act of July 31, 1894, c. 174, § 4, ante, § 402.

§ 5355. (R. S. § 2611.) Oath of special examiners of drugs.

Special examiners of drugs, medicines, chemicals, and so forth, shall, before entering upon their duties, take and subscribe an oath faithfully and diligently to perform such duties, and to use their best endeavors to prevent and detect frauds upon the revenue of the United States; which oath shall be administered by the collector of the port or district where the examiner making it is employed.

Act June 26, 1848, c. 70, § 6, 9 Stat. 239.

An examination of imported drugs and preparations used as medicine, before passing the custom house, in reference to their quality, purity, and fitness and their value, was required by R. S. § 2933, post, § 5622.

The exportation or destruction of rejected articles was provided for by R. S. § 2937, post, § 5626.

Subsequent provisions for inspection and regulation of importation of adulterated foods, drugs, and liquors, are contained in Title LVI B, "Regulation of Interstate and Foreign Commerce as to Particular Subjects," Chapter B.

§ 5356. (R. S. § 2612.) Instructions to prevent importation of adulterated drugs.

The Secretary of the Treasury shall give to the collectors of districts for which an examiner of drugs, medicines, and chemicals is not provided by law, such instructions as he may deem necessary to prevent the importation of adulterated and spurious drugs and medicines.

Act June 26, 1848, c. 70, § 5, 9 Stat. 238.

§ 5357. (R. S. § 2619, as amended, Act Feb. 27, 1877, c. 69.) Bonds of collectors, naval officers, and surveyors.

Every collector, naval officer, and surveyor, shall, before entering on the duties of his office, give a bond to the United States, with one or more sufficient sureties, for the true and faithful discharge of the duties thereof according to law. And all bonds to be hereafter given shall be of the form following, to wit: Know all men by these presents that we ——— are held and firmly bound unto the United States of America in the full and just sum of ——— dollars, money of the United States; to which payment, well and truly to be made, we bind ourselves, jointly and severally our joint and several heirs executors and administrators, firmly by these presents, sealed with our seals and dated this ——— day of ——— one thousand ——— The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said ——— to the office of ——— in the State of ———: Now, therefore, if the said ——— has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of the said office, according to law, then the above obligation to be void and of none effect; otherwise it shall abide and remain in full force and virtue.

Sealed and delivered in the presence of ——— And the amount of penalty shall be fixed by the President, as provided in section thirty six hundred and thirty nine.

First. The collectors of New York and Philadelphia, in the sum of sixty thousand dollars each.

Second. The collector of Boston and Charlestown, in the sum of forty thousand dollars.

Third. The collectors of Baltimore and Charleston, in the sum of thirty thousand dollars each.

Fourth. The collector of Norfolk and Portsmouth, in the sum of fifteen thousand dollars.

Fifth. The collectors of Portsmouth in New Hampshire, Salem and Beverly, Newport, Providence, Wilmington in Delaware, Annapolis, Georgetown in the District of Columbia, Richmond, Alexandria, Wilmington in North Carolina, New Berne, Edenton, and Vicksburgh, in ten thousand dollars each.

Sixth. The collectors of Newburyport, Gloucester, Marblehead, Plymouth, Nantucket, Portland and Falmouth, New London, New Haven, Fairfield, Perth Amboy, Newark, Yorktown, Tappahannock, Georgetown in South Carolina, Beaufort in South Carolina, and Savannah, in five thousand dollars each.

Seventh. The collectors of Middletown and Waldoborough, in four thousand dollars each.

Eighth. The collectors of the several districts in the State of Florida, in such sum as the President shall prescribe.

Ninth. All collectors not above mentioned, in two thousand dollars each.

Tenth. The naval officers at Boston, New York, Philadelphia, Baltimore, and Charleston, in ten thousand dollars each.

Eleventh. All naval officers not above mentioned, in two thousand dollars each.

Twelfth. The surveyors at Albany, Pittsburgh, Wheeling, Cincinnati, Louisville, Saint Louis, Nashville, and Natchez, in ten thousand dollars each.

Thirteenth. The surveyors of Boston, New York, Philadelphia, Baltimore, and Charleston, in five thousand dollars each.

Fourteenth. All surveyors not above mentioned, in one thousand dollars each.

Act March 2, 1799, c. 23, § 1, 1 Stat. 705. Act May 10, 1800, c. 49, 2 Stat. 68. Act May 7, 1822, c. 62, § 8, 3 Stat. 684. Act May 7, 1822, c. 107, § 2, 3 Stat. 693. Act Jan. 21, 1829, c. 10, § 1, 4 Stat. 331. Act March 2, 1831, c. 76, § 4, 4 Stat. 476. Act March 2, 1831, c. 87, §§ 1, 5, 4 Stat. 480, 482. Act June 30, 1834, c. 135, § 10, 4 Stat. 716. Act July 7, 1838, c. 169, § 8, 5 Stat. 267. Act June 4, 1844, c. 39, 5 Stat. 661. Act March 3, 1857, c. 105, 11 Stat. 200. Act March 2, 1867, c. 178, § 1, 14 Stat. 542. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 245.

This section, as enacted in the Revised Statutes, did not contain the form of the bond. The section was amended by striking out after the words "according to law" the words "under penalty as follows," and by inserting after the said words "according to law" the provisions following, relating to the form of the bond, to the word "First," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

Provisions authorizing the President to regulate and increase the sums for which bonds are required of collectors of customs, naval officers and surveyors, were made by R. S. § 3639, post, § 6638.

The Secretary of the Treasury was authorized to require bond from deputies clothed with powers of collectors by R. S. § 2633, post, § 5372.

Provisions for bonds of deputy collectors were also made by Act Feb. 6, 1907, c. 471, post, § 5369.

General provisions for the examination and renewal of official bonds were made by Act March 2, 1895, c. 177, § 5, ante, § 3290.

Notes of Decisions

Requisites and validity of bond.—The omission of the words "in the state of Vermont" from the official bond of the collector of customs for the district of

Vermont does not impair its validity. The bond is valid, either under the statute or at common law. (1886) 18 Op. Atty. Gen. 458.

Liability of sureties—In general.—Where a collector of customs intrusts a package of treasury notes, received by him in payment of duties, and canceled by him, to a person accustomed to put such packages in the post office, and they are lost or purloined before being placed in the post office, the collector is liable to the United States on his official bond for all actual damages sustained by them, which must be estimated by a jury from the damage likely to happen from their getting into circulation again, from delay and inconvenience in obtaining the proper vouchers to settle accounts, from the want of evidence at the treasury department that the notes had been redeemed, or from any other direct consequence of the condition of his bond, and of his instructions under it. U. S. v. Morgan (1850) 52 U. S. (11 How.) 154, 13 L. Ed. 643.

A collector of customs, who receives, in payment for duties, treasury notes previously canceled by him and since stolen or lost, and altered, is responsible to the United States on his official bond for the amount. Id.

The condition in a bond to well and faithfully behave and execute the office, does not render the surety liable for want of skill. Alexandria v. Corse (C. C. 1822) Fed. Cas. No. 183; Bank of United States v. Brent (C. C. 1826) Fed. Cas. No. 910.

Under the condition of a bond, given as additional security, that the officer "has faithfully discharged, and shall continue faithfully to discharge," etc., held that the surety became absolutely bound for any default of the officer. U. S. v. Anderson (C. C. 1848) Fed. Cas. No. 14,446; Same v. Brown (D. C. 1830) Fed. Cas. No. 14,663.

Liens extend to all the real estate of collectors and their sureties, owned by them at the time the sums in default were committed to them. (1830) 2 Op. Atty. Gen. 310.

—— **Scope of duties.**—A collector of the customs and his sureties are responsible on his official bond for the faithful application by him of moneys of the United States received by him from his predecessor in office. Broome v. U. S. (1853) 56 U. S. (15 How.) 143, 14 L. Ed. 636.

A collector and his sureties are responsible for money which he receives from his predecessor in office; and also for money transmitted to him by another collector, upon his representation and requisition that it was necessary to defray the current expenses of his office and advanced for that purpose. Broome v. U. S. (1853) 15 How. 143, 153, 14 L. Ed. 636.

Where duties not required by law were imposed on a collector of customs by the superior officers of the treasury department, he is still required to discharge his duties according to law, and the sureties on his official bond are liable for his failure to do so. U. S. v. Gaussen (C. C. 1875) Fed. Cas. No. 15,192.

The condition of a bond of a public officer to discharge the duties according to law refers to existing laws and those passed during his term of office. U. S. v. Gaussen (C. C. 1875) Fed. Cas. No. 15,192.

The sureties on the bond of a customs collector are not responsible for a loss of funds in his custody which he is transporting, under orders from the treasury department, from one place to another, such transportation being no part of his duty as collector. U. S. v. Adams (C. C. 1885) 24 Fed. 348.

—— **Period of liability.**—The bond of a collector of the customs takes effect from the time that he and his sureties part with it in the course of transmission to the comptroller of the treasury, even against the representatives of a party thereto, who dies before the bond is approved by the comptroller, as required by the act of congress of 1799. Broome v. U. S. (1853) 56 U. S. (15 How.) 143, 14 L. Ed. 636.

The sureties on a bond of a collector of customs appointed during a recess of the senate are not liable for his acts after he accepted a new appointment made by the president by and with the advice of the senate. U. S. v. Ellis (C. C. 1866) Fed. Cas. No. 15,047.

A bond given by a collector of customs under Act March 2, 1799, binds the sureties from the time he assumed office, though not executed until several months thereafter. Id.

The bond of a collector of customs as a depositor of public money and fiscal agent of the United States under Act Aug. 6, 1846, does not apply to past transactions. U. S. v. Ellis (C. C. 1866) Fed. Cas. No. 15,047.

The liability of sureties upon the official bond of a collector of customs is limited to acts done by him during his term of office. They are not responsible for defaults committed in relation to public moneys received by him after the term for which he was appointed. (1877) 15 Op. Atty. Gen. 214.

—— **Extinguishment.**—Giving a second official bond by a collector, with different sureties, does not of itself merge or extinguish the first; and an unsatisfied judgment on one does not bar an action on the other for the same breach. U. S. v. Hoyt (C. C. 1848) Fed. Cas. No. 15,409.

Payments and discharge of sureties.—Where a collector has, at different times, given two bonds, with different sureties, and the supervisor of the revenue has promised to apply his payments to the discharge of the first bond, though some of them were for money collected after the second bond was given, such prom-

ise does not bind the United States, nor amount to an application of the payments to the first bond. U. S. v. January (1813) 11 U. S. (7 Cranch) 572, 3 L. Ed. 443; Same v. Wardwell (C. C. 1828) Fed. Cas. No. 16,640.

Where the account of a collector of customs, who serves several successive terms, is kept by the officers of the treasury in one continued series of debits and credits, moneys paid into the treasury by the collector in the regular performance of his duty cannot, as against the sureties on his bond for that term, be applied by the treasury officers in discharge of a defalcation occurring in a previous term. U. S. v. Irving (1843) 42 U. S. (1 How.) 250, 11 L. Ed. 120.

The addition of a condition in the bond of a collector not specifically named in the act of congress, that the obligors shall not be liable if each and every deputy appointed by the collectors shall truly and faithfully execute and discharge all the duties of such deputy collector according to law, does not relieve the sureties from liability. Chadwick v. U. S. (C. C. 1880) 3 Fed. 750.

No change made by law in the rate of duties, the routine of the office, or in the method of conducting it, which does not change materially the character of the office, will discharge the sureties on the official bond of the collector. U. S. v. Gaussen (C. C. 1875) Fed. Cas. No. 15,192.

The sureties of the official bond of a collector of customs, where the mode of payment of the customs had been varied during their suretyship, were held not to be discharged by such change, as their principal was bound to receive such payments as the state directed, and to pay them over in specie, and any change in the mode or character of the payments does not affect his or their liability. Borden v. Houston (1847) 2 Tex. 594.

Action.—An assignment by a collector in trust to pay any judgment recovered on his official bond enables the United States, on recovering such judgment, to sue the trustees for an accounting. U. S. v. Hoyt (C. C. 1848) Fed. Cas. No. 15,410.

But, where the first act of the United States in affirmance of the trust is the filing of their bill for an account, the trustees are not liable for property previously disposed of with the consent of the assignor and sureties. Id.

United States, in an action upon a collector's bond, cannot obtain judgment against the surety for more than the penalty. U. S. v. Ricketts (C. C. 1825) Fed. Cas. No. 16,159.

Cited without definite application, U. S. v. Jones (C. C. 1896) 77 Fed. 717, 724.

§ 5358. (R. S. § 2620.) Bonds, how approved and filed.

All bonds required by law to be given by collectors, naval officers, surveyors, or other officers of the customs, shall be approved by the [Commissioner of Customs], and shall be filed in his office.

Act June 17, 1864, c. 130, § 5, 13 Stat. 134.

The words of this section, "Commissioner of Customs," inclosed in brackets, were superseded by the abolition of the office and the transfer of the powers and duties thereof to the Comptroller of the Treasury by the Dockery Act of July 31, 1894, c. 174, § 4, ante, § 402; and the duties of the Comptroller of the Treasury in regard to bonds were transferred to the Secretary of the Treasury by a provision of Act March 2, 1895, c. 177, § 5, set forth ante, § 3288.

Notes of Decisions

Date of approval.—The date of approval is not conclusive evidence of the commencement of the period when the bond began to run. It begins to be effective from the moment when the collector and his sureties part with it in the course of transmission. Broome v. U. S. (1853) 15 How. 143, 153, 14 L. Ed. 636.

§ 5359. (R. S. § 2621.) Duties of collector where naval officers and surveyors are appointed.

At each of the ports to which there are appointed a collector, naval officer, and surveyor, it shall be the duty of the collector:

First. To receive all reports, manifests, and documents to be made or exhibited on the entry of any ship or vessel, according to the regulations of this Title.

Second. To record, in books to be kept for that purpose, all manifests.

Third. To receive the entries of all ships or vessels, and of the goods, wares, and merchandise imported in them.

Fourth. To estimate, together with the naval officer where there is one, or alone where there is none, the amount of the dues payable thereupon, indorsing such amount upon the respective entries.

Fifth. To receive all moneys paid for duties, and take all bonds for securing the payment thereof.

Sixth. To grant all permits for the unlading and delivery of goods.

Seventh. To employ, with the approval of the Secretary of the Treasury, proper persons as weighers, gaugers, measurers, and inspectors at the several ports within his district.

Eighth. To provide, with the like approval, at the public expense, store-houses for the safe-keeping of goods, and such scales, weights, and measures as may be necessary.

Act March 2, 1799, c. 22, § 21, 1 Stat. 642.

Provisions requiring collectors of customs to make quarterly reports to the Bureau of Statistics were made by R. S. § 337, ante, § 880.

Provisions requiring collectors of customs to seize vessels fitted out or held for the purpose of committing piracy were made by R. S. § 4299, post, § 8045.

Provisions requiring collectors of customs to detain vessels intended to be employed in violation of neutrality laws were made by R. S. § 5290, which was incorporated into the Criminal Code, in section 17 thereof, post, § 10181, and was repealed by section 341 thereof, post, § 10515.

The authority, power, and jurisdiction, in relation to the exclusion of Chinese, vested by law or treaty in the collectors of customs, were conferred upon such officers under the control of the Commissioner General of Immigration as the Secretary of Commerce and Labor might designate therefor, by provisions of Act Feb. 14, 1903, c. 552, § 7, ante, § 858.

Duties in respect to consignments of game from Alaska were imposed on the collectors of customs at Seattle, Portland, and San Francisco, and all collectors and deputy collectors were required to assist in the enforcement of Act June 7, 1902, c. 1037, 32 Stat. 327, for the protection of game in Alaska, as amended by Act May 11, 1908, c. 162, ante, §§ 3615–3621, by provisions of sections 6 and 7 of said amendatory act, ante, §§ 3620, 3621.

Notes of Decisions

Powers, duties, and liability in general.—All payments and disbursements of money received by the collector in his official capacity under direction of the secretary of the treasury were within the range of his official duty. Gaussen v. U. S. (1878) 97 U. S. 584, 591, 24 L. Ed. 1009.

An ex-collector cannot appropriate moneys of the United States in his hands in payment of fees due to officers of the customs, as such authority can be exercised only by the collector actually in office. Champney v. Bancroft (C. C. 1841) Fed. Cas. No. 2,587.

A collector of customs had no authority to take a lease of property for the government without authority from the Secretary of the Treasury. Kinkead v. U. S. (1883) 18 Ct. Cl. 504.

A customhouse officer has no power to control gate keepers at piers. U. S. v. Desmond (C. C. 1858) Fed. Cas. No. 14,951.

Inspectors of customs cannot lawfully be prevented by the local health officers from landing at quarantine stations in the discharge of their duties; but the former, while visiting and remaining at such stations, should observe all reasonable regulations in the interest of public health. (1884) 18 Op. Atty. Gen. 15.

No local health regulation which denies to inspectors of customs ample opportunities for then and there protecting the public revenue is reasonable. Id.

A collector of the customs is not personally liable, in the absence of an express agreement, for the wages of one whom he employs as a night watch and oarsman. Nichols v. Moody (N. Y. 1856) 22 Barb. 611.

In an action of trespass against an inspector of customs for breaking and entering a store and carrying away goods which are subsequently condemned in the federal district court, it is a sufficient justification for the defendant to produce a warrant from a justice of the peace directed to the defendant, "as inspector," and describing the goods to be seized as "several bales of dry goods, calicoes, chintzes, etc., and other goods, wares, and merchandise." Steel v. Fisk (Vt. 1816) Brayt. 230.

Employment or removal of subordinates by collector.—Where it is the official duty of a collector of customs to appoint an officer possessing qualifications prescribed by statute, it is to be assumed that in making the appointment he performed his duty in that regard. Erhardt v. Ballin (1906) 150 Fed. 529, 80 C. C. A. 271.

In authorizing collectors, with the approbation of the secretary of the treasury, to employ "weighers, gaugers, measurers, and inspectors," congress exercised its constitutional power of vesting by law in the head of a department the appointment of officers of the government. Frelinghuysen v. Baldwin (D. C. 1882) 12 Fed. 395, 397.

A collector, with the approbation of the Secretary of the Treasury, is authorized to employ persons as occasion-

al weighers and measurers, and to agree with them as to their compensation. Pray v. U. S. (1878) 14 Ct. Cl. 256.

Though a secretary's approval of a removal from office be founded upon a misrepresentation of facts made for an illegal and fraudulent purpose, the removal is nevertheless effective. Turner v. U. S. (1886) 21 Ct. Cl. 24.

Collectors of customs can neither appoint nor dismiss inspectors, weighers, gaugers, and measurers without the approbation of the Secretary of the Treasury. (1821) 1 Op. Atty. Gen. 459.

By analogy to the power of removal exercised by the President, collectors may remove their subordinates without consulting the Secretary of the Treasury, though the approbation of the latter be necessary to an appointment. (1838) 3 Op. Atty. Gen. 325.

It is not a breach of official duty on the part of collectors to refuse to report their reasons for removing their subordinate officers. Id.

Act March 2, 1799, c. 23, giving authority to collectors to employ occasional inspectors and others in aid of the revenue, did not authorize them to employ persons to perform clerical duties in customhouses, and to pay them out of the revenue. (1843) 4 Op. Atty. Gen. 230.

Inspectors in general.—Inspectors of the customs are public officers, and not the mere servants and agents of collector. Hooper v. Fifty-One Casks of Brandy (D. C. 1848) Fed. Cas. No. 6,674; U. S. v. Morse (C. C. 1844) Fed. Cas. No. 15,820.

The approval of the Secretary of the Treasury of the removal from office of an inspector of customs may be in writing or orally, and may be before or at the time of the removal or subsequent to it. Turner v. U. S. (1886) 21 Ct. Cl. 24.

Quære, whether inspector of customs holds a lucrative United States office within meaning of the constitution. Saunders v. Haynes (1859) 13 Cal. 145.

A collector of customs may appoint as inspectors persons who reside within his district, although such persons do not reside at a port of entry or delivery. Rowley v. Gibbs (N. Y. 1817) 14 Johns. 385.

No person can be appointed to the office of permanent inspector of customs except with the approbation of the Secretary of the Treasury. (1843) 4 Op. Atty. Gen. 162.

The only true construction under the Constitution of the acts providing for inspectors is that the name of the individual proposed to be appointed shall be submitted to the Secretary of the Treasury, and that no one shall be appointed unless approved by him. Id.

The approbation of the secretary of the treasury is presumed where the collector appoints and commissions an inspector. U. S. v. Bachelder (C. C. 1814) Fed. Cas. No. 14,490.

A collector of customs cannot remove a permanent inspector without the assent of the Secretary of the Treasury; but the Secretary of the Treasury may displace an inspector without the consent of the collector. (1843) 4 Op. Atty. Gen. 165.

But as the collector's opinion has been required in appointing inspectors, and as his opinion has been uniformly consulted in removing them, it is too late to act on the mere summum jus. Id.

Duties exacted by military authorities.—The duties exacted by the military authorities of San Francisco, from the date of the cessation of hostilities between the United States and Mexico until the arrival of the regular collector appointed by the president under the act of congress making San Francisco a port of entry, were properly levied. Cross v. Harrison (1853) 57 U. S. (16 How.) 164, 14 L. Ed. 889.

Cited without definite application, Tremlett v. Adams (1851) 13 How. 295, 305, 14 L. Ed. 152; Stewart v. U. S. (1854) 17 How. 116, 127, 15 L. Ed. 65.

§ 5360. (Act March 15, 1898, c. 68, § 1.) Collectors and special deputies may administer oaths.

Hereafter Collectors of Customs and their special deputies shall be competent to administer oaths to officers of the Revenue Marine Service and employees in the Customs Service required by sections seventeen hundred and ninety [and twenty-six hundred and ninety-three] of the Revised Statutes.

Act March 15, 1898, c. 68, § 1, 30 Stat. 286.

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1899, cited above.

It superseded a similar provision made by Act March 3, 1893, c. 208, § 1, 27 Stat. 577.

The words of this section, "and twenty-six hundred and ninety-three," inclosed in brackets, were superseded by the reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327. See note to R. S. § 2693, post, in this chapter.

§ 5361. (R. S. § 2622.) Duties of collector where no naval officer is appointed.

At ports to which a collector and surveyor only are appointed, the collector shall solely execute all the duties in which the co-

operation of the naval officer is requisite at the ports where a naval officer is appointed. And he shall act in like manner in case of the disability or death of the naval officer, until a successor is appointed, unless there is a deputy duly authorized under the hand and seal of the naval officer, who in that case shall continue to act until an appointment is made.

Act March 2, 1799, c. 22, § 21, 1 Stat. 643.

Cited without definite application,
Pacific Creosoting Co. v. U. S. (1912)
196 Fed. 35, 116 C. C. A. 50.

§ 5362. (R. S. § 2623.) Duties of collector where a collector only is appointed.

At ports to which a collector only is appointed, the collector shall solely execute all the duties in which the co-operation of the naval officer is requisite, at ports where a naval officer is appointed, and he shall also, as far as may be, perform all the duties prescribed for surveyors at ports where surveyors are authorized.

Act March 2, 1799, c. 22, § 21, 1 Stat. 643.

(R. S. § 2624. Superseded.)

This section was as follows:

"At ports of delivery to which no surveyor is appointed, and at such ports only, the collector may, from time to time, when it is necessary, employ a proper person to perform the duties of surveyor, who shall be entitled to the like compensation with an inspector during the time he is employed."

It was superseded by the abolition of ports of delivery not specifically mentioned as ports of entry, and the grant of authority to the Secretary of the Treasury to "cause to be stationed at places in the various collection districts, though not named as ports of entry, officers or employés of the customs service with authority to enter and clear vessels, to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws," by sections 2 and 9 of the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

§ 5363. (R. S. § 2625.) Performance of collector's duties in case of disability.

In case of the disability or death of a collector, the duties and authorities vested in him shall devolve on his deputy, if any there be at the time of such disability or death, for whose conduct the estate of such disabled or deceased collector shall be liable; and, if there be no deputy, they shall devolve upon the naval officer of the same district, if any there be; and if there be no naval officer, they shall devolve upon the surveyor of the port appointed for the residence of such disabled or deceased collector, if any there be; and if there be no such surveyor, they shall devolve upon the surveyor of the port nearest thereto and within the district.

Act March 2, 1799, c. 22, § 22, 1 Stat. 644.

Notes of Decisions

Resignation of collector.—The term "disability" is comprehensive enough to embrace any cause whereby the surveyor becomes no longer capable of discharging the duties of his office, and in this sense it includes the case of a resignation. (1873) 14 Op. Atty. Gen. 260.

Deputy collectors.—See § 5868, post, as to appointment and delegation of collector's duties to deputies.

Where the office of collector of customs is in "abeyance," the duties thereof, whilst it remains in abeyance, may lawfully be performed by his special deputy, if there be one; if there be no such deputy, then by the naval officer, and so on, as provided herein, in the order there named. (1877) 15 Op. Atty. Gen. 398.

The authority to exercise the duties of the office in that case is, however, not imparted by this section, but by section 1769 R. S. (repealed), within the terms of which latter section the above-named officers (in the order referred to) come, agreeably to the construction given. Id.

Surveyor.—If there be no collector of the port of Galena, Ill., and all the duties of that office are imposed upon the surveyor of customs, then his acts done in performance of the duties and functions of the office of collector of the

port are as valid and effective as if done by a collector of the port. His certificate, in conjunction with that of the local inspector of steamboats, is sufficient to authorize the Secretary of War to draw his warrant as provided in the act of Congress authorizing the city of Galena, Ill., to complete certain improvements of the channel of the Galena river. (1894) 20 Op. Atty. Gen. 700.

§ 5364. (R. S. § 2626.) Duties of naval officers.

At ports to which there are appointed a collector, naval officer, and surveyor, it shall be the duty of the naval officer—

First. To receive copies of all manifests and entries.

Second. To estimate, together with the collector, the duties on all merchandise subject to duty, and no duties shall be received without such estimates.

Third. To keep a separate record of such estimates.

Fourth. To countersign all permits, clearances, certificates, debentures, and other documents, to be granted by the collector.

Fifth. To examine the collector's abstracts of duties and other accounts of receipts, bonds, and expenditures, and certify the same if found right.

Act March 2, 1799, c. 22, § 21, 1 Stat. 642.

Naval officers were required at the close of each quarter, and oftener, if directed by the Secretary of the Treasury, to examine the books, accounts, returns, and money on hand of the collectors in their respective districts by R. S. § 3650, post, § 6654.

§ 5365. (R. S. § 2627.) Duties of surveyors where collectors and naval officers are appointed.

At ports to which there are appointed a collector, naval officer, and surveyor, it shall be the duty of the surveyor, who shall be in all cases subject to the direction of the collector—

First. To superintend and direct all inspectors, weighers, measurers, and gaugers within his port.

Second. To report once in every week to the collector the name or names of all inspectors, weighers, gaugers, or measurers who are absent from or neglect to do their duty.

Third. To visit or inspect the vessels which arrive in his port, and make a return in writing every morning to the collector of all vessels which have arrived from foreign ports during the preceding day; specifying the names and denominations of the vessels, the masters' names, from whence arrived, whether laden or in ballast, to what nation belonging, and, if American vessels, whether the masters thereof have or have not complied with the law, in having the required number of manifests of the cargo on board, agreeing in substance with the provisions of law.

Fourth. To put on board each of such vessels one or more inspectors immediately after their arrival in his port.

Fifth. To ascertain the proof, quantities, and kinds of distilled spirits imported, rating such spirits according to their respective degrees of proof, as defined by the laws imposing duties on spirits.

Sixth. To examine whether the goods imported in any vessel, and the deliveries thereof, agreeably to the inspector's returns, correspond with the permits for landing the same; and if any error or disagreement appears, to report the same to the collector, and to the naval officer, if any.

Seventh. To superintend the lading for exportation of all goods entered for the benefit of any drawback, bounty, or allowance, and examine and report whether the kind, quantity, and quality of the goods, so laden on board any vessel for exportation, correspond with the entries and permits granted therefor.

Eighth. To examine, and, from time to time, and particularly on the first Mondays of January and July in each year, try the weights, measures, and other instruments used in ascertaining the duties on

imports, with standards to be provided by each collector at the public expense for that purpose; and where disagreements or errors are discovered, to report the same to the collector; and to obey and execute such directions as he may receive for correcting the same, agreeably to the standards.

Act March 2, 1799, c. 22, § 21, 1 Stat. 642.

Surveyors were required at the close of each quarter, and oftener, if directed by the Secretary of the Treasury, to examine the books, accounts, returns, and money on hand of the collectors in the respective districts by R. S. § 3650, post, § 6654.

Proceedings on returns of deliveries of goods unladed, mentioned in subsection 6, were prescribed by R. S. §§ 2887–2890, post, §§ 5579–5582.

Cited without definite application, Hogarth Shipping Co. v. Federal Sugar Refining Co. (D. C. 1909) 174 Fed. 278, 280.

§ 5366. (R. S. § 2628.) Duties of surveyor where surveyor only is appointed.

At ports to which surveyors only are appointed, the surveyor shall perform all the duties enjoined upon surveyors by the preceding section; and shall also receive and record the copies of all manifests transmitted to him by the collector; shall record all permits granted by the collector, distinguishing the gauge, weight, measure, and quality of goods specified therein; and shall take care that no goods be unladen or delivered from any ship or vessel without a proper permit for that purpose.

Act March 2, 1799, c. 22, § 21, 1 Stat. 643.

The terms of office of surveyors not continued as collectors, except surveyors at certain ports, ceased upon the reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

The duties of surveyors to enroll and license vessels employed in the coasting-trade and fisheries, were prescribed by R. S. § 4344, post, § 8093.

Surveyors at the ports of Cold Spring, Greenport, and Port Jefferson, in the State of New York, were authorized to enroll and license vessels employed in the coasting trade and fisheries and to enter and clear and grant registers to vessels employed in the whale-fisheries, by R. S. § 4345, post, § 8094.

Notes of Decisions

Validity of acts.—If there be no collector of the port at Galena, Ill., and all the duties of that office are imposed upon the surveyor of customs, then his acts done in the performance of the duties and functions of the office of collector of the port are as valid and effective as if done by a collector of the port. (1894) 20 Op. Atty. Gen. 700.

Disbursements.—Surveyors of customs at ports where there are no collectors are not to be considered as collectors, and therefore within the provisions of section 6665, post, which requires collectors of customs to disburse all moneys that may be appropriated for the construction of customhouses, courthouses, post offices, etc. (1907) 26 Op. Atty. Gen. 108.

Cited without definite application, The Lace House v. U. S. (1905) 141 Fed. 869, 875, 73 C. C. A. 103.

§ 5367. (R. S. § 2629.) Performance of surveyor's duties in case of disability.

In case of the disability or death of a surveyor, the collector of the district may authorize some fit person to perform his duties and exercise his powers; and the powers of the person so authorized shall continue until a successor is duly appointed, and ready to enter upon the execution of his office.

Act March 2, 1799, c. 22, § 22, 1 Stat. 644.

Notes of Decisions

Disability.—The duties of the office of surveyor of customs, whilst it is in "abeyance," are, by section 1769, R. S. (repealed), construed in connection with this section, devolved upon such customs officer as the collector of the district may authorize to perform them. (1877) 15 Op. Atty. Gen. 401.

Cited without definite application, The Lace House v. U. S. (1905) 141 Fed. 869, 875, 73 C. C. A. 103.

§ 5368. (R. S. § 2630.) Deputy collectors.

Every collector of the customs shall have authority, with the approval of the Secretary of the Treasury, to employ within his district such number of proper persons as deputy collectors of the customs as he shall deem necessary; and such deputies are declared to be officers of the customs. And in cases of occasional and necessary absence, or of sickness, any collector may exercise his powers and perform his duties by deputy, duly constituted under his hand and seal, and he shall be answerable for the acts of such deputy in the execution of such trust.

Act March 2, 1799, c. 22, § 22, 1 Stat. 644. Act March 3, 1817, c. 109, § 7, 3 Stat. 397.

The provisions of this section may be superseded to some extent by the grant of authority to the Secretary of the Treasury to appoint a "deputy collector to have charge of each port of entry" by section 7 of the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

See note to R. S. § 2613, ante, § 5347.

Notes of Decisions

Appointment.—A collector, when authorized by the secretary of the treasury, may appoint as many deputies as may be necessary. Schmaire v. Maxwell (C. C. 1856) Fed. Cas. No. 12,460.

The appointment of the assistant collector at the port of New York (who was formerly employed by the collector with the approval of the Secretary of the Treasury) should now, by virtue of the effect of section 10593, post, be made by the President with the advice and consent of the Senate. (1885) 18 Op. Atty. Gen. 98.

Bond.—Although no bond for a deputy collector of customs is prescribed by law, the collector may exact one for his security against defalcation, either before or after the appointment of the deputy; but such bond does not impose on the deputy the performance of other or greater duties than those required by law. Dignan v. Shields (1879) 51 Tex. 322.

A bond executed by a deputy collector of customs to his principal, for the faithful performance of a cashier's duties, imposes no greater duties than are required by law; nor is it invalid because exacted colore officii. Id.

Compensation.—A deputy collector acting also as inspector may receive additional compensation therefor. U. S. v. Morse (C. C. 1844) Fed. Cas. No. 15,820.

In an action by a deputy collector against the collector of customs to recover for his services, if it appear that it was the understanding of both parties that the defendant would be personally responsible for the plaintiff's services, plaintiff may recover, though it is the custom to pay deputies out of funds collected, and charge the same to the government. Fuller v. Briggs (1849) 22 Vt. 80.

In an action by a deputy collector of customs to recover for his services, a declaration alleging that the defendant was indebted to the plaintiff for work and labor performed as deputy collector at the request of the defendant, and that the defendant in consideration thereof afterwards promised to pay the defendant, is sufficient. Id.

Though the government does not allow the collector's account for money paid for the services of a deputy collector unless the account is accompanied by a voucher executed and sworn to by the deputy, showing that the money has in fact been paid to him, yet it is not necessary, in order that the deputy may recover from the collector for his services, that he will first execute such voucher, but it is sufficient if he offer to furnish the voucher when the money is paid to him. Id.

Powers and duties in general.—See § 5363, ante, as to performance of collector's duties by deputy.

Collecting freight charges not an official act. Cleveland, C., C. & I. R. Co. v. McClung (1886) 7 Sup. Ct. 262, 267, 119 U. S. 454, 30 L. Ed. 465.

The offices of deputy collector and of inspector may be held by the same person. Act 1822, c. 107. U. S. v. Morse (C. C. 1844) Fed. Cas. No. 15,820.

Reappraisers may be sworn by a deputy collector. Falleck v. Barney (C. C. 1862) Fed. Cas. No. 4,625; Lehmaier v. Maxwell (C. C. 1856) Fed. Cas. No. 8,-214.

Deputy may administer any oath required to be administered by the collector. Schmaire v. Maxwell (C. C. 1856) Fed. Cas. No. 12,460.

At a port where there are no appraisers, a deputy collector may examine goods entered for warehousing to ascertain their dutiable value, as well as the collector. Spring v. Russell (C. C. 1868) Fed. Cas. No. 13,261.

A deputy collector has no authority to waive a tender proposed to be made by importers, by acknowledging a tender when none is made. U. S. v. Nash, (C. C. 1869) Fed. Cas. No. 15,856.

The deputy collector is a permanent officer of the customs, and may exercise and perform the functions, powers, and

duties of the collector. U. S. v. Barton (D. C. 1833) Fed. Cas. No. 14,534.

The authority of a deputy collector of customs ceases upon the removal of the collector. (1842) 4 Op. Atty. Gen. 26.

A collector of customs may delegate to his deputy the duty of receiving and keeping customs moneys, as cashier in his office, without violating the regulations which prohibit customs officers from performing their duties by substitutes. Dignan v. Shields (1879) 51 Tex. 322.

Term of office.—Although a deputy collector of customs is constituted and appointed by the collector, with the approval of the secretary of the treasury, the tenure of office of such deputy is de facto at the will of the collector. Dignan v. Shields (1879) 51 Tex. 322.

The provision made for the continuance of deputies, in cases of disability or death of collectors, does not apply to cases where collectors have been removed from office. (1842) 4 Op. Atty. Gen. 26.

Resignation.—While a final resignation of a deputy collector of customs cannot be withdrawn, a prospective resignation may be withdrawn at any time before acceptance, or after acceptance, with consent of the authority accepting, if no new rights have intervened. Bunting v. Willis (Va. 1876) 27 Grat. 144, 21 Am. Rep. 338.

A deputy collector of customs has an absolute right to resign his office. Id.

Cited without definite application, Wynne v. U. S. (1910) 30 Sup. Ct. 447, 450, 217 U. S. 234, 54 L. Ed. 748.

§ 5369. (Act Feb. 6, 1907, c. 471.) Additional deputy collectors and other officers; duties; bonds.

That the Secretary of the Treasury be, and he is hereby, authorized to appoint a deputy collector of customs and other customs officers at ports and subports of entry in the several customs collection districts, and deputy collectors thus appointed shall have authority to receive entries, collect duties, and to perform any and all functions prescribed by law for collectors of customs, subject to such regulations and restrictions as the Secretary of the Treasury shall prescribe: Provided, That whenever the Secretary of the Treasury shall appoint a deputy collector at a port of entry where there is no collector, he shall designate the collector through whom such deputy shall report, but the bond of such deputy shall run to the Government, and the deputy shall be financially responsible directly to the Government. (34 Stat. 880.)

This was a provision of an act to prescribe the duties of deputy collectors of customs, cited above.

The provision preceding the proviso was superseded by the grant of similar authority to the Secretary of the Treasury by sections 7 and 9 of the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

§ 5370. (R. S. § 2631.) In case of sickness or absence, collectors and surveyors may authorize some officer or clerk to act.

In case of the sickness or unavoidable absence of any collector or surveyor of customs from his office, he may, with the approval of the Secretary of the Treasury, authorize some officer or clerk under him to act in his place, and to discharge all the duties required by law of such collector or surveyor in his capacity as disbursing agent; and the official bond given by the principal of the office shall be held to cover and apply to the acts of the person appointed to act in his place in such cases.

Act March 3, 1873, c. 271, 17 Stat. 604.

Provisions for the performance, temporarily, of the duties of appraisers and assistant appraisers, in case of vacancy in the office, or of sickness, disability, or absence, were made by Act March 3, 1905, c. 1413, post, §§ 5395, 5396.

§ 5371. (R. S. § 2632.) Deputies of naval officers and surveyors.

Every naval officer and surveyor, in cases of occasional and necessary absence, or of sickness, and not otherwise, may respectively exercise and perform his functions, powers, and duties by deputy, duly constituted under their hands and seals respectively, for whom,

in the execution of their trust, they shall respectively be answerable.

Act March 2, 1799, c. 22, § 22, 1 Stat. 644.

Notes of Decisions

Naval officer's deputy.—A special deputy (without compensation as such), constituted by the naval officer at the port of New York to perform the duties of the latter in cases of occasional and necessary absence or of sickness, may at the same time be appointed to a clerkship in the office of such naval officer, and be allowed, under section 2745 R. S., a compensation for his services *as clerk* greater in amount than that affixed by law to the permanent office of deputy naval officer at the same port, provided it do not exceed the rate usually paid for similar services. This case distinguished from the cases considered in the opinion of June 4, 1877 (15 Op. Atty. Gen. 286). (1877) 15 Op. Atty. Gen. 356.

§ 5372. (R. S. § 2633.) When deputies may be clothed with powers of collectors.

The Secretary of the Treasury is authorized, whenever in his opinion the public interest demands it, to clothe any deputy collector at a port other than the principal port of entry, with all the powers of his principal appertaining to official acts; and he may require such deputy to give bond to the United States, in such amount as the Secretary may prescribe, for the faithful discharge of his official duties.

Act July 18, 1866, c. 201, § 29, 14 Stat. 185. Act July 27, 1868, c. 273, § 3, 15 Stat. 240.

The Secretary of the Treasury was authorized to "appoint a deputy collector to have charge of each port of entry, who shall perform such duties" as the Secretary shall determine, by section 7 of the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Cited without definite application,
Wynne v. U. S. (1910) 30 Sup. Ct. 447, 450, 217 U. S. 234, 54 L. Ed. 748.

(R. S. § 2634. Superseded.)

This section was as follows:

"The Secretary of the Treasury may, from time to time, except in cases otherwise provided, limit and fix the number and compensation of the clerks to be employed by any collector, naval officer, or surveyor, and may limit and fix the compensation of any deputy of any such collector, naval officer, or surveyor."

It was superseded by the salary allowances for clerks and deputies prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

The Secretary of the Treasury was required to classify, as nearly as possible in conformity with R. S. § 163, ante, § 242, the clerks and persons employed by the collector, naval officer, surveyor, and appraisers in all customs districts, where the whole number of clerks and persons employed shall be as many as fifty, by the Civil Service Act of Jan. 16, 1883, c. 27, § 6, set forth ante, § 3277.

The permanent appropriation for the expenses of collecting the revenue from customs, made by R. S. § 3687, was repealed by Act Aug. 24, 1912, c. 355, § 1, 37 Stat. 434.

§ 5373. (Act Dec. 18, 1890, c. 22.) Neglect or minor delinquency of customs officers or employés.

The several collectors, naval officers, surveyors, and appraisers shall have power, with the approval of the Secretary of the Treasury, as punishment for any neglect or minor delinquency the punishment whereof is not prescribed by law, to suspend from duty with loss of pay for a period not to exceed thirty days for any one cause, any customs officer or employee nominated or appointed and subordinate to such collector, naval officer, surveyor, or appraiser: Provided, however, that the Secretary of the Treasury may, on application by the suspended person within one year from the expiration of the suspension, in his discretion pay the whole or any

part of the pay forfeited by reason of said suspension. (26 Stat. 690.)

This was an act entitled "An act providing for the maintenance of discipline among customs officers."

Notes of Decisions

Liability of collector for negligence of his subordinates.—The collector of customs is not responsible in damages for negligent acts on the part of his subordinates, in the absence of proof that such subordinates were known by him to be careless or incompetent, or were selected by him without proper care. Robertson v. Sichel (1888) 8 Sup. Ct. 1286, 1290, 127 U. S. 507, 32 L. Ed. 203; Rubens v. Robertson (C. C. 1889) 38 Fed. 86.

Plaintiff's trunk, on her arrival at the port of New York, was examined by the custom house officials, and erroneously decided to contain dutiable articles, and was therefore detained on the dock, in accordance with the regulations of the custom house, until it could be sent to the public store for appraisement. Before it could be removed it was destroyed by fire. Held, that the collector, being a public officer, was not chargeable with the negligence or misconduct of his subordinates in the course of their employment, in the absence of evidence that such subordinates were incompetent or improperly selected. Id.

§ 5374. (Act Aug. 28, 1890, c. 812, § 1.) Leave of absence of customs employés.

All officers and employees of the customs service of the Government who receive a per diem compensation shall be entitled to receive the same leave of absence as is provided for clerks and employees in the several executive departments at Washington, District of Columbia, by chapter one hundred and twenty-eight, section four, of the United States Statutes at Large, volume twenty-two, pages five hundred and sixty-three and five hundred sixty-four, approved March third, anno Domini eighteen hundred and eighty-three. (26 Stat. 362.)

This section and the section next following were an act entitled "An act providing for leave of absence for officers and employés in the customs service of the government who receive per diem compensation."

The per diem compensation of officers and employés of the Customs Service was prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

The provisions of Act March 3, 1883, c. 128, § 4, mentioned in this section, were incorporated into Act March 3, 1893, c. 211, § 5, which, as amended by Act March 15, 1898, c. 68, § 7, is set forth ante, § 238.

Notes of Decisions

Leave of absence.—The subordinate officers and employés of the customs service, wherever employed, and whether they receive an annual or per diem compensation, are entitled to the same privileges of the statute with reference to leaves of absence as clerks and employés in the executive departments at Washington. (1898) 22 Op. Atty. Gen. 77.

§ 5375. (Act Aug. 28, 1890, c. 812, § 2.) Rules and regulations to carry act into effect.

The Secretary of the Treasury shall make all rules and regulations necessary to carry the provisions of this act into effect. (26 Stat. 362.)

§ 5376. (R. S. § 2635.) Table of fees to be kept posted up.

Every collector, naval officer, and surveyor shall cause to be affixed, and constantly kept in some public and conspicuous place of his office, a fair table of the rates of fees and duties demandable by law, and shall give a receipt for the fees received by him, specifying the particulars whenever required so to do; and for every failure so to do, he shall be liable to a penalty of one hundred dollars, recoverable to the use of the informer.

Act March 2, 1799, c. 22, § 73, 1 Stat. 680.

§ 5377. (R. S. § 2636.) Penalty for extortion by customs officers.

Every officer of the customs who demands or receives any other or greater fee, compensation, or reward than is allowed by law, for

›rming any duty or service required from him by law, shall be ɜ to a penalty of two hundred dollars for each offense, recovera- o the use of the party aggrieved.

Act March 2, 1799, c. 22, § 73, 1 Stat. 680.

Bribery of customs officers or employés, and soliciting or demanding unlawful es by such officers, are punishable by the Underwood Tariff Act of Oct. 3, 913, c. 16, § III, AA, BB, post, §§ 5331, 5332, which re-enacted provisions of ıe Customs Administration Act of June 10, 1890, c. 407, §§ 26, 27, as amend- l by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 103.

Provisions prescribing a punishment for customs officers receiving part of ıformer's fees were made by Act June 22, 1874, c. 391, § 7, post, § 5801.

Notes of Decisions

cting illegal deposit.—This section ended to apply only to extortion, loes not contemplate mulcting a tor for exacting a deposit to cov- es, pursuant to the regulation of ecretary of the treasury. Hedden lin (C. C. 1887) 31 Fed. 266.

entitle one suing a collector for a penalty to recover, he must show that a charge received by the collector was illegal, and that it was received for a service that plaintiff had a right to require from the collector without charge. Iselin v. Hedden (D. C. 1886) 28 Fed. 416, reversed (C. C. 1887) 31 Fed. 266.

78. (R. S. § 2637.) Penalty for extortion by inspectors, weigh- ers, gaugers, or measurers.

any inspector, gauger, weigher, or measurer shall receive any uity, fee, or reward for any services performed by virtue of this , other than is by law allowed, or if any gauger, weigher, or surer, employed as such by the public, in the districts of Ports- th, Salem and Beverly, Boston and Charlestown, Providence, York, Philadelphia, Baltimore, Norfolk and Portsmouth, or rleston, shall gauge, weigh, or measure any article or articles, r than shall be directed by the proper officer, in order to ascer- the duties to be received, or the drawbacks to be allowed thereon, ıall make a return of the weight, gauge, or measure of any mer- dise laden, or to be laden, on board any vessel for the benefit rawback upon exportation, without having actually weighed, ɜed, or measured the same, as the case may require, after such chandise shall have been notified to the collector and entered exportation, he shall be liable for the first offense to a penalty fty dollars, and for each subsequent offense to a penalty of two lred dollars, and be discharged from the public service. And y inspector or other officer of the customs shall certify the ship- t of any merchandise entitled to drawback on exportation with- having duly inspected and examined the same, after he shall received the permit for lading such merchandise, or if the unt of such drawback shall be estimated according to weight, ɜe, or measure, until such merchandise shall be first weighed, ɜed, or measured, as the case may require, he shall be subject ıe like penalties, and be discharged from the public service.

Act March 2, 1799, c. 22, § 73, 1 Stat. 680.

In lieu of the districts mentioned in this section, other districts with differ- ıt boundaries and names, were established by the Plan of Reorganization of ıe Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, 1, ante, § 5327.

The punishment of revenue officers admitting or aiding in admitting to entry ıerchandise upon the payment of less than the amount of the duty was pre- ɜribed by R. S. § 5444, which was incorporated into the Criminal Code, in ɜction 68 thereof, post, § 10246, and was repealed by section 341 thereof, ost, § 10515.

See note to R. S. § 2636, ante, § 5377.

79. (R. S. § 2638.) Customs officers, etc., not to own vessels or engage in importation.

o person employed under the authority of the United States, in collection of duties on imports or tonnage, shall own, either in le or in part, any vessel, or act as agent, attorney, or consignee

for the owner or owners of any vessel, or of any cargo or lading on board the same; nor shall any such person import, or be concerned directly or indirectly in the importation of any merchandise for sale into the United States. Every person who violates this section shall be liable to a penalty of five hundred dollars.

Act March 2, 1799, c. 22, § 86, 1 Stat. 695.

Provisions prohibiting under penalty the Secretary of the Treasury and certain named officers from being interested in the business of trade or commerce, or from being concerned in the purchase or disposition of State or federal securities, were made by R. S. § 243, ante, § 377.

Provisions prohibiting disbursing officers from trading in public funds or property were made by R. S. § 1788, which was incorporated into the Criminal Code, in section 103 thereof, post, § 10272, and was repealed by section 341 thereof, post, § 10515.

Officers and employés in the customs service were required, as a condition precedent to the payment of compensation for their services, to make oath that they had not received improper consideration for official services, by R. S. § 1790, ante, § 3265.

Customs officers were prohibited from having any personal ownership of, or interest in, any bonded warehouse or general-order store by Act June 22, 1874, c. 391, § 24, post, § 5683.

§ 5380. (R. S. § 2639, as amended, Act July 31, 1894, c. 174, § 19.) Collectors, naval officers, and surveyors must keep and render accounts.

Every collector, naval officer, and surveyor shall keep accurate accounts of all fees and official emoluments received by him, and of all expenditures, specifying expenditures for rent, fuel, stationery, and clerk-hire, and shall annually, within ten days after the thirtieth day of June, transmit the same, verified by oath, to the proper Auditor, who shall annually lay an abstract of the same before Congress. Every collector, naval officer, or surveyor who omits or neglects to keep such account, or to transmit the same so verified, shall be liable to a penalty of not more than five hundred dollars.

Act March 2, 1799, c. 23, § 2, 1 Stat. 708. Act March 3, 1849, c. 108, § 12, 9 Stat. 396. Act July 31, 1894, c. 174, § 19, 28 Stat. 210.

This section, as enacted in the Revised Statutes, was amended by striking out after the words "verified by oath, to the," the words "Commissioner of Customs," and by inserting in lieu thereof the words "proper Auditor," as set forth here, by the Dockery Act of July 31, 1894, c. 174, § 19, cited above.

The offices of Commissioner of Customs and Deputy Commissioner of Customs were abolished by section 4 of said act, set forth ante, § 402.

The "proper Auditor" referred to in this section as amended was designated by section 7 of said Act July 31, 1894, set forth ante, § 420, as the Auditor for the Treasury Department.

Provisions requiring customs officers to send with their reports papers and records as the Secretary of the Treasury may direct were made by section 20 of said act, set forth ante, § 436.

Provisions prescribing a penalty for officers failing to make returns or reports, at the times designated by law, other than their accounts, were made by R. S. § 1780, which was incorporated into the Criminal Code, in section 101 thereof, post, § 10269, and was repealed by section 341 thereof, post, § 10515.

The fees authorized by R. S. § 2654, post, § 5393, for the issuance of bills of health, were abolished by Act June 19, 1886, c. 421, § 1, post, § 8138.

The fees authorized by R. S. § 4382, post, § 8137, for the entry direct from a foreign port and for clearance direct to a foreign port of a vessel navigating the waters of the northern, northeastern, and northwestern boundaries, were abolished by a provision of Act March 3, 1897, c. 389, § 9, post, § 8139.

The compensation of collectors, Naval officers, and Surveyors was prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327. See note to R. S. § 2613, ante, § 5347.

Notes of Decisions

Disbursements. — Disbursements of collectors of ports. Andrews v. U. S. (C. C. 1842) Fed. Cas. No. 381.

Cited without definite application, U. S. v. Lawson (1879) 101 U. S. 164, 168, 25 L. Ed. 860.

1. (R. S. § 2640.) Their duty in respect to accounts, and the penalty for omission.

llectors, naval officers, and surveyors shall attend in person at orts to which they are respectively appointed; and shall keep nd true accounts and records of all their transactions, as officers e customs, in such manner and form as may from time to time rected by the Secretary of the Treasury; and shall at all times it their books, papers, and accounts to the inspection of such ons as may be appointed for that purpose; and shall once in month, or oftener if they shall be required, transmit their acts for settlement to the officer or officers whose duty it shall be ake such settlement. And if any collector, naval officer, or sur- shall omit to keep fair and true accounts, or shall refuse to it forthwith his books, papers, and accounts to inspection as red by law, or if any collector shall omit or refuse to render his unts for settlement, for a term exceeding three months after the shall have been required by the proper officer, the delinquent r shall be liable to a penalty of one thousand dollars, to be re- ed with costs of suit.

Act March 2, 1799, c. 22, § 21, 1 Stat. 643.

Notes of Decisions

unting.—Under Act March 2, § 21 (1 Stat. 644), which made duty of collectors of customs "to the order of the officer who shall thorized to direct the payment f the whole of the moneys which nay respectively receive" by vir- that act, payments and disburse- of moneys received in his official ty, if made by the direction of the ary of the treasury, are within the of the duty of a collector of cus- Gaussen v. U. S. (1878) 97 U. , 24 L. Ed. 1009.

evy on real estate under a dis- warrant issued by the solicitor of easury under Act May 15, 1820 § 6624), against a collector of ustoms from whom a balance of account has been found to be due by accounting officers of the treasury, and the marshal's return that he has so levied, are prima facie evidence of the regularity of the levy. Murray v. Hoboken Land & Imp. Co. (1885) 59 U. S. (18 How.) 272, 15 L. Ed. 372.

Collector of port, by failing to keep and transmit yearly accounts of incidental expenses, does not forfeit right to reimbursement, but is only liable to penalty. Andrews v. U. S. (C. C. 1842) Fed. Cas. No. 381.

The treasury department acts in a judicial capacity in determining the charges to which a collector is subject, and cannot subsequently vary such adjudication to his prejudice. U. S. v. Collier (C. C. 1855) Fed. Cas. No. 14,833.

2. (R. S. § 2641.) Accounts must include all emoluments as well as expenses.

ery collector, naval officer, and surveyor shall account to the sury for all his emoluments, and also for all the expenses inci- to his office. Such accounts, as well of expenses as of emolu- s, shall be rendered on oath, at such times and in such forms, hall be supported by such proofs, as shall be prescribed by the etary of the Treasury.

Act May 7, 1822, c. 107, § 12, 3 Stat. 695.

This section may be superseded in part by the Reorganization of the Customs ervice pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 27.

See note to R. S. § 2639, ante, § 5380.

Notes of Decisions

luments.—Commissions on duty are a part of such "emoluments." v. Curtis (C. C. 1844) Fed. Cas. 808.

amount received by officers of stoms for forfeitures constitutes t of the emoluments to which the limitation of the maximum of compensation allowed by law applies. Hooper v. Fifty-One Casks of Brandy (D. C. 1848) Fed. Cas. No. 6,674.

Cited without definite application, U. S. v. Lawson (1879) 101 U. S. 164, 168, 25 L. Ed. 860.

(R. S. § 2642. Superseded.)

This section was as follows:

"The services performed by occasional inspectors shall be particularly detailed in the accounts to be transmitted to the Treasury, and certified by the naval officer or surveyor of the district, if there be any, as to the necessity for and the performance of such services."

It was superseded by the allowances for compensation of inspectors prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

§ 5383. (R. S. § 2643.) List of clerks and account of expenditures for stationery, etc., to be furnished.

Every collector, naval officer, and surveyor shall, together with his accounts of the expenses incident to his office, render a list of the clerks employed by him, stating the rate of compensation allowed to each, and the duties which they severally perform; and also an account of the sums paid for stationery, official or contingent expenses, fuel, and office-rent, stating the purposes for which the premises rented are applied.

Act May 7, 1822, c. 107, § 13, 3 Stat. 695.
See note to R. S. § 2641, ante, § 5382.

Notes of Decisions

Clerks.—A clerk in the office of a collector of customs is not a public officer charged with the safe-keeping of public money. U. S. v. Smith (1888) 8 Sup. Ct. 595, 597, 124 U. S. 525, 31 L. Ed. 534.

§ 5384. (R. S. § 2644.) Accounts of collectors upon northern, etc., frontiers; monthly estimate in advance.

The collector of customs of each of the districts on the northern, northeastern, and northwestern frontiers shall render, with his accounts of the expenses incident to his office, a list of the clerks and other officers of the customs employed by him, stating the rate of compensation allowed to each, the duties they severally perform, and also an account of the sums paid for stationery, fuel, and all other office expenses, including office-rent; for all of which expenses he shall submit an estimate each month in advance, and shall state the purposes for which any premises are used; and shall also render an accurate account of all fees and commissions collected by him.

Act March 3, 1863, c. 87, § 1, 12 Stat. 760.
See note to R. S. § 2641, ante, § 5382.

§ 5385. (R. S. § 2645.) Accounts to be rendered quarterly.

All accounts for salary, compensation, and emoluments shall be rendered quarterly, at the end of each quarter of the fiscal year.

Act Feb. 11, 1846, c. 7, § 2, 9 Stat. 3.
See note to R. S. § 2641, ante, § 5382.

§ 5386. (R. S. § 2646.) Books to be furnished to customs officers.

All blank-books, blanks, and stationery of every kind required by collectors and other officers of the customs shall, so soon as they can be prepared for delivery, by or under the direction of the Secretary of the Treasury, be furnished to them for the use of their respective offices, upon requisition made by them, and the expense of such books, blanks, and stationery shall be paid out of the appropriation for defraying the expenses of collecting the revenue from customs.

Act July 28, 1866, c. 293, § 5, 14 Stat. 309.

The Secretary of the Treasury was authorized to prescribe uniform blank forms and to cause such forms to be printed and kept on sale at ports of entry by section 7 of the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Notes of Decisions

Certificate from books.—A collector's certificate from the import books, stating that certain customhouse bonds were paid, is not admissible until article 2249, Civ. Code La., be complied with, by first proving loss of the originals,

Johnston v. Cox (1839) 13 La. 384, ante, as to power of secretary of treasury to make rules and regulations governing the enforcement of customs collections.

7. (R. S. § 2647.) Quarterly account of collection of fines, tc., required.

ery collector of customs, every naval officer, and every sur- performing or having performed the duties of a collector, render a quarter-yearly account, under oath, to the Secretary e Treasury, in such form as the Secretary shall prescribe, of ms of money by each of them respectively received or collected nes, penalties, or forfeitures, or for seizure of merchandise, or compromises made upon any seizure; or on account of suits ited for frauds against the revenue laws; or for rent and ge of merchandise, which may be stored in the public store- s, and for which a rent is paid beyond the rents paid by the tor or other such officer; or for custody of goods in bonded ouses; and if from such accounting it shall appear that the y received in any one year by any collector, naval officer, or yor, on account and for rents and storage, and for fees and ments, shall in the aggregate exceed the sum of two thousand s, such excess shall be paid by the collector, naval officer, or yor, as the case may be, into the Treasury as public money.

ct March 3, 1841, c. 35, § 5, 5 Stat. 432. Act March 3, 1857, c. 108, § 11 Stat. 229. Act July 18, 1866, c. 201, § 40, 14 Stat. 187.

he provisions of this section as to compensation of collectors, naval officers, surveyors, were superseded by the allowances prescribed by the Plan of Re- anization of the Customs Service pursuant to the provisions of Act Aug. 1912, c. 355, § 1, ante, § 5327.

ee note to R. S. § 2613, ante, § 5382.

Notes of Decisions

rical.—History and effect of early ion. U. S. v. Walker (1859) 22 99, 305, 16 L. Ed. 382; Donovan S. (1874) 23 Wall. 383, 399, 23 104; U. S. v. Lawson (1879) 101 84, 165, 25 L. Ed. 860.

o compensation under supersed- visions of this section, see U. S. donald (1866) 5 Wall. 647, 18 512; Champney v. Bancroft (C. 1) Fed. Cas. No. 2,587; U. S. v. (C. C. 1855) Fed. Cas. No. 14,- Same v. MacDonald (C. C. 1864) Fed. Cas. No. 15,668; Bachelor v. U. S. (1872) 8 Ct. Cl. 235; Lawson v. Same (1878) 14 Ct. Cl. 332; Ellsworth v. Same (1878) 14 Ct. Cl. 382; (1843) 4 Op. Atty. Gen. 261; (1856) 8 Op. Atty. Gen. 93; (1857) 12 Op. Atty. Gen. 386; (1869) 13 Op. Atty. Gen. 36; (1870) 13 Op. Atty. Gen. 213, 297, 312; (1876) 15 Op. Atty. Gen. 117.

Cited without definite application, U. S. v. Ellsworth (1879) 101 U. S. 170, 25 L. Ed. 862.

8. (R. S. § 2648.) Blanks.

lectors and surveyors of the collection-districts on the north- ortheastern, and northwestern frontiers are authorized to keep le, at their several offices, blank manifests and clearances re- d for the business of their districts, and to charge the sum of ents, and no more, for each blank which shall be prepared and ted by them.

ct July 14, 1862, c. 169, § 2, 12 Stat. 572.

ll money received for blanks was required to be covered into the Treasury sections 4 and 7 of the Plan of Reorganization of the Customs Service pur- nt to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

ee note to R. S. § 2646, ante, § 5386.

Notes of Decisions

Fees.—For decision under superseded provision of section, see (1877) 15 Op. Atty. Gen. 654.

9. (R. S. § 2649.) Special agents to examine books, ac- ounts, etc., of collectors, etc.

e Secretary of the Treasury may appoint special agents, not

exceeding fifty-three in number, for the purpose of making the examinations of the books, papers, and accounts of collectors and other officers of the customs, and to be employed generally, under the direction of the Secretary, in the prevention and detection of frauds on the customs revenue; and the expense thereof shall be charged to the "appropriation to defray the expense of collecting the revenue from customs."

Act May 12, 1870, c. 102, § 1, 16 Stat. 122.

The number and compensation of special agents to be appointed under this section were prescribed by provisions of Act March 4, 1911, c. 285, § 1, set forth post, § 5390.

(R. S. § 2650. Superseded.)

This section, as enacted in the Revised Statutes, divided the special agents authorized by R. S. § 2649, ante, § 5389, into three classes: The first class to consist of 19 agents, 2 of whom were to receive $10 a day and expenses, and the rest to receive $8 per day. The second class to consist of 16 agents, each to receive, in addition to the actual expenses incurred, $6 per day. The third class to consist of 18 agents, each to receive, in addition to the expenses actually incurred, $5 per day. It was superseded by a provision of Act March 3, 1891, c. 542, § 1, 26 Stat. 968, which was superseded by a similar provision of Act March 4, 1911, c. 285, § 1, post, § 5390.

§ 5390. (Act March 4, 1911, c. 285, § 1.) Supervising agent and special agents to examine books, accounts, etc., of collectors; number and compensation.

Hereafter the number and compensation of special agents to be appointed by the Secretary of the Treasury under section twenty-six hundred and forty-nine of the Revised Statutes of the United States, shall be as follows:

One supervising agent who shall supervise and direct the special agents of the Treasury Department and who shall receive, in addition to the necessary traveling expenses actually incurred by him, a compensation of four thousand five hundred dollars per annum;

Ten special agents who shall each receive, in addition to the necessary traveling expenses actually incurred by him, a compensation to be fixed by the Secretary of the Treasury, not to exceed twelve dollars per day;

Ten special agents who shall each receive, in addition to the necessary traveling expenses actually incurred by him, a compensation to be fixed by the Secretary of the Treasury, not to exceed ten dollars per day; and

Ten special agents who shall each receive, in addition to the necessary traveling expenses actually incurred by him, a compensation to be fixed by the Secretary of the Treasury not to exceed eight dollars per day. (36 Stat. 1393.)

These were provisions of the sundry civil appropriation act for the fiscal year 1912, cited above.

Previous similar provisions of Act August 15, 1876, c. 287, 19 Stat. 152, and Act March 3, 1891, c. 542, § 1, 26 Stat. 968, were superseded by those of this act.

A general limitation on subsistence allowances, or money in lieu thereof, was made by §§ 3236a, 3236b, ante.

§ 5391. (R. S. § 2651.) Regulations for special agents, and limitations on their number and compensation.

The Secretary of the Treasury may, from time to time, make such regulations not inconsistent with law, for the government of the special agents, as he deems expedient, and may rescind or alter regulations so made. But no special agent, in addition to those authorized by the two preceding sections, shall be appointed or employed upon any business relating to the customs revenue; nor shall any sum be paid to any agent authorized to be employed for

mileage or any other expenses except such as are actually incurred in the discharge of his official duty.

Act May 12, 1870, c. 102, §§ 2, 3, 16 Stat. 123.
See note to R. S. § 2649, ante, § 5389.

Notes of Decisions

Bond in satisfaction of judgment.—Where a bond running to the United States is taken in satisfaction of a judgment in which a special agent is entitled to a share, and judgment is afterwards obtained upon such bond, the United States may enter satisfaction of such judgment, without payment made, and without consent of the special agent. U. S. v. Bacon (C. C. 1877) Fed. Cas. No. 14,492.

§ 5392. (R. S. § 2652.) Customs officers to follow instructions and decisions of Secretary of Treasury.

It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty shall arise as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary of the Treasury shall be conclusive and binding upon all officers of the customs.

Act Aug. 30, 1842, c. 270, § 24, 5 Stat. 566.

Provisions for instructions to prevent importation of adulterated drugs were made by R. S. § 2612, ante, § 5356.

The Secretary of the Treasury was required to direct the superintendence of the collection of the duties on imports by R. S. § 249, ante, § 382.

Provisions relating to the observance of State quarantine regulations and the discharge of cargoes of vessels in quarantine were made by R. S. §§ 4792–4796, post, §§ 9150–9154.

The Secretary of the Treasury was authorized, in case of contagious disease at a port, to remove the revenue officers stationed there to a convenient place in the collection district, by R. S. § 4797, post, § 9179.

The removal of the custom house, in case of insurrection, to a secure place in the district, is authorized by R. S. § 5315, post, § 10157.

Provisions prohibiting the reversal or modification adversely to the government of the decisions of the Secretary of the Treasury relating to customs duties by such Secretary or his successor, except in concurrence with the opinion of the Attorney General or a decision of a court of the United States, and authorizing the Secretary to decline to acquiesce in decisions of inferior courts, were made by Act March 3, 1875, c. 136, § 2, ante, § 383.

Notes of Decisions

Application.—This section applies to the revenue features of the law, and does not affect its criminal feature. U. S. v. Ortega (D. C. 1895) 66 Fed. 713, 715.

Instructions of secretary of treasury.—Although a collector must carry into effect all instructions of the secretary of the treasury relative to the execution of the revenue laws, yet as to third persons the legality of the collector's action is open to judicial review. Tracy v. Quartwout (1836) 10 Pet. 80, 95, 9 L. Ed. 354; Greely v. Thompson (1850) 10 How. 225, 234, 13 L. Ed. 397; U. S. v. Beebe (D. C. 1902) 117 Fed. 670, 680 (affirmed [1903] 122 Fed. 762, 58 C. C. A. 562).

The protest here raises the single question as to the regularity of the collector's action when taken by the direction of the Secretary of the Treasury, and within one year from the original liquidation, the goods having in the meantime gone into consumption. The Secretary had authority to give the directions, the reliquidation was made within a prescribed period fixed by law, and there was no error. Hawley & Letzerich v. U. S. (1912) 3 Ct. Cust. App. 456, citing U. S. v. Hobbs (1912) Id. 256.

The immunity of the United States from suit prevents the state of Louisiana, as a producer of sugar, from maintaining an original bill in the federal Supreme Court against the Secretary and Assistant Secretary of the Treasury to review their judgment as to the duty to be exacted under Tariff Acts July 24, 1897, and Oct. 3, 1913, and the commercial treaty with Cuba Dec. 11, 1902, as made effective by Act Dec. 17, 1903, on importations of Cuban sugar. State of Louisiana v. McAdoo (1914) 34 Sup. Ct. 938, 234 U. S. 627, 58 L. Ed. 1506.

The provisions making conclusive upon all customs officers the decisions of the Secretary of the Treasury upon all questions as to the construction of revenue laws remain unaffected by the act of 1890. (1895) 21 Op. Atty. Gen. 203.

Cited without definite application, Auffmordt v. Hedden (1890) 11 Sup.

Ct. 103, 106, 137 U. S. 310, 34 L. Ed. 674; U. S. v. Loeb (C. C. 1900) 99 Fed. 723, 728; U. S. v. Leng (D. C. 1883) 18 Fed. 15, 19.

(R. S. § 2653. Superseded.)

This section was as follows:

"The Secretary of the Treasury is hereby authorized, whenever he shall think it advantageous to the public service, to abolish or suspend the office of naval officer, or any other subordinate office, in any collection-district of the United States, except in Boston, New York, Philadelphia, Baltimore, Charleston, Savannah, Portland in Maine, and San Francisco, and to assign the duties of the office or any other subordinate office so abolished or suspended to a deputy collector or inspector of the customs; and so much of all fines, penalties, and forfeitures as would otherwise inure to either of such naval officers shall, after the discontinuance of their offices, respectively, be paid into the Treasury of the United States, and there credited to the fund for defraying the expenses of collecting the revenue from customs."

It was superseded by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327, which section provided that such reorganization "should constitute for the fiscal year 1914, and until otherwise provided by Congress, the permanent organization of the customs service."

See note to R. S. § 2613, ante, § 5347.

§ 5393. (R. S. § 2654.) Fees of collectors.

There shall be allowed and paid for the use of the collectors the following fees:

First. To each collector for every entrance of any vessel of one hundred tons burden and upward, two dollars and a half.

Second. For every clearance of any vessel of one hundred tons burden and upward, two dollars and a half.

Third. For every entrance of any vessel under the burden of one hundred tons, one dollar and a half.

Fourth. For every clearance of any vessel under one hundred tons burden, one dollar and a half.

Fifth. For every post entry, two dollars.

Sixth. For every permit to land goods, twenty cents.

Seventh. For every bond taken officially, forty cents.

Eighth. For every permit to load goods for exportation, which are entitled to drawback, thirty cents.

Ninth. For every debenture or other official certificate, twenty cents.

Tenth. For every bill of health, twenty cents.

Eleventh. For every official document, registers excepted, required by any merchant, owner, or master of any vessel not elsewhere enumerated, twenty cents.

Act March 2, 1799, c. 23, § 2, 1 Stat. 706. Act June 17, 1864, c. 130, § 3, 13 Stat. 134.

The collection of the fees authorized by paragraph 10 of this section for bills of health, was abolished by Act June 19, 1886, c. 421, § 1, as amended by Act April 4, 1888, c. 61, § 2, post, § 8138.

Collectors were required to act as superintendents of light-houses, etc., and as disbursing agents for the Light-House Establishment, without compensation, by R. S. § 4672, and provisions of Act June 16, 1880, c. 235, set forth post. §§ 8445, 8446.

The fees for certain specified services of collectors and other officers of customs were abolished by Act June 19, 1886, c. 421, §§ 1, 9, post, §§ 8138, 8139.

Fees exacted by customs officers on entry of goods were abolished by a provision of the Customs Administrative Act of June 10, 1890, c. 407, § 22, 26 Stat. 140, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 102; and nothing in the Underwood Tariff Act of Oct. 3, 1913, c. 16, was to be construed to permit any fees to be charged "except as provided in this act or in" R. S. § 2862, post, § 5546. This rule of construction was part of a proviso annexed to the repeal of sections 1–42 of the Payne-Aldrich Tariff Act, by section IV, S, of the Underwood Tariff Act, set forth ante, § 5316.

The annual compensation of collectors, "in lieu of fees," was fixed and all fees were required to be covered into the Treasury, by section 4 of the

Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327. See note to R. S. § 2613, ante, § 5347.

Notes of Decisions

Packed packages. — Under Customs Administrative Act, § 22, abolishing "all fees exacted * * * upon the entry of imported goods and the passing thereof through the customs," it is not legal to require the payment of a fee on packed packages to defray the expense of administering the law relative to such packages. U. S. v. American Express Co. (C. C. 1907) 154 Fed. 996.

Fees under prior statutes.—See Barber v. Schell (1882) 107 U. S. 617, 2 Sup. Ct. 301, 27 L. Ed. 490; Andrews v. U. S. (C. C. 1842) Fed. Cas. No. 381; Ogden v. Maxwell (C. C. 1855) Fed. Cas. No. 10,458; Atkins v. Peaslee (C. C. 1860) Fed. Cas. No. 603; U. S. v. Austin (C. C. 1864) Fed. Cas. No. 14,480; Merriam v. Clinch (C. C. 1867) Fed. Cas. No. 9,460.

Cited without definite application, U. S. v. Lawson (1879) 101 U. S. 164, 168, 25 L. Ed. 860; Saunders v. U. S. (1902) 114 Fed. 42, 43, 51 C. C. A. 668; Burke v. U. S. (1884) 19 Ct. Cl. 420.

(R. S. §§ 2655–2657. Superseded.)

These sections provided for the division of fees and expenses between the collector and naval officer, and for the division of drawback fees between the collector, naval officer, and surveyor, and prescribed the fees of surveyors, inspectors, and deputy inspectors. They were superseded by the salary allowances prescribed by the Plan of Reorganization of the Customs Service pursuant to the Provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. § 2658. Superseded.)

This section was as follows:

"For every entry of goods at any customs-house on the northern, northeastern, and northwestern frontiers of the United States, a fee of fifty cents shall be charged by the collector, and accounted for to the government."

It was superseded by the abolition of fees on entry of goods by the Customs Administrative Act of June 10, 1890, c. 407, § 22, 26 Stat. 140, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 102.

See note to R. S. § 2654, ante, § 5393.

(R. S. §§ 2659–2685. Superseded.)

These sections prescribed the compensation of collectors for various districts. They were superseded by the establishment of other districts, and the allowance of certain compensation "in lieu of all fees, commissions, salaries, or other emoluments" by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

The amendment of R. S. §§ 2659, 2660, 2675, by Act Feb. 27, 1877, c. 69, 19 Stat. 246, the amendment of R. S. § 2684, by Act June 16, 1882, c. 223, 22 Stat. 105, and provisions for salaries of certain collectors, naval officers, and surveyors, made by Act June 22, 1874, c. 391, § 23, 18 Stat. 190, as amended by Act Feb. 26, 1879, c. 103, 20 Stat. 322, Act March 3, 1883, c. 135, 22 Stat. 567, Act May 2, 1888, c. 227, 25 Stat. 134, Act Aug. 28, 1890, c. 814, § 3, 26 Stat. 363, Act June 4, 1897, c. 2, § 1, 30 Stat. 30, Act Feb. 6, 1904, c. 151, 33 Stat. 11, and Act June 22, 1910, c. 311, § 2, 36 Stat. 579, were also superseded by said reorganization.

(R. S. § 2686. Superseded.)

This section provided for the division of commissions between a collector resigning, or the legal representative of a deceased collector, and his successor in office. It was superseded by the allowance of compensation in lieu of commissions by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

§ 5394. (R. S. § 2687.) Apportionment of compensation for part of a year's service.

Collectors and all other officers of the customs, serving for a less period than a year, shall not be paid for the entire year, but shall be allowed in no case a greater than a pro rata of the maximum compensation of such officers respectively for the time only which they actually serve as such collectors or officers, whether the same be under one or more appointments, or before or after confirmation. And no collector or other officer shall, in any case, receive for his services, either as fees, salary, fines, penalties, forfeitures, or otherwise, for the time he may be in service, beyond the maximum pro rata rate provided by law. And this section shall be applied and enforced in re-

gard to all officers, agents, and employés of the United States whomsoever, as well those whose compensation is determined by a commission on disbursements, not to exceed an annual maximum, as those paid by salary or otherwise.

Act Feb. 11, 1846, c. 7, § 1, 9 Stat. 3. Act July 18, 1866, c. 201, § 34, 14 Stat. 186.

The annual compensation of collectors and other customs officers was prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Rules for division of time and computation of pay were prescribed by Act June 30, 1906, c. 3914, § 6, ante, § 3243.

Provisions directing the Secretary of the Treasury to pay all customs officers lawfully holding over their respective salaries, compensation, fees, or emoluments provided by law were made by Act Aug. 23, 1894, c. 307, 28 Stat. 424. These provisions were superseded by more comprehensive provisions directing the said Secretary to pay all officers under the Treasury Department who lawfully hold over, made by Act March 2, 1895, c. 187, ante, § 3229.

Notes of Decisions

Apportionment of compensation in general.—Under Act 1838, c. 169, § 3, a collector who held his office for a part of that year was entitled only to a proportionate part of the annual compensation established by law. Hoyt v. U. S. (1850) 51 U. S. (10 How.) 109, 13 L. Ed. 348.

Officers of the customs are not entitled to additional compensation under the provisions of the third section of Act July 7, 1838, c. 169, the same having been rendered nugatory by the repeal of the act upon which it was based and the enactment of another law upon the subject. Their compensation is fixed by Act July 21, 1840, c. 99, which contains new and different provisions. (1850) 5 Op. Atty. Gen. 233.

—— **Consuls.**—A United States consul, who is entitled to retain fees collected by him during any year, up to a fixed limit, and who is removed from office during the course of a fiscal year, is not entitled to retain all the fees then collected, up to such limit, but only such part of the total annual allowance as is proportioned to the part of the fiscal year during which he has held office. Marston v. U. S. (1896) 71 Fed. 496, 18 C. C. A. 216.

A consular agent is entitled to pro rata compensation for part of a year. Mahin v. U. S. (1905) 41 Ct. Cl. 1.

—— **Employés.**—Expert witnesses for the government in cases arising under the food and drugs act are not "employés" as the term is used in this section. (1909) 28 Op. Atty. Gen. 75.

The word "employé," as used here, does not embrace persons whose services have been contracted for in connection with a particular case in court and whose employment has no degree of permanence. (1911) 29 Op. Atty. Gen. 75.

Decisions under prior statutes.—See Bates v. Drury (C. C. 1825) Fed. Cas. No. 1,100; U. S. v. Pearce (C. C. 1837) Fed. Cas. No. 16,021; Hoyt v. Curtis (C. C. 1844) Fed. Cas. 6,808; Prieur v. Morgan (La. 1845) 11 Rob. 292; Doane v. Phillips (1831) 29 Mass. (12 Pick.) 223.

(R. S. § 2688. Superseded.)

This section, as amended by Act March 3, 1875, c. 130, § 10, 18 Stat. 401, prescribed a limit to the compensation of collectors and surveyors acting as collectors. It was superseded by the allowance of a certain compensation in lieu of all fees by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Provisions fixing the compensation of collectors acting as disbursing agents were made by R. S. § 3657, post, § 6665.

(R. S. § 2689. Superseded.)

This section was as follows:

"The aggregate sums allowed in each year to the collectors, naval officers, and surveyors, shall be exclusive of the necessary expenses incident to their respective offices, in the same year, subject to the regulation of the Treasury."

It was superseded by the allowance of an annual compensation by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. §§ 2690, 2691. Superseded.)

These sections limited the compensation of collectors, naval officers and surveyors of various ports. They are superseded by the allowances for compensation made by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

An amendment of R. S. § 2691, by Act Feb. 27, 1877, c. 69, 19 Stat. 246, was also superseded therewith.

(R. S. § 2692. Superseded.)

This section authorized the Secretary of the Treasury to relieve collectors from the payment of office expenses in case the fees and emoluments received were insufficient to afford reasonable compensation, after the payment of such expenses, and required all fees paid into the Treasury to be placed to the credit of the fund for defraying the expenses of collecting the revenue from customs. It was superseded by the allowance of a fixed compensation "in lieu of all fees" and the requirement that all moneys collected or received by collectors, whether as fees or otherwise should be "covered into the Treasury" by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327, which act repealed the permanent appropriation made by R. S. § 3687, for the expenses of collecting the revenue from customs.

(R. S. § 2693. Superseded.)

This section was as follows:

"No account for the compensation for services of any clerk, or other person employed in any duties in relation to the collection of the revenue, shall be allowed, until such clerk or other person shall have certified, on oath, that the same services have been performed, that he has received the full sum therein charged to his own use and benefit, and that he has not paid, deposited, or assigned, or contracted to pay, deposit, or assign, any part of such compensation to the use of any other person, or in any way, directly or indirectly, paid or given, or contracted to pay or give, any reward or compensation for his office or employment, or the emoluments thereof."

It was superseded by the allowances for compensation of clerks and other employés made by the reorganization of the Customs Service, pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. §§ 2694–2696. Superseded.)

These sections provided for assistant collectors at New York, Jersey City, and Camden, and prescribed their duties and compensation. They were superseded by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. §§ 2697–2702. Superseded.)

These sections, the last of which was amended by Act Feb. 27, 1877, c. 69, 19 Stat. 246, prescribed the salaries of deputy collectors at various ports. They were superseded by the allowances for salaries of deputy collectors in the districts established by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Provisions for salaries of other deputy collectors made by Act June 16, 1882, c. 223, 22 Stat. 105, Act May 2, 1888, c. 227, 25 Stat. 134, Act June 22, 1874, c. 402, 18 Stat. 196, Act Jan. 24, 1880, c. 13, 21 Stat. 62, Act Feb. 27, 1901, c. 615, 31 Stat. 816, Act Aug. 28, 1890, c. 814, § 3, 26 Stat. 363, Act Feb. 25, 1905, c. 799, § 1, 33 Stat. 814, Act June 19, 1906, c. 3436, § 3, 34 Stat. 303, and Act March 4, 1909, c. 314, § 3, 35 Stat. 1065, were also superseded by said Plan of Reorganization, article VII of which authorized the appointment of a deputy collector to have charge of each port of entry, "who shall perform such duties and receive such compensation as the Secretary of the Treasury shall determine."

(R. S. § 2703. Superseded.)

This section fixed the salary of the naval officer for the district of San Francisco at $4,500 a year. It was superseded by Act June 22, 1874, c. 391, § 23, 18 Stat. 190, which fixed the salary of such naval officer at $5,000 a year. The same salary was prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. § 2704. Superseded.)

This section limited the compensation of naval officers. It was superseded by the allowances for compensation prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. § 2705. Superseded.)

This section, as modified by Act Sept. 30, 1890, c. 1126, § 1, 26 Stat. 510, and Act March 4, 1909, c. 314, § 4, 35 Stat. 1065, fixed the salary of deputy naval officers at New York and other ports. It was superseded by the salary allowances prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. §§ 2706–2718. Superseded.)

These sections fixed the compensation of surveyors at various ports. They were superseded by salary allowances prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Provisions changing or otherwise affecting such compensation, made by Act June 22, 1874, c. 391, § 23, 18 Stat. 190, as amended by Act Feb. 26, 1879, c. 103, 20 Stat. 322, Act Feb. 18, 1875, c. 80, 18 Stat. 316, Act Aug. 3, 1882, c. 377, 22 Stat. 215, Act Feb. 21, 1891, c. 251, 26 Stat. 766, Act Sept. 4, 1890, c. 873, 26 Stat. 424, Act Jan. 29, 1875, c. 29, 18 Stat. 304, Act June 16, 1880, c. 239, 21 Stat. 283, Act Feb. 28, 1881, c. 91, 21 Stat. 373, Act Feb. 28, 1881, c. 92, 21 Stat. 373, Act March 3, 1881, c. 156, 21 Stat. 512, Act March 6, 1882, c. 25, 22 Stat. 13, Act June 4, 1888, c. 341, § 2, 25 Stat. 166, Act Oct. 19, 1888, c. 1209, 25 Stat. 565, as amended by Act Aug. 28, 1890, c. 813, 26 Stat. 362, Act Feb. 9, 1889, c. 121, 25 Stat. 658, as amended by Act March 13, 1890, c. 31, 26 Stat. 18, Act Sept. 25, 1890, c. 909, § 2, 26 Stat. 467, Act Sept. 25, 1890, c. 911, 26 Stat. 467, Act Sept. 25, 1890, c. 912, 26 Stat. 467, Act Sept. 29, 1890, c. 1047, 26 Stat. 501, Act May 18, 1896, c. 191, 29 Stat. 121, Act April 21, 1898, c. 186, 30 Stat. 361, Act April 12, 1904, c. 1246, 33 Stat. 171, and Act March 18, 1904, c. 715, § 2, 33 Stat. 85, as amended by Act June 23, 1906, c. 3519, 34 Stat. 452, were also superseded by said Plan of Reorganization.

(R. S. §§ 2719, 2720. Superseded.)

These sections as amended or otherwise affected by Act June 22, 1874, c. 391, § 23, 18 Stat. 190, as amended by Act Feb. 26, 1879, c. 103, 20 Stat. 322, and Act Feb. 27, 1877, c. 69, 19 Stat. 246, fixed a limit to the compensation of surveyors. They were superseded by the salary allowances prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. §§ 2721–2723. Superseded.)

These sections, as modified by Act Sept. 30, 1890, c. 1126, 26 Stat. 510, and Act March 4, 1909, c. 314, § 4, 35 Stat. 1065, fixed the compensation of deputy surveyors at various ports. They were superseded by the salary allowances prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. § 2724. Superseded.)

This section fixed the salary of the principal appraisers at Savannah and Charleston. It was superseded by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. § 2725. Superseded.)

This section prescribed the compensation of merchant appraisers. It was superseded by the provisions relating to general appraisers and appraisers made by the Customs Administration Act of June 10, 1890, c. 407, §§ 12, 13, 26 Stat. 136, as amended by the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, post, § 5593, which fixed the salary of each of the general appraisers at $9,000 per annum; and nothing in the Underwood Tariff Act of Oct. 3, 1913, c. 16, was to be construed "to repeal or in any manner affect" subsection 12 of said section 28 "and subsequent provisions establishing a Board of General Appraisers." This rule of construction was part of a proviso annexed to repeal of sections 1–42 of the Payne-Aldrich Tariff Act by section IV, S, of the Underwood Tariff Act, set forth ante, § 5316.

(R. S. § 2726. Superseded.)

This section prescribed the salary of the general appraiser at New York. It was superseded by the acts referred to in the note to R. S. § 2725, ante.

(R. S. § 2727. Repealed.)

This section fixed the salary of the four general appraisers at the sum of $2,500 a year each, and their actual traveling expenses. It was repealed by Act Feb. 27, 1877, c. 69, 19 Stat. 246.

The provision authorizing the appointment of four general appraisers made by R. S. § 2608, was repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141.

The salary of the nine general appraisers authorized by Act June 10, 1890, c. 407, § 12, 26 Stat. 136, as amended by Act Aug. 5, 1909, c. 6, § 28, post, § 5593, was fixed by said section at $9,000 a year each.

See note to R. S. § 2725, ante.

(R. S. §§ 2728–2730. Superseded.)

These sections, the last of which was amended by Act Feb. 18, 1875, c. 80, § 1, 18 Stat. 318, fixed the salaries of appraisers at various ports. They were superseded by the salary allowances prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Subsequent provisions changing or otherwise affecting such salaries, made by Act Aug. 14, 1876, c. 270, § 2, 19 Stat. 139, Act March 3, 1891, c. 540, 26 Stat. 867, Act March 4, 1907, c. 2919, § 1, 34 Stat. 1373, Act July 1, 1902, c. 1372, 32 Stat. 715, Act Jan. 30, 1904, c. 40, 33 Stat. 9, Act June 30, 1906, c. 3914, § 4, 34 Stat. 763, and Act Jan. 23, 1911, c. 25, § 1, 36 Stat. 894, were also superseded by said Plan of Reorganization.

Provisions prohibiting the appraiser at the port of New York from engaging in any commercial or mercantile business, or from acting as agent for any person engaged in such business, were made by R. S. § 2941, post, § 5630.

(R. S. §§ 2731, 2732. Superseded.)

These sections fixed the salary of assistant appraisers at various ports. They were superseded by the salary allowances prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Subsequent provisions for salary and compensation of assistant appraisers made by Act Aug. 18, 1894, c. 301, § 1, 28 Stat. 392, Act April 28, 1904, c. 1783, 33 Stat. 538, and Act March 4, 1909, c. 314, § 3, 35 Stat. 1065, were also superseded by said Plan of Reorganization.

Provisions requiring one of the assistant appraisers at the port of New York to perform the duties of special examiner of drugs were made by R. S. § 2938, post, § 5627.

§ 5395. (Act March 3, 1905, c. 1413, § 1.) Performance of duties of appraiser during vacancy in office.

In case of a vacancy occurring, by reason of death or otherwise, in the office of appraiser or assistant appraiser of merchandise in any customs collection district the Secretary of the Treasury may designate some officer or employee within the district to perform the duties of the office, without additional compensation, until the vacancy shall have been filled. (33 Stat. 983.)

This section and the section next following were an Act entitled "An act to provide for the performance, temporarily, of the duties of appraisers and assistant appraisers of merchandise."

§ 5396. (Act March 3, 1905, c. 1413, § 2.) Performance of duties of appraiser or assistant appraiser, during his sickness, disability, or absence.

In case of the sickness, disability, or occasional and necessary absence from his office of an appraiser of merchandise in any customs collection district it shall be lawful for the appraiser to nominate, and the Secretary of the Treasury to confirm, an assistant appraiser or other officer of the customs in the same customs collection district, who shall perform the functions of the appraiser, without additional compensation, during such absence: Provided, That in no case shall any person enter upon or discharge the duties of the appraiser or assistant appraiser of merchandise until he shall have taken the oath required by law of such officer. (33 Stat. 983.)

(R. S. §§ 2733–2738. Superseded.)

These sections prescribed the compensation of inspectors. They were superseded by the allowances for compensation made by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Subsequent provisions regulating the compensation of inspectors, made by Act June 10, 1880, c. 189, 21 Stat. 173, Act March 3, 1881, c. 132, § 2, 21 Stat. 429, Act Dec. 16, 1902, c. 2, 32 Stat. 753, and Act March 4, 1909, c. 314, § 2, 35 Stat. 1065, were also superseded by said Plan of Reorganization.

(R. S. § 2739. Superseded.)

This section fixed the salary of weighers at various ports. It was superseded by the allowances for compensation prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. §§ 2740–2742. Superseded.)

These sections fixed the compensation of gaugers at various ports. They were superseded by the allowances for compensation prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

The amendment of R. S. § 2742, by Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 246, and provisions for salary of gaugers made by Act March 3, 1875, c. 147, 18 Stat. 480, and for assistant weighers made by Act March 4, 1909, c. 314, § 6, 35 Stat. 1065, were also superseded by said Plan of Reorganization.

(R. S. §§ 2743, 2744. Superseded.)

These sections fixed the compensation of special examiners of drugs at various ports. They were superseded by the allowances for compensation prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

The amendments of R. S. § 2743, by Act June 11, 1884, c. 75, 23 Stat. 40, and Act July 1, 1902, c. 1379, 32 Stat. 730, and the provisions authorizing the Secretary of the Treasury to increase and fix the compensation of special examiners of drugs, not to exceed $3,500 per annum, made by Act March 4, 1909, c. 314, § 3, 35 Stat. 1065, were also superseded by said Plan of Reorganization.

Provisions requiring one of the assistant appraisers at the port of New York to perform the duties of special examiner of drugs, were made by R. S. § 2938, post, § 5627.

A provision by Act May 10, 1912, c. 117, that the special examiner of drugs, medicines, and chemicals in the district of Boston and Charlestown, Massachusetts, should, in addition to his duties as special examiner, for which he should be appointed with special reference to his qualifications, perform the duties and hold the rank of an assistant appraiser, was also incorporated, in and superseded by said Plan of Reorganization.

(R. S. § 2745. Superseded.)

This section authorized the Secretary of the Treasury to limit and fix the compensation of examiners, clerks, verifiers, samplers, openers, packers, and messengers, at the port of New York. It was superseded by the allowances for compensation prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

The provisions authorizing Secretary of the Treasury to increase and fix the compensation of examiners of merchandise, examiners of tea, and examiners and special examiners of drugs, not to exceed $3,500 per annum, made by Act March 4, 1909, c. 314, § 3, 35 Stat. 1065, were also superseded by said Plan of Reorganization.

Provisions authorizing the appointment of examiners at the port of New York and prescribing their qualifications were made by R. S. § 2940, post, § 5629.

Provisions prohibiting the examiners at the port of New York from engaging in business were made by R. S. § 2941, post, § 5630.

(R. S. § 2746. Superseded.)

This section and the amendments thereof by Act Feb. 27, 1877, c. 69, 19 Stat. 246, and Act March 4, 1909, c. 314, § 5, 35 Stat. 1065, provided for an additional compensation of twenty-five per centum to appraisers, deputy collectors, deputy surveyors, and deputy naval officers, at San Francisco. It was superseded by the allowances for compensation prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Other provisions regulating the compensation of customs officers at various ports and subports, made by Act Aug. 28, 1890, c. 814, 26 Stat. 363, Act March 16, 1896, c. 58, § 2, 29 Stat. 60, Act Jan. 6, 1896, c. 4, 29 Stat. 2, Act June 10, 1896, c. 403, 29 Stat. 384, Act June 23, 1898, c. 494, 30 Stat. 487, and Act March 3, 1901, c. 858, 31 Stat. 1437, and the provisions authorizing the Secretary of the Treasury to increase and fix the compensation of laborers, made by Act March 4, 1909, c. 314, § 1, 35 Stat. 1065, were also superseded by said Plan of Reorganization.

CHAPTER THREE

Revenue Cutters and Boats

§§ 5397–5461. (R. S. §§ 2747–2765, etc.) (Transferred.)

This chapter consisted of R. S. §§ 2747–2765, and subsequent acts and parts of acts, relating to the Revenue-Cutter Service, as follows: Act July 7, 1884, c. 332; Act Aug. 18, 1894, c. 301; Act June 11, 1896, c. 420; Act July 1, 1898, c. 546; Act April 12, 1902, c. 501; Act April 19, 1906, c. 1640; Act May 12, 1906, c. 2454; Act May 26, 1906, c. 2556; Act June 23, 1906, c. 3520; Act April 16, 1908, c. 145; Act April 21, 1910, c. 182; Act March 4, 1911, c. 285; Act Aug. 24, 1912, c. 355; Act Feb. 10, 1913, c. 35; Act June 23, 1913, c. 3.

By Act Jan. 28, 1915, c. 20, the Coast Guard was established in lieu of the then existing Revenue-Cutter Service and the Life-Saving Service, said Coast Guard to be composed of the Revenue-Cutter Service and the Life-Saving Service, with the existing offices and positions and the incumbent officers and men of such Services. Said Coast Guard was made a part of the military forces of the United States, to operate under the Treasury Department in time of peace, and to be a part of the Navy in time of war, subject to the orders of the Secretary of the Navy in time of war or when the President shall so direct. Said Act Jan. 28, 1915, c. 20, also contained provisions relative to the organization, etc., of said Coast Guard. Said act did not, however, affect to any great extent the personnel of the Revenue-Cutter Service or the Life-Saving Service, or the duties of either of said Services. Nevertheless, in view of the consolidation and merger of said Services, into the Coast Guard by said act, the laws constituting this chapter, as above enumerated, together with said Act Jan. 28, 1915, c. 20, and all other subsequent laws relating to the newly constituted Coast Guard, have been transferred to Title LV A, which was formerly entitled "The Life-Saving Service," and now changed to "The Coast Guard." Said sections of the Revised Statutes and said laws will accordingly be found set forth or referred to post, §§ 8459½b (1)—8459½b (65), under said Title LV A, "The Coast Guard."

CHAPTER FOUR

Entry of Merchandise

Sec.
5462. Definition of word "merchandise."
5463. Definition of "port."
5464. Definition of "master."
5465. Departure from prescribed forms.
5466. Where vessels from foreign ports may enter and unlade.
5467. Where foreign vessels may enter and unlade.
5468. Where vessels bound to ports of delivery only may enter.
5469. Penalty for departing from port of arrival before making a report or entry.
5470. Duty of making report on arrival.
5471. Special report of spirits and wines.
5472. Exception as to goods destined for foreign port; articles in bulk for places in district other than port of entry.
5473. Bond before proceeding to foreign port.
5474. Duty of collector as to such bond.
5475. Vessels may proceed to other districts.
5476. Copy of report and manifest, with collector's certificate, required.
5477. Report or entry in other districts prescribed.
5478. Bond upon proceeding to another district.
5479. Cancellation of bond.
5480. Penalty for omitting to procure certificate.
5481. Requisites of an entry of goods generally.
5482. Entry of packages contained in packed packages of which no invoice, etc., has been received.
5483. Declaration on entry of packages contained in original package.
5484. Bond by agent, factor, etc.; cancellation of bond; general bond by agent, factor, or common carrier.
5485. Entry when particulars are unknown.

Sec.
5486. Custody when invoice is imperfect.
5487. Vessel's papers to be produced to collector.
5488. Public vessels need not enter.
5489. Ferry-boats need not enter; vessels making tri-weekly trips to foreign ports exempt from fees and tonnage taxes.
5490. Enrolled or licensed vessels.
5491. Entry of spirits and wines.
5492. Sea-stores to be specified.
5493. Collection of duty on excess of sea-stores.
5494. Forfeiture of sea-stores; transfer of sea-stores, etc., to other vessels of same owner.
5495. Coal for steam-vessels.
5496. Baggage and tools.
5497. Bond that owner shall make oath required from agent.
5498. Permit for baggage and tools.
5499. Penalty for concealing dutiable articles in baggage.
5500. Entry, etc., of cigars.
5501. Oaths, how taken.
5502. Oaths to be administered by clerks and inspectors of customs.
5503. Manifests of cargo required.
5504. What must be stated in manifest.
5505. Merchandise destined to different ports or districts.
5506. Penalty for failure to have a correct manifest.
5507. Except by accident or mistake.
5508. Production of manifest.
5509. Delivery of copies of manifest.
5510. What number of copies must be delivered.
5511. Penalty for omitting to produce manifest and deliver copies.
5512. Making return of violations.
5513. Copy of manifest to be mailed to Auditor for Treasury Department.
5514. Vessels bound for Natchez and Vicksburg.
5515. Expenses of officer sent with vessel.
5516. Inspector to accompany vessel to destination.
5517. Duties of master bound for Petersburg or Richmond.
5518. What weights and measures used in invoices.
5519. Merchandise deemed property of consignee.
5520. Invoices; requisites.
5521. Invoices to be produced to consular officer; declaration to be indorsed thereon.
5522. Entry without invoice, upon affidavit and verified statement; books; bond for production of invoice.
5523. Declaration to accompany invoice on entry.
5524. Punishment for entry or introduction of goods by means of false invoice, etc.
5525. Seizure of merchandise as security for fines; release on bond.
5526. Forfeiture for entry or introduction of goods by means of false invoice, etc.
5527. Addition to or deduction from invoice value; additional duties; forfeiture for undervaluation.
5528. Declaration on entry of consignments for sale.
5529. Invoices of goods from different consular districts.
5530. Collectors and other officers not liable for rulings or decisions.
5531. Bribery of revenue officers or employees; evidence.
5532. Revenue officer or employee accepting bribe; evidence.
5533. Baggage in transit to foreign country.
5534. Laws applicable to Philippine Islands.
5535. Collector to take possession when invoice is not correct.
5536. Bond for production of invoice of goods of absent owner.
5537. Authentication in absence of consul.
5538. Oath of representative.
5539. Oath where one of owners resides abroad.
5540. Certificate upon invoice.
5541. Indorsement upon invoice.
5542. Quadruple invoices; indorsement; disposition; fees.
5543. Change of destination.
5544. Countries excepted from foregoing provisions.
5545. Restriction on consular certificates.
5546. Consuls to exact proof of invoice.
5547. To report fraudulent practices.
5548. Smuggling merchandise, or making or passing false invoice.
5549. Custom-house bonds of partnerships.
5550. Custom-house brokers; license.
5551. Revocation of license.
5552. Review of decision revoking license.
5553. Regulations for carrying act into effect.
5554. Definition of "person."

§ 5462. (R. S. § 2766.) Definition of word "merchandise."

The word "merchandise," as used in this Title, may include goods, wares, and chattels of every description capable of being imported.

The word "ton" was defined by R. S. § 2951, post, § 5636.

The word "person," as used in Act June 10, 1910, c. 283, relating to licensing custom-house brokers, was defined by section 5 of that act, post, § 5554.

The words "value," "actual market value," and "wholesale price" were defined by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, R, post, § 5599.

Notes of Decisions

Definition.—The denomination of merchandise is to be understood in a commercial sense, although not scientifically correct, and all laws regulating the payment of duties are to be understood in such sense. U. S. v. One Hundred Twelve Casks of Sugar (1834) 8 Pet. 277, 278, 8 L. Ed. 944.

Dredges and scows are vessels, and are not dutiable as "goods, wares, and merchandise," under the tariff laws. The International (D. C. 1897) 83 Fed. 840, distinguishing U. S. v. Dunbar (1895) 67 Fed. 783, 14 C. C. A. 639.

The term "merchandise" is not restricted to general merchandise, as distinguished from personal baggage. U. S v. Chesbrough (D. C. 1910) 176 Fed. 778.

"Merchandise" includes all personal property not imported for the use or enjoyment of the importer himself. (1894) 21 Op. Atty. Gen. 92.

The word "merchandise" is a word used in different senses in different parts of legislation. Id.

The word "merchandise" includes placer gold. Six Parcels of Placer Gold v. U. S. (1904) 76 Pac. 473, 8 Ariz. 389.

§ 5463. (R. S. § 2767.) Definition of "port."

The word "port," as used in this Title, may include any place from which merchandise can be shipped for importation, or at which merchandise can be imported.

Notes of Decisions

Definition.—The statutes of Illinois provide that the city of Chicago shall have jurisdiction over Lake Michigan for a distance of three miles beyond the city limits, and the ordinances of that city give the city harbor master control over lake water outwardly for the same distance, between the north and south lines of the city. Held, as to certain barges in tow, which had reached a place within these limits, within the outer harbor works, where it was usual for such a tow to be broken up so the barges might be taken to their separate docks, that they should be considered as in the port of Chicago, for the purpose of fixing the time their cargoes became dutiable, though the arrival had not been reported at the barge office. Hartwell Lumber Co. v. U. S. (C. C. 1904) 128 Fed. 306, decree affirmed U. S. v. Edwin S. Hartwell Lumber Co. (1905) 142 Fed. 432, 73 C. C. A. 548, writ of certiorari denied Edwin S. Hartwell Lumber Co. v. U. S. (1906) 26 Sup. Ct. 760, 201 U. S. 644, 50 L. Ed. 903.

The term "port" may comprehend the city or town occupied by the importers, merchants, and others, but it is not confined in its extent or its limits to the town. It includes the harbor, roadstead, and shores, and all other natural and local incidents which go to make up a locality which comprises both land and water. (1899) 22 Op. Atty. Gen. 306.

Cited without definite application, Petrel Guano v. Jarnette (C. C. 1885) 25 Fed. 675, 677; The Lotus No. 2 (D. C. 1886) 26 Fed. 637, 639; U. S. v. Fifty Waltham Watch Movements (D. C. 1905) 139 Fed. 291.

§ 5464. (R. S. § 2768.) Definition of "master."

The word "master," as used in this Title, may include any person having the chief charge or command of the employment and navigation of a vessel.

Cited without definite application, U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 192.

§ 5465. (R. S. § 2769.) Departure from prescribed forms.

In cases where the forms of official documents, as prescribed by this Title, shall be substantially complied with and observed, according to the true intent thereof, no penalty or forfeiture shall be incurred by a deviation therefrom.

Act March 2, 1799, c. 22, § 111, 1 Stat. 704.

§ 5466. (R. S. § 2770.) Where vessels from foreign ports may enter and unlade.

It shall not be lawful to make entry of any vessel which shall arrive within the United States, from any foreign port, or of the cargo on board such vessel, elsewhere than at one of the ports of entry designated in chapter one of this Title; nor to unlade the cargo, or any part thereof, elsewhere than at one of the ports of delivery

therein designated, except that every port of entry shall be also a port of delivery. This section shall not prevent the master or commander of any vessel from making entry with the collector of any district in which such vessel may be owned, or from which she may have sailed on the voyage from which she shall then have returned.

Act March 2, 1799, c. 22, § 18, 1 Stat. 639.

Laws relating to customs duties were made applicable to vessels making voyages between the Philippine Islands and the United States by Act July 1, 1902, c. 1369, § 84, ante, § 3905.

This section may be superseded to some extent by the abolition of all ports of delivery not "mentioned as ports of entry," and the grant of authority to the Secretary of the Treasury to "cause to be stationed at places in the various collection districts, though not named as ports of entry, officers or employés of the customs with authority to enter and clear vessels," etc., by articles II and IX of the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Whenever, by reason of unlawful combination in opposition to the laws of the United States, duties cannot be collected in the ordinary way, they may be collected at a place in the district, other than the port of entry, on land or on board a vessel, or the port of entry may be closed, by R. S. §§ 5314–5321, post, §§ 10156–10163.

Provisions for preliminary entry of vessels before issue of special license to lade or unlade were made by Act Feb. 13, 1911, c. 46, §§ 1–4, post, §§ 5559–5562.

Notes of Decisions

Port of entry.—The warehousing act of 1846, c. 84 (see § 5646, post), authorizing importers, on giving security for the duties, to deposit their goods in the public stores, and to draw them out and pay the duties at any time within a year, did not give them a right to enter their goods at a port of delivery not a port of entry, unless authorized by the secretary of the treasury. Tremlett v. Adams (1851) 54 U. S. (13 How.) 295, 14 L. Ed. 152.

If the proper port of entry of the district be in possession of the enemy, the collector may remove the customhouse to some other convenient port within the district, and there admit vessels to entry. U. S. v. Hayward (C. C. 1815) Fed. Cas. No. 15,336.

A special act of Congress is necessary to permit an entry of goods for consumption at any other port than the port of ultimate destination. John B. Ellison & Sons v. U. S. (C. C. 1905) 136 Fed. 969, 972, affirmed 142 Fed. 732, 74 C. C. A. 64, certiorari denied (1906) 26 Sup. Ct. 763, 202 U. S. 615, 50 L. Ed. 1172.

§ 5467. (R. S. § 2771.) Where foreign vessels may enter and unlade.

Vessels which are not vessels of the United States shall be admitted to unlade only at ports of entry established by law; and no such vessel shall be admitted to make entry in any other district than in the one in which she shall be admitted to unlade.

Act March 2, 1799, c. 22, § 18, 1 Stat. 639. Act April 24, 1816, c. 71, 3 Stat. 299. Act May 7, 1822, c. 107, § 2, 3 Stat. 693. Act Feb. 22, 1827, c. 21, 4 Stat. 206. Act Feb. 13, 1837, c. 13, 5 Stat. 146.

See notes to R. S. § 2770, ante, § 5466.

Notes of Decisions

Part ownership of vessel by alien.—Vessels registered as American, and cargoes entered as such, were jointly owned by an alien and a citizen. Held, that the transaction was in violation of the laws of impost and tonnage, and an action would not lie between the parties to recover a balance of accounts. Cambioso v. Maffet (C. C. 1807) Fed. Cas. No. 2,330.

Cited without definite application, Devato v. Eight Hundred and Twenty-Three Barrels of Plumbago (D. C. 1884) 20 Fed. 510, 513.

§ 5468. (R. S. § 2772.) Where vessels bound to ports of delivery only may enter.

The master of every vessel bound to a port of delivery only, in any district, shall first come to at the port of entry of such district, with his vessel, and there make report and entry in writing, and pay all duties required by law, port fees and charges, before such vessel shall proceed to her port of delivery. Any master of a vessel who shall proceed to a port of delivery contrary to such directions shall

be liable to a penalty of five hundred dollars, to be recovered with costs of suit.

Act March 2, 1799, c. 22, § 19, 1 Stat. 640. Act May 10, 1800, c. 49, § 4, 2 Stat. 68. Act Feb. 25, 1867, c. 82, § 1, 14 Stat. 411.
See notes to R. S. § 2770, ante, § 5466.

Cited without definite application, The Saratoga (D. C. 1881) 9 Fed. 322, 324; U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 188.

§ 5469. (R. S. § 2773.) Penalty for departing from port of arrival before making a report or entry.

If any vessel, having arrived within the limits of any collection-district, from any foreign port, departs, or attempts to depart from the same, unless to proceed on her way to some more interior district to which she may be bound, before report or entry shall have been made by the master with the collector of some district, the master shall be liable to a penalty of four hundred dollars; and any collector, naval officer, surveyor, or commander of any revenue-cutter may cause such vessel to be arrested and brought back to the most convenient port of the United States. If, however, it is made to appear by the oath of the master, and of the person next in command, or by other sufficient proof to the satisfaction of the collector of the district within which such vessel shall afterward come, or to the satisfaction of the court in which the prosecution for such penalty may be had, that the departure or attempt to depart was occasioned by stress of weather, pursuit or duress of enemies, or other necessity, the penalty imposed by this section shall not be incurred.

Act March 2, 1799, c. 22, § 29, 1 Stat. 648.

Notes of Decisions

Arrival.—A mere transit through the waters of a river forming the boundary of the United States, for the purpose of proceeding to foreign territory, is not an arrival. The Apollon (1824) 9 Wheat. 362, 367, 6 L. Ed. 111.

The term "arrival," as used in acts of Congress, defined. Harrison v. Vose (1850) 9 How. 372, 380, 13 L. Ed. 179.

A Spanish fishing smack from Havana, which anchored within five miles of the mainland of Florida for the purpose of repairing a disabled mast, and did not enter any port of the United States, is not liable to a penalty for departing from the collection district without making report or entry. The Javirena (1895) 67 Fed. 152, 14 C. C. A. 350.

"More interior district."—A vessel arriving in the district of Barnstable from Nova Scotia, bound to New York, must make entry in such district, for New York is not "a more interior district," with reference to Barnstable. U. S. v. Bearse (C. C. 1826) Fed. Cas. No. 14,552.

Seizure of vessel for violating section.—As the municipal laws of one nation do not extend (except as to its own citizens) beyond its own territory, a seizure of a foreign vessel for the breach of them cannot be made in the territory of another nation. The Apollon (1824) 22 U. S. (9 Wheat.) 362, 6 L. Ed. 111.

§ 5470. (R. S. § 2774.) Duty of making report on arrival.

Within twenty-four hours after the arrival of any vessel, from any foreign port, at any port of the United States established by law, at which an officer of the customs resides, or within any harbor, inlet, or creek thereof, if the hours of business at the office of the chief officer of the customs at such port will permit, or as soon thereafter as such hours will permit, the master shall repair to such office, and make report to the chief officer, of the arrival of the vessel; and he shall, within forty-eight hours after such arrival, make a further report in writing, to the collector of the district, which report shall be in the form, and shall contain all the particulars required to be inserted in, and verified like, a manifest. Every master who shall neglect or omit to make either of such reports and declarations, or to

verify any such declaration as required, or shall not fully comply with the true intent and meaning of this section, shall, for each offense, be liable to a penalty of one thousand dollars.

Act March 2, 1799, c. 22, § 30, 1 Stat. 649.

Special provisions to facilitate the entry of steamships running in an established line in foreign trade, made by Act June 5, 1894, c. 92, § 1, 28 Stat. 85, and extended to steamships trading between Porto Rico and Hawaii and the United States by Act May 31, 1900, c. 600, 31 Stat. 249, were repealed by section 6 of Act Feb. 13, 1911, c. 46, the preceding sections of which act made more comprehensive provisions for preliminary entry of any vessel from a foreign port, and for the lading or unlading of such vessels at night. Said act is set forth post, §§ 5559–5562, 5571.

Notes of Decisions

Report of arrival.—A collector who detains a ship's papers, the register, and the enrollment is liable in tort, though the secretary of the treasury justifies the proceedings. Badger v. Gutierez (1884) 4 Sup. Ct. 563, 565, 111 U. S. 734, 28 L. Ed. 581.

As to lien for penalties, see The Strathairly (1888) 8 Sup. Ct. 609, 616, 124 U. S. 558, 31 L. Ed. 580.

An "open, clinker-built gasoline launch, about 18½ feet long," arriving at Seattle from a port of British Columbia, and not shown to be a foreign vessel or to contain merchandise, is not required to report to the customs officer of the port. U. S. v. One Gasoline Launch (1904) 133 Fed. 42, 43, 66 C. C. A. 148.

This act applies to all vessels arriving at a port, whether the arrival be voluntary or by stress of weather, or the port be the intended port of departure or not. U. S. v. Webber (C. C. 1813) Fed. Cas. No. 16,656.

If the master make report of arrival he is not liable to penalty, though he do not repair to the office of the principal officer of customs for that purpose. U. S. v. Rendell (C. C. 1853) Fed. Cas. No. 16,147.

The report of the "arrival" required is the same thing as the "entry" of the vessel. Section 5469, ante, speaks of "report or entry." There is no other entry than the report required by this section. The Paolina S. (C. C. 1880) 11 Fed. 171, 172.

In a prosecution for not making the requisite report, the government has the burden of showing that it was not made at the proper office. U. S. v. Galacar (D. C. 1852) Fed. Cas. No. 15,181.

The report required to be made by the master of the arrival of his vessel must be made at the office of the chief officer of the customs. Id.

The fact that a collector at another port voluntarily kept his office open and received entries after the close of regular business hours of August 5th does not lay the foundation for the claim of an unlawful invasion of the constitutional rights of an importer under sections 8 and 9 of article I of the constitution of the United States. Talbot v. U. S. (1911) 1 Ct. Cust. App. 415.

An American vessel in ballast, arriving in March or April, 1902, at Port Townsend, Wash., from Manila, did not arrive from a foreign port, within the meaning of the laws requiring the making of entry and the sending of a copy of the manifest. (1902) 24 Op. Atty. Gen. 27.

Cited without definite application, The Javirena (1895) 67 Fed. 152, 153, 14 C. C. A. 350; U. S. v. Legg (1901) 105 Fed. 930, 932, 45 C. C. A. 134; U. S. v. Edwin S. Hartwell Lumber Co. (1905) 142 Fed. 432, 434, 73 C. C. A. 548 (certiorari denied [1906] 26 Sup. Ct. 760, 201 U. S. 644, 50 L. Ed. 903); Hartwell Lumber Co. v. U. S. (C. C. 1904) 128 Fed. 306, 309 (affirmed [1905] 142 Fed. 432, 73 C. C. A. 548); U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 188.

§ 5471. (R. S. § 2775.) Special report of spirits and wines.

The master of any vessel having on board distilled spirits, or wines, shall, within forty-eight hours after his arrival, whether the same be at the first port of arrival of such vessel or not, in addition to the requirements of the preceding section, report in writing to the surveyor or officer acting as inspector of the revenue of the port at which he has arrived, the foreign port from which he last sailed, the name of his vessel, his own name, the tonnage and denomination of such vessel, and to what nation belonging, together with the quantity and kinds of spirits and wines, on board of the vessel, particularizing the number of casks, vessels, cases, or other packages containing the same, with their marks and numbers, as also the quantity and kinds of spirits and wines, on board such vessel as sea-stores, and

in default thereof he shall be liable to a penalty of five hundred dollars, and any spirits omitted to be reported shall be forfeited.

Act March 2, 1799, c. 22, § 30, 1 Stat. 650. Act May 1, 1872, c. 131, 17 Stat. 59.

Cited without definite application, The Javirena (1895) 67 Fed. 152, 153, 14 C. C. A. 350; The Saratoga (D. C. 1881) 9 Fed. 322, 324; U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 188.

§ 5472. (R. S. § 2776, as amended, Act June 26, 1884, c. 121, § 29.) Exception as to goods destined for foreign port; articles in bulk for places in district other than port of entry.

Any vessel may proceed with any merchandise brought in her, and, in the manifest delivered to the collector of the customs, reported as destined for any foreign port, from the district within which such vessel shall first arrive to such foreign port without paying or securing the payment of any duties upon such merchandise as shall be actually re-exported in the vessel. But the manifest so declaring to re-export such merchandise shall be delivered to such collector within forty-eight hours after the arrival of the vessel. And the master of such vessel shall give bond as required by the next section. Provided, That vessels arriving at a port of entry in the United States, laden with coal, salt, railroad-iron, and other like articles in bulk, may proceed to places within that collection district to be specially designated by the Secretary of the Treasury, by general regulations or otherwise, under the superintendence of customs officers, at the expense of the parties interested, for the purpose of unlading cargoes of the character before mentioned.

Act March 2, 1799, c. 22, § 32, 1 Stat. 651. Act Feb. 22, 1805, c. 18, § 2, 2 Stat. 316. Act June 26, 1884, c. 121, § 29, 23 Stat. 59.

This section, as enacted in the Revised Statutes, did not contain the proviso at the end of the section. It was amended by adding the proviso as set forth here by Act June 26, 1884, c. 121, § 29, last cited above.

The provisions of Act Feb. 13, 1911, c. 46, §§ 1–5, post, §§ 5559–5562, 5571, for the lading and unlading vessels, were made applicable to vessels to be unladen at a place of discharge designated by the Secretary of the Treasury under this section, by section 4 of that act, post, § 5562.

Entry of merchandise elsewhere than at a port of entry, "except at the expense of the parties in interest, upon express authority from the Secretary of the Treasury," was forbidden by the plan of Reorganization of the Customs Service pursuant to provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327. See notes to R. S. § 2770, ante, § 5466.

Notes of Decisions

Goods entered for immediate exportation.—The entering of merchandise for immediate exportation, and without any intent that it shall enter into the commerce of a country, is not an importation. (1909) 27 Op. Atty. Gen. 440.

Smoking opium may be brought into a port of the United States from a foreign country on one vessel and lawfully transferred to another vessel for immediate transportation to a foreign destination. Id.

Opium could not, under the laws existing at the time of the passage of §§ 8800, 8801, post, be brought into a port of this country from a foreign country and exported from the same port on another vessel without being subject to duty. Id.

Since the enactment of sections 8800, 8801, post, which prohibit absolutely the importation of opium in any form, smoking opium is not subject to duty, and cannot under any circumstances be entered and bonded for warehousing; and the law which made the bringing of opium into a port an importation for such purposes is, as to smoking opium, repealed. Id.

Illegal exaction of moneys.—Moneys improperly exacted from vessels proceeding under Act 1884, § 29, to unlade at places other than a port of entry, may be refunded by the secretary of the treasury without formal protest by the applicant, where application has been made within one year. (1890) 19 Op. Atty. Gen. 646.

Cited without definite application, Von Cotzhausen v. Nazro (C. C. 1879) 15 Fed. 891, 899; McLean v. Hager (C. C. 1887) 31 Fed. 602, 604; U. S. v. Fifty Waltham Watch Movements (D. C. 1905) 139 Fed. 291.

§ 5473. (R. S. § 2777.) Bond before proceeding to foreign port.

The master of any vessel so destined for a foreign port shall give bond, with one or more sureties, in a sum equal to the amount of the duties upon the merchandise, as the same shall be estimated by the collector and naval officer of the port where the report shall be made, to the satisfaction of the collector, with condition that the merchandise, or any part thereof, shall not be landed within the United States, unless due entry thereof shall have been first made and the duties thereupon paid, according to law. Such bond shall be taken for the same period, and canceled in like manner, as a bond given for obtaining drawback of duties. No such bond shall be required in respect to merchandise on board of any vessel which has put into the United States from a necessity, shown as prescribed in section twenty-seven hundred and seventy-three.

Act March 2, 1799, c. 22, § 32, 1 Stat. 651.

Provisions relating to bonds for obtaining drawback of duties, on the exportation of merchandise imported, and for the discharge of such bonds, referred to in this section, were made by R. S. §§ 3043, 3044, post, §§ 5746, 5747.

Cited without definite application, U. S. v. Rindge (D. C. 1913) 208 Fed. 611.

§ 5474. (R. S. § 2778.) Duty of collector as to such bond.

The collector receiving any bond conditioned for the payment of duties upon merchandise reported as destined for a foreign port, in case the same shall be landed within the United States, or any other bonds taken upon the exportation of merchandise entitled to drawback, shall immediately after the time when by the conditions of the same they ought to be canceled, put the same in suit, provided the proof of the occurrence of such a necessity as excuses a landing of such goods within the United States has not been produced, or further time granted therefor by the Secretary of the Treasury.

Act March 2, 1799, c. 22, § 32, 1 Stat. 652.

Provisions for judgment at the return term in suits brought on bonds for the recovery of duties were made by R. S. § 960, ante, § 1598.

§ 5475. (R. S. § 2779.) Vessels may proceed to other districts.

Any vessel in which any merchandise is brought into the United States from any foreign port, and which is specified in the manifest verified before the collector of the port in which such vessel first arrives, to be destined for other districts, may proceed with the same from district to district within the United States, in order to the landing or delivery thereof; and the duties on such of the merchandise only as shall be landed in any district shall be paid within such district.

Act March 2, 1799, c. 22, § 33, 1 Stat. 652.

Notes of Decisions

Entry for consumption.—Imported merchandise entered at one port for immediate transportation to another cannot be entered for consumption at the latter port before its arrival within the limits of that port. John B. Ellison & Sons v. U. S. (C. C. 1905) 136 Fed. 969, judgment affirmed J. B. Ellison & Sons v. Same (1906) 142 Fed. 732, 74 C. C. A. 64, writ of certiorari denied Ellison v. Same (1906) 26 Sup. Ct. 763, 202 U. S. 615, 50 L. Ed. 1172.

Jurisdiction of treasury department.—The treasury department has jurisdiction of the issuing of instructions relating to the execution of this section. (1905) 25 Op. Atty. Gen. 535.

Cited without definite application, In re Laidlow (C. C. 1890) 42 Fed. 401, 402; Laidlaw v. Abraham (C. C. 1890) 43 Fed. 297, 298.

§ 5476. (R. S. § 2780.) Copy of report and manifest, with collector's certificate, required.

Before any vessel departs from the district in which she shall first arrive for another district, provided such departure is not within

forty-eight hours after her arrival within such district, with merchandise brought in such vessel from a foreign port on which the duties have not been paid, the master shall obtain from the collector of the district from which she is about to depart, who is hereby required to grant the same, a copy of the report and manifest made by such master, certified by the collector, to which copy shall be annexed a certificate of the quantity and particulars of the merchandise which appears to him to have been landed within his district, or of the quantity and particulars of the merchandise which remains on board and upon which the duties are to be paid in some other district.

Act March 2, 1799, c. 22, § 34, 1 Stat. 652.

Notes of Decisions

Jurisdiction of treasury department.—The treasury department has jurisdiction of the issuing of instructions relating to the execution of this section. (1905) 25 Op. Atty. Gen. 535.

§ 5477. (R. S. § 2781.) Report or entry in other districts prescribed.

Within twenty-four hours after the arrival of such vessel within any other district, the master shall make report or entry to or with the collector of such other district, producing and showing the certified copy of his first report, together with a certificate from each collector of any other district within which any of the merchandise, brought in such vessel, has been landed, of the quantity and particulars of such merchandise as has been landed in each district respectively.

Act March 2, 1799, c. 22, § 34, 1 Stat. 653.

Notes of Decisions

Jurisdiction of treasury department.—The treasury department has jurisdiction of the issuing of instructions relating to the execution of this section. (1905) 25 Op. Atty. Gen. 535.

§ 5478. (R. S. § 2782.) Bond upon proceeding to another district.

The master shall, however, first give bond, with one or more sureties, to the satisfaction of the collector of the district within which the vessel first arrives, in a sum equal to the amount of the duties on the residue of the merchandise, according to such estimate as the collector shall form thereof, with condition that the residue of such merchandise shall be duly entered and delivered in another district for which the same has been reported to be destined.

Act March 2, 1799, c. 22, § 34, 1 Stat. 653.

Provisions for judgment at the return term in suits brought on bonds for the recovery of duties were made by R. S. § 960, ante, § 1598.

Notes of Decisions

Jurisdiction of treasury department.—The treasury department has jurisdiction of the issuing of instructions relating to the execution of this section. (1905) 25 Op. Atty. Gen. 535.

§ 5479. (R. S. § 2783.) Cancellation of bond.

The bond shall be canceled or discharged within six calendar months from the date thereof, by the production of certificates from the collectors of the districts for which the merchandise has been reported, showing the due entry and delivery of the merchandise in such districts, or upon due proof to the satisfaction of the collector by whom the bond was taken, and to the naval officer of the port, if any, that such entry and delivery were prevented by some unavoidable accident or casualty, and if the whole or any part of the mer-

chandise has not been lost, that it has been duly entered and delivered within the United States.

Act March 2, 1799, c. 22, § 34, 1 Stat. 654.

Notes of Decisions

Jurisdiction of treasury department.—The treasury department has jurisdiction of the issuing of instructions relating to the execution of this section. (1905) 25 Op. Atty. Gen. 535.

§ 5480. (R. S. § 2784.) Penalty for omitting to procure certificate. If the master of any such vessel fails by his neglect or fault to obtain the copy of his report from the collector of the district from which he is about to depart, or any certificate which he ought to obtain, or neglects to exhibit the same to the collector of any other district to which the vessel afterward proceeds, within the time for that purpose allowed, he shall be liable to a penalty, for every such neglect or omission, of five hundred dollars.

Act March 2, 1799, c. 22, § 34, 1 Stat. 654.

Notes of Decisions

Jurisdiction of treasury department.—The treasury department has jurisdiction of the issuing of instructions relating to the execution of this section. (1905) 25 Op. Atty. Gen. 535.

§ 5481. (R. S. § 2785.) Requisites of an entry of goods generally. The owner or consignee of any merchandise on board of any such vessel, or, in case of his absence or sickness, his known agent or factor in his name, shall, within fifteen days after the report of the master to the collector of the district for which such merchandise shall be destined, make entry thereof in writing with the collector, and shall in such entry specify the name of the vessel and of her master, in which, and the port or place from which such merchandise was imported, the particular marks, numbers, denominations, and prime cost, including charges of each particular package or parcel whereof the entry shall consist, or, if in bulk, the quantity, quality, and prime cost, including charges thereof, particularly specifying the species of money in which the invoices thereof are made out. Such entry shall be subscribed by the person making it, if the owner or consignee, in his own name, or, if another person, in his name as agent or factor, for the owner or consignee. The person making such entry shall also produce to the collector and naval officer, if any, the original invoices of the merchandise, or other documents received in lieu thereof, or concerning the same, in the same state in which they were received, with the bills of lading for the same; which invoices shall be signed by the persons in the offices of the collector and naval officer who have compared and examined them.

Act March 2, 1799, c. 22, § 36, 1 Stat. 655.

The separate entry of packages contained in packed packages, concerning which no invoice or statement of contents or values has been received, was provided for by Act May 1, 1876, c. 89, post, §§ 5482, 5483.

The entry of merchandise, the particulars of which are unknown, was provided for by R. S. § 2788, post, § 5485.

The requisites of invoices, and of indorsements thereon and declarations to accompany invoices on entry, were prescribed by the Customs Administrative Act June 10, 1890, c. 407, §§ 2–8, 26 Stat. 131–135, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 91–96, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, C–J, W, post, §§ 5520–5524, 5526–5528, 5529.

Provisions for licensing custom-house brokers were made by Act June 10, 1910, c. 283, §§ 1–5, post, §§ 5550–5554.

Notes of Decisions

"Entry."—Time of accrual of duties at time of arrival and not time of entry, see note under § 5710, post, "Accrual of Duties."

Entry as affecting applicability of tariff act, see § 5314, ante.

The word "entry" interpreted. U. S. v. Legg (1901) 105 Fed. 930, 932, 45

C. C. A. 134; U. S. v. Seidenberg (C. C. 1883) 17 Fed. 227; U. S. v. Mescall (C. C. 1908) 164 Fed. 580, 582 (reversed [1909] 30 Sup. Ct. 19, 215 U. S. 26, 54 L. Ed. 77).

"Importation."—To constitute an importation, so as to attach the right to duties, it is necessary, not only that there should be an arrival within the limits of the United States and of a collection district, but also within the limits of some port of entry. U. S. v. Vowell (1809) 9 U. S. (5 Cranch) 368, 3 L. Ed. 128; Arnold v. U. S. (1815) 13 U. S. (9 Cranch) 104, 3 L. Ed. 671; U. S. v. Edwin S. Hartwell Lumber Co. (1905) 142 Fed. 432, 73 C. C. A. 548 (affirming decree Hartwell Lumber Co. v. U. S. [C. C. 1904] 128 Fed. 306, and writ of certiorari denied Edwin S. Hartwell Lumber Co. v. U. S. [1906] 26 Sup. Ct. 760, 201 U. S. 644, 50 L. Ed. 903; U. S. v. Shallus (1911) 2 Ct. Cust. App. 332.

Where captured goods are brought into the United States by superior force or inevitable accident, they are not deemed imported, in the sense of the law, so as to be liable to pay duties. If, however, such goods are afterwards sold, or consumed in the country, they become liable to duties. Where, therefore captured goods, claimed by a neutral, were sold by consent, under an order of court, and afterwards the final proceeds were ordered to be restored to such owner, it was held that the amount of the duties due the United States upon the importation of the goods must be paid. The Concord (1815) 13 U. S. (9 Cranch) 387, 3 L. Ed. 768.

Goods are imported and brought into the United States when brought within the limits of a port of entry with the intention of unlading them there. The Missouri (D. C. 1870) Fed. Cas. No. 9,653.

Who may enter.—No person but the owner or original consignee, or, in his absence or sickness, his agent or factor, is entitled to enter the goods at the custom house, and give bond for the duties, or pay the duties. Harris v. Dennie (1830) 28 U. S. (3 Pet.) 292, 7 L. Ed. 683.

Time of entry.—The provision that the owner of merchandise on board a vessel shall, within 15 days after report of the master to the collector of the district, make entry thereof in writing to the collector, does not prevent entry of the goods before entry of the vessel. U. S. v. Legg (1901) 105 Fed. 930, 45 C. C. A. 134.

An importer being entitled to make the entry of the merchandise required of him by this section, when he presented himself to the collector, with his papers and moneys for duties, and offered to make entry and pay the duties, entry will be considered to have been at that time, though the collector refused to receive or file the papers for the purpose of determining whether they are goods "previously imported" and "for which entry has been made" at the time Tariff Act 1897, went into effect, so as to be subject to the duties imposed, not by it, but by Tariff Act Aug. 27, 1894. Id.

The whole scheme of tariff laws and the general statutes regulating the collection of duties contemplate that the importation of merchandise shall precede its entry. A collector of customs may properly refuse an entry tendered before the importation is complete. U. S. v. Edwin S. Hartwell Lumber Co. (1905) 142 Fed. 432, 73 C. C. A. 548, affirming decree Hartwell Lumber Co. v. U. S. (C. C. 1904) 128 Fed. 306, and writ of certiorari denied Edwin S. Hartwell Lumber Co. v. U. S. (1906) 26 Sup. Ct. 760, 201 U. S. 644, 50 L. Ed. 903.

Tender of entry.—As to effect of tender of entry, see U. S. v. Legg (1901) 105 Fed. 930, 932, 45 C. C. A. 134; U. S. v. Edwin S. Hartwell Lumber Co. (1905) 142 Fed. 432, 434, 73 C. C. A. 548 (certiorari denied [1906] 26 Sup. Ct. 760, 201 U. S. 644, 50 L. Ed. 903); Hartwell Lumber Co. v. U. S. (C. C. 1904) 128 Fed. 306, 309 (affirmed [1905] 142 Fed. 432, 73 C. C. A. 548).

Where, at the time of tendering entry of merchandise, there is no existent right on the part of the importers to have it accepted, nor duty on the part of the collector of customs to accept, no estoppel against the government arises through the fact that the collector's refusal may have been on wrong grounds, the statement of which may have misled the importers into failing to renew the tender on the proper occasion. U. S. v. Edwin S. Hartwell Lumber Co. (1905) 142 Fed. 432, 73 C. C. A. 548, affirming decree Hartwell Lumber Co. v. U. S. (C. C. 1904) 128 Fed. 306, and writ of certiorari denied Edwin S. Hartwell Lumber Co. v. U. S. (1906) 26 Sup. Ct. 760, 201 U. S. 644, 50 L. Ed. 903.

Entry of certain merchandise had repeatedly been tendered by the agent of the importers before its arrival in port, and was rejected by the customs officials for the expressed reason that the vessels carrying the merchandise had not reported at the customhouse. The vessels reached port shortly before a change in the tariff laws, but were not reported to the customs official until after the change had taken place; and the agent did not renew the tender between the time of the vessels' arrival and the time of the change of law, though remaining at the customhouse for the purpose of making entry as soon as he should be permitted to do so. Held, that entry could properly have been made under the old law as soon as the vessels reached port, and before they had reported, and that the reasons given by the customs officers for

rejecting the entry when previously tendered justified the agent in supposing further tender to be useless until the vessels reported, and the tender was therefore not vitiated by the failure to renew it during the period between the arrival of the vessels in port and the change in the law. Hartwell Lumber Co. v. U. S. (C. C. 1904) 128 Fed. 306, decree affirmed U. S. v. Edwin S. Hartwell Lumber Co. (1905) 142 Fed. 432, 73 C. C. A. 548, writ of certiorari denied Edwin S. Hartwell Lumber Co. v. U. S. (1906) 26 Sup. Ct. 760, 201 U. S. 644, 50 L. Ed. 903.

Specification of weight.—On the entry of sugar in peculs the weight is properly stated by giving the weight of peculs under the usage of the custom house at the time of entry. U. S. v. Baker (D. C. 1871) Fed. Cas. No. 14,-500.

Report prevented.—Where the duty of the master of a vessel arriving from a foreign port to repair to the office of the chief officer of the customs, and there make report, cannot be performed, by reason of the neglect of the officer to do that which is prerequisite, the statute is not violated. U. S. v. Randall (D. C. 1853) Fed. Cas. No. 16,119.

Production of witnesses.—This and other named sections held not to give importer the right to produce witnesses, etc., before appraisers. (1886) 18 Op. Atty. Gen. 360.

Cited without definite application, Conrad v. Pacific Ins. Co. (1832) 6 Pet. 262, 280, 8 L. Ed. 392; Ex parte Fassett (1892) 12 Sup. Ct. 295, 298, 142 U. S. 479, 35 L. Ed. 1087; In re Gardiner (1893) 53 Fed. 1013, 1014, 4 C. C. A. 155; U. S. v. One Pearl Necklace (1901) 111 Fed. 164, 169, 49 C. C. A. 287, 56 L. R. A. 130; One Pearl Chain v. U. S. (1903) 123 Fed. 371, 374, 59 C. C. A. 499; U. S. v. A. D. Shaw & Co. (1906) 144 Fed. 329, 75 C. C. A. 291, writ of certiorari denied (1906) 27 Sup. Ct. 779, 203 U. S. 591, 51 L. Ed. 331; Derobert v. Stranahan (C. C. 1903) 126 Fed. 581, 583.

(R. S. § 2786. Superseded.)

This section was as follows:

"The entries to be made by any importer, consignee, or agent, under the preceding section, shall be verified by the oath of the person making the same."

It was superseded by the Customs Administrative Act of June 10, 1890, c. 407, §§ 4, 5, 22, 26 Stat. 131, 132, 140, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 92, 102, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, E, F, post, §§ 5522, 5523, and section IV, S, of that act, ante, § 5316, which acts abolished oaths administered by customs officers, except as provided in said acts, and required declarations in lieu of oaths on entry of goods, except in cases of entries made on affidavit without invoice.

§ 5482. (Act May 1, 1876, c. 89, § 1.) Entry of packages contained in packed packages of which no invoice, etc., has been received.

A separate entry may be made of one or more packages contained in an importation of packed packages consigned to one importer or consignee, and concerning which packed packages, no invoice, or statement of contents or values, has been received.

Every such entry shall contain a declaration of the whole number of parcels contained in such original packed package; and shall embrace all the goods wares, and merchandise imported in one vessel at one time for one and the same actual owner, or ultimate consignee. (19 Stat. 49.)

This section and the section next following were an act entitled "An act to provide for the separate entry of packages contained in one importation."

Notes of Decisions

Repeal.—This act was not repealed by the customs administrative act. (1891) 20 Op. Atty. Gen. 5.

Effect.—Provision permitting the entry of packed packages without the production of an invoice modified section 5621, post, prescribing that merchandise may be stored at the expense of the owner, when an "incomplete entry has been made, or an entry without the specification of particulars, either for want of the original invoice or for any other cause"; and the latter provision does not apply to such packages. U. S. v. American Express Co. (C. C. 1907) 154 Fed. 996.

§ 5483. (Act May 1, 1876, c. 89, § 2.) Declaration on entry of packages contained in original package.

The importer, consignee, or agent's oath prescribed by section twenty-eight hundred and forty-one of the Revised Statutes, is hereby modified for the purposes of this Act, so as to require the

importer consignee or agent to declare therein that the entry contains an account of all the goods ——— imported in the ——— whereof ——— ——— is master, from ——— for account of ——— which oath so modified, shall in each case, be taken on the entry of one or more packages contained in an original package. But nothing in this act contained shall be construed to relieve the importer, consignee, or agent from producing the oath of the owner or ultimate consignee in every case, now required by law; or to provide that an importation may consist of less than the whole number of parcels contained in any packed package, or packed packages consigned in one vessel at one time, to one importer, consignee or agent. (19 Stat. 49.)

R. S. § 2841, referred to in this section, was repealed, with other sections of this chapter of the Revised Statutes, by section 29 of the Customs Administrative Act of June 10, 1890, c. 407, 26 Stat. 141. Section 5 of that act, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 92, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, F, post, § 5523, required declarations instead of oaths, contained a proviso that, if any of the invoices of merchandise which should be embraced in an entry have not been received, the declaration may state the fact, and such merchandise shall not be included in such entry, but may be entered subsequently. All oaths administered by officers of the customs, except as provided in said acts, were abolished thereby.

Notes of Decisions

Repeal.—The repeal of section 2841, R. S. by the customs administrative act, has no effect upon this act, because the latter forms no part of section 2841. (1891) 20 Op. Atty. Gen. 5.

Oath.—The form of oath prescribed, referring to section 2841, R. S., is not affected by the subsequent legislation modifying and afterwards repealing that section and substituting a declaration by the importer, consignee, or agent in the place of the former oath. (1891) 20 Op. Atty. Gen. 5.

§ 5484. (R. S. § 2787, as amended Act March 2, 1905, c. 1306.) Bond by agent, factor, etc.; cancellation of bond; general bond by agent, factor, or common carrier.

Whenever any entry is made with the collector of any district of merchandise imported into the United States subject to duty by any agent, factor, or person, other than the person to whom it belongs or to whom it is ultimately consigned, the collector shall take a bond with surety from such agent, factor, or person in the penal sum of an amount equal to double the estimated duties, with condition that the actual owner or consignee of such merchandise shall deliver to the collector a full and correct account of the merchandise imported by him, or for him on his own account, or consigned to his care, in the same manner and form as required in respect to any entry previous to the landing of merchandise; which account shall be verified by a like oath, as in the case of an entry, to be taken and subscribed before any judge of the United States, or the judge of any court of record of a State, or before any collector of the customs, or before any properly qualified notary whose seal shall be attested by the clerk of the county in which he is resident, or before any notary public designated by the Secretary of the Treasury. In case of the payment of the duties at the time of entry by any factor or agent on the merchandise entered by him, the condition of the bond shall be to produce the account of the proper owner or consignee, verified in manner as before directed, within ninety days from the date of such bond.

The bond in no case shall be for less than one hundred dollars, and may not be required when the entered value of the merchandise does not exceed one hundred dollars. In the event of failure to produce the declaration of the owner or ultimate consignee within the time herein prescribed the bond may be cancelled, at the discretion of the

Secretary of the Treasury, upon due proof that the factor or agent who entered the merchandise exercised proper diligence in the effort to fulfill the requirements of this Act.

Provided, That with the approval of the Secretary of the Treasury any agent, factor, or common carrier engaged in the entry of merchandise at the port of first arrival may give a general penal bond at said port for the production of the oaths of owners or ultimate consignees. Said bond shall be fixed by the Secretary of the Treasury at an amount sufficient in his opinion to cover all obligations to the United States that may accrue, and the record and cancellation of liabilities under said general bond shall be in accordance with such rules as he may prescribe.

Act March 2, 1799, c. 22, § 36, 1 Stat. 657, Act March 2, 1905, c. 1306, 33 Stat. 826.

This section, as enacted in the Revised Statutes, required a bond in the penal sum of "one thousand dollars," but did not authorize the taking of oaths before a notary, and made no provision for the cancellation of bonds, or for general bonds.

It was amended by substituting for the words "one thousand dollars" the words "an amount equal to double the estimated duties," after the words "in the penal sum of," and inserting the words "or before any properly qualified notary whose seal shall be attested by the clerk of the county in which he is resident, or before any notary public designated by the Secretary of the Treasury," after the words "any collector of customs," and adding at the end of the section the provisions commencing with the words "the bond in no case shall be for less," etc., making the section read as set forth here, by Act March 2, 1905, c. 1306, cited above.

Provisions for declarations in lieu of oaths, except in case of entry made upon a statement in the form of an invoice verified by the "oath of the owner, importer, consignee, or agent," with a bond for the production of a duly certified invoice, were made by the Customs Administrative Act of June 10, 1890, c. 407, §§ 3, 4, 5, 22, 26 Stat. 131–132, 140, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, 92, 102, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, D–F, post, §§ 5521–5523, and § IV, S, ante, § 5316.

Provisions for judgment at the return term in suits brought on bonds for the recovery of duties were made by R. S. § 960, ante, § 1598.

Notes of Decisions

Bonds for correct account.—As to customhouse bonds of partnerships, see § 5549, post.

Collectors of customs are required to take from an agent or person other than the owner making an entry of imported merchandise, a bond in the penal sum of $1,000, with condition that the actual owner or consignee of the merchandise shall deliver a full and correct account thereof according to the terms and specifications of that section. (1903) 25 Op. Atty. Gen. 66.

General bonds of a sufficiently large amount may, in special cases, be lawfully accepted by collectors of customs, in lieu of the special bonds of $1,000 each required by this section as formerly enacted, from agents making entries of imported merchandise for others, requiring them to produce the declaration of the owner in every case where goods may thereafter be imported without the same during a specified period. (1904) 25 Op. Atty. Gen. 177.

Cited without definite application, U. S. v. Seidenberg (C. C. 1883) 17 Fed. 227, 230.

§ 5485. (R. S. § 2788.) Entry when particulars are unknown.

Where the particulars of any merchandise are unknown, in lieu of the entry prescribed by section twenty-seven hundred and eighty-five, an entry thereof shall be made and received according to the circumstances of the case; the party making the same declaring upon oath all that he knows or believes concerning the quality and particulars of the merchandise, and that he has no other knowledge or information concerning the same.

Act March 2, 1799, c. 22, § 36, 1 Stat. 658.

Provisions for entry without invoice, upon affidavit and bond for the production of invoice, were made by the Customs Administrative Act of June 10,

1890, c. 407, § 4, 26 Stat. 131, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 92, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, E, post, § 5522.

Cited without definite application, U. S. v. Legg (1901) 105 Fed. 930, 933, 45 C. C. A. 134; U. S. v. Sommers (1909) 171 Fed. 57, 63, 96 C. C. A. 299; U. S. v. Seidenberg (C. C. 1883) 17 Fed. 227, 230; Derobert v. Stranahan (C. C. 1903) 126 Fed. 581, 583.

§ 5486. (R. S. § 2789.) Custody when invoice is imperfect.

Whenever an entry of merchandise is imperfect, for want of invoices, bills of lading, or for any other cause, the collector shall take the merchandise into his custody, until the quantity, quality, or value thereof, as the case may require, can be ascertained.

Act March 2, 1799, c. 22, § 36, 1 Stat. 658.

The collector was required to take possession in case of incorrect invoice by R. S. § 2840, post, § 5535.

See note to R. S. § 2788, ante, § 5485.

Notes of Decisions

Charges for storage.—Charges for storage and labor held legal. Hempstead v. Cadwalader (C. C. 1890) 42 Fed. 529, 530.

Cited without definite application, U. S. v. Seidenberg (C. C. 1883) 17 Fed. 227, 230; Derobert v. Stranahan (C. C. 1903) 126 Fed. 581, 583.

§ 5487. (R. S. § 2790.) Vessel's papers to be produced to collector.

The register, or other document in lieu thereof, together with the clearance and other papers granted by the officers of the customs to a vessel at her departure from the port from whence she may have arrived, Mediterranean passports excepted, shall previous to entry be produced to the collector with whom such entry is to be made, and shall remain in his office; and on the clearance of such vessel the register and other documents shall be returned to the master or owner of such vessel.

Act March 2, 1799, c. 22, § 63, 1 Stat. 675.

Notes of Decisions

Inspection of papers.—Invoices and like papers belonging to importers continue to be their property, though required by law to be impounded at the customhouse, and they have a right to inspect them under reasonable restrictions. U. S. v. Hutton (D. C. 1879) Fed. Cas. No. 15.433.

Manifest.—A manifest is one of the ship's papers which must be presented to the collector upon the entry of any vessel. New York & Cuba Mail S. S. Co. v. U. S. (D. C. 1903) 125 Fed. 320, 321, reversed (1906) 26 Sup. Ct. 327, 200 U. S. 488, 50 L. Ed. 569.

Cited without definite application, U. S. v. Legg (1901) 105 Fed. 930, 933, 45 C. C. A. 134; U. S. v. Seidenberg (C. C. 1883) 17 Fed. 227, 230.

§ 5488. (R. S. § 2791.) Public vessels need not enter.

It shall not be necessary for the master of any vessel of war, or of any vessel employed by any prince, or state, as a public packet for the conveyance of letters and dispatches, and not permitted by the laws of such prince or state to be employed in the transportation of merchandise, in the way of trade, to make report and entry

Act March 2, 1799, c. 22, § 31, 1 Stat. 651.

Importation by persons connected with the Navy of dutiable goods in public vessels was forbidden by the Articles for the Government of the Navy, R. S. § 1624, art. 12, ante, § 2973.

Notes of Decisions

Privateers.—Privateers are included within the exemption of "ships or vessels of war" from making a report and entry on arriving at a port of the United States. The Wilson v. U. S. (C. C. 1820) Fed. Cas. No. 17,846.

Cited without definite application, U. S. v. One Gasoline Launch (1904) 133 Fed. 42, 44, 66 C. C. A. 148 (dissenting opinion).

§ 5489. (R. S. § 2792, as amended, Act May 28, 1908, c. 212, § 1.) Ferry-boats need not enter; vessels making tri-weekly trips to foreign ports exempt from fees and tonnage taxes.

Vessels used exclusively as ferry-boats carrying passengers, baggage, and merchandise, shall not be required to enter and clear, nor shall the masters of such vessels be required to present manifests, or to pay entrance or clearance fees, or fees for receiving or certifying manifests, but they shall, upon arrival in the United States, be required to report such baggage and merchandise to the proper officer of the customs according to law.

Any passenger vessel engaged triweekly or oftener in trade between ports of the United States and foreign ports shall be exempt from entrance and clearance fees and tonnage taxes while such service triweekly or oftener is maintained.

Act June 4, 1872, c. 280, 17 Stat. 214. Act May 28, 1908, c. 212, § 1, 35 Stat. 424.

This section, as enacted in the Revised Statutes, did not contain the provision beginning with the words "Any passenger vessel," etc., to the end of the section as set forth here. This provision was added by amendment by Act May 28, 1908, c. 212, last cited above.

The section as so amended was not amended or repealed by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 36, relating to tonnage duties, by a provision of that section, set forth post, § 7811.

Cited without definite application, Gloucester Ferry Co. v. Pennsylvania (1885) 5 Sup. Ct. 826, 835, 114 U. S. 196, 29 L. Ed. 158; U. S. v. One Gasoline Launch (1904) 133 Fed. 42, 44, 66 C. C. A. 148 (dissenting opinion).

§ 5490. (R. S. § 2793.) Enrolled or licensed vessels.

Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern and northwestern frontiers of the United States, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees, or tonnage tax, as if from or to foreign ports; but such vessels shall, notwithstanding, be required to enter and clear.

Res. Feb. 10, 1871, No. 27, § 2, 16 Stat. 595.

This section was not amended or repealed by Act Aug. 5, 1909, c. 6, § 36, relating to tonnage duties, by a provision of that section, set forth post, § 7811.

Notes of Decisions

Vessels included.—This section applies only to vessels engaged in the foreign and coasting trade which depart from or arrive at places established by law as ports wherefrom and whereat such vessels may be cleared and entered by the customs officials. (1876) 15 Op. Atty. Gen. 166.

The steamer H. S. Holden, enrolled and licensed under R. S. 4318 (post, § 8064), for the coasting or foreign trade, which cleared Cleveland, Ohio, for Two Harbors, Mich., without cargo or passengers from Cleveland to Two Harbors, but with cargo from Cleveland to the intermediate port of Ft. William, Canada, which cargo she discharged at the latter place, and then proceeded to Two Harbors, is within the provisions of this section. (1910) 28 Op. Atty. Gen. 277.

§ 5491. (R. S. § 2794.) Entry of spirits and wines.

Every importer of distilled spirits or wines, or person to whom distilled spirits or wines are consigned, shall make a separate and additional entry thereof, specifying the name of the vessel, and her master, in which, and the place from which, such spirits or wines were imported, together with the quantity and quality thereof, and a particular detail of the casks or receptacles containing the same, with their marks and numbers; such entry shall be subscribed by the person making the same, for himself, or in behalf of the person for whom such entry is made, and shall be certified by the collector, before whom it is made, as a true copy, and conformable to the general entry before directed, in respect to all distilled spirits and wines

therein contained; such entry thus certified shall be transmitted to the surveyor or officer acting as inspector of the revenue for the port where it is intended to commence the delivery of such spirits or wines.

Act March 2, 1799, c. 22, § 37, 1 Stat. 658.

The rates of duty on spirits, wines, etc., were prescribed by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § I, Schedule H, ante, § 5291, pars. 237-249.

Cited without definite application,
U. S. v. Legg (1901) 105 Fed. 930, 933,
45 C. C. A. 134.

§ 5492. (R. S. § 2795.) Sea-stores to be specified.

In order to ascertain what articles ought to be exempt from duty as the sea-stores of a vessel, the master shall particularly specify the articles, in the report or manifest to be by him made, designating them as the sea-stores of such vessel; and in the oath to be taken by such master, on making such report, he shall declare that the articles so specified as sea-stores are truly such, and are not intended by way of merchandise or for sale; whereupon the articles shall be free from duty.

Act March 2, 1799, c. 22, § 45, 1 Stat. 661.

Notes of Decisions

"Sea stores." — Cordage, ravensduck, and sail cloth are not "sea stores" but, if not intended for the use of the ship, they are a part of the cargo. U. S. v. Twenty-Four Coils of Cordage (C. C. 1832) Fed. Cas. No. 16,566.

"Sea stores" are the supplies of different articles provided for the subsistence and accommodation of the ship's crew and passengers, and do not include coal. U. S. v. Hawley & Letzerich (C. C. 1908) 160 Fed. 734.

Hempen cables and hawsers are not "sea stores." U. S. v. One Hempen Cable and One Hempen Hawser (D. C. 1831) Fed. Cas. No. 15,931a.

Articles purchased abroad for a vessel, to be used as a part of her equipment, are not sea stores, and, where they remain on board on her arrival, they need not be reported by the master in his manifest. U. S. v. Twenty-Three Coils of Cordage (D. C. 1832) Fed. Cas. No. 16,573.

"Sea stores" in our tariff legislation are the stores contained in incoming vessels which are necessary for their use for the purposes of the voyage; articles which, brought into port aboard ship, are to be consumed aboard or carried off again in the outward voyage, or, if put ashore at all, landed only for the convenience of the ship. (1894) 21 Op. Atty. Gen. 92.

Decision of collector.—In the absence of fraud or collusion, the decision of the collector is conclusive as to the reasonable allowance of goods to be made to a vessel for entry free of duty, as sea stores. In re An Ullage Box of Sugar (D. C. 1836) Fed. Cas. No. 14,324.

§ 5493. (R. S. § 2796.) Collection of duty on excess of sea-stores.

Whenever it appears to the collector to whom a report and manifest of sea-stores are delivered, together with the naval officer, where there is one, or alone, where there is no naval officer, that the quantities of the articles, or any part thereof, reported as sea-stores, are excessive, the collector, jointly with the naval officer, or alone, as the case may be, may in his discretion estimate the amount of the duty on such excess; which shall be forthwith paid by the master, to the collector, on pain of forfeiting the value of such excess.

Act March 2, 1799, c. 22, § 45, 1 Stat. 661.

Notes of Decisions

Collection of duty.—Equipment of ship as subject to duty as imported article, see notes under § 5291, ante.

Cited without definite application, U. S. v. Hawley & Letzerich (C. C. 1908) 160 Fed. 734, 735.

§ 5494. (R. S. § 2797, as amended, Act March 3, 1897, c. 389, § 17.) Forfeiture of sea-stores; transfer of sea-stores, etc., to other vessels of same owner.

If any other or greater quantity of articles are found on board such vessel as sea-stores than are specified in an entry of sea-stores, or if any of the articles are landed without a permit first obtained

from the collector, and naval officer if any, for that purpose, all such articles as are not included in the report or manifest by the master, and all which are landed without a permit, shall be forfeited, and may be seized; and the master shall moreover be liable to a penalty of treble the value of the articles omitted or landed. Sea stores and the legitimate equipment of vessels belonging to regular lines plying between foreign ports and the United States delayed in port for any cause may be transferred in such port of the United States under the supervision of the customs officers from one vessel to another vessel of the same owner without payment of duties, but duties must be paid on such stores or equipments landed for consumption, except American products.

Act March 2, 1799, c. 22, § 45, 1 Stat. 661. Act March 3, 1897, c. 389, § 17, 29 Stat. 691.

This section, as enacted in the Revised Statutes, did not contain the provision beginning with the words "sea-stores and the legitimate equipment of vessels," etc., to the end of the section as set forth here. This provision was added by amendment by Act March 3, 1897, c. 389, § 17, last cited above.

Notes of Decisions

Supplies included in "sea stores."— Under this section coal is not "sea stores." U. S. v. Hawley & Letzerich (C. C. 1908) 160 Fed. 734.

Under this section goods to be entitled to free entry must be legitimate equipment of a vessel belonging to a regularly plying line, delayed in port, this equipment to be transferred, under supervision, from another vessel of the same line. U. S. v. Sickel (1915) 6 Ct. Cust. App. 146.

Steam winches to be installed by way of equipment, making the vessel ready for service differing from its previous service, were not in a statutory sense an equipment of the vessel, but rather for the vessel, and were not entitled to free entry. Id.

Forfeitures. — On an information against specific articles as "sea stores" forfeited, they cannot be adjudged to be forfeited as a part of the cargo or merchandise, or as a part of the tackle, etc., of the ship. U. S. v. Twenty-Four Coils of Cordage (C. C. 1832) Fed. Cas. No. 16,566.

The court will not impose a forfeiture by implication. It must be found in the plain letter of the statute. And an importer who offers goods free of duty as sea stores is liable for a penalty, but the goods are not forfeited, under Act 1799. In re An Ullage Box of Sugar (D. C. 1836) Fed. Cas. No. 14,324.

Cited without definite application, U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 188.

§ 5495. (R. S. § 2798.) Coal for steam-vessels.

The master of any vessel propelled by steam, arriving at any port in the United States, may retain all the coal such vessel may have on board at the time of her arrival, and may proceed with such coal to a foreign port, without being required to land the same in the United States or to pay any duty thereon.

Act July 7, 1838, c. 178, 5 Stat. 288.

Coal was exempt from duty by the "Free List" of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § I, par. 451, ante, § 5291, par. 451.

Cited without definite application, U. S. v. Hawley & Letzerich (C. C. 1908) 160 Fed. 734, 735.

§ 5496. (R. S. § 2799.) Baggage and tools.

In order to ascertain what articles ought to be exempted as the wearing apparel, and other personal baggage, and the tools or implements of a mechanical trade only, of persons who arrive in the United States, due entry thereof, as of other merchandise, but separate and distinct from that of any other merchandise, imported from a foreign port, shall be made with the collector of the district in which the articles are intended to be landed by the owner thereof, or his agent, expressing the persons by whom or for whom such entry is made, and particularizing the several packages, and their contents, with their marks and numbers; and the person who shall make the entry shall take and subscribe an oath before the collector, declaring that the entry subscribed by him and to which the oath is annexed

contains, to the best of his knowledge and belief, a just and true account of the contents of the several packages mentioned in the entry, specifying the name of the vessel, of her master, and of the port from which she has arrived; and that such packages contain no merchandise whatever other than wearing apparel, personal baggage, or, as the case may be, tools of trade, specifying it; that they are all the property of a person named who has arrived, or is shortly expected to arrive in the United States, and are not directly or indirectly imported for any other, or intended for sale.

Act March 2, 1799, c. 22, § 46, 1 Stat. 661. Act March 3, 1823, c. 53, § 4, 3 Stat. 782.

Wearing apparel and similar personal effects and tools of trade, etc., were comprised in the "Free List" of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § I, pars. 582, 642, ante, § 5291, pars. 582, 642.

Oaths on entry of goods were abolished by the Customs Administrative Act of June 10, 1890, c. 407, § 22, 26 Stat. 140, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 102. A similar provision as to oaths was made by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, S, ante, § 5316. A declaration in lieu of an oath was required by these acts.

Provisions for baggage in transit to foreign country were made by the Underwood Tariff Act of Oct. 3, 1913, c. 116, § III, CC, post, § 5533.

Notes of Decisions

Baggage.—As to form and effect of entry of passenger's baggage and effects, see The Robert Edwards (1821) 6 Wheat. 187, 5 L. Ed. 238; U. S. v. One Pearl Necklace (1901) 111 Fed. 164, 168, 169, 49 C. C. A. 287, 56 L. R. A. 130; Dodge v. U. S. (1904) 131 Fed. 849, 852, 65 C. C. A. 603 (certiorari denied [1904] 25 Sup. Ct. 790, 195 U. S. 632, 49 L. Ed. 353); Harts v. U. S. (1905) 140 Fed. 843, 848, 72 C. C. A. 255; U. S. v. One Trunk (1912) 192 Fed. 913, 114 C. C. A. 353.

This section and section 5498, post, are not intended to provide alternative methods of dealing with the baggage of a passenger entering the United States, and the discretion given to the customs officers by the latter section to make an examination of such baggage does not dispense with the necessity of making entry in all cases before the baggage can be landed. U. S. v. One Pearl Necklace (1901) 111 Fed. 164, 49 C. C. A. 287, 56 L. R. A. 130.

Where a passenger on a steamer purchased a pearl necklace before her departure from Paris, and by reason of its value wore the same about her neck when she made her declaration for duty, instead of having the same among her baggage, and the necklace was visible on her person, it was subject to declaration under the statutes and rules regulating passengers' baggage, and not under the regulations providing for the importation of merchandise. One Pearl Chain v. U. S. (1903) 123 Fed. 371, 59 C. C. A. 499.

Merchandise for sale.—A passenger from abroad was not bound to enter as baggage a trunk containing only merchandise intended for sale, but was bound to indicate its character to the customs officers. U. S. v. One Trunk (1912) 192 Fed. 913, 114 C. C. A. 353, affirming decree (D. C. 1909) 175 Fed. 1012.

Where merchandise for sale is imported in a trunk, separate from the remainder of a passenger's effects, no effort being made to conceal it among the passenger's personal effects or to have it treated as personal baggage, the passenger is under no obligation to declare it as baggage. Congress having prescribed two independent systems of formalities for the importation of personal effects and of merchandise not personal effects, each complete in itself, under this section and Customs Administrative Act, § 4 (post, § 5522), respectively, it could not have been intended that both should be applicable to merchandise imported by a passenger arriving in the United States, but not attempted to be concealed by dressing it up as baggage. U. S. v. One Trunk (D. C. 1909) 175 Fed. 1012, decree affirmed (1912) 192 Fed. 913, 114 C. C. A. 353.

Wearing apparel.—"Wearing apparel" defined. Astor v. Merritt (1884) 4 Sup. Ct. 413, 417, 111 U. S. 202, 28 L. Ed. 401.

Cited without definite application, U. S. v. Legg (1901) 105 Fed. 930, 933, 45 C. C. A. 134; U. S. v. One Pearl Chain (1905) 139 Fed. 513, 71 C. C. A. 500; U. S. v. A Lot of Jewelry, etc. (D. C. 1894) 59 Fed. 684, 687; U. S. v. One Pearl Chain (D. C. 1904) 139 Fed. 510; U. S. v. One Trunk (D. C. 1909) 171 Fed. 772 (affirmed [1911] 184 Fed. 317, 106 C. C. A. 459); U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778, 781.

§ 5497. (R. S. § 2800.) Bond that owner shall make oath required from agent.

Whenever the person making entry of any articles as wearing apparel, personal baggage, tools, or implements, is not the owner of

them, he shall give bond with one or more sureties, to the satisfaction of the collector, in a sum equal to the duties on like articles imported subject to duty, upon the condition that the owner of the articles shall, within one year, personally make an oath such as is prescribed in the preceding section.

Act March 2, 1799, c. 22, § 46, 1 Stat. 661.

See note to R. S. § 2799, ante, § 5496, as to abolition of oaths.

Cited without definite application, U. S. v. Legg (1901) 105 Fed. 930, 933, 45 C. C. A. 134; U. S. v. One Pearl Chain (1905) 139 Fed. 513, 71 C. C. A. 500; U. S. v. One Pearl Chain (D. C. 1904) 139 Fed. 510.

§ 5498. (R. S. § 2801.) Permit for baggage and tools.

On compliance with the two preceding sections, and not otherwise, a permit shall be granted for landing such articles. But whenever the collector and the naval officer, if any, think proper, they may direct the baggage of any person arriving within the United States to be examined by the surveyor of the port, or by an inspector of the customs, who shall make a return of the same; and if any articles are contained therein which in their opinion ought not to be exempted from duty, due entry of them shall be made and the duties thereon paid.

Act March 2, 1799, c. 22, § 46, 1 Stat. 662.

Notes of Decisions

Examination of baggage.—The discretion given to customs officers to make an examination of baggage does not dispense with the necessity of making the entry required by section 5496, ante, in all cases before the baggage can be landed. U. S. v. One Pearl Necklace (1901) 111 Fed. 164, 168, 49 C. C. A. 287, 56 L. R. A. 130.

Cited without definite application, The Robert Edwards (1821) 6 Wheat. 187, 5 L. Ed. 238; One Pearl Chain v. U. S. (1903) 123 Fed. 371, 374, 59 C. C. A. 499; U. S. v. One Pearl Chain (1905) 139 Fed. 513, 71 C. C. A. 500; U. S. v. One Pearl Chain (D. C. 1904) 139 Fed. 510.

§ 5499. (R. S. § 2802.) Penalty for concealing dutiable articles in baggage.

Whenever any article subject to duty is found in the baggage of any person arriving within the United States, which was not, at the time of making entry for such baggage, mentioned to the collector before whom such entry was made, by the person making entry, such article shall be forfeited, and the person in whose baggage it is found shall be liable to a penalty of treble the value of such article.

Act March 2, 1799, c. 22, § 46, 1 Stat. 662.

Forfeiture for false entry, etc., was provided for by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, H, post, § 5526.

Notes of Decisions

1. Proceedings to forfeit.
2. Intent.
3. Mention of articles.
4. Defenses.
5. Dutiable articles "found in the baggage."
6. Baggage.
7. Exemption from duty.
8. Imports from Philippine Islands.
9. Information.
10. Instructions.
11. Bar of proceedings.
12. Extent of forfeiture.

1. Proceeding to forfeit.—See § 5785, post.

An information under this section for the forfeiture of goods is a civil action. U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778, 785.

A proceeding in rem to forfeit presents a civil liability rather than an offense, and does not require proof of intent. (1900) 23 Op. Atty. Gen. 63.

2. Intent.—Evil intent is not a necessary ingredient in incurring the forfeiture or penalty. U. S. v. One Pearl Necklace (1901) 111 Fed. 164, 168, 49 C. C. A. 287, 56 L. R. A. 130.

This section does not make the element of fraudulent intent an ingredient of the cause of forfeiture, and if at any time while the entry is being made and before it is completed there is a disclosure by the passenger which is sufficient to put the customs officers upon an inquiry as to dutiable character of any of the contents of the baggages, such disclosure constitutes sufficient mention to the collector before whom such entry is being made, notwithstanding they were not mentioned in the en-

try or declaration. One Pearl Chain v. U. S. (1903) 123 Fed. 371, 375, 59 C. C. A. 499.

Fraudulent intent is not an ingredient of the cause of forfeiture and dutiable articles found in the handbag of a passenger after said passenger had entered other dutiable articles were subject to the enforcement of the penalties prescribed by said section. Dodge v. U. S. (1904) 131 Fed. 849, 65 C. C. A. 603, writ of certiorari denied (1904) 25 Sup. Ct. 790, 195 U. S. 632, 49 L. Ed. 353.

Mere intent to smuggle goods will not work a forfeiture under the laws of the United States. Though goods are brought in with intent to smuggle them, they may not be seized while the persons importing them may yet change their minds and observe the necessary formalities in due season. U. S. v. One Pearl Chain (1905) 139 Fed. 513, 71 C. C. A. 500.

On arrival in the United States a passenger in entering his baggage, omitted to mention to the customs officers certain dutiable articles contained therein. Held, that he thereby became liable to the penalties provided in this section, irrespective of intent. Harts v. U. S. (1905) 140 Fed. 843, 72 C. C. A. 255, affirming judgments U. S. v. Harts (D. C. 1904) 131 Fed. 886, and Same v. Sixteen Bolts of Silk (D. C. 1904) 139 Fed. 1008.

Section 5496, ante, and this section, do not apply where the claimant was ignorant of the fact that the articles were on board. U. S. v. Two Baskets (1913) 205 Fed. 37, 123 C. C. A. 310.

On the examination of a passenger's baggage dutiable articles were found placed in the skirts of dresses in such a way that they could not be seen until the skirts were unfolded. Held, that this evidence would not justify the conclusion that the owner of the baggage had intended to avoid the payment of duty upon such articles. U. S. v. Harts (D. C. 1905) 131 Fed. 886, judgment affirmed Harts v. U. S. (1905) 140 Fed. 843, 72 C. C. A. 255.

Evil intent is not a necessary ingredient in incurring the forfeiture or penalty. Id.

The penalties denounced by this section apply where any article subject to duty is found in the baggage and not mentioned at the time of making entry thereof, and this is true whether the person bringing in the baggage knew that the articles were dutiable or not, and though he was free from any intent to defraud. U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778.

A violation of this section becomes the misdemeanor denounced by section § 5785, post, when done fraudulently or knowingly. Id.

3. **Mention of articles.**—Any dutiable article found in the baggage of a passenger entering the United States, which was not at the time of making the entry of the baggage "mentioned to the collector before whom such entry was made by the person making the entry," is forfeitable; but it is a sufficient "mention" of an article to avoid forfeiture if it is called to the attention of the officer who, as representative of the collector, takes the entry or declaration, although it is not mentioned therein. U. S. v. One Pearl Necklace (1901) 111 Fed. 164, 49 C. C. A. 287, 56 L. R. A. 130.

A passenger arriving in the United States, on filling out the printed form furnished by the customs officers for the declaration and entry of baggage, struck out the clause referring to the itemized description that is required of the various articles of baggage, and inserted instead a description of the pieces of baggage he had, as consisting of certain numbers of trunks, valises, etc., and said nothing as to what articles were contained therein. Held, that this was not sufficient to put the customs officers on inquiry as to the dutiable character of the contents of the packages, so as to constitute a sufficient "mention" of the articles. Harts v. U. S. (1905) 140 Fed. 843, 72 C. C. A. 255, affirming judgments U. S. v. Harts (D. C. 1904) 131 Fed. 886, and Same v. Sixteen Bolts of Silk (D. C. 1904) 139 Fed. 1008.

A person coming into the United States, and having in possession a valuable pearl chain, silk wearing apparel, and other articles, had made a declaration on board the vessel as to certain "wearing apparel, value not known," had proceeded to the portion of the dock adjacent to the vessel that had been roped off for convenient examination of passengers' effects, and was there awaiting opportunity to give the information necessary for completing the entry; but before this opportunity had been given, the pearl chain was seized as illegally imported. Held, that the phrase "wearing apparel" was a sufficient mention of the chain, and that the seizure was illegal. U. S. v. One Pearl Chain (1905) 139 Fed. 513, 71 C. C. A. 500.

If, instead of requiring a passenger to make due entry of dutiable articles which such passenger imports, government officers elect to seize them before the passenger is called upon to complete his entry, he is not to be held responsible for failure to complete the entry, if he mentions the articles as required by law, when he first made his entry. Id.

Where the form of declaration for entry of the personal baggage and effects of a passenger prescribed by the treasury department, and used by the customs officers, does not call for an enumeration of the contents of packages, as provided for in § 5496, ante, it must be regarded as a waiver of such enumeration, and an election to proceed by the alternative method of examination provided by § 5498, ante; and, un-

less there is fraud or intentional concealment by the passenger, he cannot be subjected to the forfeiture under this section of articles which are in fact personal baggage or effects, because they are not specifically described in such declaration, although they may be dutiable on account of excessive value, as the penalty of forfeiture here prescribed applies only to entries required under § 5496, ante, to obtain a permit for the landing of the articles specified therein without examination. U. S. v. One Pearl Necklace (D. C. 1900) 105 Fed. 357.

Passenger's baggage declaration, specifying only a "trunk," without any mention of its contents, was sufficient; specification of the "trunk" being equivalent to mention of its contents. U. S. v. One Trunk (D. C. 1909) 171 Fed. 772, judgment affirmed (1911) 184 Fed. 317, 106 C. C. A. 459.

4. Defenses.—The fact that the printed form for entry of baggage prepared by the treasury department and presented to passengers entering the country for signature is misleading and unintelligible, or that it is not properly filled out by the customs officers, will not relieve a passenger from the forfeiture consequent upon his failure to mention to the officer articles which are dutiable. U. S. v. One Pearl Necklace (1901) 111 Fed. 164, 49 C. C. A. 287, 56 L. R. A. 130.

5. Dutiable articles "found in the baggage."—Inasmuch as articles for sale which accompany a person arriving in the United States, but which are not classed by the passenger as baggage, are not required to be declared at the same time as the passenger's personal baggage, an intentional misstatement at that time of the value of such articles does not make the articles forfeitable, because the importer was under no obligation to enter them or declare their value at that time, under this section or § 5496, ante, relating to "baggage." U. S. v. One Trunk (D. C. 1909) 175 Fed. 1012, decree affirmed (1912) 192 Fed. 913, 114 C. C. A. 353.

6. Baggage.—Personal effects do not cease to be baggage by being so disposed on the person as to be covered from view by the passenger's dress. U. S. v. One Pearl Chain (1905) 139 Fed. 513, 71 C. C. A. 500.

Precious stones carried loose in a pocket of a passenger arriving in the United States, though not "baggage" within the common-law definition of that term, are baggage within this section: and the passenger is bound to declare them in the same way as articles contained in his trunk. U. S. v. 218½ Carats Loose Emeralds (D. C. 1907) 153 Fed. 643, judgment affirmed Two Hundred and Eighteen and one-half Carats Loose Emeralds v. U. S. (1907) 154 Fed. 839, 83 C. C. A. 475.

7. Exemption from duty.—An exemption from duty is lost by failure to comply with this section. Dodge v. U. S. (1904) 131 Fed. 849, 850, 65 C. C. A. 603 (certiorari denied [1904] 25 Sup. Ct. 790, 195 U. S. 632, 49 L. Ed. 353); Harts v. U. S. (1905) 140 Fed. 843, 72 C. C. A. 255 (affirming judgments U. S. v. Harts [D. C. 1904] 131 Fed. 886, and Same v. Sixteen Bolts of Silk [D. C. 1904] 139 Fed. 1008).

The statute does not contemplate that in an action to enforce the forfeiture or penalty prescribed, the court shall be required to make an appraisement of the value of such articles for the purpose of ascertaining what portion would have been entitled to admission free of duty if a proper declaration and entry thereof had been made. U. S. v. Harts (D. C. 1904) 131 Fed. 886, judgment affirmed Harts v. U. S. (1905) 140 Fed. 843, 72 C. C. A. 255.

8. Imports from Philippine Islands.—This section is not inapplicable to articles brought from the Philippine Islands. Harts v. U. S. (1905) 140 Fed. 843, 72 C. C. A. 255, affirming judgments U. S. v. Harts (D. C. 1904) 131 Fed. 886, and Same v. Sixteen Bolts of Silk (D. C. 1904) 139 Fed. 1008.

9. Information.—In a proceeding to condemn goods seized as forfeited, where a motion is made to dismiss after the government's evidence is in, but the ground of the motion is not stated, any defect in the information which could have been availed of by demurrer, exception, or motion to dismiss at the trial, made on the ground of such defect, or by a motion in arrest of judgment, must on appeal be considered as waived, or as cured by the verdict of condemnation. Friedenstein v. U. S. (1888) 125 U. S. 224, 8 Sup. Ct. 838, 31 L. Ed. 736.

10. Instructions.—A charge that the government has a lien on the property and can recover the duty, though verdict for defendant is rendered, is irrelevant to the issues. U. S. v. One Pearl Necklace (1901) 111 Fed. 164, 49 C. C. A. 287, 56 L. R. A. 130.

11. Bar of proceedings.—It seems that this section has no application where the goods have been successfully passed through the customhouse without discovery. U. S. v. Five Packages of Tapestry (D. C. 1902) 114 Fed. 496.

Dutiable articles in the baggage of a person arriving in the United States from abroad became forfeitable under this section, because not mentioned to the Collector of Customs at the time of entry; but before they were seized their owner was permitted to make a lawful entry and pay the proper duty. Held, that such occurrences subsequent to the accrual of the right of forfeiture would not waive such right, nor estop the United States from asserting

it. U. S. v. One Purple Cloth Costume (D. C. 1907) 158 Fed. 899.

An acquittal of crime charged under § 5785, post, is no bar to proceedings in rem under this section. U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778, 785.

An acquittal on the charge of smuggling under section 5548, post, and of illegal importation under section 5785, post, is not a bar to a proceeding in rem to forfeit the goods under this section and section 5763, post. (1900) 23 Op. Atty. Gen. 63.

12. Extent of forfeiture.—Where an importation of packages was entered at the custom house as containing personal effects only and not subject to duty, but it turned out on examination that the packages contained dutiable merchandise of considerable value, held, that the entire packages were not forfeitable, but only the dutiable merchandise, the case being governed by this section, which is unaffected by the provisions of section 12 of the act of June 22, 1874. See § 5526, post. (1886) 18 Op. Atty. Gen. 326.

Cited without definite application, Keck v. U. S. (1899) 19 Sup. Ct. 254, 261, 172 U. S. 434, 43 L. Ed. 505; U. S. v. Legg (1901) 105 Fed. 930, 933, 45 C. C. A. 134; U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 188.

(R. S. § 2803. Superseded.)

This section provided that baggage, etc., in transit to a foreign country, might be delivered by the parties having it in charge to the collector, to be retained without payment of duty, and delivered to such parties on their departure for their foreign destination. It was superseded by the Customs Administrative Act of June 10, 1890, c. 407, § 28, 26 Stat. 141, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 104, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, CC, post, § 5533, which acts re-enacted the provision, with additions.

§ 5500. (R. S. § 2804, as amended, Act Aug. 27, 1894, c. 349, § 26.) Entry, etc., of cigars.

No cigars shall be imported unless the same are packed in boxes of not more than five hundred cigars in each box; and no entry of any imported cigars shall be allowed of less quantity than three thousand in a single package; and all cigars on importation shall be placed in public store or bonded warehouse, and shall not be removed therefrom until the same shall have been inspected and a stamp affixed to each box indicating such inspection, and also a serial number to be recorded in the custom house. And the Secretary of the Treasury is hereby authorized to provide the requisite stamps, and to make all necessary regulations for carrying the above provisions of law into effect.

Act July 28, 1866, c. 298, § 1, 14 Stat. 328. Act Aug. 27, 1894, c. 349, § 26, 28 Stat. 552.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "and a stamp affixed to each box indicating such inspection," the words "with the date thereof," and inserting instead thereof the words "and also a serial number to be recorded in the custom-house," making the section read as set forth here, by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 26, cited above.

The rates of duty on cigars, etc., were prescribed by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § I, Schedule F, ante, § 5291, pars. 181–185.

Notes of Decisions

Effect of section.—The criminal feature of section 5785, post, punishing unlawful importations, is not affected by this section. U. S. v. Ortega (D. C. 1895) 66 Fed. 713, 715.

Fraud.—The Secretary of the Treasury may release cigars imported in violation of this section, on payment of a fine equal to the duty, when in his opinion the importation does not involve fraud. (1903) 24 Op. Atty. Gen. 588.

Importations from Philippine Islands.—This section applies to cigars coming into the United States from the Philippine Islands. (1911) 29 Op. Atty. Gen. 77.

Cited without definite application, Harts v. U. S. (1905) 140 Fed. 843, 849, 72 C. C. A. 255.

§ 5501. (R. S. § 2805.) Oaths, how taken.

All oaths to be taken upon making of any of the reports or entries, or respecting any of the acts mentioned in this chapter, whether by a master of any vessel, or the owner or consignee of any merchandise, his factor or agent, or by any other person, shall be administered by

the collector, or officer to or with whom the report or entry is made, and shall be reduced to writing, and subscribed by the person taking and by the person administering the oath.

Act March 2, 1799, c. 22, § 49, 1 Stat. 664.

This section was superseded to a great extent by the Customs Administrative Act of June 10, 1890, c. 407, § 22, 26 Stat. 140, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 102, which abolished all oaths administered by officers of the customs, except as provided in said acts other sections of which repealed provisions requiring oaths by importers, etc., on entries, etc., and required, instead of such oaths, declarations similar in substance. A similar provision as to oaths was made by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, S, ante, § 5316.

A provision for designating clerks and inspectors to administer oaths, was made by Act Sept. 30, 1890, c. 1126, post, § 5502.

§ 5502. (Act Sept. 30, 1890, c. 1126.) Oaths to be administered by clerks and inspectors of customs.

Such clerks and inspectors of customs as the Secretary of the Treasury may designate for the purpose shall be authorized to administer oaths, such as deputy collectors of customs are now authorized to administer, and no compensation shall be paid or charge made therefor. (26 Stat. 511.)

This was a provision of the deficiency appropriation act for the fiscal year 1890, cited above.

See note to R. S. § 2805, ante, § 5501, as to abolition of oaths administered by officers of the customs.

§ 5503. (R. S. § 2806.) Manifests of cargo required.

No merchandise shall be brought into the United States, from any foreign port, in any vessel unless the master has on board manifests in writing of the cargo, signed by such master.

Act March 2, 1799, c. 22, § 23, 1 Stat. 644. Act July 18, 1866, c. 201, § 25, 14 Stat. 184.

Notes of Decisions

Foreign ports.—The master of a vessel entering a port of the United States with merchandise subject to duty consigned to such port is bound to deliver his manifest, though he intend such merchandise to be returned to a foreign port. The Fame (D. C. 1858) Fed. Cas. No. 4,633.

Where a vessel bound from a foreign port to a port of the United States receives cargo on the high seas, and brings it into the United States, such cargo must be regarded as brought from a foreign port. United States v. The Coquitlam (D. C. 1893) 57 Fed. 706.

An American vessel in ballast, arriving in March or April, 1902, at Port Townsend, Wash., from Manila, did not arrive from a foreign port within the meaning of the laws requiring the making of entry and the sending of a copy of the manifest. (1902) 24 Op. Atty. Gen. 27.

§ 5504. (R. S. § 2807, as amended, Act June 3, 1892, c. 86, § 1.) What must be stated in manifest.

Every manifest required by the preceding section shall contain:

First. The name of the ports where the merchandise in such manifest mentioned were taken on board, and the ports within the United States for which the same are destined; particularly noting the merchandise destined for each port respectively. Provided, however, That the master of a vessel laden exclusively either with sugar, coal, salt, hides, dyewoods, wool, or jute butts, consigned to one consignee, arriving at a port for orders, may be permitted to destine such cargo or determine its disposition "for orders," upon entering the vessel at the custom-house, and, within fifteen days afterward and before the unloading of any part of the cargo, to amend the manifest by designating the actual port of discharge of such cargo: Provided further, That in the event of failure to designate the port of discharge within fifteen days such cargo must be discharged at the port where the vessel entered.

Second. The name, description, and build of the vessel; the true admeasurement or tonnage thereof; the port to which such vessel

belongs; the name of each owner, according to the register of the same; and the name of the master of such vessel.

Third. A just and particular account of all the merchandise, so laden on board, whether in packages or stowed loose, of any kind or nature whatever, together with the marks and numbers as marked on each package, and the number or quantity and description of the packages in words at length, whether leaguer, pipe, butt, puncheon, hogshead, barrel, keg, case, bale, pack, truss, chest, box, bandbox, bundle, parcel, cask, or package, of any kind or sort, describing the same by its usual name or denomination.

Fourth. The names of the persons to whom such packages are respectively consigned, agreeably to the bills of lading signed for the same, unless when the goods are consigned to order, when it shall be so expressed in the manifest.

Fifth. The names of the several passengers on board the vessel, distinguishing whether cabin or steerage passengers, or both, with their baggage, specifying the number and description of packages belonging to each respectively.

Sixth. An account of the sea-stores remaining, if any.

Act March 2, 1799, c. 22, § 23, 1 Stat. 644, 645. Act June 3, 1892, c. 86, § 1, 27 Stat. 41.

This section, as enacted in the Revised Statutes, did not contain the two provisos following the words "respectively," in the first subsection thereof as set forth here. These provisos were added by amendment by Act June 3, 1892, c. 86, last cited above.

Provisions relating to lists of passengers, etc., to be delivered with the manifest of the cargo, were made by Act Feb. 9, 1905, c. 564, post, § 8010.

Notes of Decisions

Liability of vessel to shipper for neglect to present proper manifest.—The vessel is liable for the neglect of the master to present a proper manifest preventing the owner of the goods shipped from passing them through the customhouse. The Zenobia (D. C. 1847) Fed. Cas. No. 18,209.

Contents of manifest.—Articles purchased abroad for a vessel, to be used as a part of her equipment, are not sea stores, and, where they remain on board on her arrival, they need not be reported by the master in his manifest. U. S. v. Twenty-Three Coils of Cordage (D. C. 1882) Fed. Cas. No. 16,573.

The manifest must name shipper, and in case of return of part of cargo must show by whom shipped out and to whom consigned inward. The Ariel (D. C. 1867) Fed. Cas. No. 527.

Where the captain of a vessel is obliged by law to deliver a manifest of his cargo, he does not comply unless he exhibits a true and accurate one. Phile v. The Anna (1787) 1 Dall. 197.

Evidence.—Parol evidence is not admissible to control the intention as expressed on the face of the manifest showing the vessel and cargo to be consigned to an American port. The Fame (D. C. 1858) Fed. Cas. No. 4,633.

Cited without definite application, U. S. v. The Walla Walla (D. C. 1891) 44 Fed. 796.

§ 5505. (R. S. § 2808.) Merchandise destined to different ports or districts.

If merchandise shall be imported, destined to be delivered in different districts or ports, the quantities and packages so destined to be delivered shall be inserted in successive order in the manifest; and all spirits and wines constituting the whole or any part of the cargo of any vessel shall also be inserted in successive order, distinguishing the ports to which the same may be destined, and the kinds, qualities, and quantities thereof.

Act March 2, 1799, c. 22, § 23, 1 Stat. 644.

§ 5506. (R. S. § 2809.) Penalty for failure to have a correct manifest.

If any merchandise is brought into the United States in any vessel whatever from any foreign port without having such a manifest on board, or which shall not be included or described in the manifest, or shall not agree therewith, the master shall be liable to a penalty

equal to the value of such merchandise not included in such manifest; and all such merchandise not included in the manifest belonging or consigned to the master, mate, officers, or crew of such vessel, shall be forfeited.

Act March 2, 1799, c. 22, § 24, 1 Stat. 646.

Notes of Decisions

1. Forfeiture—In general.
2. —— What forfeitable.
3. —— "Without having a manifest on board."
4. —— Other grounds of forfeiture.
5. —— Intent.
6. —— Sentence.
7. Penalty—In general.
8. Intent.
9. Enforcement against vessel—In general.
10. —— Information or libel.
11. —— Dismissal as to master.
12. —— Evidence.
13. Remission.
14. Refusal of clearance of vessel.

1. Forfeiture—In general.—The penalty of Act 1799 applied only to articles imported in a vessel owned in whole or in part by citizens or inhabitants of the United States. U. S. v. Twenty-Six Diamond Rings (D. C. 1855) Fed. Cas. No. 16,572.

2. —— What forfeitable.—The statute applies only to merchandise belonging or consigned to the master, mate, officers, or crew; and other merchandise which is omitted from the manifest is not forfeitable thereunder. The Coquitlam (1896) 77 Fed. 744, 23 C. C. A. 438.

Domestic goods shipped from foreign port to aid in concealing foreign goods, liable to forfeiture. The Ariel (D. C. 1867) Fed. Cas. No. 527.

A steamer with supplies for a sealing fleet sailed from Victoria, B. C., and, by preconcerted arrangement, met vessels of the fleet at Tonki bay and Port Etches, in the waters of the United States, within four leagues of the shore, and there transferred to them part of her cargo, and received sealskins from them, in violation of the revenue laws. She was then seized and found to be without any manifest of her cargo. Held, that the part of her original cargo still on board, and the sealskins received, were subject to forfeiture. U. S. v. The Coquitlam (D. C. 1893) 57 Fed. 706.

3. —— "Without having a manifest on board."—A forfeiture is not saved by making a manifest after the arrival of the vessel within the limits of a port of entry with the intention of landing them there, though before it is demanded by the customs officer. U. S. v. Ten Thousand Cigars (C. C. 1855) Fed. Cas. No. 16,450.

Where a cargo is seized for want of a manifest thereof, the master cannot prevent a forfeiture by thereafter making out a manifest and tendering it to the officers making the seizure. U. S. v. The Coquitlam (D. C. 1893) 57 Fed. 706.

4. —— Other grounds of forfeiture.—A forfeiture is incurred where a false manifest is presented. One Hundred and Thirty-Four Thousand Nine Hundred and One Feet of Pine Lumber (C. C. 1858) Fed. Cas. No. 10,523.

Merchandise brought in trunks with personal baggage not entered on the ship's manifest held properly forfeited, as imported with an intent to defraud the United States. Lewey v. U. S. (C. C. 1878) Fed. Cas. No. 8,309.

Goods will be forfeited for nonproduction of manifest not satisfactorily accounted for. The Ariel (D. C. 1867) Fed. Cas. No. 527.

It is not an essential preliminary that the ship should have been seized. The Missouri (D. C. 1869) Fed. Cas. No. 9,652.

Where a vessel bound from a foreign port to a port of the United States receives cargo on the high seas, and brings it into the United States, such cargo must be regarded as brought from a foreign port, and is forfeitable, if there is no manifest thereof. U. S. v. The Coquitlam (D. C. 1893) 57 Fed. 706.

Under Act March 15, 1787, providing that every vessel from which merchandise shall be unladed before due entry at the office of the collector of the port shall be forfeited, a vessel is liable to forfeiture where the master had only exhibited 20 hampers of porter in his official manifest, whereas a much greater quantity was found on board the ship, besides 42 hampers landed and deposited in a store, and 24 hampers delivered on shore to the master himself. Phile v. The Anna (Pa. 1787) 1 Dall. 197.

A failure to enter a chariot and harness, brought by water from Pennsylvania, was a forfeiture of the vessel, chariot, and harness, under the revenue laws of Virginia, as they existed in May, 1786. Bentley v. Roan (Va. 1790) 4 Call, 153.

5. —— Intent.—Goods will not be forfeited because of the absence of the manifest, where it appears that the same was inadvertently lost by the master before the vessel sailed, and that no part of the cargo had been unshipped after it was taken on board. U. S. v. Certain Cigars, etc. (C. C. 1873) Fed. Cas. No. 14,765.

To incur a forfeiture there must be an intentional omission from the manifest. U. S. v. Lot of Silk Umbrellas (C. C. 1881) 12 Fed. 412.

Where a libel for information was filed against a vessel's boatswain to

enforce a forfeiture for attempting to import foreign goods without entering them in the vessel's manifest, held, that it must be dismissed, in the absence of any attempt at concealment, and in view of the fact that the practice of making such importations had been tolerated and apparently recognized as legal by the custom-house officials, and the further fact that the boatswain, a native of China, had no reason to suppose that he was thereby violating the law. U. S. v. Three Trunks (D. C. 1881) 8 Fed. 583.

To enforce a forfeiture held, the government must show affirmatively an "actual intention to defraud," under section 16 of the act of June 22, 1874, now repealed, see note under § 5796, post. Id.

6. —— **Sentence.**—A sentence of condemnation forfeiting a portion of a cargo from an omission to enter the same in the manifest is erroneous, unless the libel charge the particular omission. The Thomas and Henry v. U. S. (C. C. 1818) Fed. Cas. No. 13,919.

7. **Penalty—In general.**—A declaration alleging that goods imported without a manifest belonged to the master is not supported by evidence that they belonged to, and were smuggled on board by, one of the crew. U. S. v. Hutchinson (D. C. 1868) Fed. Cas. No. 15,431.

Where the vessel is used as a common carrier, and the owner or master thereof is not a consenting party to the illegal act, or privy thereto, the only remedy appears to be an action against the master. (1912) 29 Op. Atty. Gen. 364.

8. **Intent.**—For importing goods without a manifest, the master is liable to a penalty, though ignorant that the goods were on board; as where they are brought on board, and concealed by a sailor. U. S. v. Hutchinson (D. C. 1868) Fed. Cas. No. 15,431; Same v. The Missouri (C. C. 1872) Id. 15,785; Same v. The Queen (C. C. 1873) Id. 16,108. CONTRA, see U. S. v. The Stadacona (C. C. 1871) Fed. Cas. No. 16,371.

9. **Enforcement against vessel—In general.**—Where the vessel is not used as a common carrier, the government has, by virtue of § 5792, post, a lien on the vessel for the penalty incurred under this section by the master, and may enforce that lien by libel and seizure. (1912) 29 Op. Atty. Gen. 364.

Vessel not forfeitable unless owner or master consented or was privy to illegal act, see § 5766, post.

10. —— **Information or libel.**—In a libel filed against a vessel to recover the penalty imposed, it is not necessary to aver a prior seizure. The Missouri (D. C. 1869) Fed. Cas. No. 9,652.

An information will lie directly against a vessel for the recovery of the penalty for importing goods not included in the manifest without a previous prosecution of the master. The Missouri (D. C. 1869) Fed. Cas. No. 9,652; U. S. v. Platt (D. C. 1840) Id. 16,054a; Same v. The Queen (D. C. 1870) Id. 16,107; (C. C. 1873) Id. 16,108.

An information against a vessel charging the importation of merchandise not included in the manifest may be amended without terms in respect to allegations of ownership of the vessel. U. S. v. The Queen (D. C. 1870) Fed. Cas. No. 16,107.

11. —— **Dismissal as to master.**—On an information against a vessel and her master for the penalty for the importation of merchandise not included in the manifest tried as a civil cause of admiralty and maritime jurisdiction, where the answer of the vessel does not except to such joinder but that of the master does, the information will be dismissed as to him and a decree entered against the vessel. U. S. v. The Queen (C. C. 1873) Fed. Cas. No. 16,108; U. S. v. The Irma (D. C. 1870) Fed. Cas. No. 15,444 (following [D. C. 1870] Fed. Cas. No. 16,107); U. S. v. The Queen (D. C. 1870) Fed. Cas. No. 16,107.

In a suit against a vessel and her master jointly to recover a penalty for importing goods not included in the manifest, it is proper to dismiss the suit as to the master, on the ground that he is entitled to a trial by jury and to proceed with it as against the vessel. U. S. v. The Queen (C. C. 1873) Fed. Cas. No. 16,108.

12. —— **Evidence.**—The manifest of the cargo filed in the customhouse is competent evidence on the question whether certain goods were imported without being entered on the manifest. U. S. v. The Missouri (C. C. 1872) Fed. Cas. No. 15,785.

Proof held to justify the release of a vessel seized to enforce a lien for the penalty. U. S. v. The Walla Walla (D. C. 1891) 44 Fed. 796.

13. **Remission.**—The treasury department has jurisdiction of the remission of fines, penalties, and forfeitures imposed by this section. U. S. v. Hutchinson (D. C. 1868) Fed. Cas. No. 15,431; (1905) 25 Op. Atty. Gen. 535.

14. **Refusal of clearance of vessel.**—A collector of customs may lawfully refuse a clearance to a vessel whose master is alleged to be amenable to the penalty provided by this section for bringing into the United States merchandise not included in the manifest required and described in the preceding sections. (1881) 17 Op. Atty. Gen. 82.

A collector of customs has no right to refuse clearance of a vessel, used as a common carrier, because of the nonpayment of a fine imposed under this section for bringing into the Unit-

ed States merchandise not included in the manifest, unless the master or owner of the vessel was consenting to the illegal act or privy thereto. (1912) 29 Op. Atty. Gen. 364.

Cited without definite application, Friedenstein v. U. S. (1891) 8 Sup. Ct. 838, 839, 125 U. S. 224, 31 L. Ed. 736; The Purissima Concepcion (C. C. 1885) 24 Fed. 358, 360; The Saratoga (D. C. 1881) 9 Fed. 322, 324; U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 188; U. S. v. A Lot of Jewelry, etc. (D. C. 1894) 59 Fed. 684, 687.

§ 5507. (R. S. § 2810, as amended, Act Feb. 27, 1877, c. 69, § 1.) Except by accident or mistake.

Whenever it is made to appear to the satisfaction of the collector, naval officer, and surveyor, or to the major part of them, where those officers are established at any port, or to the satisfaction of the collector alone, where either of the other of the officers is not established, or to the satisfaction of the court in which a trial shall be had concerning such forfeiture, that no part of the cargo of any vessel without proper manifests was unshipped, after it was taken on board, except such as shall have been particularly specified and accounted for in the report of the master, and that the manifests had been lost or mislaid, without fraud or collusion, or were defaced by accident, or became incorrect by mistake, no forfeiture or penalty shall be incurred under the preceding section.

Act March 2, 1799, c. 22, § 24, 1 Stat. 646. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 246.

This section, as enacted in the Revised Statutes, was amended by striking out after the words "where either of the other of the officers" the word "are," and inserting instead thereof the word "is," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, last cited above.

Notes of Decisions

Forfeiture of vessel.—See § 5792, post, as to lien on vessel for penalty incurred by master or owner under § 5506, ante.

Vessel not forfeitable unless owner or master consented to or was privy to illegal act, see § 5766, post.

Accident.—Where the master of the vessel delivered the invoices and bill of lading to the naval officer, and had a manifest made out in the custom house, under the inspection of the naval officer, if some of the cargo is overlooked by accident, it does not forfeit the vessel and cargo. Fairclough v. Gatewood (Va. 1790) 4 Call, 158.

Mistake.—It would seem that, in all cases of importation in vessels, a forfeiture is not to be inferred by a mere mistake in the manifest, report, or entry, without fraud, misconduct, or culpable negligence. U. S. v. The Margaret Yates (D. C. 1849) Fed. Cas. No. 15,720.

Unshipped goods.—The master is not entitled to the benefit of this section if the goods are unshipped. Throwing goods into the dock, protected so that they may be reclaimed, is unshipment. U. S. v. Hutchinson (D. C. 1868) Fed. Cas. No. 15,431.

Cited without definite application, U. S. v. A Lot of Jewelry (D. C. 1894) 59 Fed. 684, 687.

§ 5508. (R. S. § 2811.) Production of manifest.

Every master of any vessel laden with merchandise, and bound to any port in the United States, shall, on his arrival within four leagues of the coast thereof, or within any of the bays, harbors, ports, rivers, creeks, or inlets thereof, upon demand, produce the manifests in writing, which such master is required to have on board his vessel, to such officer of the customs as first comes on board his vessel, for inspection, and shall deliver to such officer true copies thereof, which copies shall be provided and subscribed by the master, and the officer to whom the original manifests have been produced shall certify upon the back thereof that the same were produced, and the day and year on which the same were so produced, and that such copies were to him delivered and by him examined with the original manifest; and shall likewise certify upon the back of such copies the day and year on which the same were delivered, and shall forthwith transmit such copies to the respective collectors of the several

districts, to which the goods by such manifests appear respectively to be consigned.

Act March 2, 1799, c. 22, § 25, 1 Stat. 646. Act July 18, 1866, c. 201, § 25, 14 Stat. 184.

Cited without definite application,
The Javirena (1895) 67 Fed. 152, 153, 14 C. C. A. 350.

§ 5509. (R. S. § 2812.) Delivery of copies of manifest.

The master of any such vessel shall in like manner produce to the officer of the customs who first comes on board such vessel, upon her arrival within the limits of any collection-district in which the cargo, or any part thereof, is intended to be discharged or landed, for his inspection, such manifest; and shall also deliver to him true copies thereof, such copies also to be provided and subscribed by the master, the production of which manifests and the delivery of which copies shall also be certified by the officer of the customs, upon the back of the original manifests, with the particular day and year when such manifests were produced to such officer, and when he so received the copies thereof; and such officer is required forthwith to transmit the copies of the manifests to the collector of the district; and the master shall afterward deliver the original manifests so certified to the collector. When any manifest shall be produced, upon which there shall be no certificate from any officer of the customs as before mentioned, the master producing the same shall be required to make oath that no officer has applied for, and that no indorsement has taken place on, any manifest of the cargo of such vessel.

Act March 2, 1799, c. 22, § 25, 1 Stat. 646.
See note to R. S. § 2805, ante, § 5501, as to abolition of oaths.

Notes of Decisions

Evidence.—A copy of a manifest taken from the books of a custom house is a copy of a record, and it may be given in evidence when properly proved. U. S. v. Johns (C. C. 1806) Fed. Cas. No. 15,481, 4 Dall. 412, 415, 1 L. Ed. 888.

§ 5510. (R. S. § 2813.) What number of copies must be delivered.

The master of any such vessel shall not be required to make delivery of more than one copy of each manifest to the officer who shall first come on board of such vessel, within four leagues of the coast of the United States, and one other copy to such officer as shall first come on board within the limits of any collection-district, for which the cargo of such vessel, or some part thereof, is destined, nor to make delivery of any such copy to any other officer; but it shall be sufficient, in respect to any such other officer, to exhibit to him the original manifests and the certificates thereupon.

Act March 2, 1799, c. 22, § 25, 1 Stat. 647.
A copy of the manifest was required to be mailed to the Auditor for the Treasury Department by Act March 2, 1895, c. 177, § 9, post, § 5513.

§ 5511. (R. S. § 2814.) Penalty for omitting to produce manifest and deliver copies.

If the master of any vessel laden with merchandise, and bound to any port in the United States, fails upon his arrival within four leagues of the coast thereof, or within the limits of any collection-district, where the cargo of such vessel, or any part thereof, is intended to be discharged, to produce such manifests as are heretofore required, in writing, to the proper officer upon demand therefor, or to deliver such copies thereof, according to the directions of the preceding sections, or if he fails to give an account of the true destination of the vessel, which he is hereby required to do, upon request of such officer, or gives a false account of such destination, in order to evade the production of the manifests, the master shall

for every such neglect, refusal, or offense, be liable to a penalty of not more than five hundred dollars. If any officer first coming on board, in each case, shall neglect or refuse to certify on the back of such manifests the production thereof, and the delivery of such copies respectively as are directed to be delivered to such officer, such officer shall be liable to a penalty of five hundred dollars.

Act March 2, 1799, c. 22, § 26, 1 Stat. 647.

Notes of Decisions

Penalty.—The master is subject to a fine for failure to produce a manifest. U. S. v. Teffry (C. C. 1866) Fed. Cas. No. 16,443.

Cited without definite application. The Saratoga (D. C. 1881) 9 Fed. 322, 324.

§ 5512. (R. S. § 2815.) Making return of violations.

The officers who may apply to the master of any such vessel, respecting any of the provisions in the preceding sections, and who shall not receive full satisfaction therein, are hereby required to make a return in writing of the name of the vessel and master so offending, in any or all of the particulars required, as soon as possible, to the collector of the district to which such vessel shall be considered to be bound.

Act March 2, 1799, c. 22, § 26, 1 Stat. 648.

§ 5513. (Act March 2, 1895, c. 177, § 9.) Copy of manifest to be mailed to Auditor for Treasury Department.

On and after July first, eighteen hundred and ninety-five, each master of a vessel arriving in the United States from a foreign port except vessels carrying traffic in bond on transfer ferries shall, immediately upon landing and before entering his vessel at the customhouse, mail to the Auditor for the Treasury Department, Washington, a true copy of the manifest of his vessel, and shall on entering his vessel make affidavit that he has mailed such copy and that the same is true and correct; and he shall also mail to the said Auditor a true copy of the corrected manifest filed on any post entry of his vessel. Any master who neglects or refuses to mail to the Auditor the required copy of the original or corrected manifest shall be subject to the same fines and penalties fixed by law for his failure to deliver the manifest of his vessel to the collector: Provided, That this section shall not apply to ports where there is a naval officer. (28 Stat. 808.)

This section was a part of the legislative, executive, and judicial appropriation act for the fiscal year 1896, cited above.

Notes of Decisions

Foreign port.—Manila not a foreign port. (1902) 24 Op. Atty. Gen. 27.

(R. S. §§ 2816–2831. Superseded.)

R. S. §§ 2816–2821, provided that merchandise intended to be imported into certain ports of delivery therein named might be entered at a port of entry and thereafter transported to the port of delivery, upon compliance with sections 2825 to 2831, inclusive. R. S. §§ 2822, 2823, made similar provisions for the entry of merchandise intended for certain ports of delivery upon the Mississippi River and its tributaries. R. S. § 2824, making a similar provision, was repealed by Act March 3, 1897, c. 389, § 16, 29 Stat. 691. R. S. §§ 2825–2831, regulated the entry and transportation of merchandise destined for the ports of delivery named in sections 2816 to 2824, inclusive.

These sections and amendments thereof by Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 246, 247, and Act June 16, 1880, c. 239, 21 Stat. 283, extending the provisions of R. S. § 2822, were superseded by the establishment of certain customs districts with district headquarters and ports of entry and the abolition of all ports of delivery not "specifically mentioned as ports of entry," by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327. By section 9 of said Plan of Reorganization the Secretary of the Treasury might cause to be stationed at plac-

es in the various collection districts, though not named as ports of entry, officers of the customs with authority to enter and clear vessels, to accept entries of merchandise, to collect duties, and to enforce the customs and navigation laws.

Immediate transportation in bond, without appraisement, of merchandise imported at certain ports, consigned to certain other ports from the port of arrival to the port of destination, was provided for and regulated by R. S. §§ 2990–2997. These sections were repealed, and other provisions for the same purpose substituted therefor, by Act June 10, 1880, c. 190, set forth, with later provisions relating to the subject, post under chapter 7A of this Title, "Immediate Transportation in Bond to Inland Ports."

§ 5514. (R. S. § 2832.) Vessels bound for Natchez and Vicksburg.

All vessels proceeding to the ports of Natchez or Vicksburgh from any foreign port shall stop and report their arrival at the port of New Orleans; and before any such vessel shall proceed on her voyage to Natchez or Vicksburgh the collector for the district of New Orleans shall order on board any such vessel a custom-house officer, who shall remain on board such vessel until her arrival at Natchez or Vicksburgh. Such custom-house officer shall take possession of and safely keep all the papers belonging to such vessel having relation to the freight or cargo on board, which papers he shall deliver to the collector at Natchez or Vicksburgh immediately after his arrival at that port; and any such vessel, which shall depart from New Orleans without such custom-house officer on board, shall be subject to all the pains and penalties provided for by law for a violation of the revenue laws.

Act June 30, 1834, c. 135, § 2, 4 Stat. 715. Act July 7, 1838, c. 175, 5 Stat. 287.

The ports of Natchez and Vicksburg were abolished by establishment of the customs district of New Orleans, to include that part of the State of Mississippi, by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Cited without definite application,
Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313.

§ 5515. (R. S. § 2833.) Expenses of officer sent with vessel.

The expenses of the custom-house officer who may be put on board any such vessel bound for Natchez or Vicksburgh at New Orleans, from the time of his being put on board until his return to New Orleans, shall be paid by the owner of such vessel.

Act June 30, 1834, c. 135, § 3, 4 Stat. 715.
See note to R. S. § 2832, ante, § 5514.

Cited without definite application,
Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313.

§ 5516. (R. S. § 2834, as amended, Act March 3, 1897, c. 389, § 15.) Inspector to accompany vessel to destination.

Collectors and surveyors, respectively, may, whenever they judge it to be necessary for the security of the revenue, put an inspector of the customs on board any vessel, to accompany the same until her arrival at the first port of entry or delivery, in the district to which such vessel may be destined. If the master of any vessel shall neglect or omit to deposit a manifest as herein prescribed, or shall refuse to receive an inspector of the customs on board, as the case requires, he shall forfeit and pay five hundred dollars, to be recovered with cost of suit, one-half for the use of the officer with whom such manifest ought to have been deposited, and the other half to the use of the collector of the district to which such vessel may be bound. If, however, the manifest shall, in either of the above cases, have been previously delivered to any officer of

the customs, pursuant to the provisions hereinafter made in that behalf, the depositing of a manifest shall not be necessary.

Act March 2, 1799, c. 22, § 19, 1 Stat. 641. Act March 3, 1897, c. 389, § 15, 29 Stat. 691.

This section, as enacted in the Revised Statutes, was as follows:

"The master of any vessel bound to any district in Connecticut, through or by the way of Sandy Hook, shall, before he passes the port of New York, and immediately after his arrival, deposit with the collector for the district of New York a true manifest of the cargo on board such vessel. The master of any vessel bound to the district of Burlington shall, before he passes the port of Philadelphia, and immediately after his arrival, deposit with the collector thereof a like manifest; and the collector shall, after registering the manifest, transmit the same, duly certified to have been so deposited, to the officer with whom the entries are to be made; and the," continuing to the end of the section as set forth here.

It was amended by repealing the words quoted above by Act March 3, 1897, c. 389, last cited above.

See note to R. S. § 2770, ante, § 5466, as to abolition of parts of delivery.

Cited without definite application,
Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313.

(R. S. § 2835. Repealed.)

This section prescribed the duties of masters of vessels bound up James River, Va., in regard to deposit of manifests, etc. It was repealed by Act March 3, 1897, c. 389, § 16, 29 Stat. 691.

§ 5517. (R. S. § 2836.) Duties of master bound for Petersburg or Richmond.

The master of any vessel arriving within the districts of Petersburgh or Richmond, laden with merchandise, belonging or consigned to persons resident within both the districts, shall make entry of such vessel, in manner already prescribed by law, with the collector of that district wherein the owner or consignee, or the husband or acting manager of such vessel, shall actually reside; and the master shall, at the time of making the entry, deliver a duplicate manifest of the cargo to the collector, whose duty it shall then be to certify the same as a true copy, and to transmit it to the collector of the other district, and the delivery of such merchandise shall be authorized by permits from the collector of each district, respectively, in which the same has been duly entered according to law. No importer, owner, or consignee of merchandise, residing in either district, shall, however, be admitted to make an entry of such merchandise with the collector of the district in which such importer, owner, or consignee does not reside. All entries, moreover, for merchandise, made by agents, for persons residing in other districts, shall be made with the collector of the district in which such vessel may discharge.

Act March 3, 1801, c. 25, 2 Stat. 116.

The districts of Petersburg and Richmond were abolished by the establishment of the district of Virginia by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

§ 5518. (R. S. § 2837.) What weights and measures used in invoices.

All invoices shall be made out in the weights or measures of the country or place from which the importation is made, and shall contain a true statement of the actual weights or measures of such merchandise, without any respect to the weights or measures of the United States.

Act June 30, 1864, c. 171, § 27, 13 Stat. 217.

Concealment or destruction of any invoice, book, or paper relating to merchandise liable to duty was punishable by R. S. § 5443, incorporated into the Criminal Code as section 64 thereof, post, § 10232, and repealed by section 341 thereof, post, § 10515.

Making a false invoice, etc., or a false entry of goods, etc., was punishable R. S. § 2865, post, § 5548, and by the Customs Administrative Act of June , 1890, c. 407, §§ 6, 9, 26 Stat. 134, 135, re-enacted by the Payne-Aldrich riff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 95, 97, amended by the Under-ood Tariff Act of Oct. 3, 1913, c. 16, § III, G, post, § 5524. False entry s also punishable by R. S. § 5445, incorporated into section 69 of the Crim-al Code, post, § 10237, and repealed by section 341 thereof, post, § 10515; d forfeiture of the merchandise therefor was imposed by the Customs Ad-nistrative Act of June 10, 1890, c. 407, § 9, 26 Stat. 135, amended by the yne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 97, and further nended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, H, post, § 26.

Other provisions for invoices, declarations accompanying them, etc., were ade by the Customs Administrative Act, amended by the Payne-Aldrich Tar- Act, and further amended by the Underwood Tariff Act, § III, C–F, W, st, §§ 5520–5523, 5529.

Cited without definite application,
Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313.

(R. S. § 2838. Repealed.)

This section required invoices of merchandise subject to duty ad valorem to made out in the currency of the place or country from which the importation as made, and to contain a true statement of the actual cost of such mer-andise in such foreign currency. It was repealed by the Customs Adminis-ative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141. Provisions of a similar ature, applicable to all invoices, were made by section 2 of that act, amended the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, and rther amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, C, st, § 5520.

(R. S. § 2839. Repealed.)

This section provided for forfeiture of merchandise entered, but not invoiced cording to the actual cost at the place of exportation, with the design to ade payment of duty. It was repealed by the Customs Administrative Act of une 10, 1890, c. 407, § 29, 26 Stat. 141, and provisions of a similar nature ere made by section 9 of that act, amended by the Payne-Aldrich Tariff Act Aug. 5, 1909, c. 6, § 28, 36 Stat. 97, and further amended by the Under-ood Tariff Act of Oct. 3, 1913, c. 16, § III, H, post, § 5526.

19. (Act Oct. 3, 1913, c. 16, § III, B.) Merchandise deemed property of consignee.

All merchandise imported into the United States shall, for the ose of this Act, be deemed and held to be the property of the on to whom the same is consigned; and the holder of a bill ding duly indorsed by the consignee therein named, or, if con-ed to order, by the consignor, shall be deemed the consignee eof; and in case of the abandonment of any merchandise to the rwriters the latter may be recognized as the consignee. (38 181.)

This paragraph and the five paragraphs next following, were subdivisions section III of the Underwood Tariff Act of 1913, cited above. Said section II, by subdivision A thereof, amended the Customs Administrative Act of une 10, 1890, c. 407, 26 Stat. 131, as previously amended, to read as set orth in said section III, subdivisions B–CC. By such amendment and re-nactment, said Customs Administrative Act of June 10, 1890, and the amend-ents thereof by Act July 24, 1897, c. 11, § 32, 30 Stat. 211, Act May 17, 898, c. 341, 30 Stat. 417, Act Dec. 15, 1902, c. 1, 32 Stat. 753, Act May 27, 908, c. 205, 35 Stat. 403, and the Payne-Aldrich Tariff Act of Aug. 5, 1909, 6, § 28, 36 Stat. 91, were superseded, except the provisions thereof mentioned a proviso of section IV, S, of this act, set forth ante, § 5316.

Said Customs Administrative Act of June 10, 1890, as originally enacted and amended previous to the Payne-Aldrich Tariff Act, consisted of thirty sec-ons, of which section 30 prescribed the time when the act should go into ef-ct. Of the preceding twenty-nine sections of the original act, section 15 pro-iding for review by the courts of decisions of the Board of General Apprais-rs, was omitted from the act as further amended by the Payne-Aldrich Tariff ct, and the remaining twenty-eight sections were amended thereby, constitut-g sections 1–28 thereof. A new section, designated as section 29, was added y the Payne-Aldrich Tariff Act, which created a Court of Customs Appeals nd prescribed its jurisdiction and powers, proceedings, etc. Its provisions

were incorporated in and superseded by chapter 8 of the Judicial Code c March 3, 1911, set forth ante, §§ 1179–1190. Another new section, designate as section 30, was also added by the Payne-Aldrich Tariff Act, which provide for the appointment of an Assistant Attorney-General, a Deputy Assistan Attorney-General, and attorneys, in charge of matters of reappraisment, etc of imported goods and litigation incident thereto. Said section 30 is set fort ante, § 519.

The provisions of the Customs Administrative Act as amended by Act Jul 24, 1897, c. 11, were made applicable to all articles coming into the Unite States from the Philippine Archipelago, by Act March 8, 1902, c. 140, § 8 set forth post, § 5534.

Besides the provisions of this paragraph those of section III, C–J, W, Z–CC all of which relate to the entry of merchandise, are set forth in this chapte post, §§ 5520–5524, 5526–5533. The provisions of section III, K–U, V X, which relate to the appraisal of goods, are set forth under chapter 6 of thi Title, post, §§ 5591, 5592, 5594–5602. The provisions of section III, S, whic relate to withdrawal of goods from bonded warehouse, are set forth under chap ter 7 of this Title, post, § 5656. The provisions of section III, Y, which re late to payment of duties, are set forth under chapter 8 of this Title, post, 5718. The provisions of section III, T, which relate to the enforcement of cus toms laws, are set forth under chapter 10 of this Title, post, § 5791.

This provision, originally enacted in the Customs Administrative Act of Jun 10, 1890, c. 407, § 1, 26 Stat. 131, was substantially re-enacted as a provisio of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, whic was re-enacted in the same language by this act.

Similar provisions made by R. S. § 3058, as amended by Act Feb. 23, 1887, c 221, post, § 5760, were superseded by this section; but further provisions add ed to R. S. § 3058, by said amendment, in respect to merchandise abandoned t underwriters or salvors, were not repealed by the Customs Administrative Ac of June 10, 1890, by a proviso annexed to section 29 of the act which was re enacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat 104.

Notes of Decisions

Ownership of goods.—See § 5760, post.

Where merchandise is consigned to customs brokers for another, who is the owner, the brokers, having presented the invoice, made the entry, and received the goods, are liable for additional duties assessed because of undervaluation. Gray v. U. S. (1902) 113 Fed. 213, 51 C. C. A. 170 (affirming judgment U. S. v. Gray [D. C. 1901] 107 Fed. 104, and writ of certiorari denied Gray v. U. S. [1902] 22 Sup. Ct. 939, 184 U. S. 700, 46 L. Ed. 765); Baldwin v. U. S. (1902) 113 Fed. 217, 51 C. C. A. 174 (affirming judgment U. S. v. Baldwin [D. C. 1901] 107 Fed. 104, and writ of certiorari denied Baldwin v. U. S. [1902] 22 Sup. Ct. 939, 184 U. S. 700, 46 L. Ed. 765).

Where a railroad company whose line extended across the boundary between Mexico and the United States, pursuant to authority of its directors, appointed two agents to receive and enter at a customs port of the United States all goods imported by or consigned to the company, and one of such agents made the declaration on a consular invoice of goods as agent of the railroad company, and the other as consignee made the entry, paid the duty with money of the company, and received the goods, the company may be held as importer or consignee for an additional duty assessed on a reliquidation, and it was error to direct a verdict for the company. U. S. v. Mexican International R. Co. (1907) 151 Fed. 545, 81 C. C. A. 61.

This section does not prohibit the consignment of imported goods to an other than the real owner. Burke v Davis (C. C. 1894) 63 Fed. 456.

This section was intended to preven frauds upon the government arisin from collusive transfers, and confer no right upon a mere consignee t make a declaration as "owner" unde section 5523, post, but he must mak the declaration as consignee, and i the declaration must state truly th name of the owner. U. S. v. Fawcet (C. C. 1897) 86 Fed. 900.

Where a consignee of goods, as appeared from the ship's sworn manifes and from a certified invoice, paid th duty and received the goods from th collector, the latter was not liable t a transferee of the bill of lading, holding the same as collateral for a draf drawn on the consignees for the pric of the goods, which they refused t pay on presentation. Derobert v. Stranahan (C. C. 1903) 126 Fed. 581.

A customhouse broker, who make the sworn declaration for entry o goods, in which he declares himsel the consignee, cannot thereafter den that he is such as against the government, and becomes liable for the duties under the provision that "all merchandise imported * * * shall * * * be deemed and held to be the property of the person to whom the merchandise may be consigned," including additional duties imposed for undervaluation under § 5527, post. U. S. v. Vandiver (D. C. 1904) 133 Fed. 252.

This section, although providing that the holder of the bill of lading "shall be deemed the consignee," and that

ts shall be "held to be the prop- of the consignee, does not pre- the government from going be- the bill of lading to show true rship, for the purpose of deter- g forfeitability. U. S. v. One of Crushed Wheat (D. C. 1908) Fed. 562.

power of attorney, signed by the dual members of a firm as well the firm name, confers explicit rity upon one of its members to he partnership name in signing s and executing certain customs , acts performed in compliance such authorization are obligatory the firm. (1892) 20 Op. Atty. 311.

sent of consignees to shipment.— in merchants ordered for impor- a quantity of merchandise of a not subject to duty. In response e order a shipment was consigned em of an article of a different cter, which was subject to a high of duty, and which they refused cept or to make themselves re- ible for in any way. Held, that was no colorable authority for hipment of the merchandise, and the consignees should not be con- d as having "imported" the mer- ise within this section. U. S. v. ll (1904) 129 Fed. 909, 64 C. C. 41, affirming judgment U. S. v. ll Bros. (D. C. 1903) 122 Fed.

endants ordered a consignment of by sample, which consisted whol- cotton from a foreign manufac- turer, which waste was entitled to free entry. The manufacturer shipped waste to fill the order consigned to defendant through certain persons, who were not defendant's agents, at Suspension Bridge, which bill was indorsed to be delivered to N. When the goods arrived, N. declared, without authority, that the goods belonged to defendants, and entered them for consumption. On examination it was found that the waste was cotton and woolen mixed, and was therefore taxable for duty at 10 cents a pound. Defendants, on notification, refused to accept the waste under the contract, and it was sold for duty, resulting in a large deficiency. Held, that defendants were not liable for such deficiency. Id.

Where merchandise is shipped to parties in the United States, which is of a different character from that ordered, it is a consignment made without the consent of the consignees, within the meaning of article 1231, Customs Regulations 1899, prescribing that, when the proceeds from the sale of unclaimed merchandise are not sufficient to pay the duties and other charges thereon, "the consignees are liable for such duties, unless it be shown that the consignment was made without their consent." Id.

Where merchandise is shipped to parties in the United States without their authority, they are under no obligation, in order to free themselves from liability for duty, to make entry of the merchandise or to take possession of it for any purpose. Id.

20. (Act Oct. 3, 1913, c. 16, § III, C.) Invoices; requisites. All invoices of imported merchandise shall be made out in currency of the place or country from whence the importations be made, or, if purchased, or agreed to be purchased, in the ency actually paid, agreed upon, or to be paid therefor, shall ain a correct, complete, and detailed description of such mer- dise and of the packages, wrappings, or other coverings con- ng it, and shall be made in triplicate or in quadruplicate in of merchandise intended for immediate transportation with- appraisement, and signed by the person owning or shipping the e, if the merchandise has been actually purchased, or price ed upon, fixed, or determined, or by the manufacturer or owner eof, if the same has been procured otherwise than by purchase, greement of purchase, or by the duly authorized agent of such haser, seller, manufacturer, or owner. (38 Stat. 181.)

See notes to subdivision B of this section, ante, § 5519.

This provision, as originally enacted in the Customs Administrative Act of une 10, 1890, c. 407, § 2, 26 Stat. 131, was amended by the substitution of e words "correct, complete, and detailed description of such merchandise, and ll the packages, wrappings or other coverings containing it," in lieu of the ords "correct description of such merchandise," by the Payne-Aldrich Tariff ct of Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, which was further amended by the ddition of the words "or agreed to be purchased" after the words "or if pur- hased," with changes in the wording to conform to such addition, making the rovision read as set forth here, by this act.

Invoices of leaf tobacco specifying in detail the character of such tobacco, hether wrapper or filler, its origin and quantity, were required by a provision paragraph 182, "Schedule F," of section I of this act, ante, § 5291, par. 182. Similar provisions were made by R. S. §§ 2838, 2853, both of which sections

were repealed by section 29 of the Customs Administrative Act of June 10, 1890, 26 Stat. 141.

The values of foreign coin, as estimated pursuant to Act Aug. 27, 1894, c. 349, § 25, post, § 6536, were required, by a provision of that section, to be followed in estimating the value of foreign merchandise exported to the United States.

Invoices were required to be made out in the weights or measures of the place or country from which the importation is made, by R. S. § 2837, ante, § 5518.

Declarations to be indorsed on the invoices produced to the consular officer were provided for by section III, D, of this act, post, § 5521.

Entry of merchandise without invoice was provided for by section III, E, of this act, post, § 5522.

Previous provisions requiring invoices of merchandise intended for immediate transportation without appraisement to be in quadruplicate were made by Act June 10, 1880, c. 190, § 4, post, § 5542.

Countries "where there is no consul" were excepted from provisions relating to invoices by R. S. § 2859, post, § 5544.

Notes of Decisions

Construction in general.—See § 6536, post, as to ascertaining value of foreign coins.

The provisions of this section and Act Oct. 1, 1890, c. 1244, § 52 (post, § 6536), being substantially re-enactments of former laws, must be interpreted in the light of the decisions, construing those former laws and the estimate of the director of the mint as proclaimed by the Secretary of the Treasury must be held conclusive, both upon the government and the importer as under the former statutes. U. S. v. Klingenberg (1894) 14 Sup. Ct. 790, 792, 153 U. S. 93, 38 L. Ed. 647.

Currency in which invoices made out.—The value of foreign coins, as ascertained by the estimate of the director of the mint, and proclaimed by the secretary of the treasury, is conclusive upon customhouse officers and importers. Hadden v. Merritt (1885) 5 Sup. Ct. 1169, 115 U. S. 25, 29 L. Ed. 333.

An importer in giving the invoice value of his merchandise stated it in dollars, instead of rupees, having mistaken the rupee abbreviation for the dollar mark. Held, that this constituted a clerical mistake. U. S. v. Muller, Maclean & Co. (1907) 158 Fed. 405, 85 C. C. A. 515.

A written contract entered into at San Francisco, in the state of California, for the sale of goods to arrive from Calcutta, contained this clause: "Any change in duties to be for or against purchasers." The rate of duty on the bags constituting the subject-matter of the contract has not been changed since the contract was made. The amount of duty actually paid was, however, considerably less than the amount which it would have been necessary to pay on the same goods if they had been entered at the time when the contract was made, owing to a change, meanwhile, in the estimated value of the rupee, in which currency, the invoice of such merchandise was required to be made out. In an action by the purchaser of the goods to recover the amount of this difference, held, the parties, by the words "change of duties," intended a change in the rate of duty by authority of congress, not a difference in the amount of duty merely. Detrick v. Balfour (C. C. 1881) 8 Fed. 468.

Where goods are invoiced in the legal currency of the country of exportation, and also in another foreign currency, which gives a higher value in United States money, the valuation must be taken according to the legal currency of the country of exportation. U. S. v. Klingenberg (C. C. 1896) 77 Fed. 279.

When the value of imported merchandise is stated in the invoice in a foreign currency, the value of such currency at the time of exportation from the foreign country fixes the valuation in United States currency. U. S. v. Knauth (C. C. 1896) 77 Fed. 599.

The statement of the values of foreign coins, contained in a proclamation by the secretary of the treasury, is conclusive upon the customs officials in reducing to United States currency a valuation of imported merchandise. Id.

A proclamation of the secretary of the treasury stated the value of the florin of Austria-Hungary to be $0.482, according to the gold standard, $0.32 according to the silver standard, with silver the nominal standard, paper the actual standard, its depreciation measured by the gold standard. Held, that a valuation of imported merchandise in florins must be reduced to United States currency on the basis of the gold standard. Id.

Any money which is in common use as a medium of purchase and sale, though not of the coinage of the country, is a currency of the country within Act March 3, 1801. U. S. v. Dry Ox and Cow Hides (D. C. 1865) Fed. Cas. No. 14,995.

Duress.—Importers so changed the form of invoicing as to increase the amount of duty payable, this being done to comply with a rule which had been established by the Board of General

aisers, but which the courts subntly held illegal. Held, that as ction of the importers had been ut protest and the customs offihad not raised or changed the ins, nor directed or requested that done, there had been no legal ulsion or duress. Gulbenkian v. (C. C. 1909) 175 Fed. 860, judgaffirmed (1911) 186 Fed. 133, 108 A. 245.

importers were embarrassed in g the actual market value of their handise, but they elected to enter voolens and cottons with the adis of a penny a yard for dampage 10 per cent. for shrinking. A no- that this was done under duress not make a case of duress. No rful demand was made on the imrs, and what they did was done and voluntarily to fix the en- value of the goods. Van Ingen v. U. S. (1913) 4 Ct. Cust. App.

importers had been warned that entered value of their brierwood lower than that of other impor- and that unless the value was ad- d penalties for undervaluation l be exacted. The importers were by this warning required to do nothing more than the law itself obliged; they were subjected to no unlawful demand and consequently to no duress. Colonial Import & Export Co. v. U. S. (1914) 5 Ct. Cust. App. 137.

The importer may, in view of possible subsequent proceedings, register with his entry his claim as to the true valuation, and for the collector to refuse this privilege might be duress. But to constitute duress the proof must show a substantial right had been denied. Batten & Co. v. U. S. (1914) 5 Ct. Cust. App. 447.

The importers were constrained to include the commissions in dispute in the entered value of the merchandise; otherwise their entries would not have been received, but simply returned to them. This constituted duress. Vandiver v. U. S. (1915) 6 Ct. Cust. App. 80.

Cited without definite application, Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313; Cramer v. Arthur (1880) 102 U. S. 612, 616–619, 26 L. Ed. 259; U. S. v. Wilson (1897) 18 Sup. Ct. 85, 86, 168 U. S. 273, 42 L. Ed. 464.

21. (Act Oct. 3, 1913, c. 16, § III, D.) Invoices to be produced to consular officer; declaration to be indorsed thereon.

. All such invoices shall, at or before the shipment of the merdise, be produced to the consular officer of the United States he consular district in which the merchandise was manufacd, or purchased, or contracted to be delivered from, or when hases or agreements for purchase are made in several places, he consular district where the merchandise is assembled for ment, as the case may be, for export to the United States, and l have indorsed thereon, when so produced, a declaration signed the purchaser, seller, manufacturer, owner, or agent, setting that the invoice is in all respects correct and true and was e at the place from which the merchandise is to be exported e United States; that it contains, if the merchandise was obed by purchase, or agreement for purchase, a true and full ement of the time when, the place where, the person from whom same was purchased, or agreed to be purchased, and the actual thereof, or price agreed upon, fixed, or determined, and of all ges thereon, as provided by this Act; and that no discounts, tes, or commissions are contained in the invoice but such as been actually allowed thereon, and that all drawbacks or boun- received or to be received are shown therein; and when obd in any other manner than by purchase, or agreement of pure, the actual market value or wholesale price thereof, at the of exportation to the United States, in the principal markets he country from whence exported; that such actual market e is the price at which the merchandise described in the invoice eely offered for sale to all purchasers in said markets, and that the price which the manufacturer or owner making the decion would have received, and was willing to receive, for such chandise sold in the ordinary course of trade in the usual whole- quantities, and that it includes all charges thereon as provided his Act, and the actual quantity thereof; and that no different ice of the merchandise mentioned in the invoice so produced

has been or will be furnished to anyone. If the merchandise was actually purchased, or agreed to be purchased, the declaration shall also contain a statement that the currency in which such invoice is made out is that which was actually paid for the merchandise by the purchaser, or agreed to be paid, fixed, or determined. (38 Stat. 181.)

See notes to subdivision B of this section, ante, § 5519.

These provisions, as originally enacted in the Customs Administrative Act of June 10, 1890, c. 407, § 3, 26 Stat. 131, were amended by the substitution of the words "consular officer," in lieu of the words "consul, vice-consul or commercial agent," and the addition of the word "seller," after the words "signed by the purchaser," by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, which was further amended by the addition of the words "or contracted to be delivered from, or when purchases or agreements for purchases are made in the several places, in the consular district where the merchandise is assembled for shipment," after the words "consular district in which the merchandise was manufactured or purchased," with changes in the wording to conform to such addition, and by the substitution of the phrase "and that no discounts, rebates, or commissions are contained in the invoice but such as have been actually allowed thereon and that all drawbacks or bounties received or to be received are shown therein," in lieu of the phrase "and that no discounts, bounties, or drawbacks are contained in the invoice but such as have been actually allowed thereon," making the provisions read as set forth here, by this act.

A further provision relating to invoices of merchandise purchased or manufactured in different consular districts was made by subdivision W of this section, post, § 5529.

The words "value," "actual market value," and "wholesale price," were defined by subdivision R of this section, post, § 5599.

Provisions relating to the production of invoices to the consul or other officer, and the indorsement of declarations thereon, were made by R. S. § 2854, repealed by section 29 of the Customs Administrative Act of June 10, 1890, c. 407, 26 Stat. 141.

Provisions that merchandise subject to ad valorem duty, belonging to a person not residing at the time in the United States, actually purchased by him, or otherwise acquired, or belonging to the manufacturer, should not be admitted to entry unless the invoice should be verified by the oath of the owner, administered by a consul or other officer, were made by R. S. §§ 2843, 2845, repealed by said section 29.

A declaration to the consul, by the person producing the invoice, at the port in the United States at which it is intended to make entry of the merchandise, was required by R. S. § 2855, post, § 5541.

The certification of invoices by consuls or other officers, and their duties in regard thereto, were provided for by R. S. §§ 2855, 2861–2863, post, §§ 5541, 5545–5547.

Declarations to be filed with the collector on entry of merchandise were provided for by subdivision F of this section, post, § 5523.

The authentication of invoices in the absence of the consular officer was provided for by R. S. § 2844, as amended by Act June 28, 1906, c. 3569, post, § 5537.

Notes of Decisions

Production of invoice to consular officer.—An invoice executed in triplicate in due form must be produced at or before each shipment to the consul at the place of shipment. Shipments in trains are subject to the same rules as shipments by water. Locke v. U. S. (C. C. 1866) Fed. Cas. No. 8,442.

Free goods are not within the provisions of R. S. §§ 2854–2857, requiring an invoice with a certain prescribed declaration of the shipper, and a certificate of the consul at the port of shipment, or the prescribed bond, to be presented to the collector as a condition of entry of the goods. Siegfried v. Phelps (C. C. 1889) 40 Fed. 660, judgment reversed Phelps v. Siegfried (1892) 12 Sup. Ct. 391, 142 U. S. 602, 35 L. Ed. 1128.

The government is not bound by the acts of its consul in certifying to the correctness of an invoice, when based upon false and fraudulent statements. U. S. v. Sixteen Cases of Silk Ribbons (D. C. 1870) Fed. Cas. No. 16,301.

A certified consular invoice is required by law for the admission to entry of imported merchandise not subject to duty, excepting where congress has expressly dispensed with that requirement. (1889) 19 Op. Atty. Gen. 225.

The person making the declaration to an invoice of goods intended for shipment from a foreign country to the United States is not required to be actually present before the consul, vice consul, or commercial agent of the United States in order to authorize such consular officer to certify such invoice. (1897) 21 Op. Atty. Gen. 571.

All that is necessary in order to au-

e such consular officer to certify voice produced, with the declara- ndorsed thereon signed, and with ath attached, is that he shall be ed that the person making the hereto is the person he represents f to be, that he is a credible per- and that the statements made such oath are true. Id.

re the consular officer has doubts the identity of the person making claration, as to his credibility, or the truthfulness of the statements rth in the declaration, he would the right to require the declarant ne personally before him. Id.

uation of merchandise.—The pro- in the revenue act of March 3, § 1 (12 Stat. 737), that when for- goods brought or sent into the d States are obtained otherwise by purchase, they shall be in-, at the "actual market value of at the time and place when and the same were procured or man- ured," does not mean any locali- re limited than the country where oods are bought or manufactured. ot's Champagne (1865) 70 U. S. all.) 114, 18 L. Ed. 116; Three and One Hundred and Nine Cases ampagne (D. C. 1867) Fed. Cas. 4,012.

ds imported by the purchaser, subject to ad valorem duty, l be entered at the purchase price, goods imported by the manufac- should be entered at the market or value at the place of expor- . U. S. v. Twelve Casks of Cud- (D. C. 1834) Fed. Cas. No. 16,- Same v. Twenty-Six Bales of er Boots (D. C. 1858) Id. 16,- Same v. Twenty-Six Cases of er Boots (C. C. 1860) Id. 16,571.

s obligatory on the importer to h the appraisers and collector a true valuation of merchandise. inghaus v. U. S. (1899) 19 Sup. 05, 307, 172 U. S. 622, 43 L. Ed.

ler the act of 1799, a foreign facturer might invoice goods made m at the actual cost of the raw ial, the value of labor employ- nd the expense of transportation e port of shipment. Ninety-Five Bales of Paper v. U. S. (C. C. 1820) Fed. Cas. No. 10,274.

The importer may enter his goods at their cash value in the foreign country, reduced to specie. Grant v. Maxwell (C. C. 1851) Fed. Cas. No. 5,699.

The cost of the raw materials is to be taken at the market price of such material at the time when the manufacture of the goods was completed. U. S. v. Sixteen Cases of Silk Ribbons (D. C. 1870) Fed. Cas. No. 16,301.

A memorandum slip attached to each invoice that showed the change the importer had wished to make in the valuation as entered is not such an entry as could be taken to comply with the statute. The importer was entitled to make upon the entry itself his protest against the addition by the collector of commissions paid as a part of the dutiable value. Stein v. U. S. (1911) 1 Ct. Cust. App. 478.

The Treasury Department has no authority to insist that declarations upon goods obtained by purchase shall contain the further clause declaring that the prices in the invoice represent the actual foreign market value on the day of shipment, etc. (1899) 22 Op. Atty. Gen. 405.

Verification of invoice.—This section does not require the invoices to be verified. U. S. v. 646 Half-Boxes of Figs (D. C. 1908) 164 Fed. 778.

The question as to where and in what manner the oaths to the declarations indorsed on invoices shall be taken is more a matter of regulation or instruction for the government of consular officers than of construction of a statute. (1897) 21 Op. Atty. Gen. 571.

Evidence of violation of section.—As to evidence of violations, see Cliquot's Champagne (1865) 3 Wall. 114, 116, 18 L. Ed. 116; Fennerstein's Champagne (1865) 3 Wall. 145, 147, 18 L. Ed. 121.

Cited without definite application, Hilton v. Guyot (1895) 16 Sup. Ct. 139, 159, 159 U. S. 113, 40 L. Ed. 95; U. S. v. Wilson (1897) 18 Sup. Ct. 85, 168 U. S. 273, 42 L. Ed. 464; Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313; U. S. v. Auffmordt (D. C. 1884) 19 Fed. 893, 894 (affirmed [1887] 7 Sup. Ct. 1182, 122 U. S. 197, 30 L. Ed. 1182).

22. (Act Oct. 3, 1913, c. 16, § III, E.) Entry without invoice, upon affidavit and verified statement; books; bond for production of invoice.

Except in case of personal effects accompanying the passenger, nportation of any merchandise exceeding $100 in value shall be tted to entry without the production of a duly certified invoice eof as required by law, or of an affidavit made by the owner, rter, or consignee, before the collector or his deputy, showing it is impracticable to produce such invoice; and no entry shall ade in the absence of a certified invoice, upon affidavit as afore- unless such affidavit be accompanied by a statement in the form n invoice, or otherwise, showing the actual cost of such merchan-

dise, if purchased, or if obtained otherwise than by purchase, the actual market value or wholesale price thereof at the time of exportation to the United States in the principal markets of the country from which the same has been imported, which statement shall be verified by the oath of the owner, importer, consignee, or agent desiring to make entry of the merchandise, to be administered by the collector or his deputy, and it shall be lawful for the collector or his deputy to examine the deponent under oath, touching the sources of his knowledge, information, or belief in the premises, and to require him to produce any letter, paper, or statement of account in his possession, or under his control, which may assist the officers of customs in ascertaining the actual value of the importation or any part thereof, and in default of such production, when so requested, such owner, importer, consignee, or agent shall be thereafter debarred from producing any such letter, paper, or statement for the purpose of avoiding any additional duty, penalty, or forfeiture incurred under this Act, unless he shall show to the satisfaction of the court or the officers of the customs, as the case may be, that it was not in his power to produce the same when so demanded; and no merchandise shall be admitted to entry under the provisions of this section unless the collector shall be satisfied that the failure to produce a duly certified invoice is due to causes beyond the control of the owner, consignee, or agent thereof: Provided, That the Secretary of the Treasury may make regulations by which books, magazines, and other periodicals published and imported in successive parts, numbers, or volumes, and entitled to be imported free of duty, shall require but one declaration for the entire series. And when entry of merchandise exceeding $100 in value is made by a statement in the form of an invoice, the collector shall require a bond for the production of a duly certified invoice. (38 Stat. 182.)

See notes to subdivision B of this section, ante, § 5519.

These provisions, as originally enacted in the Customs Administrative Act of June 10, 1890, c. 407, § 4, 26 Stat. 131, were amended by striking out the word "dutiable" after the words "merchandise exceeding $100 in," by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 92, re-enacted in the same language by this act.

Provisions for bond by agent were also made by R. S. § 2787, ante, § 5484.

Provisions for production of invoice of goods of absent owner were made by R. S. § 2842, post, § 5536.

Provisions authorizing the Secretary of the Treasury to admit merchandise to entry in certain cases without invoice were made by R. S. §§ 2847, 2848, but became inoperative by the repeal of preceding sections referred to therein, by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141.

Personal effects accompanying the passenger were comprised in the "Free List" of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § I, par. 642, ante, § 5291, par. 642.

Books, etc., and other publications entitled to be imported free of duty, were described in the free list of the Underwood Tariff Act, § I, pars. 424–428, ante, § 5291, pars. 424–428.

Notes of Decisions

Production of invoice.—This section applies only where there has been an actual, intentional entry of merchandise, and not where the entry has been concealed. U. S. v. 218½ Carats Loose Emeralds (D. C. 1907) 153 Fed. 643, judgment affirmed Two Hundred and Eighteen and One-Half Carats Loose Emeralds v. U. S. (1907) 154 Fed. 839, 83 C. C. A. 475.

The collector has no power to permit an entry of merchandise unaccompanied by an invoice, or a sufficient excuse for its absence. U. S. v. Thirty-Nine Thousand One Hundred and Fifty Cigars (D. C. 1866) Fed. Cas. No. 16,464.

The provision that "except in case of personal effects, no importation of any merchandise" shall be entered without invoice, is equivalent to an exception of articles not personal effects from the provision relative to the declaration of "baggage" in section 5496, ante. U. S. v. One Trunk (D. C. 1909) 175 Fed. 1012, decree affirmed (1912) 192 Fed. 913, 114 C. C. A. 353.

Value of single parcels post package, and not of entire number of packages arriving by same mail, held to determine necessity for customs entry. U. S. v.

een Packages of Dental Instru- (D. C. 1915) 222 Fed. 121.

forma invoice and bond.—The required to be given on the entry rchandise without a duly-certified e, is not intended to secure a pen- or a breach of duty, but only ac- amages. U. S. v. Cutajar (1895) d. 530, 14 C. C. A. 515.

ro forma invoice is for entry pur- a recognized lawful invoice made oath as a substitute for a regu- certified invoice; a penalty for valuation in such an invoice may icted and an entry on a pro forma e is such an entry as the language tion 5527, post, should and must to, namely, "the duty shall not, er, be assessed in any case upon ount less than the entered value." v. Bennett & Loewenthal (1911) Cust. App. 249.

iewing at length the history of egislation, the practice of the ury Department and the decisions e courts as well, no warrant is for the statement that an entry a pro forma invoice should be held until the certified invoice is pro- or the bond given for its produc- as been forfeited; nor is any au- y found for holding that liquida- s proper on an amount less than ntered value in case an entry is upon a pro forma invoice, no est clerical error or duress ap- g. Id.

pro forma invoice for purposes of takes the place of the certified invoice and is a complete substitute therefor; and so, the production and filing on some day later than the date of filing the pro forma invoice of papers required by regulations to be produced and "filed with the entry," is not a compliance with articles 570 and 571, Customs Regulations of 1908. McBride v. U. S. (1911) 1 Ct. Cust. App. 293, T. D. 31354; U. S. v. Frank & Lambert (1911) 2 Ct. Cust. App. 239, T. D. 31973; U. S. v. Bennett & Loewenthal (1911) 2 Ct. Cust. App. 249, T. D. 31975; U. S. v. Rettig (1912) 2 Ct. Cust. App. 537.

The bond required of an importer entering his goods upon a pro forma invoice stipulates that duties are to be and will be paid upon the certified invoice valuation. In all cases the collector is empowered to reliquidate within one year, the customs regulations governing him in the exercise of this power. In this case authority for the reliquidation by the collector is found both in the law and the express stipulation of the importer's bond. U. S. v. Hobbs (1912) 3 Ct. Cust. App. 256.

Cited without definite application, Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313; The Laura (1885) 5 Sup. Ct. 881, 883, 114 U. S. 411, 29 L. Ed. 147; U. S. v. Sommers (1909) 171 Fed. 57, 96 C. C. A. 299; U. S. v. Fisher (C. C. 1881) 8 Fed. 414, 416; Insurance Co. of North America v. Willey (1912) 212 Mass. 75, 98 N. E. 677.

23. (Act Oct. 3, 1913, c. 16, § III, F.) Declaration to accompany invoice on entry.

Whenever merchandise imported into the United States is en- by invoice, a declaration upon a form to be prescribed by the etary of the Treasury, according to the nature of the case, shall led with the collector of the port at the time of entry by the r, importer, consignee, or agent, which declaration so filed shall ly signed by the owner, importer, consignee, or agent before the ctor, or before a notary public or other officer duly authorized w to administer oaths and take acknowledgments, under regula- to be prescribed by the Secretary of the Treasury: Provided, if any of the invoices or bills of lading of any merchandise im- d in any one vessel which should otherwise be embraced in said have not been received at the date of the entry the declaration state the fact, and thereupon such merchandise, of which the ces or bills of lading are not produced, shall not be included in entry, but may be entered subsequently. That the Secretary of Treasury and the Secretary of Commerce are hereby authorized directed to establish from time to time for statistical purposes t or enumeration of articles in such detail as in their judgment be necessary comprehending all goods, wares, and merchandise rted into the United States, and that as a part of the declaration n provided there shall be either attached thereto or included in an accurate statement specifying, in the terms of the said led list or enumeration, the kinds and quantities of all merchan- imported, and the value of the total quantity of each kind of le, and it shall be the duty of the consular officer, to whom the

invoice shall be produced, to require such information to be given. (3 Stat. 182.)

See notes to subdivision B of this section, ante, § 5519.

These provisions, as originally enacted in the Customs Administrative Ac of June 10, 1890, c. 407, § 5, 26 Stat. 132, prescribing various forms of decla rations, were amended by provisions prescribing different forms by the Payne Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 95, which was furthe amended by provisions requiring instead of the forms prescribed, "a declaratio upon a form to be prescribed by the Secretary of the Treasury," and by th addition of the provision "that the Secretary of the Treasury and the Sec retary of Commerce are hereby authorized," etc., to the end of the paragraph making the provisions read as set forth here, by this act.

A declaration on entry of merchandise consigned for sale was provided fo by subdivision J of this section, post, § 5528.

Provisions requiring an oath on entry of merchandise by invoice, to be ad ministered by the collector, were made by R. S. § 2841, which was repeale by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat 141, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 3 Stat. 104; and all oaths administered by officers of the customs, except a provided in the Customs Administrative Act, were abolished by section 2 thereof.

The provisions for abolition of oaths made by the Customs Administrativ Act of June 10, 1890, c. 407, § 22, 26 Stat. 140, amended by the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 102, were superseded by a proviso an nexed to section IV, S, of the Underwood Tariff Act, set forth ante, § 5316 that nothing in the act should be construed to permit any oaths to be demanded except as provided.

Provisions for entry of separate packed packages of which no invoice has been received, were made by Act May 1, 1876, c. 89, §§ 1, 2, ante, §§ 5482, 5483.

Provisions relating to representatives of deceased or insolvent owners were made by R. S. § 2846, post, § 5538.

The collector's certification of the invoice was required by R. S. § 2852, post § 5540.

Notes of Decisions

Historical.—As to former laws governing appraisal of goods imported and entered by the manufacturer, see Belcher v. Lawrason (1858) 21 How. 251, 254, 16 L. Ed. 123.

Declaration in general.—Section 5519, ante, confers no right upon a mere consignee to make a declaration as "owner" under this section, but he must make the declaration as consignee, and in the declaration must state truly the name of the owner. U. S. v. Fawcett (C. C. 1897) 86 Fed. 900, 901.

Under section 5, Customs Administrative Act, the practice of having declarations signed in blank by an importer, to be filled in later by a customs broker, and the practice of notaries public in falsely certifying such declarations as having been made and sworn to in their presence, are illegal, and to be condemned in law as in morals. U. S. v. Cohn (C. C. 1904) 128 Fed. 615, judgment affirmed Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

Under R. S. § 2841, an oath, by a person entering merchandise, that he does not know of or believe in the existence of any invoices or bills of lading other than those produced by him, does not constitute a false oath, although he knew of the existence of copies. U. S. v. Harrison (D. C. 1887) 32 Fed. 386.

On entering an importation of certain merchandise, the importer made "the declaration of owner in cases where merchandise has been actually purchas ed," which is set forth in section 5 Customs Administrative Act, but it lat er appeared that the importation wa made pursuant to an agreement unde which the importer might, after exam ination, retain and pay for, or return any part or all of the goods, and th importer admitted that he did not con sider himself the actual owner, bu made the entry as an accommodatio to the parties who caused the goods t be shipped to him. Held that, as h had full dominion over the property with the right to sell or otherwise dis pose of it without accountability to an one, he should be considered the "own er," and might properly make the dec laration aforesaid. U. S. v. Ninety Nine Diamonds (D. C. 1904) 132 Fed 579, judgment affirmed (1905) 139 Fed 961, 72 C. C. A. 9, 2 L. R. A. (N. S. 185, writ of certiorari denied (1906 26 Sup. Ct. 760, 201 U. S. 645, 50 L Ed. 903.

Evidence.—As to evidence required t convict of perjury at custom house, se U. S. v. Wood (1840) 14 Pet. 430, 10 L Ed. 527.

Cited without definite application Forbes v. Gracey (1876) 94 U. S. 762 763, 24 L. Ed. 313; Oberteuffer v. Rob ertson (1886) 6 Sup. Ct. 462, 469, 11 U. S. 499, 29 L. Ed. 706; U. S. v. Som mers (1909) 171 Fed. 57, 96 C. C. A 299; U. S. v. Auffmordt (D. C. 1884 19 Fed. 893, 894 (affirmed [1887] 7 Sup Ct. 1182, 122 U. S. 197, 30 L. Ed. 1182)

24. (Act Oct. 3, 1913, c. 16, § III, G.) Punishment for entry or introduction of goods by means of false invoice, etc.

If any consignor, seller, owner, importer, consignee, agent, or person or persons, shall enter or introduce, or attempt to enter troduce, into the commerce of the United States any imported handise by means of any fraudulent or false invoice, declara- affidavit, letter, paper, or by means of any false statement, writ- or verbal, or by means of any false or fraudulent practice or ance whatsoever, or shall make any false statement in the decla- ns provided for in paragraph F without reasonable cause to be- the truth of such statement, or shall aid or procure the making ny such false statement as to any matter material thereto with- reasonable cause to believe the truth of such statement, or shall uilty of any willful act or omission by means whereof the United es shall or may be deprived of the lawful duties, or any portion of, accruing upon the merchandise, or any portion thereof, em- ed or referred to in such invoice, declaration, affidavit, letter, paper, atement, or affected by such act or omission, such person or per- shall upon conviction be fined for each offense a sum not ex- ng $5,000, or be imprisoned for a time not exceeding two years, oth, in the discretion of the court: Provided, That nothing in this on shall be construed to relieve imported merchandise from for- re by reason of such false statement or for any cause elsewhere ided by law. (38 Stat. 183.)

See notes to subdivision B of this section, ante, § 5519.

These provisions were substituted for provisions of the same nature made by e Customs Administrative Act of June 10, 1890, c. 407, §§ 6, 9, 26 Stat. 134, 35, amended and re-enacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, 6, § 28, 36 Stat. 95, 97.

Smuggling merchandise, or making or passing false invoice, was punishable y R. S. § 2865, post, § 5548.

Securing false entry of goods was punishable by R. S. § 5445, incorporated to the Criminal Code, in section 69 thereof, post, § 10237, and was repealed by ction 341 thereof, post, § 10515.

Forging customs entry certificates was punishable by R. S. § 5417, incorporat- l into the Criminal Code in section 63 thereof, post, § 10231, and repealed by ction 341 thereof, post, § 10515.

Penalty for false entry for benefit of drawback was provided for by R. S. § 050, post, § 5753.

Importing or bringing goods into the United States, contrary to law, or re- iving, buying, etc., such goods, after importation, was punishable by R. S. § 082, post, § 5785.

Notes of Decisions

onstruction.
alse entry—In general.
— Entry.
— Intent.
— Loss of duties.
imitations.
dictment—Sufficiency.
— Duplicity.
— Specifying means used.
— Under prior statutes.
vidence and presumptions.
efenses.

Construction.—The party who s an entry, using the term entry narrower sense, is the owner, ter, consignee, or agent.—U. S. escall (1909) 30 Sup. Ct. 19, 21, J. S. 26, 54 L. Ed. 77. reversing (C. 08) 164 Fed. 584, 587.

istruction of Act March 3, 1863, n relation to the fraudulent entry oods.—U. S. v. Ballard (D. C. Fed. Cas. No. 14,506.

False entry—In general.—Conceal- by agent consignee of imported goods of facts not proper to be included in the invoice, account, and bill of lading, but which would have excited the suspicion of a collector, is not a violation of Act 1909, making it a felony to state falsely in declaration of an agent consignee that nothing has been suppressed or concealed, whereby the United States may be defrauded of duties lawfully due. U. S. v. Salen (1914) 35 Sup. Ct. 51, 235 U. S. 237, 59 L. Ed. 210.

No offense is complete until the false declaration referred to is filed or offered to be filed with the collector when making or attempting to make entry of the goods. U. S. v. Fawcett (C. C. 1897) 86 Fed. 900.

The offense is committed by presenting an invoice containing false statements as to the weight of the merchandise, knowing that, under the practice of the office, such invoice would be used for the purpose of the first entry, and,

if approved by the examiner, as the basis for the liquidation of the duties, and intending it to be so used; and it is immaterial whether or not a statement of such weight was required by law. U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, judgment affirmed Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, writ of certiorari denied (1906) 26 S. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

Entering goods by a false invoice is an illegal importation. U. S. v. Jordan (D. C. 1876) Fed. Cas. No. 15,498.

Importer, making affidavit that nothing had been concealed or suppressed whereby the United States might be defrauded, held guilty of perjury if he had knowledge of any document which, if known, would have led the United States to fix the customs duties higher than those based on the values stated in the consular invoice. U. S. v. Salen (D. C. 1914) 216 Fed. 420.

Where the value in an entry is falsely stated or concealed, with a view to defraud the revenue, this would be an offense. (1878) 16 Op. Atty. Gen. 158.

3. —— **Entry.** — The word "entry" does not refer alone to the act of filing at the custom house the written paper known as an "entry," but embraces the entire transaction of passing the goods through the custom house, among the various steps of which would be the official returns of customs weighers. U. S. v. Mescall (C. C. 1908) 164 Fed. 580, judgment reversed (1909) 30 Sup. Ct. 19, 215 U. S. 26, 54 L. Ed. 77.

4. —— **Intent.**—The law punishes the attempt, not the intention, to defraud the revenue laws by false invoices. U. S. v. Riddle (1809) 9 U. S. (5 Cranch) 311, 3 L. Ed. 110.

An intent to defraud the United States is not an essential ingredient of the offense. U. S. v. Fawcett (C. C. 1897) 86 Fed. 900.

5. —— **Loss of duties.**—As the right to duties accrues by the importation of merchandise with an intent to unlade, and immediately upon the importation the duties become a personal charge and debt upon the importer, the United States is deprived of duties, within the provision for the punishment of any person "who shall be guilty of any willful act or omission by means whereof the United States shall be deprived of the lawful duties," etc., the moment it becomes entitled to them and they are withheld by the importer, and it is immaterial whether its officers retain the merchandise or not. U. S. v. Boyd (C. C. 1885) 24 Fed. 692, judgment reversed Boyd v. U. S. (1886) 6 Sup. Ct. 524, 116 U. S. 616, 29 L. Ed. 746.

Loss of lawful duties is not a necessary element of the crime of making a fraudulent entry of merchandise. U. S. v. Cutajar (C. C. 1894) 60 Fed. 744, appeal dismissed Cutajar v. U. S. (1897) 17 Sup. Ct. 993, 41 L. Ed. 1185.

6. **Limitations.**—A prosecution under R. S. § 5445, post, § 10237, for effecting an entry of goods at the custom house by means of a fraudulent invoice of them and a false classification as to their quality and value, is a prosecution of an offense arising under the revenue laws, within the meaning of R. S. § 1046, ante, § 1710, and such prosecution is not barred where an indictment is found within five years, next after the committing of the offense. U. S. v. Hirsh (1879) 100 U. S. 33, 25 L. Ed. 539.

7. **Indictment—Sufficiency.**—An indictment charging a customs examiner with knowingly passing invoices containing false statements as to the weight of imported merchandise will not be held insufficient on the theory that the law provides that weighing is to be done by officers known as weighers, and that therefore the examiner could not legally pass the invoices. Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, affirming judgments U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, and Same v. Cohn (C. C. 1904) 128 Fed. 615, and writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

An indictment considered, and held to charge the offense of conspiracy to commit an offense under Customs Administrative Act, § 9. Heike v. U. S. (1911) 192 Fed. 83, 112 C. C. A. 615, affirming judgment U. S. v. Heike (C. C. 1910) 175 Fed. 852, writ of certiorari granted Heike v. U. S. (1912) 32 Sup. Ct. 527, 223 U. S. 730, 56 L. Ed. 633, and judgment affirmed (1913) 33 Sup. Ct. 226, 227 U. S. 131, 57 L. Ed. 450, Ann. Cas. 1914C, 128.

In an indictment an averment that the defendant "willfully declared that he was the owner of the goods, whereas in fact he was not the owner, as he then and there well knew," is sufficient upon demurrer. U. S. v. Fawcett (C. C. 1897) 86 Fed. 900.

An indictment charging that persons, intending to defraud the customs revenue, used a false invoice, that in its nature would tend to effect the fraud, sufficiently charges that they knew the false nature of such invoice, and its capacity for effecting the fraud. U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, judgment affirmed Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, and writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

It is not necessary to aver that the United States was in fact deprived of duties by the acts of defendants. Id.

In an indictment in a federal court it is not necessary to allege the tenor of an instrument unless it touches the very pith of the crime itself, as in forgery, or counterfeiting. An indictment for conspiracy to defraud the United States by obtaining the entry of im-

merchandise without payment legal duty thereon need not allege nor of an instrument by means ich, as charged, it was intended omplish the fraudulent entry. U. Grunberg (C. C. 1904) 131 Fed.

indictment under section 10201, or conspiracy to defraud the Unit- tes by means of a false invoice, ficient which sets forth such a racy, notwithstanding that it does t forth the consummation of the nor include an allegation that aud could have been accomplished, detected. U. S. v. Stamatopoulos 1908) 164 Fed. 524.

llegation of conspiracy to defraud overnment of customs duties is ently made in an indictment that conspiracy with respect to mer- se to be imported into the Unit- tes without invoicing or entering me and without paying the duties and there accruing thereon. U. White (C. C. 1909) 171 Fed. 775.

e § 5665, post, providing that any or importer of merchandise on the duties have not been paid on satisfactory security and obtain- permit may re-export the same t the payment of duty under in- on of the proper officers, not only nplates that the goods be deposit- ship within the time limited after removal, but also requires that ipment shall be under the con- inspection of the customs offi- and Act 1890 makes it a crime y owner or importer to make or pt to make any entry of goods ut payment of duty, and one con- ates a crime who means to de- conceal, or withdraw goods re- from a warehouse for exporta- and to introduce them uncondi- y into the country effecting a titious entry by which the duties become due instanter, an indict- charging a conspiracy to effect esult sufficiently charged a crime; here the defendant was charged aving withdrawn certain imported from the warehouse for expor- upon bond and permit, all on ry 15, 1902, and the indictment alleged that the goods were not ted "then and there," but were eld and concealed with the knowl- f the defendants, the goods would garded as "entered," and the du- herefrom due when the owners truckmen to whom the custody ntrusted disregarded the limita- put on them and introduced the into the unrestricted commerce country, though the time within the goods might be properly ex- had not arrived; hence the in- ent was not objectionable because not allege that defendants con- or withheld the goods, not only time of their removal, but for e period which was allowed to export them. U. S. v. Ehrgott (C. C. 1910) 182 Fed. 267.

8. —— **Duplicity.**—The offense of effecting an entry and of aiding in effecting an entry of imported goods at less than their true weight or measure, by means of false samples or representations, may be charged conjunctively in the same count of an indictment. U. S. v. Bettilini (C. C. 1871) Fed. Cas. No. 14,587.

An indictment for making a false entry of merchandise, is not double because it charges in a single count a false entry by a false and fraudulent affidavit, a false and fraudulent paper, and a false and fraudulent written statement, as the making of these are all acts connected with the same transaction. U. S. v. Cutajar (C. C. 1894) 60 Fed. 744, appeal dismissed Cutajar v. U. S. (1897) 17 Sup. Ct. 993, 41 L. Ed. 1185.

9. —— **Specifying means used.**—The acts necessary to effect an entry being prescribed by statute, an allegation that an entry was effected is a specific statement of what acts were done without a specific description of those acts. U. S. v. Moller (C. C. 1879) Fed. Cas. No. 15,794; Same v. Ballard (D. C. 1871) Fed. Cas. No. 14,506.

An indictment charging defendant with effecting an entry of goods by fraudulent means must specify what fraudulent means were used; otherwise, it is bad.—U. S. v. Bettilini (C. C. 1871) Fed. Cas. No. 14,587.

An indictment for conspiracy to defraud the United States of sums to become due to it as customs duties must allege, to some extent at least, the means intended to be used to defraud—as that it was by smuggling, or by forged or false invoices, or the like—although the details of the plan need not be set out, since they may not have been known to the grand jury or to the conspirators themselves. U. S. v. Grunberg (C. C. 1904) 131 Fed. 137.

An indictment for conspiracy to defraud the United States by a false invoice is not vitiated by the particularity with which the overt act is set forth, if the conspiracy of itself be sufficient. U. S. v. Stamatopoulos (C. C. 1908) 164 Fed. 524.

10. —— **Under prior statutes.**—See U. S. v. Fawcett (C. C. 1897) 86 Fed. 900; Same v. Platt (D. C. 1840) Fed. Cas. No. 16,054a.

11. **Evidence and presumptions.**—A defendant, who was an examiner in the custom house, was charged with conspiracy with his codefendants to permit the entry of goods subject to an ad valorem duty at an undervaluation. It was shown that two cases of goods passed by him were throughout of much higher grade than shown by the invoices, and that each contained a number of inclosed packages, and on cross-examination that he examined

only one package out of the two cases. Held, that evidence offered by him to show that it was his custom, with respect to the goods of all importers, to examine one package only of a case in which the goods were all of one kind, and that it was not unusual for him to pass two cases on examination of one, was properly excluded as immaterial on the question of his fraudulent intent, since under the facts shown the examination of the single package was sufficient to have shown the fraudulent character of the entry. Grunberg v. U. S. (1906) 145 Fed. 81, 76 C. C. A. 51.

On an issue as to the contents and value of certain cases of imported goods which defendants were charged with having secured the entry of at an undervaluation through a conspiracy, the testimony of a witness who assisted in the selection and packing of the goods by the foreign seller was not inadmissible, because he did not take part in nor witness all of the steps taken from the selection of the goods for shipment to the closing of the cases and their shipment, and consequently could not testify from his own knowledge to the ultimate fact; but his testimony is admissible, so far as it relates to pertinent facts within his knowledge, to be considered in connection with that of other witnesses and the established course of business in the establishment. Id.

Fraud will not be imputed to an importer in invoicing goods at the weight as given by the customary method of weighing, but the appraisers are not bound thereby. U. S. v. Nash (C. C. 1869) Fed. Cas. No. 15,856.

On a prosecution for entering goods at a false valuation, evidence that other goods of the same kind were entered about the same time, at a higher valuation, is admissible. U. S. v. Merriam (D. C. 1871) Fed. Cas. No. 15,759.

12. Defenses.—It is immaterial whether government officers retain the merchandise or not, in a prosecution under this section. U. S. v. Boyd (C. C. 1885) 24 Fed. 692, judgment reversed Boyd v. U. S. (1886) 6 Sup. Ct. 524, 116 U. S. 616, 29 L. Ed. 746.

It is no defense to an indictment under section 10,201, post, for conspiracy by defendants, who were importers, and an officer of the customs revenue service, to defraud the United States by effecting the entry of goods by payment of less than the legal duty, by means of false invoices to be approved by such officer, that if the practice prescribed by the statute had been followed the object of the alleged conspiracy could not have been accomplished, because such officer was not authorized to pass on the correctness of the invoices, where the indictment avers that he was charged with such duty by the practice prevailing at the port, and that defendants, by taking advantage of such practice, in fact accomplished the purpose of the conspiracy. In such case it is immaterial whether the practice was legal or illegal. U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, judgment affirmed Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

While an importer cannot be subjected to a forfeiture or penalty unless the practice prescribed by statute has been followed in the customhouse, one charged criminally with having effected an entry of goods at less than the true weight, and by payment of less than the legal duty, by means of a false invoice, and by the bribing of the examiner to approve such invoice, cannot take advantage of the fact that the practice of submitting the matter to the examiner, instead of to a surveyor, was irregular and unauthorized, and that the examiner had no legal right, under the statute, to do the things in relation to which he was corruptly influenced. Id.

Cited without definite application, Origet v. U. S. (1888) 8 Sup. Ct. 846, 847, 125 U. S. 240, 31 L. Ed. 743; U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 188.

§ 5525. (Act June 22, 1874, c. 391, § 13.) Seizure of merchandise as security for fines; release on bond.

Any merchandise entered by any person or persons violating any of the provisions of the preceding section, but not subject to forfeiture under the same section, may, while owned by him or them, or while in his or their possession, to double the amount claimed, be taken by the collector and held as security for the payment of any fine or fines incurred as aforesaid, or may be levied upon and sold on execution to satisfy any judgment recovered for such fine or fines. But nothing herein contained shall prevent any owner or claimant from obtaining a release of such merchandise on giving a bond, with sureties satisfactory to the collector, or, in case of judicial proceedings, satisfactory to the court, or the judge thereof, for the payment of any fine or fines so incurred: Provided, however, That such merchandise shall in no case be released

all accrued duties thereon shall have been paid or secured. (18 188.)

This section was part of the Anti-Moiety Act of 1874, entitled "An act to mend the customs laws and to repeal moieties."

The preceding section of this act, referred to in this section, provided that ny owner, importer, or other person who should, with intent to defraud the evenue, make any entry of imported merchandise by means of false statements, ritten or verbal, whereby the United States should be deprived of lawful duies, should be fined and imprisoned, and the merchandise forfeited. It was epealed, and other provisions substituted therefor, by the Customs Adminisrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, re-enacted by the 'ayne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 104.

The collector was required to take possession of merchandise incorrectly inoiced, by R. S. § 2840, post, § 5535.

Notes of Decisions

nd for seized goods.—The bond for eturn of seized goods (Act 1799, should include the additional sum sed by Act March 3, 1865, as a penalty for undervaluation. U. S. v. Three Horses (C. C. 1870) Fed. Cas. No. 16,500.

26. (Act Oct. 3, 1913, c. 16, § III, H.) Forfeiture for entry or introduction of goods by means of false invoice, etc.

. If any consignor, seller, owner, importer, consignee, agent, or r person or persons shall enter or introduce, or attempt to enter ntroduce, into the commerce of the United States any imported chandise by means of any fraudulent or false invoice, declaration, avit, letter, paper, or by means of any false statement, written erbal, or by means of any false or fraudulent practice or appli- whatsoever, or shall make any false statement in the declara- provided for in paragraph F without reasonable cause to believe truth of such statement, or shall aid or procure the making of such false statement as to any matter material thereto without onable cause to believe the truth of such statement, or shall be y of any willful act or omission by means whereof the United es shall or may be deprived of the lawful duties or any portion eof, accruing upon the merchandise or any portion thereof, emed or referred to in such invoice, declaration, affidavit, letter, r, or statement, or affected by such act or omission, such merdise, or the value thereof, to be recovered from such person or ons, shall be forfeited, which forfeiture shall only apply to the le of the merchandise or the value thereof in the case or package aining the particular article or articles of merchandise to which fraud or false paper or statement relates. That the arrival withe territorial limits of the United States of any merchandise coned for sale and remaining the property of the shipper or conor, and the acceptance of a false or fraudulent invoice thereof he consignee or the agent of the consignor, or the existence of other facts constituting an attempted fraud, shall be deemed, for purposes of this paragraph, to be an attempt to enter such merdise notwithstanding no actual entry has been made or offered. Stat. 183.)

See notes to subdivision B of this section, ante, § 5519.

These provisions were substituted for provisions of the same nature made by he Customs Administrative Act of June 10, 1890, c. 407, §§ 6, 9, 26 Stat. 134, 35, amended and re-enacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, . 6, § 28, 36 Stat. 95, 97.

These provisions superseded similar provisions made by R. S. § 2864.

Forfeiture for undervaluation was provided for by subdivision I of this sec- ion, post, § 5527.

Forfeiture of sea-stores was provided for by R. S. § 2797, as amended by ct March 3, 1897, c. 389, § 17, ante, § 5494.

Forfeiture of dutiable articles concealed in baggage was provided for by R. . § 2802, ante, § 5499.

Previous provisions for forfeiture for omissions in invoice were made by R. S. § 2901, post, § 5590.

Forfeiture for relanding goods entered for drawback was provided for by R. S. § 3049, post, § 5752.

Notes of Decisions

1. Construction.
2. Owner, consignee, agent, or other person.
3. Forfeiture—In general.
4. —— Intent.
5. —— Entry in general.
6. —— Attempt to enter.
7. —— False entry.
8. —— Effect on revenue.
9. —— Importing.
10. Effect of forfeiture or seizure.
11. Bona fide lienors or purchasers.
12. Defenses.
13. Abatement by death of defendant.
14. Limitations.
15. Process.
16. Information, libel, or petition.
17. Evidence.
18. Trial.
19. Judgment.
20. —— Under prior statutes.
21. Extent of forfeiture—Prior statute.
22. Suit for value of merchandise.
23. Decisions under former acts.

1. Construction.—Under prior statutes, see Wood v. U. S. (1842) 16 Pet. 342, 362, 10 L. Ed. 987; U. S. v. Seventy-Eight Casks of White Wine (D. C. 1869) Fed. Cas. No. 16,259; Same v. Jordan (D. C. 1876) Fed. Cas. No. 15,498.

The customs laws are revenue laws, and proceedings for forfeiture under them must be strictly construed. U. S. v. Eighty-Four Boxes of Sugar (1833) 32 U. S. (7 Pet.) 453, 8 L. Ed. 745; Same v. Fifty-Nine Demijohns Aguadiente and Four Barrels of Cigarettes (D. C. 1889) 39 Fed. 401, 402.

Revenue laws are not penal laws, in the sense which requires them to be construed with great strictness in favor of the defendant. They are remedial laws, rather. Taylor v. U. S. (1845) 3 How. 197, 204, 11 L. Ed. 559; Cliquot's Champagne (1865) 70 U. S. (3 Wall.) 114, 116, 145, 18 L. Ed. 116; Fennerstein's Champagne (1865) 3 Wall. 145, 147, 18 L. Ed. 121.

Act 1799 reaches cases whereby a false and fraudulent undervaluation, less than the amount of duties required by law, has been paid, as well as those where no duties at all have been paid. Taylor v. U. S. (1845) 44 U. S. (3 How.) 197, 11 L. Ed. 559.

Forfeiture may be enforced by proceedings in rem independently of the criminal prosecution. Origet v. U. S. (1888) 8 Sup. Ct. 846, 125 U. S. 240, 31 L. Ed. 743.

Laws imposing forfeitures for fraud are not technically penal, so as to call for a strict construction, but are to be construed so as effectually to accomplish the intention of their makers. U. S. v. Willetts (D. C. 1871) Fed. Cas. No. 16,699.

The provision relating to fraudulent or false invoices, statements, practices, or appliances, has application only when such means are employed in connection with goods the importation of which is not concealed. U. S. v. 218½ Carats Loose Emeralds (D. C. 1907) 153 Fed. 643, judgment affirmed 218½ Carats Loose Emeralds v. U. S. (1907) 154 Fed. 839, 83 C. C. A. 475.

2. Owner, consignee, agent, or other person.—The act of the agent or consignee is the act of the guilty principal. Cliquot's Champagne (1865) 3 Wall. 114, 116, 18 L. Ed. 116; Fennerstein's Champagne (1865) 3 Wall. 145, 147, 18 L. Ed. 121.

To enforce a forfeiture it is necessary that the acts made a ground of forfeiture shall be done by the owner, or some one for whom he is responsible, or under whom he derives title; and goods will not be forfeited which are unlawfully brought into this country by a mere trespasser, without the knowledge of the owner or his agent, and with intent to himself appropriate the money provided by the owner for the payment of the lawful duties. U. S. v. 1,150½ Pounds of Celluloid (1897) 82 Fed. 627, 27 C. C. A. 231.

A seller of goods, which were delivered to the purchaser, although having the right as against the purchaser, to rescind the sale and recover the goods, because they were obtained by means of fraudulent representations and with the intention on the part of the purchaser not to pay for the same, cannot assert such right against the right of the United States to forfeit the goods, where they were seized when the purchaser, while thus clothed with ownership and possession, was attempting to smuggle them into the country in violation of its customs laws. 581 Diamonds v. U. S. (1903) 119 Fed. 556, 56 C. C. A. 122, 60 L. R. A. 595.

A forfeiture is imposed only for fraud, misconduct, or negligence of the owner. He is not to suffer for the fraud, misconduct, or negligence of the revenue officers alone. Six Hundred and Fifty-One Chests of Tea v. U. S. (C. C. 1826) Fed. Cas. No. 12,916.

An employé in the customs service of the United States who makes and returns false weights in connection with an entry of imported merchandise is comprehended by the words "other person" in the provisions, § 1, for the forfeiture of goods or their value where "any owner, importer, consignee, agent, or other person" shall make an entry by means of false and fraudulent practices, or shall be guilty of any unlawful act or omission whereby the United States is deprived of the lawful duties,

for the punishment of such person ne or imprisonment or both. U. S. escall (C. C. 1908) 164 Fed. 580, nent reversed (1909) 30 Sup. Ct. 15 U. S. 26, 54 L. Ed. 77.

e illegal act of one partner without knowledge or consent of the others fficient to forfeit the partnership s. U. S. v. Six Hundred and Sixty-Bales of Tobacco (D. C. 1878) Fed. No. 16,297.

rfeiture for illegal entry does not ne against a party who was in an- country when the entry was made, e it does not appear that the per- making the entry at the custom e was his agent. U. S. v. 646 Half- s of Figs (D. C. 1908) 164 Fed.

Forfeiture—In general.—Under pri- tatutes, see U. S. v. Ten Cases ls (C. C.) Fed. Cas. No. 16,448; ht v. U. S. (C. C.) Fed. Cas. 18,099; U. S. v. Sixteen Packages C. 1819) Fed. Cas. No. 16,303; v. U. S. (C. C. 1878) Fed. Cas. 12,906; U. S. v. Package of Lace C. 1833) Fed. Cas. No. 15,985; e v. Barnes (D. C. 1872) Fed. Cas. 14,523; Same v. Two Thousand Hundred and Seventeen Bushels alt (D. C. 1881) 8 Fed. 224.

e bribing of a weigher by an im- er at any time before the final ent of duties with the intent of pro- g a false return, where a false re- is procured, will subject the goods neir value to forfeiture. U. S. v. er (D. C. 1871) Fed. Cas. No. 14,-

e mixing of charcoal with sugar, the purpose of reducing its grade, e the fact is not disclosed, will sub- the same to forfeiture, though the rter acted in good faith. U. S. v. of Sugar (D. C. 1874) Fed. Cas. 14,722.

der R. S. § 2854, goods purchased ad by the importer were subject to iture where the invoice contained count that was not in fact allowed urchaser. U. S. v. Two Thousand Hundred and Seventeen Bushels alt (D. C. 1881) 8 Fed. 224.

e penalty of forfeiture is incur- where a passenger on a steamer will- omits to mention to the customs als merchandise in his possession. . v. 218½ Carats Loose Emeralds C. 1907) 153 Fed. 643, judgment ned 218½ Carats Loose Emeralds S. (1907) 154 Fed. 839, 83 C. C. 75.

forfeiture of imported goods for lation of the customs laws can be red unless clearly imposed by law. . v. Eighteen Packages of Dental uments (D. C. 1915) 222 Fed. 121.

der parcels post convention with nany, customs regulations, and act 09, parcels post packages held not ct to forfeiture for undervalua- Id.

4. —— **Intent.**—Although a mere intention to evade the payment of duties is not, in itself, a cause of forfeiture, yet, when a question arises whether an act has been committed which draws after it that consequence, such intention will justify the court in not putting on the conduct of the party, in respect to the act in question, an interpretation as favorable as, under other circumstances, it would be disposed to do. The Robert Edwards (1821) 19 U. S. (6 Wheat.) 187, 5 L. Ed. 238.

One who had the right of possession of, and a lien on, imported merchandise for the duties and transportation charges which he had paid, with the option to purchase any part of it at fixed prices, or to return it to the vendors, declared in good faith, in making an entry of the goods, that he was the owner, and his statement did not deprive the government of any lawful duties. Held not to constitute an offense as a false statement. U. S. v. Ninety-Nine Diamonds (1905) 139 Fed. 961, 72 C. C. A. 9, 2 L. R. A. (N. S.) 185, affirming judgment (D. C. 1904) 132 Fed. 579, and writ of certiorari denied (1906) 26 Sup. Ct. 760, 201 U. S. 645, 50 L. Ed. 903.

The word "false" means more than incorrect or erroneous and implies statements knowingly or negligently untrue. Id.

An importation of tobacco, a part consisting wholly of wrapper, a part of filler, and a part of wrapper and filler mixed, was invoiced and entered as "tobacco fillers." Filler tobacco was subject to a lower rate of duty than mixed tobacco or wrapper tobacco, under paragraphs 213–4, Tariff Act July 24, 1897, c. 11, § 1, Schedule F, 30 Stat. 169. Held that, in the absence of circumstances indicating a fraudulent intent on the part of the importers, the entry could not be considered to have been made "by means of a false or fraudulent invoice," by reason of which the tobacco should be forfeited. U. S. v. Seventy-Five Bales of Tobacco (1906) 147 Fed. 127, 77 C. C. A. 353.

The section was not intended to apply to errors of judgment, but to acts plainly indicating a wrongful intent to defraud the government; and a mere mistake in the description of imported merchandise, unaccompanied by acts from which an intent to defraud may be presumed, is insufficient to justify forfeiture under this section. Id.

There must be a guilty scienter and intent on the part of the forfeiter, and where entry was made on an invoice falsely made out by the foreign shipper, but there was an entire absence of fraudulent intent on the part of those concerned in making the entry, there could be no forfeiture, though the shipper had a financial interest in defrauding the revenue. U. S. v. One Silk Rug (1908) 158 Fed. 974, 86 C. C. A. 178.

The same guilty intent must be shown

for the penalty of forfeiture as for conviction under § 5524, ante. Id.

Goods are not subject to forfeiture because the importer has attempted to enter them at a rate of duty less than that to which they are ultimately found to be liable, when there is in fact no false description of them with intent to defraud the revenue. U. S. v. Thirty-One Boxes and Packages of Imported Articles, etc. (D. C. 1833) Fed. Cas. No. 16,465a.

An intent to defraud will be imputed to manufacturers who invoice goods at the cost price under a misapprehension of the law, supposing themselves to be purchasers, where such invoicing tended to evade or defraud the revenue, though they in fact had no such intent. U. S. v. Five Casks of Files (D. C. 1840) Fed. Cas. No. 15,112.

Under earlier acts, see In re Twelve Hundred and Nine Quarter Casks, etc., of Wine (D. C. 1868) Fed. Cas. No. 14,-279; U. S. v. Two Thousand One Hundred and Seventeen Bushels of Malt (D. C. 1881) 8 Fed. 224.

To authorize a recovery against a consignee of the value of goods fraudulently invoiced, where he is not the owner, but merely an agent to sell, knowledge on his part of the fraudulent undervaluation is necessary to establish the "actual intention to defraud." U. S. v. Newmark (D. C. 1876) Fed. Cas. No. 15,870.

An untrue description of the goods works a forfeiture, without reference to any fraud of the party making the entry. U. S. v. Nineteen Bales of Tobacco (D. C. 1898) 112 Fed. 779.

An invoice describing certain imported tobacco as "fillers," and to be sold as "fillers," when in fact it is "wrappers," is a false entry, warranting forfeiture, though the jury found the consignee and his agent, who made the entry, to be innocent of fraud. Id.

In order to incur a forfeiture it is necessary that the statement should be willfully and knowingly false, and without colorable support from the facts of the case. U. S. v. Ninety-Nine Diamonds (D. C. 1904) 132 Fed. 579, judgment affirmed (1905) 139 Fed. 961, 72 C. C. A. 9, 2 L. R. A. (N. S.) 185, writ of certiorari denied (1906) 26 Sup. Ct. 760, 201 U. S. 645, 50 L. Ed. 903.

Where merchandise is innocently entered by a person on an invoice fraudulently made out by the foreign shipper, it is not liable to forfeiture. U. S. v. Twenty Boxes of Cheese (D. C. 1908) 163 Fed. 369.

5. —— **Entry in general.**—The fraudulent undervaluation by foreign consignors in the foreign country of goods consigned to a person in New York constitutes, upon their arrival at the port of entry, an attempt to introduce them into the commerce of the United States, and when they are unloaded and placed in general order they are actually introduced into that commerce, although the owner might at any time within a year have withdrawn the goods and directed them to be forwarded to a foreign country without payment of duties. U. S. v. Twenty-Five Packages of Panama Hats (1913) 34 Sup. Ct. 63, 231 U. S. 358, 58 L. Ed. 267.

To subject goods to forfeiture for a false valuation in an invoice, it must have been produced at the customhouse for the purposes of an entry. U. S. v. Twenty-Eight Packages of Pins (D. C. 1833) Fed. Cas. No. 16,561.

While it is a condition to entry of merchandise that invoices should be carried before an American consul, this is not necessarily a part of the entry within the provision relating to illegal "entry." At the earliest entry does not begin till the owner, after the goods reach this country, begins that series of acts through which, by application to the customs officials, he gains possession. U. S. v. One Trunk (D. C. 1909) 171 Fed. 772, judgment affirmed (1911) 184 Fed. 317, 106 C. C. A. 459.

Imports intended for entry held subject to forfeiture for attempted fraud on the revenue, though not formally entered. U. S. v. Eighteen Packages of Dental Instruments (D. C. 1915) 222 Fed. 121.

6. —— **Attempt to enter.**—This section does not apply until an entry has been actually made or attempted, and goods in "general order" are not subject to forfeiture, if the consignee did not participate in the false invoice and had not entered the goods. U. S. v. Twenty-Five Packages of Panama Hats (1912) 195 Fed. 438, 115 C. C. A. 340.

Where goods are refused an entry for want of an invoice, they are forfeited if the owner attempts to procure an entry by any false and fraudulent practice or appliance whatever. U. S. v. Thirty-Nine Thousand One Hundred and Fifty Cigars (D. C. 1866) Fed. Cas. No. 16,464.

The making of a false affidavit of damage, with intent to defraud the revenue, is sufficient to incur the forfeiture. U. S. v. Six Hundred and Sixty-One Bales of Tobacco (D. C. 1878) Fed. Cas. No. 16,297.

An attempt to make an entry by means of any false or fraudulent invoice, affidavit, etc., with intent to defraud, completes the ground of forfeiture, though the fraudulent entry is not carried out. Id.

It is not essential that there should be a completed fraud upon the United States, but that it is enough if the act or attempt is of a character calculated to deprive the United States of duty. U. S. v. Sixty-Six Cases of Cheese (D. C. 1908) 163 Fed. 367.

If the falsification by itself, without further wrongful acts, could not, in

regular course of procedure, pro- the result of depriving the Unit- States of lawful duties, forfeiture ot incurred, even though there have been wrongful intent. U. Twenty Boxes of Cheese (D. C.) 163 Fed. 369.

here a plan to smuggle is shown he manner of packing and invoic- imported merchandise is liable to eiture, though the invoice may been corrected before entry. U. One Bag of Crushed Wheat (D. 908) 166 Fed. 562.

ported goods are liable to for- re where the foreign shipper, the t of the merchandise, attempts to e entry by a false invoice and a declaration of shipment. Id.

importer swore to a false invoice e before an American consul, but importation presented at the cus- house an invoice to which was d sufficient to make the true val- Held, that the case was not with- he provision relating to any "at- pt to make any entry of imported chandise by means of any fraud- t or false invoice." The illegal nt was abandoned before any "at- pt" was made to enter the goods. S. v. One Trunk (D. C. 1909) 171 772, judgment affirmed (1911) Fed. 317, 106 C. C. A. 459.

here an importer took out a fraud- t invoice, but concluded not to it in making entry of the goods ered by the invoice, but used in- d a corrected invoice, the goods e not forfeitable on the ground of raudulent "attempt to enter" im- ted merchandise, under Customs ninistrative Act, § 9. U. S. v. One nk (D. C. 1909) 175 Fed. 1012, ee affirmed (1912) 192 Fed. 913, C. C. A. 353.

—— **False entry.**—The fact that e lace dresses in a package by nselves were found in a case of s and embroideries, but were not tioned in the invoice, does not by lf warrant the infliction of the alties for entering merchandise by ns of a false or fraudulent invoice. Lace House v. U. S. (1905) 141 869, 73 C. C. A. 103.

arriving at market value at port exportation, purchaser can only be uired to adopt methods usually pted by merchants in making pur- ses. Bartlett v. Kane (C. C. 1852) l. Cas. No. 1,077.

false valuation in an invoice of ds subject to ad valorem duty is price charged in the invoice less the fair and just buying and sell- prices at the time and place where invoice was made up. U. S. v. rteen Packages of Pins (D. C. 2) Fed. Cas. No. 15,151.

n attempt to enter anchors or bar as "anchor iron," parts of chain les as "links," and boat iron as "straight links," if done with attempt to evade the revenue law will subject them to forfeiture. U. S. v. Thirty-One Boxes, etc. (D. C. 1833) Fed. Cas. No. 16,465a.

Where the invoice by which an entry is made states the value in two kinds of foreign coin, there is no fraud justifying a forfeiture where the real value of the coin is underestimated, under the federal laws. U. S. v. Three Hundred and Twenty-Six Cases of Hosiery (D. C. 1861) Fed. Cas. No. 16,-507.

Where the invoice is made out in a currency other than that of the purchase with intention of taking advantage of a usage of the treasury officers, whereby less duties would be paid than those exacted if the currency actually used was stated, the invoice is falsely made up. U. S. v. Dry Ox and Cow Hides (D. C. 1865) Fed. Cas. No. 14,995.

Where the consignee of merchandise falsely described himself as owner, the merchandise was forfeitable. U. S. v. One Bag of Crushed Wheat (D. C. 1908) 166 Fed. 562.

Where value in entry is falsely stated or concealed, with view to defraud revenue, a forfeiture is incurred. (1878) 16 Op. Atty. Gen. 158.

8. —— **Effect on revenue.**—Under prior statutes, see Bollinger's Champagne (1865) 70 U. S. (3 Wall.) 560, 18 L. Ed. 78.

None of the acts denounced by the provision for the confiscation of goods because of the making of a false entry, constitute an offense thereunder, unless they deprive the United States of some of its lawful duties. U. S. v. Ninety-Nine Diamonds (1905) 139 Fed. 961, 72 C. C. A. 9, 2 L. R. A. (N. S.) 185, affirming judgment (D. C. 1904) 132 Fed. 579, and writ of certiorari denied (1906) 26 Sup. Ct. 760, 201 U. S. 645, 50 L. Ed. 903.

The falsification must be such that, if consummated, it would deprive the government of lawful duties. U. S. v. Twenty Boxes of Cheese (D. C. 1908) 163 Fed. 369.

Forfeitures are not confined (except as to the general clause covering every "willful act or omission") to cases in which the United States has been actually deprived of lawful duties. (1893) 20 Op. Atty. Gen. 633.

9. —— **Importing.**—Cattle owned by a resident of Canada, and permitted to graze near the national boundary, and to roam at will into the United States, without any intent on the part of the owner to permit them to remain or to dispose of them in the United States, held not "imported" or permitted to be in the United States by the owner's willful act or omission, with intent to deprive the United States of duties, and were therefore not subject to forfeiture. U. S. v.

Eighty-Five Head of Cattle (D. C. 1913) 205 Fed. 679.

10. Effect of forfeiture or seizure.—In prosecution under § 5524, ante, for "a willful act or omission by means whereof the United States shall be deprived of the lawful duties," etc., it is immaterial whether government officers retain the merchandise or not. U. S. v. Boyd (C. C. 1885) 24 Fed. 692, judgment reversed Boyd v. U. S. (1886) 6 Sup. Ct. 524, 116 U. S. 616, 29 L. Ed. 746.

Regular duties may be exacted on an importation of foreign goods, notwithstanding the goods have been seized and forfeited, and the whole of the proceeds from their sale applied to the use of the United States. (1902) 24 Op. Atty. Gen. 1.

There is no authority for the practice of the treasury department to exact duties when forfeiture prevails only in those cases which arise under § 5527, post, and not in other customs revenue cases involving forfeiture. Id.

11. Bona fide lienors or purchasers.—Under statutory provision for the forfeiture of goods without an alternative of their value, title of the United States to the goods forfeited is not consummated until after judicial condemnation, but the right to them relates backward to the time the offense was committed, so as to avoid all intermediate sales of them between the commission of the offense and condemnation. But under a provision in which the forfeiture is the goods or their value, the United States have no title in the goods, until an election has been made either to recover the goods or their value, so that any rights in the goods acquired bona fide by third persons in the mean time are protected. Caldwell v. U. S. (1850) 8 How. 366, 379, 12 L. Ed. 1115.

Advances made in good faith, by auctioneers in possession, upon goods entered at a fraudulent undervaluation, before the government had elected to proceed for a forfeiture, or to sue for the value, are a lien upon the proceeds. U. S. v. Seventy-Eight Cases of Books (D. C. 1869) Fed. Cas. No. 16,258b.

A bona fide purchaser of goods imported at a fraudulent valuation before the United States has elected its remedy will be protected. U. S. v. Fifty-Three Boxes of Havana Sugar (D. C. 1870) Fed. Cas. No. 15,098; Same v. Sundry Boxes of Havana Sugar, Id. 16,418.

The consignee of goods imported at a fraudulent valuation, who, having no knowledge of the fraud, made advances and incurred expenses in relation thereto, will be protected. U. S. v. Fifty-Three Boxes of Havana Sugar (D. C. 1870) Fed. Cas. No. 15,098.

Under prior statutes, see U. S. v. Four Cases of Lastings (D. C. 1879) Fed. Cas. No. 15,145; Same v. Certain Diamonds (D. C. 1887) 30 Fed. 364.

The forfeiture does not extend to the interest of bona fide lienors without notice of the fraud, and where freight is earned before the government makes its election whether to declare the merchandise forfeited or to recover its value, and the former proceeding is chosen and the property is sold, such freight must be paid out of the proceeds of the sale; the owners of the vessel having no knowledge of any offense. Six Hundred Tons of Iron Ore (D. C. 1881) 9 Fed. 595, 596

Where the forfeiture is in the alternative of "the goods or their value," a sale to a bona fide purchaser, before the government has elected to resort to the goods, will pass good title. U. S. v. Auffmordt (D. C. 1884) 19 Fed. 893, 901. affirmed (1887) 7 Sup. Ct. 1182, 122 U. S. 197, 30 L. Ed. 1182.

12. Defenses.—A party who perpetrates a fraud upon the customhouse, and thereby enters his goods upon false invoices and false valuations, and gets a regular delivery thereof upon the payment of such duties as such false invoices and false valuations require, cannot avail himself of the fraud to defeat a forfeiture. Wood v. U. S. (1842) 16 Pet. 342, 362, 10 L. Ed. 987.

If goods are fraudulently invoiced, they are not exempted from forfeiture by having been appraised in the customhouse above the invoice prices, and delivered on payment of the duties assessed on such increased valuation. Clifton v. U. S. (1846) 4 How. 242, 248, 11 L. Ed. 957.

The hurried entry of goods in the absence of the owner, where pillage by the enemies' soldiers was threatened, held a sufficient excuse for a mistake. U. S. v. Nine Packages of Linen (C. C. 1818) Fed. Cas. No. 15,884.

A new penalty, imposed for a violation of laws previously defined, may be enforced, though unknown to the claimant at the time of the violation. U. S. v. Fourteen Packages of Pins (D. C. 1832) Fed. Cas. No. 15,151.

Neither accident, mistake, nor innocence of fraudulent intention is a sufficient defense to an information for forfeiture of a package of goods containing an article not described in the invoice. U. S. v. Package of Lace (D. C. 1833) Fed. Cas. No. 15,985.

A purchaser whose invoice truly states the actual cost is not subject to any forfeiture where the valuation is raised by the customs officers for the purposes of imposing duty. U. S. v. Five Casks of Files (D. C. 1840) Fed. Cas. No. 15,112.

Goods invoiced at their actual market price cannot be forfeited for undervaluation, although in fact the price stated was below the market value at the place of exportation. U. S. v. One

dred Fifty Bales Unwashed Wool C. 1861) Fed. Cas. No. 15,932b; (D. C. 1862) Fed. Cas. No. 15,-a.

ne government is not bound by the of its consul in certifying to the rectness of an invoice, when based n false and fraudulent statements. S. v. Sixteen Cases of Silk Ribbons C. 1870) Fed. Cas. No. 16,301.

3. **Abatement by death of defend-**—An action by the United States enforce a forfeiture of the value of orted goods because of fraudulent ervaluation, is one highly penal in racter, and abates on the death of defendant, and cannot be revived inst his legal representatives. U. v. De Goer (D. C. 1889) 38 Fed. 80; ne v. Riley (D. C. 1899) 104 Fed. .

4. **Limitations.**—The provision for feiture is penal in its nature, and refore subject to section 1713, ante, viding for a three-year statute of itations for proceedings for the reery of "any pecuniary penalty or feiture of property accruing under customs revenue laws of the Unit-States." U. S. v. Wittemann (1907) Fed. 377, 81 C. C. A. 503.

5. **Process.**—A summons for the rfeiture" of the value of importans not indorsed with a reference to statute may be set aside; but not er a general appearance with knowlge of the nature of the action, and er several years' delay and the exation by limitation of the governnt's time to bring a new action. U. v. Riley (D. C. 1898) 88 Fed. 480.

6. **Information, libel, or petition.**—to sufficiency of information to ence forfeiture under earlier statutes, Two Hundred Chests of Tea 324) 22 U. S. (9 Wheat.) 430, 435, L. Ed. 128; Clifton v. U. S. (1846) How. 242, 243, 11 L. Ed. 957; Buck-v. Same (1846) 4 How. 251, 255, L. Ed. 961; Friedenstein v. Same 888) 125 U. S. 224, 8 Sup. Ct. 838, L. Ed. 736; Origet v. Same (1888) 5 U. S. 240, 8 Sup. Ct. 846, 31 L. 743; U. S. v. Thirteen Packages Plate Glass (D. C. 1854) Fed. Cas. 16,459; Same v. Three Parcels of broidery (D. C. 1856) Fed. Cas. No. 512; Same v. Seventy-Eight Cases Books (D. C. 1869) Fed. Cas. No. 258; Same v. Fifteen Barrels of stilled Spirits (D. C. 1892) 51 Fed. .

An averment that the requirements the statute, which are merely ditory to the revenue officers and the porter, have been complied with, is necessary. U. S. v. Seventy-Eight ses of Books (D. C. 1869) Fed. s. No. 16,258.

A direct averment that the person king the fraudulent entry was either ner, consignee, or agent of the property is not necessary where it appears from the statements of the information that the person was either the owner, or acted as agent of the owner. Id.

Articles charging a violation in the general words of the statute, and alleging the use of all the means prohibited by the statute, by all the possible persons, are bad for indefiniteness. U. S. v. Fifteen Barrels of Distilled Spirits (D. C. 1892) 51 Fed. 416.

Where, in an information for forfeiture, allegations were united from which it might be inferred that the matter could be brought under various sections of the law, but which were insufficient for the ground of forfeiture intended by the government, and where no sufficient ground was actually stated, exceptions to the sufficiency of the information should be sustained. U. S. v. 646 Half Boxes of Figs (D. C. 1908) 164 Fed. 778.

An allegation of a cause of forfeiture on the theory of conspiracy is inadequate, which does not name some one as conspiring with the party charged. U. S. v. One Bag of Crushed Wheat (D. C. 1908) 166 Fed. 562.

The petition in a proceeding by the government for the forfeiture of goods imported into the country contrary to law, which alleged that the goods were imported without being invoiced or entry made with any collector of customs, and without declaration to the proper revenue officer, and that some person fraudulently brought into the country from a foreign country goods which should have been invoiced, declared, and entered according to the law, with intent to defraud the government, was sufficient. Six Parcels of Placer Gold v. U. S. (1904) 76 P. 473, 8 Ariz. 389.

17. **Evidence.**—In a forfeiture proceeding for evading duties, evidence of other fraudulent transactions is admissible to show the intent with which the act was committed. Alfonso v. U. S. (C. C. 1843) Fed. Cas. No. 188; U. S. v. One Hundred and Forty-Six Thousand Six Hundred and Fifty Clapboards (C. C. 1874) Fed. Cas. No. 15,935; Same v. Sixteen Cases of Silk Ribbons (D. C. 1870) Fed. Cas. No. 16,301; Same v. Six Hundred and Sixty-One Bales of Tobacco (D. C. 1878) Fed. Cas. No. 16,297.

As to evidence of violations, see Cliquot's Champagne (1865) 3 Wall. 114, 116, 18 L. Ed. 116; Fennerstein's Champagne (1865) 3 Wall. 145, 147, 18 L. Ed. 121; U. S. v. One Case of Hair Pencils (C. C. 1825) Fed. Cas. No. 15,-924.

On an information for forfeiture of goods subject to ad valorem duty, the appraisement of public appraisers is prima facie evidence. In re One Hundred and Twenty-Three Packages of Glass (C. C. 1841) Fed. Cas. No. 10,-525; U. S. v. Fourteen Packages of

Pins (D. C. 1832) Fed. Cas. No. 15,151.

A mere misdescription of shawls as worsted shawls which are made up of cotton and worsted, is not of itself competent evidence of a fraudulent intent, such as will warrant a forfeiture of the goods. U. S. v. Ten Cases of Shawls (C. C. 1846) Fed. Cas. No. 16,448; Same v. Ten Cases of Merchandise (D. C. 1840) Fed. Cas. No. 16,447.

Where goods are seized as fraudulently invoiced, the claimants must prove the integrity of the invoice from other sources than the invoice itself. Wood v. U. S. (1842) 41 U. S. (16 Pet.) 342, 10 L. Ed. 987.

A bill of lading, entry, and owner's oath, concerning other goods than those seized, may be admitted as a link in the chain of evidence to show a privity between the parties to commit a fraud upon the revenue. Taylor v. U. S. (1845) 44 U. S. (3 How.) 197, 11 L. Ed. 559.

In the trial of a cause, where goods had been seized upon suspicion of being fraudulently imported, it was held proper to allow to go to the jury as evidence appraisements of the goods, made either by the official appraisers or appraisers acting under an appeal, they being present to verify the papers. The objection that the appraisements had not been made in the presence of the jury was held insufficient. Buckley v. U. S. (1846) 45 U. S. (4 How.) 251, 11 L. Ed. 961.

On the trial of a cause where goods had been seized on suspicion as fraudulently imported, it is proper to show that the agent of the claimant had sold goods for him at prices which yielded profits which other persons engaged in the same trade averred could not have been fairly made in the then state of the market. Id.

In the trial of a cause where goods had been seized as fraudulently imported, invoices of other goods imported by the party are admissible. Id.

Upon a proceeding for the forfeiture of imported goods, on the ground that they were knowingly invoiced below the actual market value at the time and place when and where manufactured, letters by parties abroad to other parties offering to sell at a certain rate were offered in evidence for the purpose of showing the market value of the articles of merchandise at the particular place in the foreign country. Held, that the letters were admissible in evidence, it appearing that such letters were written in the ordinary course of business of the party writing them and contemporaneously with the transaction which was the subject of the suit, although it appeared that neither the writers nor the recipients of the letters were in any way connected with the subject of the suit. Fennerstein's Champagne (1865) 70 U. S. (3 Wall.) 145, 18 L. Ed. 121.

Where goods proceeded against on the ground that the packages were made up with intent to evade and defraud the revenue were entered on the oath of a claimant taken as in the case of goods actually purchased, evidence that the real owner was the foreign manufacturer, and the claimant only a consignee, held immaterial. U. S. v. Four Cases Printed Merinoes (C. C. 1835) Fed. Cas. No. 15,146.

The court will be liberal in the admission of evidence bearing upon the point whether goods were fraudulently entered, but evidence clearly irrelevant is not admissible. Id.

On a proceeding to forfeit goods as having been invoiced at less than their actual cost at the place of exportation, the market price at that place at the time is admissible as the surest test of the honesty of the transaction. U. S. v. Two Cases of Woolens (C. C. 1841) Fed. Cas. No. 16,576.

In a forfeiture proceeding invoices of shipments in July and August are admissible to show market value of goods shipped in May. Alfonso v. U. S. (C. C. 1843) Fed. Cas. No. 188.

On a libel to forfeit goods for false valuation, proof of correct entries made about the same time of the same kind of goods by the claimant is admissible to show that he knew their real value. U. S. v. One Hundred and Forty-Six Thousand Six Hundred and Fifty Clapboards (C. C. 1874) Fed. Cas. No. 15,935.

Upon a proceeding for a forfeiture of a package of goods containing an article not described in the invoice evidence of accident or mistake may be given to rebut the inference of fraudulent intention. U. S. v. Package of Wool (D. C. 1833) Fed. Cas. No. 15,986.

The fact that the appraisers have materially raised the invoice value of imported goods is prima facie, but not conclusive, evidence of undervaluation in a subsequent proceeding to forfeit the goods on the ground of fraudulent invoice. U. S. v. Two Hundred Quarter Boxes of Cigars (D. C. 1858) Fed. Cas. No. 16,587.

A material undervaluation shown will be presumed to have been made with intent to defraud the revenue, in the absence of clear and credible testimony excusing it. Id.

Admissibility and competency of evidence to prove the actual market value of imported wines alleged to have been undervalued. In re Twelve Hundred and Nine Quarter Casks, etc., of Wine (D. C. 1868) Fed. Cas. No. 14,279.

Upon a prosecution for the forfeiture of goods, the law presumes that there was, at the time and place of manufacture of imported goods, an actual market value, and no evidence is admissible to prove the contrary. In re Six Cases of Silk Ribbons (D. C. 1869) Fed. Cas. No. 12,914.

ere an affidavit of damage is in
false, there is a prima facie pre-
tion of an intent to defraud the
ue. U. S. v. Six Hundred and
One Bales of Tobacco (D. C.
Fed. Cas. No. 16,297.
proceedings for the forfeiture of
ted merchandise, the burden of
g that the importation was legal
upon the claimant. U. S. v. One
of Crushed Wheat (D. C. 1908)
ed. 562.

Trial.—In proceedings for the for-
e of imported merchandise, ques-
as to classification of the mer-
ise may be left undecided, to be
nined by the Board of General
isers. U. S. v. Seventy-Five
of Tobacco, 147 Fed. 127, 77 C.
353.
weight of an affidavit of value,
ed to the invoice as required by
s for the jury. In re One Hun-
and Twenty-Three Packages of
(C. C. 1841) Fed. Cas. No. 10,-

a trial for forfeiture of imported
andise, a foreign shipper, who was
ed with fraudulent, conduct, was
eard. Held, that he was entitled
earing and that, where he season-
appeared and asked for a new
the request should be granted.
v. Two Bales of Rugs (D. C.
167 Fed. 689.

Judgment.—A judgment of forfei-
against imported merchandise for
leged attempt to defraud the cus-
laws cannot be vacated on a peti-
iled after the term, and more than
ears after its entry, to permit the
ter to defend, on the ground of ir-
arities in the procedure; no mis-
or clerical error being alleged. U.
Four Lorgnette Holders (D. C.
132 Fed. 564.

—— Under prior statutes.—See
Robert Edwards (1821) 19 U. S. (6
t.) 187, 5 L. Ed. 238; Frieden-
v. U. S. (1888) 125 U. S. 224, 8
Ct. 838, 31 L. Ed. 736; Origet v.
(1888) 125 U. S. 240, 8 Sup. Ct.
31 L. Ed. 743.

Extent of forfeiture—Prior stat-
See Buckley v. U. S. (1846) 4
251, 260, 11 L. Ed. 961; Locke
S. (C. C. 1866) Fed. Cas. No.
; Two Hundred and Fifty Bar-
of Molasses v. Same (C. C. 1869)
Cas. No. 14,293; U. S. v. Ten
Shawls (C. C.) Fed. Cas. No.
8; U. S. v. Package of Wool (D.
33) Fed. Cas. No. 15,986; Same
en Cases of Merchandise (D. C.
Fed. Cas. No. 16,447; Two
red and Fifty Barrels of Molas-
. U. S. (D. C. 1869) Fed. Cas.
14,293; In re Cases of Silk Rib-
(D. C. 1869) Fed. Cas. No. 12,-

Suit for value of merchandise.—
e imported goods are the property of their manufacturer, the invoice need only state the fair market value of the goods at the place of manufacture, and it need not state "the actual cost thereof at the place of exportation"; and such invoice of goods which belong to their manufacturer is not, nor is an entry of such goods, within the purview of R. S. § 2839, so as to make the person entering them, with design to evade payment of duty, liable to a forfeiture of their value. U. S. v. Auffmordt (1887) 122 U. S. 197, 7 Sup. Ct. 1182, 30 L. Ed. 1182.

In a suit for the value of goods fraudulently entered under Rev. St. § 2864, the recovery is not limited to the sum which defendant received on the sale of the goods by him. U. S. v. York Street Flax Spinning Co. (C. C. 1879) Fed. Cas. No. 16,781.

An action of debt for the value of merchandise forfeited for entry by means of false and fraudulent practices and appliances, is not an action "to recover a fine or penalty," or "an action upon contract, express or implied," within the meaning of section 549 of the Code of Civil Procedure of the state of New York, and consequently an execution against the bodies of the defendants cannot be issued out of a circuit court of the United States in that state for damages and costs. U. S. v. Reid (C. C. 1883) 17 Fed. 497.

On a forfeiture of goods by reason of false practice subsequent to the original entry, the value of the goods at the time of the payment of the duties is recoverable. U. S. v. Baker (D. C. 1871) Fed. Cas. No. 14,500.

An action lies against the person making the entry for the recovery of the value of the goods where the entry was by means of false papers. U. S. v. Baker (D. C. 1871) Fed. Cas. No. 14,500; Same v. Willetts (D. C. 1871) Fed. Cas. No. 16,699.

23. Decisions under former acts.—U. S. v. Tappan (1826) 11 Wheat. 419, 420, 6 L. Ed. 509; U. S. v. Sixty-Seven Packages of Dry Goods (1854) 58 U. S. (17 How.) 85, 15 L. Ed. 54; Same v. Nine Cases of Silk Hats (1854) 58 U. S. (17 How.) 97, 15 L. Ed. 57; Same v. One Package of Merchandise (1854) 58 U. S. (17 How.) 98, 15 L. Ed. 57; Same v. One Case of Clocks (1854) 58 U. S. (17 How.) 99, 15 L. Ed. 57; Cliquot's Champagne (1865) 3 Wall. 114, 142, 18 L. Ed. 116; Fennerstein's Champagne (1865) 3 Wall. 145, 147, 18 L. Ed. 121; U. S. v. Auffmordt (1887) 122 U. S. 197, 7 Sup. Ct. 1182, 30 L. Ed. 1182, affirming (D. C. 1884) 19 Fed. 893; U. S. v. Jordan (D. C. 1876) Fed. Cas. No. 15,498.

Cited without definite application, U. S. v. One Hundred Fifty Crates of Earthenware (1818) 3 Wheat. 232, 233, 4 L. Ed. 377; Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed 313; U. S. v. Dominici (1897) 78 Fed

334, 336, 24 C. C. A. 116; U. S. v. Ehrgott (C. C. 1910) 182 Fed. 267; U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 188; U. S. v. Fifty Waltham Watch Movements (D. C. 1905) 139 Fed. 291.

Act June 10, 1890, c. 407, §§ 6, 9, 26 Stat. 134, 135, cited, U. S. v. Zucker (1896) 16 Sup. Ct. 641, 642, 161 U. S. 475, 40 L. Ed. 777; Anglo-Californian Bank v. U. S. (1899) 20 Sup. Ct. 19, 20, 175 U. S. 37, 44 L. Ed. 64; Abner Doble Co. v. U. S. (1902) 119 Fed. 152, 153, 56 C. C. A. 40; U. S. v. A Lot of Precious Stones & Jewelry (1904) 134 Fed. 61, 68 C. C. A. 1; Sapery v. U. S. (1905) 135 Fed. 332, 68 C. C. A. 140; U. S. v. Riley (D. C. 1898) 88 Fed. 480, 481.

§ 5527. (Act Oct. 3, 1913, c. 16, § III, I.) Addition to or deduction from invoice value; additional duties; forfeiture for undervaluation.

I. The owner, consignee, or agent of any imported merchandise may, at the time when he shall make entry of such merchandise, but not after either the invoice or the merchandise has come under the observation of the appraiser, make such addition in the entry to or such deduction from the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of 1 per centum of the total appraised value thereof for each 1 per centum that such appraised value exceeds the value declared in the entry: Provided, That the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value, and shall be limited to 75 per centum of the appraised value of such article or articles. Such additional duties shall not be construed to be penal, and shall not be remitted nor payment thereof in any way avoided except in cases arising from a manifest clerical error, nor shall they be refunded in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback: Provided, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than 75 per centum, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding other than a criminal prosecution that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles in each invoice which are undervalued: Provided further, That all additional

penalties, or forfeitures applicable to merchandise entered by
certified invoice shall be alike applicable to merchandise en-
y a pro forma invoice or statement in the form of an invoice,
forfeiture or disability of any kind incurred under the provi-
f this section shall be remitted or mitigated by the Secretary
Treasury. The duty shall not, however, be assessed in any
pon an amount less than the entered value, unless by direction
Secretary of the Treasury in cases in which the importer cer-
t the time of entry that the entered value is higher than the
market value and that the goods are so entered in order to
dvances by the appraiser in similar cases then pending on ap-
or reappraisement, and the importer's contention shall subse-
be sustained by a final decision on reappraisement, and it shall
that the action of the importer on entry was taken in good
after due diligence and inquiry on his part, and the Secretary
Treasury shall accompany his directions with a statement of
nclusions and his reasons therefor. (38 Stat. 184.)

e notes to subdivision B of this section, ante, § 5519.

ese provisions were substituted for similar provisions made by the Cus-
s Administrative Act of June 10, 1890, c. 407, § 7, 26 Stat. 134, as amend-
y Act July 24, 1897, c. 11, § 32, 30 Stat. 211, as further amended by
Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 95.

rovisions for additional duties on failure to submit books, etc., to inspec-
, were made by subdivisions U, V, of this section, post, §§ 5600, 5601.

e words "value," "actual market value," and "wholesale price," as used
his act, were defined in subdivision R of this section, post, § 5599.

rovisions for additions to the invoice values, made by R. S. § 2900, were
aled by section 29 of the Customs Administrative Act.

Notes of Decisions

stitutionality of statute.
ition to or deduction from invoice
lue.
Under earlier statutes.
praisal—In general.
Presumption of correctness.
Direction by collector.
chandise purchased or procured
herwise.
Decisions under prior acts.
chandise subject—Duty based on
lue.
Cartons and boxes.
itional duties—In general.
Under prior statutes.
Quantity not correctly stated.
As penalty.
Different articles in one invoice.
erent invoices for one importation.
Assessment.
enses—In general.
Fraudulent intent in undervalu-
g.
ifest clerical error.
to be refunded on exportation, etc.
ission by secretary of treasury.
ered value—In general.
Pro forma invoice.
to recover additional duties.
Prior proceedings for forfeiture as
r.
feitures—In general.
Effect of forfeitures or seizure.
Intent.
Parties.
Evidence.
Defenses.
Remission or compromise.
Review.

nstitutionality of statute.—Stat-
stitutional. Passavant v. U. S.
13 Sup. Ct. 572, 575, 148 U. S.
L. Ed. 426, affirming judgment
In re Passavant (C. C. 1892) 50 Fed. 788; Origet v. Hedden (1894) 15 Sup. Ct. 92, 95, 155 U. S. 228, 39 L. Ed. 130.

2. Addition to or deduction from invoice value.—Insertion by importers, on entries and invoices, of additional charges, in order to avoid onerous penalties imposed by the appraisers for their omission, though such penalties may be illegal, renders payment of the increased duties caused thereby involuntary. Maxwell v. Griswold (1850) 51 U. S. (10 How.) 242, 13 L. Ed. 405; Robertson v. Frank Bros. Co. (1889) 132 U. S. 17, 10 Sup. Ct. 5, 33 L. Ed. 236.

Appraisers' decision as to what markets are principal ones final. Stairs v. Peaslee (1855) 18 How. 521, 527, 15 L. Ed. 474.

The word "country" in revenue laws embraces all the possessions of a foreign state. Id.

The period of exportation is the day of sailing from the foreign port. Sampson v. Peaslee (1857) 20 How. 571, 576, 15 L. Ed. 1022.

Where there was a controversy as to duties payable on an importation of an article called in the invoice "concentrated molasses," and the plaintiffs decided that the article was a species of green sugar which was subject to export duty, while molasses was not, and they therefore added, as appeared by their report, a sum equal to the amount of that duty, though none such was paid, the addition was made, not as an export duty, but to bring up the invoice value to the actual market value of the merchandise at the

place of exportation. Belcher v. Linn (1860) 65 U. S. (24 How.) 508, 16 L. Ed. 754.

The consignee who has sworn to the invoice sent by the owner will not be allowed to amend the entry to avoid a penalty after the collector has directed an appraisement. Harriman v. Maxwell (C. C. 1856) Fed. Cas. No. 6,105.

The owner, consignee, or agent may make addition in the entry to the invoice cost or value to raise the same to the true market value. Harding v. Whitney (C. C. 1869) Fed. Cas. No. 6,052.

Importers cannot qualify the effect of their act in adding to the invoice value by stating that it was made to prevent a seizure. Haas v. Arthur (C. C. 1877) Fed. Cas. No. 5,885.

The fact that the consignee upon entering the goods, added 2 per cent. to the invoiced value thereof merely as a precaution against having the goods subjected to penal duties and forfeited, does not prejudice the question whether the shipper of the goods stated the value thereof correctly in the invoice. U. S. v. Three Hundred Bales of Wool (D. C. 1865) Fed. Cas. No. 16,508.

The valuation is properly made on a corrected invoice made and received before the appraisal, and accepted by the collector as the true invoice, who also amends the original entry to correspond with the corrections. Schmeider v. Barney (C. C. 1880) 6 Fed. 150.

An invoice of imported goods comprised several items of the same kind, and one or more items were found to have been undervalued. A corrected invoice was made and received, but not appraised, and was accepted by the collector, who amended plaintiff's original entry to correspond with the corrected invoice. Held, that the valuation of such importations should be made on the corrected invoice. Schmeider v. Barney (C. C. 1880) 6 Fed. 150.

The unauthorized act of a United States consul in adding to the invoiced value of goods the amount of ocean freights is not conclusive upon the importer, and he is entitled to have the valuation corrected, even though the appraiser has in a pro forma manner approved the invoice by marking it "Correct." U. S. v. Zuricaldy (C. C. 1896) 71 Fed. 955, applying Robertson v. Bradbury (1889) 10 Sup. Ct. 158, 132 U. S. 491, 33 L. Ed. 405.

In making an addition to the invoice value at the time of entry, in order to equal market value, the importer should state the added value with sufficient definiteness to enable the customs officers to ascertain its amount; but reference to an item, without specifying its amount, is sufficient, if such amount is officially known to the customs officers. A. J. Woodruff & Co. v. U. S. (C. C. 1896) 154 Fed. 861.

The importers of certain sugar in hogsheads made entry on an invoice which included by mistake the value of the hogsheads in that of the sugar, but before the entry was liquidated they produced a corrected invoice, showing the proper deduction for the hogsheads. Held, that it was not, under the circumstances, necessary for the importers to make entry on a pro forma invoice, and give a bond for the production of a corrected invoice, in the method prescribed in section 5522, ante, and that the collector should have made allowance for the hogsheads. Gillespie v. U. S. (C. C. 1900) 124 Fed. 106.

Where an invoice specifies items distinctly from the per se value of the article invoiced, and the importer entering the importation states they are added to make market value, they constitute part of the entered value, as though included in the per se value. Daloz v. U. S. (C. C. 1909) 171 Fed. 275.

An alleged replace invoice held not the true replace invoice since the accompanying affidavit was made nearly 4 months after decision of secretary of the treasury. Hampton, Jr., & Co. v. U. S. (1914) 5 Ct. Cust. App. 163.

3. —— Under earlier statutes.—Stairs v. Peaslee (1855) 59 U. S. (18 How.) 521, 15 L. Ed. 474; Goddard v. Maxwell (C. C. 1853) Fed. Cas. No. 5,492; Vaccari v. Same (C. C. 1855) Fed. Cas. No. 16,810; Lehmaier v. Same (C. C. 1856) Fed. Cas. No. 8,214; Schmaire v. Same (C. C. 1856) Fed. Cas. No. 12,460; (1878) 16 Op. Atty. Gen. 158; (1885) 18 Op. Atty. Gen. 259.

4. Appraisal—In general.—As to entry and appraisal under former system, see Bartlett v. Kane (1853) 16 How. 263, 272, 14 L. Ed. 931; Belcher v. Lawrason (1858) 21 How. 251, 256, 16 L. Ed. 123; U. S. v. Tappan (1826) 24 U. S. (11 Wheat.) 419, 6 L. Ed. 509.

Where an appraiser who has advanced the value of imported merchandise fails to give notice of the advance to the importer as required by the customs regulations, the importer thus being deprived of the right of appeal for reappraisement, the appraisement is invalid, and does not afford a proper basis for the forfeiture and condemnation of the goods for undervaluation. The Lace House v. U. S. (1905) 141 Fed. 869, 73 C. C. A. 103.

An importation of sugar was invoiced as "basis 81°," with a memorandum attached stating: "Purchased at 1 and ¼ ct. per Sp. lb. net, basis 81° average, 1–32 c. per lb. to be added for each degree above 81° test, or 1–16c. per lb. to be deducted for each degree below 81° test; fractional of a degree pro rata." This meant that the price was to vary according to the quality, as shown by the polariscope test. Upon appraisal, the value of the sugar was found to be more than 10 per cent. above the price of 1¾ cents per pound, but much less than that above the price as fixed by the test according

memorandum. Held, that this ot an undervaluation of more 0 per cent., which would justify position of an additional duty. v. American Sugar-Refining Co. 1896) 71 Fed. 951.

handise seized for violation of ction should be appraised under ovisions of section 5594, post, ot under section 5777, post. 23 Op. Atty. Gen. 377.

customs administration provided t 1890 is a complete, uniform, niversal system, substituting ex- remedies for those previously ie. Id.

method of appraisement author- section 5594, post, is the ex- method to be employed on the de of customs revenue adminis-, and applies to all cases where sement is involved, and no ques- f criminality or fraudulent ille- arises prior to appraisement.

appraisement procedure in un- ation cases which aims at the f additional duties is none the ivil because forfeiture may be l as a possible ultimate result.

— Presumption of correctness. e the general rule is that the ion is conclusive upon all par- nevertheless the appraisement is to be impeached, where the of- as proceeded on a wrong princi- ontrary to law, or has exceeded wers. Oberteuffer v. Robertson 6 Sup. Ct. 462, 471, 116 U. S. 9 L. Ed. 706; Badger v. Cusi- (1889) 9 Sup. Ct. 431, 432, 130 39, 32 L. Ed. 851; Muser v. e (1894) 15 Sup. Ct. 77, 80, 155 240, 39 L. Ed. 135; U. S. v. Pas- (1898) 18 Sup. Ct. 219, 221, S. 16, 42 L. Ed. 644.

appraisal by the customs officers l, and cannot be reviewed in ac- law, unless impeached for fraud want of power to make it. Oel- nn v. Merritt (1887) 8 Sup. Ct. 54, 123 U. S. 356, 31 L. Ed. 164. udulent practices in connection he customs duties are not legal- y being treated as legal and reg- y customs officers. U. S. v. Two and One Hundred and Seventeen ls of Malt (D. C. 1881) 8 Fed.

— Direction by collector.—A or has no right to direct an ap- ment unless he suspects the to be invoiced below their ac- ost. If he does so suspect, he irect an appraisement. U. S. v. n (1826) 24 U. S. (11 Wheat.) L. Ed. 509.

collector's subsequent adoption proceedings of the appraisers is ount to having requested them. n v. Hoyt (1846) 45 U. S. (4 327, 11 L. Ed. 996.

7. Merchandise purchased or procured otherwise.—Under Act March 3, 1857, the distinction in the penalty, when the appraised value of goods imported exceeds the invoiced value by 10 per cent., between goods purchased and those obtained otherwise than by purchase, is abolished. Belcher v. Lawrason (1858) 62 U. S. (21 How.) 251, 16 L. Ed. 123.

8. —— Decisions under prior acts.—See Belcher v. Lawrason (1858) 62 U. S. (21 How.) 251, 16 L. Ed. 123; Durand v. Lawrence (C. C. 1852) Fed. Cas. No. 4,187; Thomson v. Maxwell (C. C. 1852) Fed. Cas. No. 13,983; Christ v. Same (C. C. 1853) Fed. Cas. No. 2,698; Crowley v. Same (C. C. 1855) Fed. Cas. No. 3,448; Warburg v. Same (C. C. 1855) Fed. Cas. No. 17,142; Bannendahl v. Redfield (C. C. 1858) Fed. Cas. No. 964; Bischoff v. Maxwell (C. C. 1859) Fed. Cas. No. 1,438; U. S. v. One Case of Cashmere Shawls (D. C. 1847) Fed. Cas. No. 15,923; In re Twelve Hundred and Nine Quarter Casks, etc., of Wine (D. C. 1868) Fed. Cas. No. 14,279; In re Six Cases of Silk Ribbons (D. C. 1869) Fed. Cas. No. 12,914; U. S. v. Sixteen Cases of Silk Ribbons (D. C. 1870) Fed. Cas. No. 16,301.

9. Merchandise subject—Duty based on value.—Where it was obligatory on the appraiser and the collector to inquire into the value of certain imported merchandise in determining the duty properly assessable thereon, under paragraph 387, Tariff Act July 24, 1897, providing that merchandise of such character was subject to specific duties at various specified rates, depending on the weight and certain other characteristics of such goods, and that none thereof should pay a less rate than 50 per centum ad valorem, such duty was one "regulated" in some manner "by the value" of such merchandise, within the meaning of the provision for additional duty. Hoeninghaus v. U. S. (1899) 19 Sup. Ct. 305, 307, 172 U. S. 622, 43 L. Ed. 576.

When the question whether goods are to pay a specific or an ad valorem duty depends on whether they exceed a certain value (as in the case of gloves, under paragraph 458, Act 1890), an appraisement is essential under section 7 of the customs administrative act; and, if the appraisement disclose that the goods have been undervalued more than 10 per cent., they are subject to the penalty of an increased duty, although the excess of over 10 per cent. on the invoice value is not sufficient to require an ad valorem instead of a specific duty. Pings v. U. S. (1896) 72 Fed. 260, 18 C. C. A. 557.

The additional duty is collectible when the question whether the goods are to pay a specific or an ad valorem duty depends upon whether they exceed a certain value, and the appraise-

ment shows an undervaluation, even though the appraised value is not sufficient to subject them to an ad valorem duty. U. S. v. Nuckolls (1902), 118 Fed. 1005, 55 C. C. A. 499.

Antimony was entered under the law of 1909, which made it dutiable specifically, and withdrawn under the law of 1913, which makes it dutiable ad valorem. Its appraised exceeded its declared value. The law of 1913 will not be given a retroactive effect, so as to make it subject to the additional duty imposed by this section, upon merchandise dutiable ad valorem when the appraised exceeds the declared value. Sheldon & Co. v. U. S. (1916) 6 Ct. Cust. App. 516.

10. —— Cartons and boxes.—Boxes containing lemons, which are treated in the tariff act as a dutiable entity by themselves, being subjected to a separate classification from the lemons they contain, are within the provision for the undervaluation of "any article of imported merchandise," and, when undervalued, are subject to the penalties provided by said section. Phelps Bros. & Co. v. U. S. (C. C. 1892) 142 Fed. 213.

11. Additional duties—In general.—The duty should be assessed only on the quantity of the goods arriving in port, and not on the quantity appearing by the invoice to have been shipped. The paragraph forbidding the assessment of duties on an amount less than the invoice value refers only to the price, and not to the quantity. Marriott v. Brune (1850) 9 How. 619, 631, 635, 13 L. Ed. 282; Weaver & Sterry v. Saltonstall (C. C. 1889) 38 Fed. 493, 494.

Importers who have failed to accompany the entry of their importation with a true and correct invoice stating the cost or market value thereof must be required to pay the additional duty, where the duty to be levied is to be regulated by the value of such goods. Hoeninghaus v. U. S. (1899) 19 Sup. Ct. 305, 172 U. S. 622, 43 L. Ed. 576.

A customhouse broker, who makes the sworn declaration for entry of goods, in which he declares himself the consignee, becomes liable for additional duties imposed for undervaluation. U. S. v. Vandiver (D. C. 1904) 133 Fed. 252.

Where the consular invoice showed a net per se value of 8,310.60 francs, nondutiable charges of 113.25 francs, and dutiable charges of 972 francs, and entrant attaching his declaration to the consular invoice, erroneously deducted the nondutiable charges from the net per se value stated in the invoice, making no mention of the dutiable charges, "additional duty," under this section, should be levied proportionate to an undervaluation of 113.25 francs, and not 113.25 plus 972 francs. U. S. v. Bates (1916) 6 Ct. Cust. App. 540.

The legislation on the subject reviewed. (1882) 17 Op. Atty. Gen. 268.

12. —— Under prior statutes.—See Belcher v. Lawrason (1858) 62 U. S. (21 How.) 251, 16 L. Ed. 123.

13. —— Quantity not correctly stated.—The penalty of 20 per cent. (Act July 30, 1846, § 8) cannot be exacted for a 10 per cent. undervaluation in coal arising solely from an excess of quantity. Manhattan Gaslight Co. v. Maxwell (C. C. 1852) Fed. Cas. No. 9,023.

Where a valuation of molasses in casks in an invoice is correct, but the quantity stated in the invoice is less than the actual quantity, found on gauging, the case is not one for the imposition of a penalty for undervaluation. Yznaga v. Redfield (C. C. 1860) Fed. Cas. No. 18,197.

Where an invoice of molasses in casks does not specify the number of gallons, the case is one of undervaluation, and the penalty may properly be imposed. Id.

14. —— As penalty.—As to penalty imposed by former law in case excess of appraisement over entry value, see Ring v. Maxwell (1854) 17 How. 147, 15 L. Ed. 25; U. S. v. Collier (C. C. 1855) Fed. Cas. No. 14,833; Morris v. Robertson (C. C. 1888) 37 Fed. 199, 200; (1882) 17 Op. Atty. Gen. 268.

The "further sum," equal to 2 per cent. of the appraised value of imported merchandise for each 1 per cent. that such appraised value exceeds the value declared in the entry, which, under Customs Administrative Act, may be collected from an importer for undervaluation "in addition to the duties imposed by law," is a penalty, and exclusive jurisdiction of a suit to recover such sum is therefore, by section 991, ante, vested in the District Courts of the United States. Helwig v. U. S. (1903) 23 Sup. Ct. 427, 432, 188 U. S. 605, 47 L. Ed. 614.

The additional duties provided for by this section are penalties within the meaning of sections 10130–10134, post. (1893) 20 Op. Atty. Gen. 660.

15. —— Different articles in one invoice.—Although the articles composing an invoice are dissimilar and known by different trade-names, still, if they belong to the same class, and are grouped together in the tariff acts as dutiable under their class name at the same rate, and are valued in the entry only at a lump sum for the entire importation, the penalty imposed by Rev. St. § 2900, requiring an additional duty of 20 per cent. if, on appraisal, the value of imported goods shall exceed by 10 per cent. or more the value declared in the entry, is not incurred unless the appraisement of the importation as a whole exceeds by 10 per cent. or more the value declared in the entry. Morris v. Robertson (C. C. 1888) 37 Fed.

listinguishing Schmeider v. Barney C. 1880) 6 Fed. 150.

Different invoices for one impor-n.—Where an importation was al- to be an unit, but divided into invoices for the sake of conven- and entered of different values, invoice must stand upon its own ng; and the whole cannot be aver- so as to avoid the additional duty n is levied upon one invoice taken self. Sampson v. Peaslee (1857) How. 571, 579, 15 L. Ed. 1022.

—— **Assessment.**—Collector of the port cannot make an addition to invoice value upon mere hearsay mation, derived from the collector e second port. Spring v. Russell C. 1868) Fed. Cas. No. 13,261.

here a board of three general ap-sers, on reappraisement appraised value of imported merchandise more 10 per cent. above the value de-d in the importer's entry, and the tional duties provided for in section t 1890, thereupon accrued and were ted by the collector, no appeal from eview of the decision of the collec-n assessing such additional duties rovided for under said act. In re avant (C. C. 1892) 50 Fed. 788.

addition made to the invoice value, ise the same to the actual market e, though marked upon the invoice f, becomes a part of the entered e, and the collector cannot ignore addition, and then assess a penal which would not otherwise have ued. U. S. v. Merck & Co. (C. C.) 91 Fed. 641.

finding the invoice value of im-ed merchandise, a collector of cus- has no right, after the appraiser appraised the merchandise and ted an item of commissions as non-able to include such item in the in-e value, and assess duty thereon, a mere inspection of the invoice, out inquiry or evidence to justify action. U. S. v. Lahey & Duncan C. 1904) 132 Fed. 181.

e action of government officers at rt of entry in raising the apprais-alue of dutiable goods and imposing nalty authorized by statute for un-aluation will be presumed to be ect, just, and without prejudice to owner, unless the contrary is shown; e the presumption is that such offi-do their duty. Guesnard v. Louis-& N. R. Co. (1884) 76 Ala. 453.

nder earlier statutes, see Passavant . S. (1893) 13 Sup. Ct. 572, 575, U. S. 214, 37 L. Ed. 426 (affirming ment In re Passavant [C. C. 1892] ed. 788); Belmont v. Lawrence (C. 853) Fed. Cas. No. 1,280; Schmeid-. Barney (C. C. 1880) 6 Fed. 150; S. v. Thomas Leeming & Co. (C. 907) 153 Fed. 489.

. Defenses—In general.—Where the e in specie and in foreign paper ency are both set out in the invoice, the fact that the importer makes the entry in the specie value alone will not subject the goods to a penalty for undervaluation. Fiedler v. Maxwell (C. C. 1853) Fed. Cas. No. 4,760.

A penalty for undervaluation cannot be imposed on the importation of goods by their producer, where a corrected invoice is handed in before any action is taken to determine the value of the goods. Howland v. Maxwell (C. C. 1853) Fed. Cas. No. 6,799.

The penalty for undervaluation attaches whether the importer makes the addition to his invoice or not. Goddard v. Maxwell (C. C. 1853) Fed. Cas. No. 5,492; Morris v. Same (C. C. 1853) Fed. Cas. No. 9,834; Vaccari v. Same (C. C. 1855) Fed. Cas. No. 16,810; Lehmaier v. Same (C. C. 1856) Fed. Cas. No. 8,214; Schmaire v. Same (C. C. 1856) Fed. Cas. No. 12,460.

One who is assessed with a penalty for entering dutiable goods at a sum below their actual value cannot, in an action for the penalty, defend on the ground that he intentionally omitted certain items from the entry in order to pay them separately under protest. He must either give notice, and ask for a reappraisement, or take an appeal, as provided by law. U. S. v. Strauss (D. C. 1893) 55 Fed. 388.

19. —— Fraudulent intent in undervaluing.—The additional duties are payable, except in case of clerical error, irrespective of any question of fraudulent undervaluation on the part of the importer. U. S. v. 1,621 Pounds of Fur Clippings (1900) 106 Fed. 161, 45 C. C. A. 263.

Goods are not fraudulently entered if the entry is made according to the actual cost, no matter how fraudulent the invoice may be. Goodwin v. U. S. (C. C. 1811) Fed. Cas. No. 5,554.

20. Manifest clerical error.—Where an entry made by an agent of the owner included only a part of the goods and the owner subsequently made a further entry of the residue, and the goods agreed with the two entries taken together, but differed materially from the first entry, the collector could make a seizure of the goods after the second entry for a variance between the goods and the first entry and the seizure must be followed by confiscation, unless it appears that the difference resulted from accident and mistake. U. S. v. Six Packages of Goods (1821) 6 Wheat. 520, 521, 5 L. Ed. 321.

An importer, in giving the invoice value of his merchandise stated it in dollars, instead of rupees, having mistaken the rupee abbreviation for the dollar mark. Held, this constituted a clerical mistake. U. S. v. Muller, MacLean & Co. (1907) 158 Fed. 405, 85 C. C. A. 515.

An import was more expensive than that called for by the invoice, owing to an alleged error of the shipper in

failing to conform to an order for a cheaper kind. Held, that this was not a clerical error for which relief should be given, and that, owing to the facility with which such apparent errors might be fraudulently arranged by collusion between importer and shipper, it would be establishing a dangerous precedent to excuse an error of this kind. Magnus & Lauer v. U. S. (1900) 166 Fed. 1020, 91 C. C. A. 145, affirming judgment (C. C. 1908) 160 Fed. 281.

Where there was, through mistake, an error in an invoice and entry, and a correct invoice was obtained, a penalty for undervaluation should not be imposed. Carnes v. Maxwell (C. C. 1856) Fed. Cas. No. 2,417.

Although the statement, in an invoice, of the value of merchandise at a certain sum per ton, "on trucks," shows that something not dutiable may be included in the price, it does not show any value less than that stated, since it does not show how much is to be taken out for nondutiable items; and such statement of the price is not such a manifest clerical error as entitles the importer to a correction on a new invoice. Roebling v. U. S. (C. C. 1896) 77 Fed. 601.

On entering certain merchandise the importers presented an entry and invoice together, the former of which stated only the value of the merchandise, omitting a dutiable item of packing boxes, but the latter plainly stated both items. The merchandise was appraised at the higher value, as stated in the invoice. Held that, in the absence of circumstances indicating an intention to evade the law, this was a case "arising from a manifest clerical error," which exempted the merchandise from the additional duty accruing where the appraised value exceeds the entered value, "except in cases arising from a manifest clerical error." S. M. Lawder & Sons v. Stone (C. C. 1901) 125 Fed. 809.

Certain importers inadvertently entered a shipment of goods on the basis of an invoice which, through clerical error, failed to specify certain charges as nondutiable. Their inclusion in the entered value indicated a price for the goods which rendered them subject to a higher duty than that which would have been applicable had they been entered at their true value. The error was not brought to the importers' attention until, after liquidation, demand was made for the increased duties that had been assessed on account of the error, whereupon they sought permission to correct the error. Held, that this should have been allowed. Wilmerding v. U. S. (C. C. 1904) 139 Fed. 1004.

The expression "clerical error" implies negligence or carelessness of a clerk, writer, or copyist, and assumes that the mistake, or negligence, or carelessness, is that of one engaged in the subordinate service of transcription, copying, or comparison; labor not requiring original thought; and where a standard article was incorrectly invoiced at an excessive price, this was a clerical error of a kind of which correction is not harmful to the administration of customs laws, and relief from which should be granted. Morimura Bros. v. U. S. (C. C. 1908) 160 Fed. 280.

Allowance should have been made in the dutiable value of an importation on the ground of clerical error, where it appeared that the shippers had failed to note on the invoice that the value included certain nondutiable charges. R. U. Delapenha & Co. v. U. S. (C. C. 1909) 175 Fed. 311.

To constitute manifest clerical error, this must be apparent to the appraising officers or collector at the time of liquidation and upon the record itself. Hampton, Jr., & Co. v. U. S. (1914) 5 Ct. Cust. App. 51 (distinguishing U. S. v. Zuricaldy [C. C. 1896] 71 Fed. 955); Thomsen & Co. v. U. S. (1914) 5 Ct. Cust. App. 69 (citing U. S. v. Swedish Produce Co. [1913] 4 Ct. Cust. App. 223; Same v. Wyman & Co. [1913] Id. 264; Same v. Proctor Co. [1914] 5 Ct. Cust. App. 44); U. S. v. Nozaki Bros. (1914) 5 Ct. Cust. App. 286; U. S. v. Rice (1914) 5 Ct. Cust. App. 288.

An American concern with a London branch closed that branch and directed that such supplies as had been forwarded from this country and not consumed should be returned to the United States. Some goods of English manufacture were included in the consignment made up to be returned, but these last were not declared at the home port of entry, apparently through ignorance or mistake, for there is no imputation of fraud. The English goods were fairly to be treated as excess goods and not subject to an additional duty over and above that to which they would have been subject if regularly imported. Downing & Co. v. U. S. (1911) 2 Ct. Cust. App. 278, citing U. S. v. Thomas Leeming & Co. (C. C. 1907) 153 Fed. 489.

Where the facts establishing the undervaluation of merchandise are known to importers at the time the entry is made, the undervaluation does not present a case of manifest clerical error. U. S. v. Swedish Produce Co. (1913) 4 Ct. Cust. App. 223.

The commission charged abroad, disputed here as dutiable, was entered on the invoice in the words and figures intended by the writer; they received from the collector the interpretation they were intended to take when the invoice was made out. This is not a case of manifest clerical error. U. S. v. Wyman & Co. (1913) 4 Ct. Cust. App. 264, citing Same v. Bennett & Loewenthal (1911) 2 Ct. Cust. App. 249.

Importers claim they overstated the

e of the merchandise in a pro for-
invoice, being misled by an error
e transmission of a cable message
their London office. The ap-
er appraised the merchandise at
value stated in the pro forma in-
, and the collector liquidated
eon. Held, that this is not man-
error in the appraisement or as-
ment, and cannot be reviewed up-
rotest to the board of classifica-
U. S. v. National Steam Naviga-
Co. (1913) 4 Ct. Cust. App. 491.
tomobile tires were sold and im-
ed to replace defective tires. The
ers made the entry, following the
ce, without adding anything to the
ce price to make market value.
was not a clerical error. This
on plainly requires, if it is desired
dd to the invoice value to make
et value, that this should be done
e time of making entry and not
wards. U. S. v. Proctor Co.
4) 5 Ct. Cust. App. 44, citing
e v. Swedish Produce Co. (1913)
. Cust. App. 223; Same v. Wy-
Id. 264.

idence of admitted clerical error
before the importers at the time
made entry. Subsequently the
in valuation was disclosed to the
aiser. These facts do not consti-
a case of manifest clerical error.
. v. Bayersdorfer & Co. (1914)
. Cust. App. 99, citing U. S. v.
lish Produce Co., 4 Ct. Cust. App.
U. S. v. Wyman, Id. 264; U.
Proctor, 5 Ct. Cust. App. 44.

e collector had before him the
ce, the entry, and the weigher's
ficate, and it was apparent there-
that the statement of the gross
ht of the wire in the invoice and
was incorrect and that the true
ht less tare, which is the dutiable
ht, was before him in the manner
ired by law. A case of manifest
cal error was thus presented and
ortage in weight of the shipment
nvoiced appeared. U. S. v. Bush
o. (1914) 5 Ct. Cust. App. 127,
g Marriott v. Brune (1850) 50 U.
33, 13 L. Ed. 282; U. S. v. Nash
C. 1869) Fed. Cas. No. 15,856.

e entry here asserts the item
ed as exempt was dutiable. On
invoice the item is called a buying
nission. This does not disclose
fest clerical error. When the
aiser examined the statement of
nspector that the item was a non-
ble buying commission, in connec-
with the fact that the charges
made by the seller of the goods
found the gross sum the dutiable
e of the goods, the inquiry was
luded. U. S. v. Brodie (1915) 6
Cust. App. 186.

here the consular invoice for goods
rted from Hongkong stated the
value in three currencies—cor-
y in pounds sterling but incorrect-
gold dollars and Tientsin taels—
not one of the three agreeing by the proper rate of exchange with either of the others, and the entrants adopted the statement in Tientsin taels and declared its equivalent in gold dollars, they cannot escape the payment of additional duty by claiming a manifest clerical error. U. S. v. Gordon & Ferguson (1915) 6 Ct. Cust. App. 410.

Where the consular invoice for cloth showed the number of units of length, the price per unit, and the value as the product of the two, without stating whether the unit was yards or meters or the price for a yard or a meter, and the importers, having declared accordingly, claim afterwards that the consular invoice stated the measurement in yards and the price for a meter, if there was error, it was not manifest clerical error. De Liagre & Co. v. U. S. (1915) 6 Ct. Cust. App. 470.

The Secretary of the Treasury has power, after an entry has been made upon an invoice, believed by the importer to contain a true statement of the actual market value of the goods, to permit the importer, before payment of duties, to substitute another invoice, giving less value, in case it appears affirmatively that the second invoice truly stated the actual market value, and that such true and actual value was not inserted in the original invoice by reason of mistake. (1866) 11 Op. Atty. Gen. 532.

21. Not to be refunded on exportation, etc.—An importer, who has been compelled, on account of the undervaluation of his goods, to pay additional duty, is not entitled, on their re-exportation, to have this duty refunded. Bartlett v. Kane (1853) 57 U. S. (16 How.) 263, 14 L. Ed. 931.

On the warehousing and re-exporting of imported goods the importer is not entitled to recover back amount of the penalty paid because of an undervaluation. Bartlett v. Kane (C. C. 1852) Fed. Cas. No. 1,077.

The additional duty imposed by section 7, Customs Administrative Act June 10, 1890, is not subject to drawback upon the exportation of the article, but must be regarded in the light of a penal duty. (1891) 20 Op. Atty. Gen. 247.

22. Remission by secretary of treasury.—There is no statute granting to the Secretary of the Treasury the power to adopt article 1450, Customs Regulations 1899, permitting entry of imports by appraisement without invoice, where the invoice value greatly exceeds the general market value at the time of exportation. Ullmann v. U. S. (C. C. 1910) 177 Fed. 567.

The Secretary of the Treasury may remit "additional duties" or penalties, but he has no power to remit any part of the duties, strictly so called, however erroneously they may have been

assessed. (1893) 20 Op. Atty. Gen. 660.

The secretary of the treasury is not authorized to remit penalties incurred under section 7 of Customs Administrative Act amounting to more than $1,000 until after the proper proceeding before a district judge. (1894) 21 Op. Atty. Gen. 101.

The Secretary of the Treasury has no power to permit collectors of customs to receive special deposits of penal duties, to be returned by them to the importers in case the duties should be remitted. All duties paid to the collector must be placed to the credit of the Treasurer of the United States. (1896) 21 Op. Atty. Gen. 345.

Where payment of the penal duties imposed under section 7 is required as a condition precedent to the delivery of the goods the power of the secretary of the treasury to remit such penalties is unavailing in many cases, but not in the case of warehoused goods nor where the penalties are first assessed on final liquidation after the delivery of the goods to the importer. (1896) 21 Op. Atty. Gen. 418.

The Treasury Department has no authority, when goods are entered or withdrawn for consumption, to suspend the collection of penal duties accruing thereon pending an application for remission, "the goods in the meanwhile having been delivered from the custody of the government." Id.

The power of the Secretary of the Treasury to release and remit fines, penalties and forfeitures relates only to civil liability and consequences where the value of the property seized or the amount of the fine or forfeiture incurred does not exceed $1,000, but does not include penalties "accrued" or "incurred," which have been "adjudged" as part of the punishment of an indictment. (1903) 24 Op. Atty. Gen. 583.

23. Entered value—In general.—The entry in the invoices, that the importer is entitled to a deduction for prompt payment of the price, cannot affect the amount of duty chargeable. Ballard v. Thomas (1856) 19 How. 382, 383, 15 L. Ed. 690.

Invoice and entered value, as value upon which duty is to be assessed. Kimball v. Goodrich (1870) 10 Wall. 436, 437, 19 L. Ed. 964.

As duty cannot, as to the goods, "be assessed upon an amount less than the invoice or entered value," whatever is put down in the invoice and entry as the value of the goods per se cannot be diminished, although in fact there may have been included in such value the cost of cartons and packing, unless the invoice or entry shows distinctly what such cost was, and that it was included. Oberteuffer v. Robertson (1886) 6 Sup. Ct. 462, 465, 471, 116 U. S. 499, 29 L. Ed. 706.

It is obligatory on the importer to furnish the appraisers and collector with a true valuation of imported merchandise. Hoeninghaus v. U. S. (1899) 19 Sup. Ct. 305, 172 U. S. 622, 43 L. Ed. 576.

There can be no issue between the invoice value of merchandise and any value below. Roebling v. U. S. (C. C. 1896) 77 Fed. 601.

As to an importation of framed paintings which were invoiced as "paintings," it would not be in violation of the provision forbidding the assessment of duty "on less than the invoice * * * value," to treat the invoice value for this item as including the frames, where it appeared that such value was sufficient, and that it was customary so to describe paintings with frames. U. S. v. Hensel, Bruckmann & Lorbacher (C. C. 1896) 158 Fed. 645.

Internal transportation charges for getting the goods from the place of manufacture to the place of shipment, even if not dutiable elements of market value, become a part of the entered value when they are included in the entry as a part of the market value because that was thought to be the best way, without indicating that such inclusion was objected to. In such case the charges form an indisputable part of the entered value, which the collector cannot reduce. Vantine v. U. S. (C. C. 1899) 91 Fed. 519.

An importer added to the invoice value an amount considered necessary to equal actual market value. On reappraisement this addition was decided unnecessary and the invoice value was held correct. Held, that the provision therein that "duty shall not, however, be assessed in any case upon an amount less than the * * * entered value," indicates an intent to bind the importer to the market value fixed by him, regardless of that found by appraisers or of the general rule of conclusiveness of such finding, and so duty could not be assessed on a less amount than that on which entry was made. Daloz v. U. S. (C. C. 1909) 171 Fed. 275.

Where imported merchandise offered for entry has depreciated from its invoice value, the rate of duty is to be determined by considering not alone section 5599, post; but effect must be given to this section, and the duty should not be assessed in any case upon an amount less than the invoice or entered value. Ullman v. U. S. (1910) 1 Ct. Cust. App. 61.

A regulation issued by the Treasury Department permitting entry by appraisement without invoice is not valid in so far as the regulation might be construed to abrogate the provision requiring that in no case shall an assessment be fixed on an amount less than the invoice or entered value. Id.

24. —— Pro forma invoice.—The provision that duty shall not be as-

on less than the invoice value, not require that the collector take as the dutiable value an ive sum erroneously given in a rma invoice, when he has before consular invoice giving the cor- alue. He conforms to the stat- he assesses on the basis of the in the latter invoice. U. S. v. , Maclean & Co. (1907) 158 05, 85 C. C. A. 515.

provision that duty shall not be ed on "less than the invoice or d value," does not prevent as- nt on less than the value stated ro forma invoice on which entry le under section 5522, ante; and a certified invoice is produced ordance with the latter section, e value stated therein is approv- the appraiser, duty may prop- e assessed on that value, even less than that given in the pro invoice. U. S. v. Commercial Co. (C. C. 1905) 141 Fed. 473.

o forma invoice is for entry pur- a recognized lawful invoice made oath as a substitute for a reg- certified invoice; a penalty for aluation in such an invoice may icted and an entry on a pro for- voice is an entry to which is ap- e the provision forbidding the ment of duty upon an amount an the entered value. U. S. v. tt & Loewenthal, 2 Ct. Cust. 249.

er earlier statute, see (1885) 18 tty. Gen. 259.

Suit to recover additional duties. fact that a collector fails to levy dditional duty upon imported to which they are subject under atute by reason of undervalua- does not affect the right of the States to recover the same by U. S. v. Nuckolls (1902) 118 005, 55 C. C. A. 499.

action to recover additional du- ccruing upon an undervaluation e maintained against a consignee, t proof of any fraudulent intent consignor, or the consignee, or ent. U. S. v. Bishop (1903) 125 81, 60 C. C. A. 123.

— Prior proceedings for for- as bar.—See Gray v. U. S. 113 Fed. 213, 51 C. C. A. 170 ing judgment U. S. v. Gray [D. 1] 107 Fed. 104, and writ of cer- denied Gray v. U. S. [1902] 22 t. 939, 184 U. S. 700, 46 L. Ed. Baldwin v. Same [1902] 113 17, 51 C. C. A. 174 (affirming ent U. S. v. Baldwin [D. C. 107 Fed. 104, and writ of cer- denied Baldwin v. U. S. [1902] . Ct. 939, 184 U. S. 700, 46 L. 5).

er prior statutes, see U. S. v. (D. C. 1859) Fed. Cas. No. ; U. S. v. Segars (D. C. 1859) Fed. Cas. No. 16,249; Falleck v. Barney (C. C. 1862) Fed. Cas. No. 4,625.

27. **Forfeitures—In general.**—The provision for forfeiture is not applicable unless there has been a legal appraisement. The Lace House v. U. S. (1905) 141 Fed. 869, 73 C. C. A. 103.

Goods are forfeitable for an undervaluation in the invoice, though not discovered until after they have passed inspection. U. S. v. Eighty-Two Packages of Glass (D. C. 1857) Fed. Cas. No. 15,038.

28. **— Effect of forfeiture or seizure.**—The fact that goods have been seized for undervaluation does not deprive the consignee or owner of the right of reappraisement given in section 5594, post. The Lace House v. U. S. (1905) 141 Fed. 869, 73 C. C. A. 103.

The forfeiture and sale by the United States of imported goods for undervaluation does not relieve the importer from liability for the duty thereon, so as to entitle him to a return of the duty paid. The obligation to pay the duty is incurred by the act of importation, and the importer is not relieved from such obligation by the violation of a different provision of the customs law, although he thereby incurs as a penalty a forfeiture of the entire importation. U. S. v. One Case Paintings, Engravings, and Manufactures of Metal (1900) 99 Fed. 426, 39 C. C. A. 586.

29. **— Intent.**—The fraudulent intent of the owner or agent in entering imported merchandise is an indispensable condition of the right to forfeit the goods for undervaluation. U. S. v. Bishop (1903) 125 Fed. 181, 60 C. C. A. 123.

To subject goods to forfeiture for fraudulent undervaluation, it must be shown that the goods were invoiced below their value, with an intent to defraud the United States. U. S. v. Seventy-Eight Cases of Books (D. C. 1869) Fed. Cas. No. 16,258a; Same v. Three Hundred Bales of Wool (D. C. 1865) Fed. Cas. No. 16,508; Same v. One Hundred Fifty Bales Unwashed Wool (D. C. 1861) Fed. Cas. No. 15,932b.

Any intentional undervaluation is cause of forfeiture. In re Six Cases of Silk Ribbons (D. C. 1869) Fed. Cas. No. 12,914; Same v. One Case of Cashmere Shawls (D. C. 1847) Fed. Cas. No. 15,923; U. S. v. Fifty-Three Boxes of Havana Sugar (D. C. 1870) Fed. Cas. No. 15,098.

30. **— Parties.**—A patent owner, who is suing an importer for infringement by the importation of infringing goods, which have been detained by the customs officials, and libeled for forfeiture because of fraudulent undervaluation, may, for the protection of his interests, be permitted to intervene in the forfeiture proceedings, on giving proper security. U. S. v. One Case

Chemical Compound (D. C. 1897) 81 Fed. 373.

31. —— **Evidence.**—On an information for forfeiture for undervaluation, the importer may show the selling price at the place of importation and the market price at the place of manufacture. In re One Hundred and Twenty-Three Packages of Glass (C. C. 1841) Fed. Cas. No. 10,525.

On an information for forfeiture for undervaluation the United States are not bound by the action of the revenue officers in assenting to the invoice valuation, but they must show undervaluation at the trial. U. S. v. Twenty-Five Cases of Cloths (D. C. 1840) Fed. Cas. No. 16,563.

32. —— **Defenses.**—The fact that duties have been paid or secured, and the goods turned over to the importer, will not prevent a forfeiture for a fraudulent undervaluation in the invoice. The Cloth Cases (D. C. 1840) Fed. Cas. No. 2,902.

33. —— **Remission or compromise.**—When certain merchandise was seized and libeled under this section, and the United States attorney recommended the acceptance of an offer of claimants to compromise under section 6375, post, finding no fraud or irregularity on their part, held not to be a proper case for compromise. (1897) 22 Op. Atty. Gen. 491.

The Secretary of the Treasury is without authority to remit or mitigate a seizure made pursuant to the provisions of this section on shipments of imported frozen eggs, where the appraised value of the eggs exceeded their entered value more than 75 per cent. (1911) 29 Op. Atty. Gen. 261.

A forfeiture cannot be remitted after it has been adjudged and decreed. (1899) 22 Op. Atty. Gen. 491.

34. —— **Review.**—Delay by an importer in commencing proceedings of review to reclaim the proceeds of an imported article seized and sold by the government for undervaluation under a mistake of fact held not to constitute such laches as to bar relief. U. S. v. One Case Chemical Compound (D. C. 1913) 203 Fed. 63.

Cited without definite application, U. S. v. Legg (1901) 105 Fed. 930, 933, 45 C. C. A. 134; Same v. Sommers (1909) 171 Fed. 57, 96 C. C. A. 299; Meyers v. Shurtleff (C. C. 1885) 23 Fed. 577, 579; Yanada v. Spalding (C. C. 1885) 24 Fed. 21; Reiss v. Magone (C. C. 1889) 39 Fed. 105, 107; Same v. Phillips (D. C. 1891) 46 Fed. 466, 467.

§ 5528. (Act Oct. 3, 1913, c. 16, § III, J.) Declaration on entry of consignments for sale.

J. When merchandise entered for customs duty has been consigned for sale by or on account of the manufacturer thereof, to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee shall, at the time of the entry of such merchandise, present to the collector of customs at the port where such entry is made, as a part of such entry, and in addition to the certified invoice or statement in the form of an invoice required by law, a statement signed by such manufacturer, declaring the cost of production of such merchandise, such cost to include all the elements of cost as stated in paragraph L of this Act. When merchandise entered for customs duty has been consigned for sale by or on account of a person other than the manufacturer of such merchandise, to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee shall at the time of the entry of such merchandise present to the collector of customs at the port where such entry is made, as a part of such entry, a statement signed by the consignor thereof, declaring that the merchandise was actually purchased by him or for his account, and showing the time when, the place where, and from whom he purchased the merchandise, and in detail the price he paid for the same: Provided, That the statements required by this section shall be made in triplicate, and shall bear the attestation of the consular officer of the United States resident within the consular district wherein the merchandise was manufactured, if consigned by the manufacturer or for his account, or from whence it was imported when consigned by a person other than the manufacturer, one copy thereof to be delivered to the person making the statement, one copy to be transmitted with the triplicate invoice of the merchandise to the collector of the port in the United States to which

nerchandise is consigned, and the remaining copy to be filed in the ulate. (38 Stat. 185.)

See notes to subdivision B of this section, ante, § 5519.

These provisions, as originally enacted in the Customs Administrative Act f June 10, 1890, c. 407, were re-enacted in the same language as provisions of he Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 96, which vere re-enacted without change by this act.

Notes of Decisions

tement of cost of production.— statement by the manufacturer erchandise consigned by him or on account for sale in the United s, declaring the cost of the pro- on of such merchandise, required presented to the collector at the of the entry of the merchandise, d be signed by the manufacturer elf. The signing of such state- by an agent is insufficient. 0) 19 Op. Atty. Gen. 655.

The manufacturer is not required to appear in person before the proper consular officer and sign in his presence the statement, in order that it may receive the attestation of such officer. Should the consular officer certify that it has been satisfactorily shown to him that the statement is, as it purports to be, the act of the manufacturer, this would be an attestation of the statement and meet the requirement of the statute. Id.

529. (Act Oct. 3, 1913, c. 16, § III, W.) Invoices of goods from different consular districts.

. Where merchandise purchased or manufactured in different ular districts in the same country is assembled for shipment and raced in a single invoice and consulated at the shipping point, such ice shall have attached thereto the original bills or invoices or ements in the nature of such, showing the prices actually paid, racted to be paid, fixed, or determined, and in connection with such purchase or consignment the invoice shall state all charges expenses as provided in paragraph R of this section. (38 Stat.)

See notes to subdivision B of this section, ante, § 5519.

The requisites of invoices and the indorsements thereon were prescribed by ubdivisions C. D. of this section, ante, §§ 5520, 5521.

"Paragraph R of this section" mentioned in this provision, is set forth post, 5599.

530. (Act Oct. 3, 1913, c. 16, § III, Z.) Collectors and other officers not liable for rulings or decisions.

From and after the taking effect of this Act, no collector or r officer of the customs shall be in any way liable to any owner, orter, consignee, or agent of any merchandise, or any other per- for or on account of any rulings or decisions as to the classifica- of said merchandise or the duties charged thereon, or the collec- of any dues, charges, or duties on or on account of said merchan- , or any other matter or thing as to which said owner, importer, ignee, or agent of such merchandise might, under this Act, be led to appeal from the decision of said collector or other officer, rom any board of appraisers. (38 Stat. 191.)

See notes to subdivision B of this section, ante, § 5519.

This provision, as originally enacted in the Customs Administrative Act of une 10, 1890, c. 407, § 25, 26 Stat. 141, was re-enacted in the same language s a provision of the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 03, which was re-enacted without change by this act.

Appeals from decisions of collectors or other officers were provided for by ubdivisions M, N, of this section, post, §§ 5594, 5595.

Notes of Decisions

iability of customs officers in general.
ctions to recover excess duties—Aboli- tion of right to sue collector.
— Necessity and sufficiency of pro- test.
— Limitations.
— Premature proceedings.
6. — Pleading in general.
7. — Bill of particulars.
8. — Evidence.
9. — Trial.
10. — Reference.
11. — Verdict and findings by court.
12. — Interest recoverable.

Rubens v. Robertson (C. C. 1889) 38 Fed. 86; Cantzler v. Gordon (1834) 6 La. 258.

Cited without definite application, U. S. v. American Express Co. (C. C. 1910) 177 Fed. 735.

§ 5531. (Act Oct. 3, 1913, c. 16, § III, AA.) Bribery of revenue officers or employees; evidence.

AA. Any person who shall give, or offer to give, or promise to give, any money or thing of value, directly or indirectly, to any officer or employee of the United States in consideration of or for any act or omission contrary to law in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of goods, wares, or merchandise, including herein any baggage or of the liquidation of the entry thereof, or shall by threats or demands or promises of any character attempt to improperly influence or control any such officer or employee of the United States as to the performance of his official duties shall, on conviction thereof, be fined not exceeding $2,000, or be imprisoned at hard labor not more than one year, or both, in the discretion of the court; and evidence of such giving, or offering, or promising to give, satisfactory to the court in which such trial is had, shall be regarded as prima facie evidence that such giving or offering or promising was contrary to law, and shall put upon the accused the burden of proving that such act was innocent and not done with an unlawful intention. (38 Stat. 191.)

See notes to subdivision B of this section, ante, § 5519.

This provision, as originally enacted in the Customs Administrative Act of June 10, 1890, c. 407, § 26, 26 Stat. 141, was re-enacted in the same language as a provision of the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 103, which was re-enacted without change by this act.

§ 5532. (Act Oct. 3, 1913, c. 16, § III, BB.) Revenue officer or employee accepting bribe; evidence.

BB. Any officer or employee of the United States who shall, excepting for lawful duties or fees, solicit, demand, exact, or receive from any person, directly or indirectly, any money or thing of value in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of goods, wares, or merchandise, including herein any baggage or liquidation of the entry thereof, on conviction thereof shall be fined not exceeding $5,000, or be imprisoned at hard labor not more than two years, or both, in the discretion of the court; and evidence of such soliciting, demanding, exacting, or receiving, satisfactory to the court in which such trial is had, shall be regarded as prima facie evidence that such soliciting, demanding, exacting, or receiving was contrary to law, and shall put upon the accused the burden of proving that such act was innocent and not with an unlawful intention. (38 Stat. 192.)

See notes to subdivision B of this section, ante, § 5519.

This provision, as originally enacted in the Customs Administrative Act of June 10, 1890, c. 407, § 27, 26 Stat. 141, was re-enacted in the same language as a provision of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 103, which was re-enacted without change by this act.

§ 5533. (Act Oct. 3, 1913, c. 16, § III, CC.) Baggage in transit to foreign country.

CC. Any baggage or personal effects arriving in the United States in transit to any foreign country may be delivered by the parties having it in charge to the collector of the proper district, to be by him retained, without the payment or exaction of any import duty, or to be forwarded by such collector to the collector of the port of departure and to be delivered to such parties on their departure for their foreign destination, under such rules and regulations as the Secretary of the Treasury may prescribe. (38 Stat. 192.)

See notes to subdivision B of this section, ante, § 5519.

This provision, as originally enacted in the Customs Administrative Act of June 10, 1890, c. 407, § 28, 26 Stat. 141, was re-enacted in the same language

a provision of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 at. 104, which was re-enacted without change by this act.

The provision superseded R. S. § 2803, re-enacting the provisions of that tion, with the addition of the words "or to be forwarded by such collector to collector of the port of departure."

4. (Act March 8, 1902, c. 140, § 8.) Laws applicable to Philippine Islands.

e provisions of the Act entitled "An Act to simplify the in relation to the collection of revenues," approved June tenth, een hundred and ninety, as amended by an Act entitled "An Act ovide for the Government and to encourage the industries of Jnited States," approved July twenty-fourth, eighteen hundred inety-seven, shall apply to all articles coming into the United s from the Philippine Archipelago. (32 Stat. 55.)

This section was part of an act temporarily to provide revenue for the ilippine Islands, and for other purposes, cited above.

Provisions for free admission of certain articles from the Philippine Islands re made by the Underwood Tariff Act of Oct. 3, 1909, c. 16, § IV, C, ante, § 94.

5. (R. S. § 2840.) Collector to take possession when invoice s not correct.

every case in which a collector shall suspect that any merlise is not invoiced at a sum equal to that for which it has ly been sold in the place or country from whence it was imd, he shall take the merchandise into his possession, and retain ame with reasonable care, at the risk and expense of the owner nsignee, until its value at the time and place of importation een ascertained, as in the case of damaged merchandise, or of handise not accompanied with an invoice, and until the duties g, according to such valuation, have been paid, or secured to id. But in case of a prosecution for forfeiture, such appraise- shall not exclude other proof, upon the trial, of the actual of the merchandise at the place of exportation.

Act March 2, 1799, c. 22, § 66, 1 Stat. 677.

The custody of goods in case of imperfect entry was provided for by R. S. 2789, post, § 5570.

The liquidation of duties on damaged merchandise, was provided for by tion III, X, of the Underwood Tariff Act, post, § 5602.

The seizure of merchandise as security for fines was authorized by the ti-Moiety Act of June 22, 1874, c. 391, § 13, ante, § 5525.

Cited without definite application,
Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313.

(R. S. § 2841. Repealed.)

This section prescribed the forms of oaths of which one, according to the ture of the case, was required to be administered by the collector at the ne of the entry of merchandise by invoice. It was repealed by the Cusns Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, amend- and re-enacted by the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 at. 104, and declarations in lieu of oaths, were required to accompany the voice by section 5 of the Customs Administrative Act, amended by the yne-Aldrich Act and further amended by the Underwood Tariff Act of Oct. 1913, c. 16, § III, F, ante, § 5523. All oaths administered by officers of customs, except as provided in the Customs Administrative Act, were olished by section 22 thereof, amended by section 28 of the Payne-Aldrich t.

The provisions for the abolition of fees and oaths on entry of goods, made the Customs Administrative Act of June 10, 1890, c. 407, § 22, 26 Stat. 0, as amended by the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 at. 102, were superseded by a proviso annexed to section IV, S, of the nderwood Tariff Act of Oct. 3, 1913, ante, § 5316, which provided that othing in this act shall be construed to permit any oaths to be demanded fees to be charged except as provided in this act," etc.

Provisions for the separate entry of packages contained in one importation re made by Act May 1, 1876, c. 89, § 2, ante, § 5483.

§ 5536. (R. S. § 2842.) Bond for production of invoice of goods of absent owner.

No merchandise subject to ad-valorem duty imported into the United States, and belonging to a person residing in the United States, but at the time absent from the place where the merchandise is intended to be entered, shall be admitted to an entry, unless the importer, consignee, or agent, shall previously give bond, the form of which shall be prescribed by the Secretary of the Treasury, with sufficient sureties, to produce, within four months, to the collector of the port where the merchandise may be, the invoice of the same, duly certified, according to the circumstances of the case, by the oath of the owner, or one of the owners; which oath shall be administered by a collector, if there is any in the place where the owner may be or, if there is none, by some public officer duly authorized to administer oaths.

Act March 1, 1823, c. 21, § 6, 3 Stat. 733.

Provisions for bond for production of invoice in case of entry made by a verified statement in the form of an invoice were made by the Customs Administrative Act of June 10, 1890, c. 407, § 4, 26 Stat. 131, amended by the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 92, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, E, ante § 5522.

Provisions for judgment at the return term in suits brought on bonds for the recovery of duties were made by R. S. § 960, ante, § 1598.

See note to R. S. § 2841, ante, as to abolition of oaths.

Cited without definite application,
Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313.

(R. S. § 2843. Repealed.)

This section required that, for admission to entry of merchandise subject to ad valorem duty, belonging to a person not residing in the United States who should have actually purchased it, the invoice should be verified by the oath of the owner, administered by a consul or other officer, and certified by him. It was repealed by the Customs Administrative Act of June 10, 1890 c. 407, § 29, 26 Stat. 141, and a declaration, similar in substance to such oath, was required by section 3 of that act to be indorsed on the invoice produced to the consul or other officer. Said section 29 was re-enacted by the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 104.

See note to section III, D, of the Underwood Tariff Act, ante, § 5521, as to declaration to be indorsed on invoice produced to consular officer.

§ 5537. (R. S. § 2844, as amended, Act June 28, 1906, c. 3569.) Authentication in absence of consul.

If there is no consul [or commercial agent] of the United States in the country from which such merchandise was imported, the authentication required by the preceding section shall be executed by a consul of a nation at the time in amity with the United States, if there is any such residing there; and if there is no such consul in the country the authentication shall be made by two respectable merchants, if any there be, residing in the port from which the merchandise shall have been imported. Provided, That the authentication may be made by the collector or a deputy collector of customs in the case of merchandise shipped to the United States from the Philippine Islands.

Act March 1, 1823, c. 21, § 7, 3 Stat. 733. Act June 28, 1906, c. 3569 34 Stat. 539.

This section, as enacted in the Revised Statutes, did not contain the proviso relating to authentications in the Philippine Islands. This proviso was added at the end of the section, making the section read as set forth here, by Act June 28, 1906, c. 3569, last cited above.

The words of this section, "or commercial agent," inclosed in brackets, were superseded by the abolition of the grade of commercial agent by Act April 5, 1906, c. 1366, § 2, ante, § 3139.

Indorsement of invoices was required by R. S. § 2855, post, § 5541, and by the Customs Administrative Act of June 10, 1890, c. 407, § 3, 26 Stat. 131, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat.

1, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, III, D, ante, § 5521.

Rev. St. § 2843, referred to as "the preceding section," repealed by the ustoms Administrative Act of June 10, 1890, c. 407, § 29, was as follows: "Sec. 2843. No merchandise subject to ad-valorem duty belonging to a person ot residing at the time in the United States, and who shall have actually urchased the same, shall be admitted to entry, unless the invoice is verified y the oath of the owner, or one of the owners, certifying that the merchandise as actually purchased for his account, or for account of himself and partners n the purchase; that the invoice annexed thereto contains a true and faithul account of the actual cost thereof, and of all charges thereon, and that o discounts, bounties, or drawbacks, are contained in the invoice, but such s have been actually allowed on the same. Such oath shall be administered y a consul or commercial agent of the United States, or by some public officer uly authorized to administer oaths in the country where the merchandise as purchased; and the same shall be duly certified by the consul, commercial gent, or public officer; and when such oath is administered by an officer other han a consul or commercial agent of the United States, such official certifiate shall be authenticated by such a consul or commercial agent."

Notes of Decisions

thentication in absence of consul.— collector at the port of New York ted a proffered invoice and entry t duly certified. The invoice was ied by the British vice consul at na, Mexico, this certificate conng the statement that there was merican consular office within that ict. The invoice as presented to collector was duly certified under aws and regulations. It was the collector's duty to receive it, and failing to do this no valid appraisement could be had. All proceedings as to exacting bond and otherwise after such failure were accordingly invalid. U. S. v. Marquardt & Co. (1915) 6 Ct. Cust. App. 168.

Cited without definite application, Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313.

(R. S. § 2845. Repealed.)

This section required that, for admission to entry of merchandise subject o ad valorem duty, belonging to a person not residing in the United States, who had not acquired it in the ordinary mode of bargain and sale, or belonging to the manufacturer, the invoice should be verified by the oath of the wner, administered and authenticated as prescribed in the two preceding sections. It was repealed by the Customs Administrative Act of June 10, 1890, . 407, § 29, 26 Stat. 141, and a declaration similar in substance to such ath was required by section 3 of that act to be indorsed on the invoice roduced to the consul or other officer.

Said section 29 was re-enacted by the Payne-Aldrich Tariff Act of Aug. , 1909, c. 6, § 28, 36 Stat. 104.

See note to section III, D, of the Underwood Tariff Act, ante, § 5521, as o indorsement on invoice.

538. (R. S. § 2846.) Oath of representative.

Whenever merchandise subject to ad-valorem duty belongs to estates of deceased persons or of persons insolvent who have gned the same for the benefit of their creditors, the oaths to ines may be administered to the executor or administrator, or he assignee, of such persons.

Act March 1, 1823, c. 21, § 9, 3 Stat. 734.

This section was superseded, as to requirement of oaths, by the abolition f all oaths administered by officers of the customs, except as provided therein, by the Customs Administrative Act of June 10, 1890, c. 407, § 22, 26 Stat. 140, and by the repeal, by section 29 of that act, 26 Stat. 141, of R. S. § 2841, 2843, 2845, which required oaths to accompany invoices on entry f merchandise, and the substitution of declarations for such oaths, by sections 3–5 of said act, 26 Stat. 131, amended by the Payne-Aldrich Tariff Act f Aug. 5, 1909, c. 6, § 28, 36 Stat. 102, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, D, F, ante, §§ 5521, 5523, and § V, S, ante, § 5316.

Cited without definite application, Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313.

(R. S. §§ 2847, 2848. Superseded.)

These sections authorized the Secretary of the Treasury to admit to entry n certain cases merchandise subject to ad valorem duty, belonging to a person not residing in the United States, not accompanied with an invoice verified

and authenticated as required by preceding sections. They became inoperative by the repeal of R. S. §§ 2843, 2845, by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, re-enacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 104, and the enactment of provisions for entry of goods without invoice by section 4 of said Customs Administrative Act, amended by the Payne-Aldrich Tariff Act, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, E, ante § 5522.

§ 5539. (R. S. § 2849.) Oath where one of owners resides abroad.

In all cases where merchandise subject to ad-valorem duty belongs in part to a person residing in the United States, and in part to a person residing out of the United States, the oath of one of the owners residing in the United States shall be sufficient to admit the same to an entry. In all cases, however, where the merchandise was manufactured, in whole or in part, by any one of the owners, residing out of the United States, the same shall not be so admitted to an entry, unless the invoice has been verified and authenticated by such manufacturer in the manner prescribed in section twenty-eight hundred and forty-five.

Act March 1, 1823, c. 21, § 11, 3 Stat. 734.

This section was superseded to the extent that it required an oath and verification by the repeal of section 2845 and the substitution of declarations for oaths, by the Customs Administrative Act of June 10, 1890, c. 407, §§ 5, 22, 29, 26 Stat. 132, 140, 141, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 92, 102, 104, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, B–J, ante, §§ 5519–5524, 5526–5528.

Cited without definite application,
Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313.

(R. S. § 2850. Superseded.)

This section provided that whenever the invoice or merchandise belonging to a person not residing in the United States had not been duly verified and authenticated, and, upon application to the Secretary of the Treasury, the merchandise had been refused entry, the same should be deemed suspected. It became inoperative by the repeal, by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, re-enacted by the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 104, of the special provisions of R. S. §§ 2843, 2845, for verification and authentication of such invoices.

(R. S. § 2851. Repealed.)

This section prescribed a fee of $2.50 for consular certification of invoices. It was repealed, and such fees were included with those for which, by R. S. § 1745, ante, § 3205, the President was authorized to prescribe rates, by Act April 5, 1906, c. 1366, § 9, ante, § 3187.

Exacting excessive fees for verification of invoices was punishable by R. S. § 1716, ante, § 3172.

§ 5540. (R. S. § 2852.) Certificate upon invoice.

When any merchandise is admitted to an entry upon invoice, the collector of the port in which the same is entered shall certify the same under his official seal; and no other evidence of the value of such merchandise shall be admitted on the part of the owner thereof, in any court of the United States, except in corroboration of such entry.

Act March 1, 1823, c. 21, § 23, 3 Stat. 737.

Cited without definite application,
Forbes v. Gracey (1876) 94 U. S. 762, 763, 24 L. Ed. 313.

(R. S. § 2853. Repealed.)

This section required invoices to be in triplicate and prescribed by whom they should be signed. It was repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, and provisions of the same nature, with additions, were made by section 2 of that act, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, and the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, C, ante, § 5520.

(R. S. § 2854. Repealed.)

This section prescribed the requirements of declarations to accompany invoices produced to the consul or other officer. It was repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, and provisions of the same nature, with additions, were made by section 3 of that act, amended by the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, and the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, D, ante, § 5521.

541. (R. S. § 2855.) Indorsement upon invoice.

he person so producing such invoice shall at the same time de-
e to such consul, vice-consul, [or commercial agent] the port in
United States at which it is intended to make entry of mer-
ndise; whereupon the consul, vice-consul, [or commercial
nt] shall indorse upon each of the triplicates a certificate, un-
his hand and official seal, stating that the invoice has been pro-
ed to him, with the date of such production, and the name of
person by whom the same was produced, and the port in the
ted States at which it shall be the declared intention to make
ry of the merchandise therein mentioned. The consul, vice-
sul, [or commercial agent] shall then deliver to the person pro-
ing the same, one of the triplicates, to be used in making entry
he merchandise; shall file another in his office, to be there care-
y preserved; and shall, as soon as practicable, transmit the
aining one to the collector of the port of the United States at
ch it shall be declared to be the intention to make entry of the
chandise.

Act March 3, 1863, c. 76, § 1, 12 Stat. 738.

The words "or commercial agent," inclosed in brackets, where they occur three times in this section, were superseded by the abolition of the grade of commercial agent by Act April 5, 1906, c. 1566, § 3, ante, § 3140.

The words at the beginning of this section "the person so producing such invoice," and "such consul," etc., refer to provisions of R. S. §§ 2853, 2854, repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141. Substitutes for the provisions so repealed were enacted in sections 2 and 3 of that act, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, and the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, C, D, ante, §§ 5520, 5521.

Before the repeal of R. S. §§ 2853, 2854, mentioned above, section 2853 and this section were amended by the Immediate Transportation Act of June 10, 1880, c. 190, § 4, post, § 5542, so as to require that all invoices of merchandise imported and intended to be transported without appraisement to any of the ports mentioned in section 7 of that act should be made in quadruplicate, one of the quadruplicates to be used in making entry at the port of arrival, and one to be used in making entry at the port of destination. Similar provisions were made by the Customs Administrative Act of June 10, 1890, c. 407, § 2, amended by the subsequent tariff acts mentioned above.

Further provisions relating to the duties of consular officers as to certification of invoices are contained in R. S. §§ 2861–2863, post, §§ 5545–5547.

The authentication of invoices in the absence of the consular officer was provided for by R. S. § 2844, as amended by Act June 28, 1906, c. 3569, ante, § 5537.

The destruction of old invoices on file in consular offices was authorized by Act Feb. 24, 1903, c. 753, set forth ante, § 3173.

Notes of Decisions

oods not subject to duty.—Under requirement that all "invoices" of chandise imported be made in tripli-, and certified by the consul, and "no merchandise" be admitted to y unless the invoice conforms to requirements, and the consular regions of 1874 and 1881, providing "all invoices of importations" must authenticated by the consul, an inve authenticated by the consul is essary in the case of an importation goods not subject to duty. Phelps Siegfried (1892) 142 U. S. 602, 12 Sup. Ct. 391, 35 L. Ed. 1128, reversing (C. C. 1889) 40 Fed. 660, and following U. S. v. Mosby (1889) 133 U. S. 273, 10 Sup. Ct. 327, 33 L. Ed. 625.

Consul's fees.—Consul's duty to account for fees defined. U. S. v. Mosby (1890) 10 Sup. Ct. 327, 331, 332, 333, 133 U. S. 273, 33 L. Ed. 625.

Government's right to fees defined. Id.

Cited without definite application, U. S. v. Wilson (1897) 18 Sup. Ct. 85, 168 U. S. 273, 42 L. Ed. 464; Wilson v. U. S. (1896) 32 Ct. Cl. 64.

§ 5542. (Act June 10, 1880, c. 190, § 4.) Quadruple invoices; in dorsement; disposition; fees.

Sections twenty-eight hundred and fifty-three and twenty-eigh hundred and fifty-five of the Revised Statutes of the United State be, and the same are hereby, so amended as to require that a invoices of merchandise imported from any foreign country an intended to be transported without appraisement to any of th ports mentioned in the seventh section of this act, shall be mad in quadruplicate; and that the consul, vice-consul, [or commerci agent] to whom the same shall be produced, shall certify each c said quadruplicates under his hand and official seal in the manne required by section twenty-eight hundred and fifty-five of the Re vised Statutes, and shall then deliver to the person producing th same two of the quadruplicates, one to be used in making entry a the port of first arrival of the merchandise in the United States and one to be used in making entry at the port of destination, fil another in his office, there to be carefully preserved and as soon a practicable transmit the remaining one to the collector or surveyo of the port of final destination of the merchandise: Provided, how ever, That no additional fee shall be collected on account of an service performed under the requirements of this section. (2 Stat. 173.)

This was a provision of the Immediate Transportation Act, cited above Other provisions of that act are set forth post, §§ 5695–5698, 5700, 5702, 5704

Quadruplicate invoices of merchandise intended for immediate transporta tion were required by the Customs Administrative Act of June 10, 1890, c 407, § 2, 26 Stat. 181, which, as amended, was further amended by the Under wood Tariff Act of Oct. 3, 1913, c. 16, § III, C, ante, § 5520. The provision of said section 2 of the Customs Administrative Act were substitutes fo similar provisions made by R. S. § 2853, repealed by section 29 of that act

R. S. § 2855, mentioned in this section, is set forth ante, § 5541.

The words of this section, "or commercial agent," inclosed in brackets were superseded by the abolition of the grade of commercial agent by Ac April 5, 1906, c. 1366, § 3, ante, § 3140.

(R. S. § 2856. Repealed.)

This section provided that, in case of merchandise imported from a foreign country adjacent to the United States, the declaration required in the two pre ceding sections might be made to, and the certificate indorsed by, the consul vice-consul, or commercial agent at or nearest to the port of clearance for the United States. It was repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, re-enacted by the Payne-Aldrich Act o Aug. 5, 1909, c. 6, § 28, 36 Stat. 104.

§ 5543. (R. S. § 2857.) Change of destination.

Whenever, from a change of the destination of any merchandise after the production of the invoice thereof to the consul, vice-consul, [or commercial agent], or from other cause, the triplicate transmitted to the collector of the port to which such merchandise was originally destined, is not received at the port where the same actually arrives, and where it is desired to make entry thereof, the merchandise may be admitted to an entry on the execution by the owner, consignee, or agent, of a bond, with sufficient security, in double the amount of duty apparently due, conditioned for the payment of the duty which shall be found to be actually due thereon. The collector of the port where such entry shall be made shall immediately notify the consul, vice-consul, [or commercial agent] to whom such invoice has been produced, to transmit to such collector a certified copy thereof; and such consul, vice-consul, [or commercial agent] shall transmit the same accordingly without delay; and the duty shall not be finally liquidated until such triplicate, or a certified copy thereof, shall have been received. Such

dation, however, shall not be delayed longer than eighteen ths from the time of making such entry.

Act March 3, 1863, c. 76, § 1, 12 Stat. 738.

The words "or commercial agent," inclosed in brackets where they occur three nes in this section, were superseded by the abolition of the grade of com- ercial agent by Act April 5, 1906, c. 1366, § 3, ante, § 3140.

The provisions of this section were made inapplicable to importations under ct June 8, 1896, c. 371, by section 4 of that act, set forth post, § 5708.

(R. S. § 2858. Repealed.)

This section provided that the Secretary of the Treasury, whenever it had come impracticable for the person desiring to make entry of merchandise to oduce any invoice thereof, might authorize the entry thereof, and remit for- itures in such cases, as in other cases under the revenue laws. It was re- aled by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 tat. 141, re-enacted by the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 at. 104.

44. (R. S. § 2859.) Countries excepted from foregoing provi- sions.

e six preceding sections shall not apply to countries where there o consul, vice-consul, [or commercial agent] of the United es. And whenever the value of the imported merchandise does exceed one hundred dollars, the collector may admit it to entry out the production of the triplicate invoice, and without sub- ing the question to the Secretary of the Treasury, if he is sat- l that the neglect to produce such invoice was unintentional that the importation was made in good faith, and without any ose of defrauding or evading the revenue laws.

Act March 3, 1863, c. 76, § 1, 12 Stat. 739. Act July 18, 1866, c. 201, § 19, Stat. 182.

The words of this section, "or commercial agent," inclosed in brackets, were perseded by the abolition of the grade of commercial agent by Act April 5, 906, c. 1366, § 3, ante, § 3140.

Of "the six preceding sections" mentioned in this section,—being R. S. §§ 853–2858,—all except sections 2855 and 2857 were repealed by the Customs dministrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141.

The submission to the Secretary of the Treasury of the question of admission entry of merchandise without an invoice was provided for by R. S. § 2858, e of the sections repealed, as stated above.

Entry of merchandise without invoice, upon affidavit, was provided for by the ustoms Administrative Act of June 10, 1890, c. 407, § 4, 26 Stat. 131, amend- d by the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 92, and fur- er amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, E, nte, § 5522.

Notes of Decisions

eal.—This section is not repealed ction 9, Act June 22, 1874 (18 188), or by Act May 1, 1876 (19 49). (1884) 17 Op. Atty. Gen.

penses.—Where goods without in- and unclaimed are sent to a gen- rder warehouse, and subsequently, the application of the assignees of ill of lading for entry of the same, sent to the public store for ex- ation and appraisement, the charges for cartage to the appraiser's store and for storage and labor there may properly be exacted from the im- porter, although the value of the goods is less than $100. Kennedy v. Magone (1895) 158 U. S. 212, 15 Sup. Ct. 814, 39 L. Ed. 954, affirming (C. C. 1890) 41 Fed. 768.

Cited without definite application, Hempstead v. Cadwalader (C. C. 1890) 42 Fed. 529.

(R. S. § 2860. Repealed.)

This section provided that, "except as allowed in the four preceding sections," being R. S. §§ 2856–2859,—no merchandise imported should be admitted to ntry unless the invoice conformed to the requirements of sections 2853, 2854, nd 2855, and had thereon the certificate in those sections satisfied, nor unless e invoice was verified, etc., nor unless the triplicates transmitted to the ollector had been received by him. It was repealed, with most of the other ections mentioned therein, by the Customs Administrative Act of June 10, 890, c. 407, § 29, 26 Stat. 141.

§ 5545. (R. S. § 2861.) Restriction on consular certificates.

No consular officer of the United States shall grant a certificate for merchandise shipped from countries adjacent to the United States, which have passed a consulate after purchase for shipment.

Act Feb. 22, 1873, c. 184, § 3, 17 Stat. 474.
A similar provision was made by R. S. § 1717, ante, § 3174.

§ 5546. (R. S. § 2862.) Consuls to exact proof of invoice.

All consular officers are hereby authorized to require, before certifying any invoice under the provisions of the preceding sections, satisfactory evidence, either by the oath of the person presenting such invoices or otherwise, that such invoices are correct and true. In the exercise of the discretion hereby given, the consular officers shall be governed by such general or special regulations or instructions as may from time to time be established or given by the Secretary of State.

Act March 3, 1865, c. 111, 13 Stat. 532.
Provisions of a similar nature were made by R. S. § 1715, ante, § 3171.
The oath provided for by this section was excepted from the abolition of oaths by a proviso of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, S, ante, § 5316.

§ 5547. (R. S. § 2863.) To report fraudulent practices.

All consuls and [commercial agents] of the United States having any knowledge or belief of any case or practice of any person who obtains verification of any invoice whereby the revenue of the United States is or may be defrauded, shall report the facts to the collector of the port where the revenue is or may be defrauded, or to the Secretary of the Treasury.

Act July 14, 1862, c. 163, § 18, 12 Stat. 559.
The words of this section, "commercial agents," inclosed in brackets, were superseded by the abolition of the grade of commercial agent by Act April 5, 1906, c. 1366, § 3, ante, § 3140.
False certification by consular officers of invoices or other papers was punishable by R. S. § 5442, which was incorporated into the Criminal Code in section 70 thereof, post, § 10238, and was repealed by section 341 thereof, post, § 15515.

(R. S. § 2864. Superseded.)

This section as amended by Act Feb. 18, 1875, c. 80, 18 Stat. 319, was as follows:

"If any owner, consignee, or agent of any merchandise shall knowingly make, or attempt to make, an entry thereof by means of any false invoice, or false certificate of a consul, vice-consul, or commercial agent, or of any invoice which does not contain a true statement of all the particulars hereinbefore required, or by means of any other false or fraudulent document or paper, or of any other false or fraudulent practice or appliance whatsoever, such merchandise or the value thereof shall be forfeited."

It was superseded by similar provisions made by the Customs Administrative Act of June 10, 1890, c. 407, § 9, 26 Stat. 135, amended by the Payne-Aldrich Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 97, amended and superseded by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, G, H, ante, §§ 5524, 5526.

§ 5548. (R. S. § 2865, as amended, Act Feb. 27, 1877, c. 69, § 1.) Smuggling merchandise, or making or passing false invoice.

If any person shall knowingly and willfully, with intent to defraud the revenue of the United States, smuggle, or clandestinely introduce, into the United States, any goods, wares, or merchandise, subject to duty by law, and which should have been invoiced, without paying or accounting for the duty, or shall make out or pass, or attempt to pass, through the custom-house any false, forged, or fraudulent invoice, every such person, his, her, or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five thousand dollars, or imprison-

or any term of time not exceeding two years, or both, at the etion of the court.

Act Aug. 30, 1842, c. 270, § 19, 5 Stat. 565. Act Feb. 27, 1877, c. 69, § 1, 9 Stat. 247.

This section, as enacted in the Revised Statutes, was as follows:

"Every person who makes out or passes, or attempts to pass, through the cus-om-house, any false, forged, or fraudulent invoice, or who shall aid or abet in aking or passing such false, forged, or fraudulent invoice, shall be deemed guil-y of a misdemeanor, punishable by a fine of not more than five thousand dol-ars, or by imprisonment for not more than two years, or both, in the discre-ion of the court."

It was amended by substituting therefor the section set forth here, by Act 'eb. 27, 1877, c. 69, § 1, cited above.

Provisions of a similar nature were made by the Customs Administrative ct of June 10, 1890, c. 407, § 9, 26 Stat. 135, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 97, and further amended by he Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, G, ante, § 5524.

Securing false entry of goods was punishable by R. S. § 5445, incorporated nto the Criminal Code, in section 69 thereof, post, § 10237, and repealed by ection 341 thereof, post, § 10515.

Notes of Decisions

peal of act.—As to repeal of super-l acts, see In re Landsberg (D. C.) Fed. Cas. No. 8,041.

is act does not repeal section 5785, U. S. v. A Lot of Jewelry, etc. C. 1894) 59 Fed. 684, 686; Same rtega (D. C. 1895) 66 Fed. 713,

ements of offense—In general.—By established definition of the word ggling," both in English and rican law, to constitute the offense goods must be unladen and brought hore. Keck v. U. S. (1899) 19 Ct. 254, 172 U. S. 434, 43 L. Ed.

person becomes guilty of smug-by avoiding the first opportunity n to make a customs declaration pay the duty. Rogers v. U. S. 0) 180 Fed. 54, 58, 103 C. C. A. 31 L. R. A. (N. S.) 264.

indictment for smuggling goods Canada into the United States out an invoice cannot be maintain-nder this section as formerly en-d, as such importations are gov-d by section 5810, post, which re-es only the delivery to the collec-of the manifest of the goods im-ed from adjacent territory. U. S. olton (C. C. 1867) Fed. Cas. No. 97.

e offense is not committed by an done before the obligation to pay account for the duties arises. rican Sugar Refining Co. v. Bid-(C. C. 1903) 124 Fed. 677, 681.

e who goes abroad with funds fur-ed by another, and buys goods to muggled home, and causes them to delivered to the carrier, who actu-smuggles them, is guilty, though service be gratuitous. U. S. v. tin (D. C. 1868) Fed. Cas. No. 29.

constitute smuggling, there must omething in the manner of the im-ation which violates the statute, such as secrecy or concealment, intent to defraud the revenue, or the like. U. S. v. Thomas (D. C. 1870) Fed. Cas. No. 16,473.

Act of smuggling goods contained in a passenger's pocket and omitted from his declaration on shipboard is complete when he has left the vessel, though he is still within the custom lines on the dock. U. S. v. 218½ Carats Loose Emeralds (D. C. 1907) 153 Fed. 643, 647, affirmed (1907) 154 Fed. 839, 83 C. C. A. 475.

It was alleged that an exporter had caused a false and fraudulent invoice to be made out, signed, verified, and left with a consul to be transmitted to the collector of customs at an American port, and had then caused the merchandise covered by the invoice to be shipped to said port; but it was not charged or shown that he had been concerned in importing the goods. Held, that the case was not brought within this section. U. S. v. 646 Half-Boxes of Figs (D. C. 1908) 164 Fed. 778.

Though this section provides for the punishment of persons aiding and abetting smuggling, and though if an offense necessarily involves an unlawful agreement between two or more persons the parties thereto cannot be charged with conspiracy for making such agreement, but must be prosecuted for the principal offense, the parties to a conspiracy to smuggle foreign merchandise and defraud the United States of customs duties may be indicted for conspiracy, as neither smuggling nor defrauding the United States necessarily involves an agreement between two or more persons, and either offense may be committed by a single individual. U. S. v. Shevlin (D. C. 1913) 212 Fed. 343.

To constitute the offense of smuggling, there must be a secret introduction of dutiable goods with intent to defraud the government. San Antonio

Light Pub. Co. v. Lewy (Tex. Civ. App. 1908) 113 S. W. 574.

—— **Fraudulent entry.**—The provision making it criminal to "smuggle or clandestinely introduce" merchandise into the United States, does not include a case where merchandise is fraudulently entered at the customhouse. U. S. v. 646 Half-Boxes of Figs (1908) 164 Fed. 778.

—— **Attempts.**—The section does not include mere attempts, and under it the offense is not complete until the obligation to pay or account for the duty has arisen; hence the concealment of merchandise on board an incoming vessel, though with the intent and for the purpose of clandestinely introducing the same into the United States without the payment of the duty thereon, and although continued until after the vessel has entered the waters of a port of the United States, does not constitute the offense. Keck v. U. S. (1899) 19 Sup. Ct. 254, 172 U. S. 434, 43 L. Ed. 505.

—— **Intent.**—To support an indictment under this section, there must be sufficient evidence of a criminal intent. (1900) 23 Op. Atty. Gen. 63.

Indictment.—Any words of description which make clear to the common understanding the articles in respect to which the offense is alleged are sufficient, and an indictment sufficiently describes the article as "prepared opium subject to duty by law, to wit, the duty of $12 per pound," where the only opium subject to a duty of $12 per pound is "opium containing less than 9 per cent. of morphia and opium prepared for smoking." Dunbar v. U. S. (1895) 15 Sup. Ct. 325, 327, 156 U. S. 185, 39 L. Ed. 390.

An indictment charging the defendant with having smuggled and clandestinely introduced into the United States certain diamonds of a stated value, which should have been invoiced, and duty paid thereon, with intent to defraud the revenue, sufficiently describes the smuggled goods, though certain classes of diamonds were free of duty. Keck v. U. S. (1899) 19 Sup. Ct. 254, 172 U. S. 434, 43 L. Ed. 505.

An indictment, alleging that accused at Sault Ste. Marie, Mich., did unlawfully, knowingly, and fraudulently import and bring into the United States certain merchandise, to wit, 3½ yards of black woolen suiting cloth of the value of $10, contrary to law—that is, clandestinely and without entering the same at the United States Customs Office and port of entry with the United States Collector of Customs and paying the duty thereon—the same being foreign merchandise subject to an import duty as provided in Act July 24, 1897, c. 11, 30 Stat. 151, sufficiently charged "smuggling." Rogers v. U. S. (1910) 180 Fed. 54, 103 C. C. A. 408, 31 L. R. A. (N. S.) 264.

An indictment charging that defendant did "bring into the country clandestinely" certain dutiable goods, was synonymous with the provision, making it an offense to "clandestinely introduce" dutiable goods into the country with intent to avoid payment of duty. Id.

An indictment for smuggling "smoking opium" and "prepared opium" sufficiently described dutiable merchandise. U. S. v. Gardner (C. C. 1890) 42 Fed. 832.

An indictment that describes smuggled property in terms which presuppose the existence of some law is not bad on that account, as where it describes the goods "as subject to duty and which should have been invoiced." U. S. v. White (C. C. 1909) 171 Fed. 775.

An allegation that defendants knowingly smuggled goods meets the requirement that it must be alleged they knew the goods were dutiable. Id.

Indictment must allege the facts relied upon as rendering the importation alleged an offense, or state the particular illegality intended to be proved, and such allegation must be proved as made. U. S. v. Thomas (D. C. 1870) Fed. Cas. No. 16,473.

An indictment alleging that defendant smuggled into the United States merchandise subject to a duty, which should have been invoiced, without paying or accounting for such duty, and without having such merchandise invoiced, is sufficient without alleging that defendant knew that the duty had not been paid. U. S. v. Dunbar (D. C. 1894) 60 Fed. 75, 76, judgment affirmed Dunbar v. U. S. (1895) 15 Sup. Ct. 325, 328, 156 U. S. 185, 39 L. Ed. 390.

An indictment for conspiracy to smuggle merchandise and defraud the United States of customs duties need not allege that defendants intended that such merchandise should not be invoiced. U. S. v. Shevlin (D. C. 1913) 212 Fed. 343.

Where an indictment for conspiring to defraud the United States of customs duties and to commit the crime of smuggling merchandise into the United States clearly described the general purpose and scope of the conspiracy, it was not necessary to allege the exact manner or means by which the merchandise was to be passed through the customs lines. Id.

Evidence.—Where defendant, having dutiable goods secreted on his person, knowingly passed the customs office at the dock where he entered the United States and ignored three distinct calls of the customs officer before his further progress was arrested and the goods disclosed, when he stated for the first time that he expected to enter the goods at the main customhouse some distance away, instead of at the dock, a finding that he intended to evade entering the goods or paying the duty at

and that he was guilty of smug-
g, was justified under the rule that
erson becomes guilty of that offense
avoiding the first opportunity given
make a customs declaration and
the duty. Rogers v. U. S. (1910)
Fed. 54, 103 C. C. A. 408, 31 L.
A. (N. S.) 264.

unishment.—Sentence and fine im-
ed for smuggling. U. S. v. Mills
C. 1872) Fed. Cas. No. 15,777.

cquittal or conviction as bar.—A
dict for defendants, indicted for
ggling certain diamond rings into
United States, was ground for a
in bar to a libel by the United
tes for the forfeiture of the rings.
S. v. Rosenthal (1909) 174 Fed. 652,
C. C. A. 406.

conviction on an indictment for
ggling, where the imprisonment im-
ed is served out, and the fine paid,
a pardon received as to the costs
of prosecution, also imposed, will bar a civil action of debt to recover the penalty of double the value of the goods smuggled. U. S. v. Gates (D. C. 1845) Fed. Cas. No. 15,191; Same v. Tilton (D. C. 1874) Fed. Cas. No. 16,525.

An acquittal on the charge of smuggling under this section and of illegal importation under section 5785, post, is not a bar to a proceeding in rem to forfeit the goods under section 5499, ante, and section 5763, post. (1900) 23 Op. Atty. Gen. 63.

Cited without definite application, U. S. v. Sixty-Seven Packages of Dry Goods (1854) 17 How. 85, 91, 15 L. Ed. 54; Same v. Johannesen (C. C. 1888) 35 Fed. 411; In re Greenwald (C. C. 1896) 77 Fed. 590, 594; U. S. v. Mitchell (C. C. 1905) 141 Fed. 666, 669; Same v. Curtis (D. C. 1883) 16 Fed. 184, 188; Same v. Caminata (D. C. 1912) 194 Fed. 903.

(R. S. § 2866. Repealed.)

This section provided for the entry and conveyance in transit, without payment of duties, of merchandise arriving at certain ports in the United States destined for the British possessions in North America, and for conveyance in transit from such possessions for export from said ports, in pursuance of provisions of the treaty with Great Britain of May 8, 1871. It was repealed on the termination of arts. 18–25, 30, of that treaty, pursuant to the Joint Resolution of March 3, 1883, No. 22, 22 Stat. 641.

The treaty of May 8, 1871, arts. 18–25, 30, 17 Stat. 869, 872, 873, mentioned in section 1 of that resolution, related to certain sea fisheries, and to the carriage of goods, without payment of duty, on the St. Lawrence, the Great Lakes, and the rivers connecting them.

Act March 1, 1873, c. 213, 17 Stat. 482, mentioned in and repealed by section 3 of that resolution, was incorporated into R. S. §§ 2506, 2866, 4347, which were therefore repealed by the operation of the resolution. Of the provisions so repealed, section 2506, carrying into effect article 21 of the treaty, admitted into the United States, free of duty, fish oil and fish, the produce of the fisheries of the Dominion of Canada or of Prince Edward Island; section 2866, carrying into effect article 29 of the treaty, provided for the conveyance of merchandise in transit, without payment of duties, through the United States; and the provisos annexed to section 4347, giving effect to article 30 of the treaty, permitted the carriage of goods in British vessels, without payment of duty, between ports or places in the United States, upon the St. Lawrence, the Great Lakes, and the rivers connecting the same.

5549. (Act June 20, 1876, c. 136, as amended, Act Aug. 27, 1894, c. 349, § 70.) Custom-house bonds of partnerships.

When any bond is required by law to be executed by any firm or rtnership for the payment of duties upon goods, wares or merandise, imported into the United States by such firm or partrship, or for any other purpose connected with the general transtion of business at any custom-house, the execution of such bond any member of such firm or partnership, in the name of said m or partnership, shall bind the other members or partners ereof, in like manner and to the same extent, as if such other embers or partners had personally executed the same. And any tion or suit may be instituted on such bond against all the memrs or partners of such firm, as if all of the members or partners d executed the same. (19 Stat. 60. 28 Stat. 569.)

This was an act entitled "An act relating to the execution of custom-house bonds."

This act was amended by inserting after the words "imported into the United States by such firm or partnership" the words "or for any other pur-

pose connected with the general transaction of business at any custom-house," as set forth here by Act Aug. 27, 1894, c. 349, § 70, last cited above.

Bonds were required in the transaction of business at custom-houses by R. S. §§ 2776–2778, 2787, 2800, 2825, 2842, 2925.

Notes of Decisions

Partnership bond.—A customs bond executed in a firm name by a partner duly authorized by power of attorney to execute it is obligatory upon the firm. (1892) 20 Op. Atty. Gen. 311.

§ 5550. (Act June 10, 1910, c. 283, § 1.) Custom-house brokers; license.

The collector or chief officer of the customs at any port of entry or delivery shall, upon application, issue to any person of good moral character, being a citizen of the United States a license to transact business as a custom-house broker in the collection district in which such license is issued, and on and after sixty days from the approval of this Act no person shall transact business as a custom-house broker without a license granted in accordance with this provision; but this Act shall not be so construed as to prohibit any person from transacting business at a custom-house pertaining to his own importations. (36 Stat. 464.)

This section and the five sections next following were an act entitled "An act to license custom-house brokers."

See note to R. S. § 2770, ante, § 5466, as to abolition of ports of delivery.

Notes of Decisions

Definition.—The term "customhouse broker," as used in section 23, Tariff Act 1894 (28 Stat. 552), includes persons who deal in drawback matters exclusively, as well as those who combine all branches of customhouse work. (1895) 21 Op. Atty. Gen. 255.

License.—The authority to collect drawback may be delegated by a manufacturer to a general selling agent or to some attorney at law, but such a person must conduct his business through a licensed broker unless he obtains himself a license. (1895) 21 Op. Atty. Gen. 255, 258.

Liability for additional duties.—A customhouse broker, who makes the sworn declaration for entry of goods, in which he declares himself the consignee, cannot thereafter deny that he is such as against the government, and becomes liable for the duties under the provision of section 5519, ante, that "all merchandise imported * * * shall * * * be deemed and held to be the property of the person to whom the merchandise may be consigned," including additional duties imposed for undervaluation under section 5527, ante. U. S. v. Vandiver (D. C. 1904) 133 Fed. 252.

Cited without definite application, U. S. v. Burr (1895) 15 Sup. Ct. 1002, 1005, 159 U. S. 78, 40 L. Ed. 82.

§ 5551. (Act June 10, 1910, c. 283, § 2.) Revocation of license.

The collector or chief officer of the customs may at any time, for good and sufficient reasons, serve notice in writing upon any custom-house broker so licensed to show cause why said license shall not be revoked, which notice shall be in the form of a statement specifically setting forth the grounds of complaint. The collector or chief officer of customs shall within ten days thereafter notify the custom-house broker in writing of a hearing to be held before him within five days upon said charges. At such hearing the custom-house broker may be represented by counsel, and all proceedings, including the proof of the charges and the answer thereto, shall be presented, with right of cross-examination to both parties, and a stenographic record of the same shall be made and a copy thereof shall be delivered to the custom-house broker. At the conclusion of such hearing the collector or chief officer of customs shall forthwith transmit all papers and the stenographic report of the hearing, which shall constitute the record in the case, to the Secretary of the Treasury for his action. Thereupon the said Secretary of the Treasury shall have the right to revoke the license of any custom-house broker, in

h case formal notice shall be given such custom-house broker ın ten days. (36 Stat. 464.)

Notes of Decisions

ocation of license.—When the li- of a broker has been revoked, he t thereafter deal directly with the customs officials, except when acting for himself as principal. (1895) 21 Op. Atty. Gen. 255.

52. (Act June 10, 1910, c. 283, § 3.) Review of decision revoking license.

ıy licensed custom-house broker aggrieved by the decision of Secretary of the Treasury may, within thirty days thereafter, not afterwards, apply to the United States circuit court for ircuit in which the collection district is situated for a review ıch decision. Such application shall be made by filing in the e of the clerk of said court a petition praying relief in the ises. Thereupon the court shall immediately give notice in writ- f such application to the Secretary of the Treasury, who shall with transmit to said court the record and evidence taken in the together with a statement of his decision therein. The filing ıch application shall operate as a stay of the revocation of the se. The matter may be brought on to be heard before the said in the same manner as a motion, by either the United States ct attorney or the attorney for the custom-house broker, and ecision of said United States circuit court for the circuit in which ollection district is situated shall be upon the merits as disclosed e record and be final, and the proceedings remanded to the Sec- y of the Treasury for further action to be taken in accordance the terms of the decree. (36 Stat. 465.)

53. (Act June 10, 1910, c. 283, § 4.) Regulations for carrying act into effect.

e Secretary of the Treasury shall prescribe regulations nec- y or convenient for carrying this Act into effect. (36 Stat.

54. (Act June 10, 1910, c. 285, § 5.) Definition of "person."

e word person wherever used in this Act shall include per- copartnerships, associations, joint stock associations and cor- tions. (36 Stat. 465.)

CHAPTER FIVE

Unlading

Penalty for unlading without permit.
Forfeiture for unlawful transfer.
Permits.
What a permit must state.
License to lade or unlade at night.
Preliminary entry of vessel to boarding officer, and lading or unlading thereupon.
Bond for special license to lade or unlade at night.
Issue of special licenses and permits.
Time of delivery.
Penalty for unlawful delivery.
Forfeiture for unlawful delivery.
Inspectors.

Sec.
5567. Duties of inspectors.
5568. Delivery of cargo.
5569. Compensation, etc., of inspectors.
5570. Compensation of inspectors in case of delay.
5571. Compensation of inspectors, etc., for night service; boarding officers may administer oaths.
5572. Time for unloading.
5573. Salt and coal and other articles.
5574. Removal from wharf.
5575. Indorsement on permit for landing spirits, etc.
5576. Landing of spirits, etc., regulated.
5577. Marking casks and cases of spirits.
5578. Obliteration of marks.

Sec.
5579. Forfeiture of omitted or missing articles, except in case of accident or mistake.
5580. Account of deliveries.
5581. Proceedings upon returns of deliveries.
5582. Returns of weighers, gaugers, and measurers.
5583. Distress of weather.
5584. Storage of goods in distress.
5585. Variance between report and delivery of vessel in distress.
5586. Reloading of vessel in distress.
5587. Obstruction by ice.
5588. Tare.

§ 5555. (R. S. § 2867.) Penalty for unlading without permit.

If after the arrival of any vessel laden with merchandise and bound to the United States, within the limits of any collection-district, or within four leagues of the coast, any part of the cargo of such vessel shall be unladen, for any purpose whatever, before such vessel has come to the proper place for the discharge of her cargo, or some part thereof, and has been there duly authorized by the proper officer of the customs to unlade the same, the master of such vessel and the mate, or other person next in command, shall respectively be liable to a penalty of one thousand dollars for each such offense and the merchandise so unladen shall be forfeited, except in case of some unavoidable accident, necessity, or distress of weather. In case of such unavoidable accident, necessity, or distress, the master of such vessel shall give notice to, and, together with two or more of the officers or mariners on board such vessel, of whom the mate or other person next in command shall be one, shall make proof upon oath before the collector, or other chief officer of the customs of the district, within the limits of which such accident, necessity or distress happened, or before the collector, or other chief officer of the collection-district, within the limits of which such vessel shall first afterward arrive, if the accident, necessity, or distress happened not within the limits of any district, but within four leagues of the coast of the United States. The collector, or other chief officer, is hereby authorized and required to administer such oath.

Act March 2, 1799, c. 22, § 27, 1 Stat. 648.

Notes of Decisions

Scope of act in general.—What constitutes a violation. U. S. v. The Virgin (C. C. 1806) Fed. Cas. No. 16,625.

If, for the purpose of exchanging cargo, vessels rendezvous at a place within four leagues of the shore, and one of them then tows the others beyond the four-league line, where the exchange is made, then the continued, concerted, necessary action for the effectuation of that purpose, including the towing out, should probably be considered as a part of the actual exchange, being a part of the res gestæ of the offense which the statute was intended to prevent. U. S. v. The Coquitlam (D. C. 1893) 57 Fed. 706, questions certified to and determined The Coquitlam v. U. S. (1896) 16 S. Ct. 1117, 163 U. S. 346, 41 L. Ed. 184.

—— **"Arrival."**—A vessel is not considered to arrive so as to be regarded as importing her cargo, unless she arrives within a port, and with the intent to enter her cargo. Harrison v. Vose (1850) 9 How. 372, 381, 13 L. Ed. 179; The Cargo ex Lady Essex (D. C. 1889) 39 Fed. 765, 767.

A vessel driven ashore by stress of weather has not "arrived" within the limits of the collection district, and the unlading of her cargo without authority of the customs officer does not subject it to forfeiture. The Cargo ex Lady Essex (D. C. 1889) 39 Fed. 765, 767.

When a vessel comes within four leagues of the shore of the United States, and makes a transfer of merchandise with another vessel there, without authority from the revenue officers, it should be held to have "arrived" there, and be treated as a vessel "bound" to the United States. U. S. v. The Coquitlam (D. C. 1893) 57 Fed. 706.

—— **Before coming to proper place of discharge.**—The unlading of rum from a vessel before arrival at her port of discharge is an offense under this section, and not under sections 5563, 5564, post. U. S. v. Brant (C. C. 1806) Fed. Cas. No. 14,637.

This section applies to vessels which have not reached their port of destination and discharge. The Industry (C. C. 1812) Fed. Cas. No. 7,028.

This section, and not sections 5563–5565, post, applies where the goods imported are unladen before the vessel has arrived at a port or place within a collection district. The Active (D. C. 1866) Fed. Cas. No. 33.

— **Wrecked goods.**—This section not apply to wrecked goods brought shore. Peisch v. Ware (1808) 4 nch, 347, 363, 2 L. Ed. 643.

'here 'a vessel has been driven ore by stress of weather, the unload- of her cargo without authority of customs officer does not subject forfeiture, although no notice was n of the contingency which made unloading necessary. The Cargo Lady Essex (D. C. 1889) 39 Fed.

— **"Persons in command."**—The vision making the unlading an of- e applies only to the captain and e. U. S. v. Smith (C. C. 1808) . Cas. No. 16,343.

— **"Bound to the United States."**— s section is not violated by an un- ng and transfer of cargo after ves- have casually arrived within the ts of a collection district, if they not bound to the United States, have no cargo destined to be un- n in the United States. The Co- lam (1896) 77 Fed. 744, 23 C. C. 438, reversing (D. C. 1893) 57 Fed.

navoidable accident, necessity, or ress.—The defense that goods were den by unavoidable accident, neces- , or distress is not admissible un- the requisite proofs thereof were le before the collector, or were pre- ted by inevitable accident, etc. U. . Hayward (C. C. 1815) Fed. Cas. 15,336.

'hat constitutes a case of unavoida- accident, necessity, and distress. Id.

orfeitures.—Unloading goods with- a permit before reaching port of tination does not cause a forfeiture the ship. U. S. v. The Hunter (C. 806) Fed. Cas. No. 15,428.

forfeiture for unlading imported ds before reaching port of discharge applies to both foreign and American vessels. The Betsy (C. C. 1818) Fed. Cas. No. 1,365.

A forfeiture of goods for a violation of the revenue laws will not be imposed, unless the owner of such goods or his agent had been guilty of an infraction of such laws. The act of a trespasser, or one having no interest in the goods, will not have that effect. The Cargo ex Lady Essex (D. C. 1889) 39 Fed. 765, 767.

Evidence.—The admission of the goods to entry is not evidence either that the proofs were furnished, or of the existence of accident, necessity, or distress. U. S. v. Hayward (C. C. 1815) Fed. Cas. No. 15,336.

Proof that the fact of an intended illegal importation was previously known to the revenue officers, and that they acted thereon in making the seizure, is admissible. U. S. v. Nine Trunks (C. C. 1878) Fed. Cas. No. 15,886.

A forfeiture of the cargo of the E. was claimed on the ground that it had been imported without payment of duties. The information averred that the cargo had been sold to the master of the E. by the master of the V. Held, that it would be presumed, for the purpose of sustaining the information against a demurrer, that the sale took place under such circumstances as to constitute it a legal sale, and that the master of the V. had authority to make the sale. The Cargo ex Lady Essex (D. C. 1889) 39 Fed. 765.

Cited without definite application, Constable v. National S. S. Co. (1894) 14 Sup. Ct. 1062, 1071, 154 U. S. 51, 39 L. Ed. 903; U. S. v. 1,150½ Pounds of Celluloid (1897) 82 Fed. 627, 631, 27 C. C. A. 231; The Saratoga (D. C. 1881) 9 Fed. 322, 324; Hogarth Shipping Co. v. Federal Sugar Refining Co. (D. C. 1909) 174 Fed. 278, 280.

5556. (R. S. § 2868.) Forfeiture for unlawful transfer.

f any merchandise, so unladen from on board any such vessel, ll be put or received into any other vessel, except in the case of h accident, necessity, or distress, to be so notified and proved, the ster of any such vessel into which the merchandise shall be so and received, and every other person aiding and assisting there- shall be liable to a penalty of treble the value of the merchandise, l the vessel in which they shall be so put shall be forfeited.

Act March 2, 1799, c. 22, § 28, 1 Stat. 648.

Provisions that no vessel used by a common carrier shall be subject to forfeiture for violation of revenue laws unless it appears that the owners or masters of such vessel were a consenting party or privy to the illegal act, were made by Act Feb. 8, 1881, c. 34, post, § 5766.

Notes of Decisions

iolation of act in general.—This sec- is not violated by an unlading and nsfer of cargo after vessels have ually arrived within the limits of collection district, if they are not nd to the United States, and have cargo destined to be unladen in the United States. The Coquitlam (1896) 77 Fed. 744, 23 C. C. A. 438, reversing (D. C. 1893) 57 Fed. 706.

The reception by one vessel of goods unladen from another without a permit subjects the receiving vessel to forfeiture, irrespective of a fraudulent in-

tent on the part of her officers. The Ploughboy (D. C. 1859) Fed. Cas. No. 11,229.

The facts that efforts were made to find an officer, which were unsuccessful on account of the lateness of the hour, and that the master was impatient to proceed, furnish no legal excuse. Id.

Acts of congress declaring forfeitures of vessels and cargoes for violation of the revenue laws are not to be construed with the strictness applicable to penal laws, but rather so as to accomplish the purpose for which they were intended. U. S. v. The Coquitlam (D. C. 1893) 57 Fed. 706, following Ten Cases of Opium (D. C. 1864) Fed. Cas. No. 13,828, and distinguishin The Cargo ex Lady Essex (D. C 1889) 39 Fed. 765, and questions cer tified to and determined The Coquit lam v. U. S. (1896) 16 Sup. Ct. 1117 163 U. S. 346, 41 L. Ed. 184.

When a vessel comes within fou leagues of the shore of the Unite States, and makes a transfer of mer chandise with another vessel there without authority from the revenue of ficers, it should be held to have "ar rived" there, and be treated as a ves sel "bound" to the United States. Id

Cited without definite application The Saratoga (D. C. 1881) 9 Fed. 322 324.

§ 5557. (R. S. § 2869, as amended, Act June 5, 1894, c. 92, § 2.) Permits.

The collector jointly with the naval officer, if any, or alone wher there is none, shall, according to the best of his or their judgment o information, make a gross estimate of the amount of the duties o the merchandise to which the entry of any owner or consignee, hi factor or agent shall relate, which estimate shall be indorsed upo such entry and signed by the officer making the same. The amoun of the estimated duties having been first paid, or secured to be paid pursuant to the provisions of this title, the collector shall, togethe with the naval officer, where there is one, or alone where there i none, grant a permit to deliver the merchandise, whereof entry ha been so made, and then, and not before, it shall be lawful to delive the merchandise.

Act March 2, 1799, c. 22, § 49, 1 Stat. 664. Act June 5, 1894, c. 92, § 2, 2 Stat. 86.

This section, as enacted in the Revised Statutes, was amended by striking ou after the words "grant a permit to" the word "land," and by inserting in plac thereof the word "deliver," and by striking out after the words "it shall b lawful to" the word "land," and by inserting in place thereof the word "de liver," as set forth here, by Act June 5, 1894, c. 92, last cited above.

Provisions for permits for immediate lading or unlading of vessels admitte to preliminary entry were made by Act Feb. 13, 1911, c. 46, § 4, post, § 5562

Cited without definite application, Porter v. Beard (1888) 8 Sup. Ct. 554, 555, 124 U. S. 429, 31 L. Ed. 490; Davies v. Miller (1889) 9 Sup. Ct. 560, 130 U. S. 284, 32 L. Ed. 932; Constable v. National S. S. Co. (1894) 14 Sup. Ct. 1062, 1071, 154 U. S. 51, 38 L. Ed. 903; Barney v. Rickard (1895) 15 Sup. Ct. 642, 644, 157 U. S. 352, 3 L. Ed. 730; Saltonstall v. Birtwe (1895) 66 Fed. 969, 14 C. C. A. 20 (affirmed [1896] 17 Sup. Ct. 19, 164 U S. 54, 41 L. Ed. 348); U. S. v. Leg (1901) 105 Fed. 930, 933, 45 C. C. A 134.

§ 5558. (R. S. § 2870.) What a permit must state.

All permits shall specify, as particularly as may be, the merchan dise to be delivered, namely, the number and description of the pack ages, whether trunk, bale, chest, box, case, pipe, hogshead, barrel keg, or any other packages whatever, with the mark and number o each package, and, as far as circumstances will admit, the content thereof, together with the names of the vessel and master, in whic and the place from whence they were imported; and no merchandis shall be delivered by any inspector or other officer of the custom that does not fully agree with the description thereof in such permit

Act March 2, 1799, c. 22, § 49, 1 Stat. 664.

Cited without definite application, Hogarth Shipping Co. v. Federal Sugar Refining Co. (D. C. 1909) 174 Fed 278, 280.

(R. S. § 2871. Repealed.)

This section, providing for the granting of a special license to unlade at ight, and the amendment thereof by Act June 30, 1906, c. 3909, 34 Stat. 633, ere repealed by section 6 of Act Feb. 13, 1911, c. 64, the preceding sections f which are set forth post, §§ 5559-5562, 5571. Said sections were substiutes for the provisions so repealed.

559. (Act Feb. 13, 1911, c. 46, § 1.) License to lade or unlade at night.

Jpon arrival at any port in the United States of any vessel or er conveyance from a foreign port or place, either directly or way of another port in the United States, or upon such arrival m another port in the United States of any vessel or other conance belonging to a line designated by the Secretary of the Treas- as a common carrier of bonded merchandise, and, after due re- t and entry of such vessel in accordance with existing law or due ort, under such regulations as the Secretary of the Treasury may escribe, of the arrival of such other conveyances, the collector of stoms, with the concurrence of the naval officer at ports where there a naval officer, shall grant, upon proper application therefor, a ecial license to lade or unlade the cargo of any such vessel or other nveyance at night; that is to say, between sunset and sunrise. 6 Stat. 899.)

This section and the three sections next following were part of an act entitled "An act to provide for the lading or unlading of vessels at night, and the preliminary entry of vessels, and for other purposes."

Section 5 of the Act is set forth post, § 5571.

Section 6 of the Act repealed provisions of the same nature made by R. S. § 2871, amended by Act June 30, 1906, c. 3909, 34 Stat. 633.

Act June 5, 1894, c. 92, § 1, 28 Stat. 85, and the amendment thereof by Act May 31, 1900, c. 600, 31 Stat. 249, were also repealed by said section 6.

Notes of Decisions

Decision under prior act.—See Contable v. National S. S. Co. (1894) 14 up. Ct. 1062, 1071, 154 U. S. 51, 38 L. Ed. 903; The Egypt (D. C. 1885) 25 Fed. 320, 331, 333.

5560. (Act Feb. 13, 1911, c. 46, § 2.) Preliminary entry of vessel to boarding officer, and lading or unlading thereupon.

The master of any vessel from a foreign port or place, upon arival within a customs collection district of the United States, ound to a port of entry in such district, may make preliminary entry f the vessel by making oath or affirmation to the truth of the stateents contained in his original manifest and delivering his said origial manifest to the customs officer who shall board such vessel within uch district, with a copy of said original manifest for the use of the aval officer at ports where there is a naval officer; whereupon, upon rrival at the wharf or place of discharge, the lading or unlading of he cargo of such vessel may proceed, by both day and night, under uch regulations as the Secretary of the Treasury may prescribe. 36 Stat. 900.)

5561. (Act Feb. 13, 1911, c. 46, § 3.) Bond for special license to lade or unlade at night.

Before any such special license to lade or unlade at night shall e granted and before any permit shall be issued for the immediate ading or unlading of any such vessel after preliminary entry, as ereinbefore provided, either by day or by night the master, owner, gent, or consignee of such vessel or other conveyance shall make roper application therefor and shall at the same time execute and leliver to the United States, through the collector of customs, a good and sufficient bond, in a penal sum to be approved by the said collector, conditioned to indemnify and save the United States harmess from any and all losses and liabilities which may occur or be oc-

casioned by reason of the granting of such special license or the issuing or granting of such permit for immediate lading or unlading or the master, owner, agent, consignee, or probable consignee, as aforesaid, may execute and deliver to the United States, in like manner and form, a good and sufficient bond, in the penal sum of fifty thousand dollars, conditioned to indemnify and save the United States harmless from any and all losses and liabilities which may occur or be occasioned by reason of the granting of such special licenses and the issuing or granting of such permits for immediate lading or unlading by day and night during a period of six months. (36 Stat. 900.)

§ 5562. (Act Feb. 13, 1911, c. 46, § 4.) Issue of special licenses and permits.

Application having been duly made and the required bond having been duly executed and delivered, special license or licenses to lade or unlade at night after regular entry of vessels, and due report of other conveyances, may be granted, and a permit or permits may be issued for the immediate lading and unlading, by day and night, of vessels admitted to preliminary entry, or of other conveyances of which due report of arrival has been made: Provided, That the provisions of this Act shall extend and be applicable to any vessels or other conveyances bound to a port of entry in the United States to be unladen at a port of delivery or to be unladen at a place of discharge designated by the Secretary of the Treasury under the provisions of section twenty-seven hundred and seventy-six of the Revised Statutes as amended: Provided further, That when preliminary entry of a vessel shall be made by the master as herein provided he shall not be relieved from making due report and entry of his vessel at the custom-house in accordance with existing law, and any liability of the master or owner of any such vessel to the owner or consignee of any merchandise landed from her shall not be affected by the granting of such special license, but such liability shall continue until the merchandise is properly removed from the dock whereon the same may be landed. (36 Stat. 900.)

The use of the term "port of delivery" was discontinued, and all ports of delivery not made ports of entry were abolished, by section 2 of the Plan of Reorganization of the Customs Service pursuant to the provisions of Act. Aug. 24, 1912, c. 355, § 1, ante, § 5327.

R. S. § 2776, mentioned in this section, is set forth ante, § 5472.

§ 5563. (R. S. § 2872, as amended, Act June 26, 1884, c. 121, § 25.) Time of delivery.

Except as authorized by the preceding section, no merchandise brought in any vessel from any foreign port shall be unladen or delivered from such vessel within the United States but in open day—that is to say, between the rising and the setting of the sun—except by special license from the collector of the port, and naval officer of the same, where there is one, for that purpose, nor at any time without a permit from the collector, and naval officer, if any, for such unlading or delivery.

Act March 2, 1799, c. 22, § 50, 1 Stat. 665. Act June 26, 1884, c. 121, § 25, 23 Stat. 59.

The "preceding section," R. S. § 2871, mentioned in this section, was repealed by section 6 of Act Feb. 13, 1911, c. 46, sections 1–4 of which are set forth ante, §§ 5559–5562.

This section as enacted in the Revised Statutes, was amended by Act June 26, 1884, c. 121, § 25, 23 Stat. 59, by adding at the end of the section the following provision: "When the license to unlade between the setting and rising of the sun is granted to a sailing vessel under this section, a fixed, uniform, and reasonable compensation may be allowed to the inspector or inspectors for services between the setting and rising of the sun, under such regulations as the Secretary of the Treasury may prescribe to be received by the collector

om the master, owner, or consignee of the vessel, and to be paid by him to e inspector or inspectors." This provision was superseded by provisions of e same nature made by Act Feb. 13, 1911, c. 46, § 5, post, § 5571.

Notes of Decisions

e of act in general.—What con- es unloading goods without a per- U. S. v. The Virgin (C. C. 1806) Cas. No. 16,625.

prohibition of unloading without mit applies, though the port is at originally intended for the port scharge. The Industry (C. C. Fed. Cas. No. 7,028.

ion 5555, ante, and not this sec- applies where the goods imported nladen before the vessel has ar- within a collection district. The (D. C. 1866) Fed. Cas. No. 33.

ds landed without a permit, by the unlawful act of the mas- nd without the knowledge or con- of the owner or consignee, are t to forfeiture. U. S. v. Twenty of Matches (D. C. 1868) Fed. No. 16,559.

iable goods, imported as passen- baggage, where no attempt was to have them passed as such, he owner, without knowledge of seizure, offered them with cor- ills of lading and moneys for en- the customhouse, held not for- le. U. S. v. Ninety-Five Boxes, D. C. 1874) Fed. Cas. No. 15,891.

illegal unlading after arrival at should be prosecuted under this n. The Coquitlam (D. C. 1893) ed. 706, 713, questions certified preme Court (1895) 70 Fed. 336, C. A. 674; questions answered) 16 Sup. Ct. 1117, 163 U. S. 41 L. Ed. 184, and reversed) 77 Fed. 744, 23 C. C. A. 438.

ere a person arriving in the d States took with him from the articles which he had willfully ed to declare to the customs offi- he was guilty of unloading mer- ise without a permit, in viola- of this section. U. S. v. 218½ s Loose Emeralds (D. C. 1907) Fed. 643, judgment affirmed 218½ s Loose Emeralds v. U. S. (1907) Fed. 839, 83 C. C. A. 475.

"Merchandise."—This section s to goods the importation of was prohibited by law. Har- v. U. S. (1814) 12 U. S. (8 h) 109, 3 L. Ed. 504.

er dollars are "goods, wares, and andize," for the landing of which nit from the customhouse is nec- . The Elizabeth and Jane (C. 22) Fed. Cas. No. 4,355.

urtenances or equipments of a purchased bona fide for its use, be landed without a permit. U. Chain Cable (C. C. 1836) Fed. No. 14,776.

ds free of duty cannot be law- unladen and delivered without a n permit from the collector and officer. U. S. v. The Sarah B. Harris (C. C. 1870) Fed. Cas. No. 16,223.

A vessel is not forfeited by the landing without a permit of two gallons of brandy, taken on board by a seaman for his own use on the voyage home. The Sarah Bernice (D. C. 1867) Fed. Cas. No. 12,343.

Goods are subject to forfeiture, though they were the product of the United States, and simply transported to a foreign country, and were exempt from duty, and all the laws and regulations relating to such transit had been complied with. U. S. v. Twenty Cases of Matches (D. C. 1868) Fed. Cas. No. 16,559.

Cases of goods landed with the owner's personal baggage are subject to forfeiture. U. S. v. Three Cases, Marked A. D. 1, 2, and 3 (D. C. 1873) Fed. Cas. No. 16,498.

The compass of a steamship, being part of its apparel and tackle, is not "merchandise." U. S. v. Fry (D. C. 1892) 48 Fed. 713, following Same v. Chain Cable (C. C. 1836) Fed. Cas. No. 14,776.

—— "From any foreign port."—Vessel forfeited for unlading foreign goods without a permit, etc., although not actually brought by her from a foreign port, but transshipped into her on the homeward voyage. The Harmony (C. C. 1812) Fed. Cas. No. 6,081.

A vessel engaged in the coasting trade, having goods on board, which have not paid duties, is not within the provision as to landing foreign goods without a permit. Jackson v. U. S. (C. C. 1826) Fed. Cas. No. 7,149.

Mackerel, the property of an American citizen, caught in an American vessel by an American seaman, and shipped in an American vessel from a foreign port of transshipment, cannot be landed without a written permit. U. S. v. The Sarah B. Harris (C. C. 1870) Fed. Cas. No. 16,223.

A vessel, arriving from a foreign port, is forfeited by landing goods without a permit from the collector after her arrival in the port of discharge. The John C. Brooks (D. C. 1861) Fed. Cas. No. 7,336.

Goods of whatever growth or manufacture brought from a foreign port or place, and landed at a port or place within the United States without a permit, are forfeited. In re Ten Cases of Opium (D. C. 1864) Fed. Cas. No. 13,828.

Opium shipped from San Francisco to Portland by the way of Victoria, B. C., and taken ashore there, for however short a time, cannot be landed by the same vessel at Portland without a permit. Id.

The carrying out of salt, and its re-

turn to the port of departure by a fishing vessel, which touched at a foreign port, is not a bringing of goods from a foreign port. The E. K. Dresser (D. C. 1879) Fed. Cas. No. 4,324.

—— **"Unlading or delivery."**—Goods were taken at night in a boat from the vessel, and when partly unloaded on the wharf defendant was discovered, and the goods were all returned to the vessel. Held not a landing. U. S. v. Smith (C. C. 1808) Fed. Cas. No. 16,-343.

The removal of dutiable goods from the vessel to the wharf is an unlading, and, where no permit was granted, will subject them to a forfeiture. U. S. v. Nine Trunks (C. C. 1877) Fed. Cas. No. 15,885.

The transshipment of a cargo from one vessel to another, while lying at a wharf in port, is an unlading and delivery. The Fame (D. C. 1858) Fed. Cas. No. 4,633.

A discharge of cargo into lighters is not an unloading of them. U. S. v. The Express (D. C. 1858) Fed. Cas. No. 15,066.

—— **"Permit."**—Goods landed under a permit obtained by collusion with a deputy collector are forfeited, as suc permit is void. Bottomley v. U. S. (C. C. 1840) Fed. Cas. No. 1,688.

A permit obtained by fraud or a oral permit from the custom officer land goods will not save a forfeitur The Sarah B. Harris (D. C. 1867 Fed. Cas. No. 12,344.

—— **Intention.**—Innocence of inte tion cannot, any more than ignoran of law, afford a defense to the mast or owner of a vessel for a violation this act. U. S. v. The Sarah B. Ha ris (C. C. 1870) Fed. Cas. No. 16,22 Same v. The Cuba (D. C. 1869) I 14,898.

Cited without definite applicatio The John Griffin (1872) 15 Wall. 2 33, 21 L. Ed. 80; Friedenstein v. U S. (1888) 8 Sup. Ct. 838, 839, 125 U S. 224, 31 L. Ed. 736; U. S. v. Or Pearl Necklace (1901) 111 Fed. 16 169, 49 C. C. A. 287, 56 L. R. A. 13 One Pearl Chain v. U. S. (1903) 12 Fed. 371, 374, 59 C. C. A. 499; Th Egypt (D. C. 1885) 25 Fed. 320, 32 U. S. v. A Lot of Jewelry, etc. (D. C 1894) 59 Fed. 684, 687; Same v. On Pearl Necklace (D. C. 1900) 105 Fe 357.

§ 5564. (R. S. § 2873.) Penalty for unlawful delivery.

If any merchandise shall be unladen or delivered from any ves sel, contrary to the preceding section, the master of such vessel, an every other person who shall knowingly be concerned, or aiding therein, or in removing, storing, or otherwise securing such mer chandise, shall each be liable to a penalty of four hundred dollars fo each offense, and shall be disabled from holding any office of trust o profit under the United States, for a term not exceeding seven years and the collector of the district shall advertise the name of such per son in a newspaper printed in the State in which he resides, withi twenty days after each respective conviction.

Act March 2, 1799, c. 22, § 50, 1 Stat. 665.

Notes of Decisions

Construction in general.—Where a person is selling goods in his possession which he concedes to have been smuggled, he is guilty of keeping or storing goods with knowledge that they were landed without license. Walsh v. U. S. (C. C. 1847) Fed. Cas. No. 17,116.

This section is not to be applied in cases evidently outside of the intention of the statute, such as derelict or salvaged goods, or goods unladen in case of accident to save them from loss, nor to cases of unlading by a superior attacking force, nor, in like manner, where it is affirmatively shown that it could not, by any practicable means, be prevented by the master or person in command. U. S. v. Curtis (D. C. 1883) 16 Fed. 184.

As guilty knowledge or evil intent are not necessary ingredients in statutory crimes or penalties, where the intention of the statute appears not to make them so, in an action against the master of a vessel, for unloading goods without a permit, the master's want of knowledge or of participation in the unlawful acts is no defense. Id.

Liability of master or other person in command.—Section 5464, ante, defining "master" as any person having the chief charge or command of a vessel, and this section are to be construed together as imposing only one penalty for unlading without a permit, viz., a penalty upon the master, or, if he be not in command at the time, then upon the person who is in command of the vessel. U. S. v. Curtis (D. C. 1883) 16 Fed. 184.

The design of this section is to secure vigilance on the part of masters, or the persons having charge of the vessel, in preventing illicit traffic, which, by virtue of their command, they are presumed to be able to prevent. Id.

Where 77 packages of cigars were secretly lowered for the purpose of

ling from the bows of the steam- at 2 o'clock a. m., while she t anchor at lower quarantine, York harbor, while the master bsent from the ship, he having the day previous to the New custom house, 15 miles distant, ke entry of the arrival of the , as he was bound to do by law, hat, though the penalty of $400 incurred, the suit should have against the person in actual com- of the vessel at the time, and gainst the absent master, and he latter was not liable. Id.

Trial.—Under prior statute, see U. S. v. Curtis (D. C. 1883) 16 Fed. 184.

Information.—If the information be filed by the district attorney on behalf of the United States, though expressed to be for the benefit of the collector and all concerned, it will be sufficient. Walsh v. U. S. (C. C. 1847) Fed. Cas. No. 17,116.

Cited without definite application, Peisch v. Ware (1808) 4 Cranch, 347, 2 L. Ed. 643; Locke v. U. S. (1813) 7 Cranch, 339, 344, 3 L. Ed. 364; The Saratoga (C. C. 1883) 15 Fed. 382, 383; Id. (D. C. 1881) 9 Fed. 322.

55. (R. S. § 2874.) Forfeiture for unlawful delivery.

l merchandise, so unladen or delivered contrary to the provisions ction twenty-eight hundred and seventy-two, shall become for- l, and may be seized by any of the officers of the customs; and e the value thereof, according to the highest market price of the , at the port or district where landed, shall amount to four hun- dollars, the vessel, tackle, apparel, and furniture shall be sub- o like forfeiture and seizure.

Act March 2, 1799, c. 22, § 50, 1 Stat. 665.

Notes of Decisions

visions as to forfeiture of vessel. §§ 5766, 5792, post.

ion 5766, post, provides that no shall be subject to seizure by of the penalty incurred under ection, unless it shall appear that aster at the time of the alleged as a consenting party or privy o. The Saratoga (C. C. 1883) l. 382.

ds landed at different times, but the same cargo and vessel, may ded together to make up the ite amount to forfeit the vessel. arah Bernice (D. C. 1867) Fed. No. 12,343.

eiture in general.—As to grounds feiture, see notes under § 5563,

Information or libel.—It is not ary to state the time and place portation, nor the vessel in which s made; but it is sufficient to that they were unknown. Locke S. (1813) 7 Cranch, 339, 3 L. 64.

rmations of seizure for forfei- are civil proceedings in rem. nstein v. U. S. (1888) 8 Sup. 8, 839, 842, 125 U. S. 224, 31 . 736.

rmation must allege that the were unladen in some port or within a collection district, with- permit from its collector, or that ort or district is unknown. U. Burnham (C. C. 1816) Fed. Cas. 4,690.

ibel for a forfeiture for a viola- of customs laws should substan- agree with the terms of the stat- The Betsy (C. C. 1818) Fed. No. 1,365.

A libel need not allege the goods to be of foreign growth. Id.

Forfeiture for landing goods under a collusive permit may be enforced upon a general count charging that the goods were landed without a permit. Bottomley v. U. S. (C. C. 1840) Fed. Cas. No. 1,688.

Allegations in the libel as to the goods landed and their value bind the government. The Sarah Bernice (D. C. 1867) Fed. Cas. No. 12,343.

—— **Evidence.**—The diamonds seized were claimed by a third person. Held, that the declarations of the person having them in custody, made to the agent in regard to them while he was making an official examination as to whether they should be seized for forfeiture, and while he had them in his possession, were admissible against the claimant as part of the res gestæ. Friedenstein v. U. S. (1888) 125 U. S. 224, 8 Sup. Ct. 838, 31 L. Ed. 736.

The defense that the party has been prevented by inevitable accident, necessity, or distress from complying with the requisitions of this section and section 5807, post, is not admissible under a plea which simply puts in issue a denial of the facts constituting a forfeiture thereunder. U. S. v. Hayward (C. C. 1815) Fed. Cas. No. 15,336.

On an information of forfeiture, the goods themselves are regarded as the defendant, and it is no objection to the admission of proof of communications made to the revenue officer that they were made in the absence of the claimant. U. S. v. Nine Trunks (C. C. 1878) Fed. Cas. No. 15,886.

Proof of foreign growth or manufacture of alleged unlawfully imported

goods is not necessary. The Active (D. C. 1866) Fed. Cas. No. 33.

Vessel forfeited for smuggling cigars on the testimony of their owner, who produced an invoice for their shipment to the place from which the vessel sailed, and a letter from the master of the vessel stating that they had been shipped, and that he had paid the master the agreed freight, though the master denied the shipment. The John Griffin (D. C. 1870) Fed. Cas. No. 7,-348.

Evidence is not sufficient to sustain forfeiture of vessel for smuggling where the only evidence is that of the seamen who were arrested in the act of smuggling, and promised immunity if they would testify against the vessel. The Cleopatra (D. C. 1871) Fed. Cas. No. 2,886.

—— **Trial.**—Where, on the trial of an information, the claimants prayed the court to instruct the jury that the United States were not entitled to recover unless the goods were unladen and delivered without permits, and the jury were told, in reply, "If the permits were obtained by fraud and improper means, they were of no effect, and a mere nullity, and the United States were entitled to recover if the goods were imported with the view to defraud the revenues," it was held that, whether or not the permits were obtained by fraud or improper means, was a point in the cause for the jury to decide, and that the instruction was calculated to mislead. Caldwell v. U. S. (1850) 49 U. S. (8 How.) 366, 12 L. Ed. 1115.

Where the evidence fully proved that imported packages were unladen and delivered without the required permit, the direction of the court to return a verdict condemning them to the use of the government was correct. Four Packages v. U. S. (1878) 97 U. S. 404, 412, 24 L. Ed. 1031.

Diamonds were found by a government agent at a jewelry store where the person having them in charge was trying to dispose of them, and taken to the custom house, where, after an examination of such person, they were appraised and placed in the seizure room. Held, that it was not calling for a conclusion of law to ask the agent, "When and where did you make the seizure of those diamonds?" Friedenstein v. U. S. (1888) 125 U. S. 224, 8 Sup. Ct. 838, 31 L. Ed. 736.

A libel for forfeiture of a vessel charging the violation of certain provisions of the law will be dismissed if the facts do not authorize a forfeiture, although an offense against other provisions of the same law is shown. U. S. v. The Hunter (C. C. 1806) Fed. Cas. No. 15,428.

—— **Judgment.**—It is wholly immaterial who makes the seizure, or whether it was irregularly made or not, or whether the cause assigned originally for the seizure be that for which t condemnation takes place, provided t adjudication is for a sufficient cau Taylor v. U. S. (1845) 3 How. 197, 2 205, 11 L. Ed. 559.

—— **Purchaser or lienor.**—The Unit States has no title in the goods until election has been made to recover t goods or their value, and any rights the goods acquired bona fide by thi persons in the meantime are protect Caldwell v. U. S. (1850) 8 How. 3 379. 12 L. Ed. 1115.

The fact that a ship has been arre ed for smuggling, and released on bo held sufficient to put persons subs quently furnishing her with supplies inquiry as to her character, and to d feat their claims, as against the gover ment's right to a forfeiture. U. S. The Haytian Republic (D. C. 1894) Fed. 120.

Where, by the terms of revenue la the penalty of its violation is the forfe ture of the goods without alternativ then the property in said goods vests once in the government, and no pu chaser of said goods, however innocen can acquire any title to them. Th remain liable to seizure and confiscatio wherever found. Summers v. Cla (1877) 29 La. Ann. 93.

—— **Remission.**—Amount allowed di trict attorney for attending an exan ination to procure remission of a forfe ture. The Pacific (D. C. 1866) Fe Cas. No. 10,645.

Where a vessel was condemned an sold by decree of a United States cou as a forfeiture under this section, fo landing after sunset certain cases o foreign gin and brandy, valued at mor than $400, the proceeds of the sale be ing still retained subject to the order of the court, held that the owner an a mortgagee of the vessel are person who incurred the forfeiture within th meaning of sections 10132, 10133, pos which authorize the Secretary of th Treasury, after certain proceedings ha to remit such forfeiture, "if in his opin ion the same shall have been incurre without willful negligence or any in tention of fraud in the person or per sons incurring the forfeiture." (1880 16 Op. Atty. Gen. 473.

—— **Under earlier statutes.**—Se Phile v. The Anna (Pa. 1787) 1 Dal 197; Richards v. Tabb (Va. 1788) Call. 522; Stratton v. Hague (Va 1790) 4 Call. 564.

Cited without definite applicatio Peisch v. Ware (1808) 4 Cranch, 347 2 L. Ed. 643; Harford v. U. S. (1814 8 Cranch, 109, 3 L. Ed. 504; U. S. v One Pearl Necklace (1901) 111 Fed 164, 169, 49 C. C. A. 287, 56 L. R. A 130; The Saratoga (D. C. 1881) 9 Fed 322; U. S. v. A Lot of Jewelry, etc (D. C. 1894) 59 Fed. 684, 687; Sam v. One Pearl Necklace (D. C. 1900) 10 Fed. 357.

56. (R. S. § 2875.) Inspectors.

ıe collector of any district at which any vessel arrives, immely on her first coming within such district, or the surveyor of port where such vessel is, may put and keep on board such vesvhile remaining within such district, or in going from one dis- to another, one or more inspectors to examine the cargo or ents of such vessel, and to superintend the delivery thereof, or much thereof as shall be delivered within the United States, to perform such other duties, according to law, as they shall be ted by the collector, or surveyer, to perform for the better se- g the collection of the duties. Only collectors shall have power, ever, to put inspectors on board vessels, to go from one district nother.

Act March 2, 1799, c. 22, § 53, 1 Stat. 667.

Provisions fixing the compensation of keepers of life-saving and life-boat stations, conferring on said keepers the powers of inspectors of customs, requiring em to take charge of property saved from shipwrecks, and requiring them to side at or near their respective stations, were made by Act June 18, 1878, c. 55, § 4, post, § 8531.

Notes of Decisions

ding cargoes for inspection.—The tary of the Treasury has plenary by statute to superintend the tion of duties or imposts and ton- and to prescribe regulations not sistent with law to prevent frauds the customs revenue. He may au- e his agents, in the discharge of duties, to insist that all cargoes d be actually landed for inspec- and in permitting the discharge of cargoes upon lighters he is granting a privilege to the importer. In the exercise of this privilege by the importer he suffers no wrong in being required to pay for watchmen's services. Arbuckle Bros. v. U. S. (1912) 3 Ct. Cust. App. 105.

Cited without definite application, Hartranft v. Oliver (1888) 8 Sup. Ct. 958, 960, 125 U. S. 525, 31 L. Ed. 813.

67. (R. S. § 2876.) Duties of inspectors.

ıe inspector shall make known to the master of such vessel the es he is to perform; and shall suffer no merchandise to be un- ı, or otherwise removed from such vessel, without a permit in ng from the collector of the port, and naval officer thereof, if The inspector shall enter in a book, to be by him kept accordto such a form as shall be prescribed or approved by the color, the name of the person in whose behalf such permits are ted, together with the particulars therein specified, and the ks, numbers, kinds, and description of the respective packages h shall be unladen pursuant thereto, and shall keep a like account e book of all merchandise which, not having been entered within time limited by this Title, or for some other cause, has been to the store or warehouse provided for the reception of such chandise; such book shall be delivered to the surveyor in the th of January in every year for his inspection, and immediately such inspection be transmitted by the surveyor, with such obations as he may think necessary thereon, to the collector, to eposited in his office.

Act March 2, 1799, c. 22, § 53, 1 Stat. 667.

Cited without definite application, Hartranft v. Oliver (1888) 8 Sup. Ct. 958, 960, 125 U. S. 525, 31 L. Ed. 813.

568. (R. S. § 2877.) Delivery of cargo.

he inspector shall attend to the delivery of the cargo under his , at all times when the unlading or delivery of merchandise is ful, particularly from the rising to the setting of the sun on each Sundays and the fourth day of July in each year excepted; for ch purpose he shall constantly attend and remain on board the vesthe deliveries from which he is to superintend, or at any other sta- where his inspection is necessary. The inspector shall not quit

such station or place without the leave of the surveyor of the po first obtained, who shall appoint another inspector, if he deems necessary, to supply the place of such inspector during his absenc and any inspector who shall neglect or in any manner act contra to the duties hereby enjoined, shall for the first offense be li ble to a penalty of the sum of fifty dollars, and for the second o fense shall be displaced, and be incapable of holding any station trust or profit under the revenue laws of the United States, for term not exceeding seven years.

Act March 2, 1799, c. 22, § 53, 1 Stat. 667.

§ 5569. (R. S. § 2878.) Compensation, etc., of inspectors.

No inspector shall perform any other duties or service on boa any vessel, the superintendence of which is committed to him, f any person whatever, other than what is required by this Title, u der the penalty of being disabled from acting any longer as an i spector of the customs; the wages or compensation of such i spector as may proceed from one district to another, shall be d frayed by the master of the vessel committed to his care; every i spector or other officer of the revenue, while performing any du on board any vessel, not in a port of the United States, dischargin her cargo, shall be entitled to receive from the master of such vess such provisions and accommodations as are usually supplied to pa sengers, or as the state and condition of such vessel will admit, o receiving therefor fifty cents a day; and any master of any vess who shall refuse such provisions and reasonable accommodation shall be liable to a penalty of one hundred dollars.

Act March 2, 1799, c. 22, § 53, 1 Stat. 667.

Provisions requiring the inspector quitting the vessel at night to secure th hatches with locks, and prohibiting the opening of such locks until the follow ing morning, in the presence of the said inspector, were made by R. S. § 307 post, § 5773.

§ 5570. (R. S. § 2879.) Compensation of inspectors in case o delay.

If, by reason of the delivery of the cargo in several districts, mor than the term allowed by law shall in the whole be spent therein the wages or compensation of the inspector who may be employe on board of any vessel, in respect to which such term may be so ex ceeded, shall, for every day of such excess, be paid by the master o owner; and the inspector shall, previously to the clearance of th vessel, render an exact account to the collector of all such compen sation as has been paid, or is due and payable by the master o owner.

Act March 2, 1799, c. 22, § 56, 1 Stat. 670.

§ 5571. (Act Feb. 13, 1911, c. 46, § 5.) Compensation of inspec tors, etc., for night service; boarding officers may administe oaths.

The Secretary of the Treasury shall fix a reasonable rate of ex tra compensation for night services of inspectors, storekeepers weighers, and other customs officers and employees in connectio with the lading or unlading of cargo at night, or the lading at nigh of cargo or merchandise for transportation in bond or for expor tation in bond, or for the exportation with benefit of drawback, bu such rate of compensation shall not exceed an amount equal to doubl the rate of compensation allowed to each such officer or employee fo like services rendered by day, the said extra compensation to be pai by the master, owner, agent, or consignee of such vessel or other con veyance, whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holi days shall be granted, to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto

ɔrding to the rates fixed therefor by the Secretary of the Treasury. toms officers acting as boarding officers, and any customs officer may be designated for that purpose by the collector of customs, hereby authorized to administer the oath or affirmation herein vided for, and such boarding officers shall be allowed extra com- sation for services in boarding vessels at night or on Sundays nolidays—at the rate prescribed by the Secretary of the Treasury herein provided, the said extra compensation to be paid by the ster, owner, agent, or consignee of such vessels. (36 Stat. 901.)

See notes to section 1 of this act, ante, § 5559.

This section superseded a provision of the same nature made by an amend- nent of R. S. § 2872, ante, § 5563, by Act June 26, 1884, c. 121, § 25, 23 Stat. 59.

572. (R. S. § 2880, as amended, Act May 9, 1896, c. 164.) Time for unloading.

Vhenever any merchandise shall be imported into any port of the ted States from any foreign port, in any vessel, at the expiration ten working days if the vessel is less than five hundred tons ster, and within fifteen working days if it is of five hundred tons ster and less than one thousand, and within twenty working days is of one thousand tons register and less than fifteen hundred, within twenty-five working days if it is of fifteen hundred tons ster and upward, not including legal holidays and days when the dition of the weather prevents the unlading of the vessel with ty to its cargo, after the time within which the report of the ster of any vessel is required to be made to the collector of the rict, if there is found any merchandise other than has been re- ted for some other district or some foreign port, the collector ll take possession thereof; but with the consent of the owner onsignee of any merchandise, or with the consent of the owner or ster of the vessel in which the same may be imported, the mer- ndise may be taken possession of by the collector after one day's ce to the collector of the district. All merchandise so taken shall delivered pursuant to the order of the collector of the district, which a certificate or receipt shall be granted.

Act March 2, 1799, c. 22, § 56, 1 Stat. 669. Act March 2, 1861, c. 81, 12 Stat. 209. Act May 9, 1896, c. 164, 29 Stat. 115.

This section, as enacted in the Revised Statutes, was as follows:

"Whenever any merchandise shall be imported into any port of the United States from any foreign port, in any vessel, at the expiration of eight work- ng days, if the vessel is less than three hundred tons burden, and within twelve working days, if it is of three hundred tons burden and less than eight hundred, and within fifteen days, if it is of eight hundred tons burden and upward, after the time within which the report of the master of any ves- sel is required to be made to the collector of the district, if there is found any merchandise other than has been reported for some other district, or some foreign port, the collector shall take possession thereof; but with the con- sent of the owner or consignee of any merchandise, or with the consent of the owner or master of the vessel in which the same may be imported, the merchandise may be taken possession of by the collector after one day's notice to the collector of the district. All merchandise so taken shall be delivered pursuant to the order of the collector of the district, for which a certificate or receipt shall be granted."

It was amended to read as set forth here by Act May 9, 1896, c. 164, last cited above.

Notes of Decisions

emurrage claims.—This section has relation to claims for demurrage. Hundred and Seventy-Five Tons Mineral Phosphates (D. C. 1881) 9 209, 210.

Cited without definite application, Bartlett v. Lockwood (1896) 16 Sup. Ct. 334, 337, 160 U. S. 357, 40 L. Ed. 455; U. S. v. Twenty-Five Packages of Panama Hats (1913) 34 Sup. Ct. 63, 65, 231 U. S. 358, 58 L. Ed. 267.

§ 5573. (R. S. § 2881, as amended, Act June 3, 1892, c. 86.) Sa and coal and other articles.

The limitation of time for unlading, prescribed by the precedin section, shall not extend to vessels laden exclusively with coal, sal sugar, hides, dyewoods, wool, or jute butts, consigned to one co signee, arriving at a port for orders; but if the master of any such ve sel requires a longer time to discharge her cargo, the wages or com pensation of the inspector, for every day's attendance exceeding th number of days allowed by law, shall be paid by the master c owner; and thereupon the collector is hereby authorized and requi ed to allow such longer time, not exceeding fifteen days.

Act March 2, 1799, c. 22, § 56, 1 Stat. 669. Act June 3, 1892, c. 86, 2 Stat. 41.

This section, as enacted in the Revised Statutes, was as follows:

"The limitation of the time for unlading, prescribed by the preceding sectio shall not extend to vessels laden with salt or coal; but if the master or ow er of any vessel laden with salt or coal requires a longer time to discharge h cargo, the wages, or compensation of the inspector, for every day's attendanc exceeding the number of days allowed by law, shall be paid by the master c owner; and thereupon the collector is hereby authorized and required to a low such longer time as, in his judgment, he may think necessary to discharg such cargo, not exceeding fifteen days."

It was amended to read as set forth here, by Act June 3, 1892, c. 86, las cited above.

§ 5574. (R. S. § 2882.) Removal from wharf.

No merchandise, brought in any vessel, from any foreign port o place, requiring to be weighed, gauged, or measured, in order t ascertain the duties thereupon, shall, without the consent of th proper officer, be removed from any wharf, or place, upon which th same may be landed or put, before the same shall have been s weighed, gauged, or measured, and if spirits, wines, or sugars, be fore the proof or quality and quantity thereof is ascertained an marked thereon, by or under the direction of the proper officer; an if any such merchandise shall be removed from such wharf or place unless with the consent of the proper officer, obtained before th same has been so weighed, gauged, or measured, and if spirits, wines or sugars, before the proof or quality and quantity has been s ascertained and marked, the same shall be forfeited, and may b seized by any officer of the customs or inspection.

Act March 2, 1799, c. 22, § 51, 1 Stat. 665.

Notes of Decisions

Consent to removal from wharf.—Wine and spirits, saved from a wreck and landed, are not liable to forfeiture because they were removed without the consent of the collector before the quantity and quality were ascertained and the duties paid. Peisch v. Ware (1808) 4 Cranch, 347, 363, 2 L. Ed. 643.

A collector cannot impose any conditions to the granting of permission to allow goods discharged from a ship to remain on the wharf than are prescrib ed by statute or the secretary's regula tions, and to exact more would be un lawful constraint, and hence duress an void. The Egypt (C. C. 1885) 25 Fed 320, 331.

Cited without definite application. In re Blumlein (C. C. 1892) 49 Fed. 228, 231 (affirmed [1893] 55 Fed. 383, 5 C. C. A. 142); Young v. Lehmann (D. C. 1886) 27 Fed. 383, 385.

§ 5575. (R. S. § 2883.) Indorsement on permit for landing spirits, etc.

Every permit for the unlading of spirits, wines, or any part thereof, shall, previous to such landing or unlading thereof, be produced to the officer of inspection, who shall record or register in proper books the contents thereof, and shall indorse thereupon the word "Inspected," the time when, and his own name; after which he shall return the permit to the person by whom it was produced, and then, and not otherwise, it shall be lawful to land the spirits, or wines, therein specified; and if spirits or wines shall be landed without such indorse-

upon the permit granted for that purpose, the master of the l from which the same shall have been so landed shall for every offense be liable to a penalty of five hundred dollars, and the s or wines so landed shall be forfeited.

Act March 2, 1799, c. 22, § 37, 1 Stat. 658.

d without definite application affirmed (1893) 55 Fed. 383, 5 C. C. A. Blumlein (C. C. 1892) 49 Fed. 228, 142.

76. (R. S. § 2884.) Landing of spirits, etc., regulated.

distilled spirits, and wines, shall be landed under the inspection e surveyor, or other officer acting as inspector of the revenue he port, and such of the inspectors of the customs as shall be ted by him for that purpose, and not otherwise, on pain of fore thereof, for which purpose the officer shall at all reasonable attend. This shall not, however, be construed to exclude the ction of any officer of the customs, as now or heretofore prac-

Act March 2, 1799, c. 22, § 38, 1 Stat. 658.

d without definite application, 228, affirmed (1893) 55 Fed. 383, 5 C. C. Blumlein (C. C. 1892) 49 Fed. A. 142.

77. (R. S. § 2885.) Marking casks and cases of spirits.

e officers of inspection of any port where distilled spirits or s shall be landed, shall, upon the landing thereof, and as soon e casks, vessels, and cases containing the same shall be ined, gauged, or measured, brand or otherwise mark in durable acters, the several casks, vessels, and cases containing the same, the marks shall express the number of casks, vessels, or cases, her of spirits or wines, marked by each officer respectively, in year, in progressive numbers for each of the articles; also the of importation, the name of the vessel, and the surname of the er; also each kind of spirits or wines, for which different rates ity are or shall be imposed, the number of gallons in each cask ase, and the rate of proof if spirits; also the name of the sur- r or chief officer of inspection for the port, and the date of im- ation; of all which particulars the chief officers of inspections keep fair and correct accounts, in books to be provided for that ose.

Act March 2, 1799, c. 22, § 39, 1 Stat. 659. Act July 14, 1832, c. 227, § 5, 4 tat. 591.

d without definite application, 228, affirmed (1893) 55 Fed. 383, 5 C. C. Blumlein (C. C. 1892) 49 Fed. A. 142.

78. (R. S. § 2886.) Obliteration of marks.

n the sale of any cask, vessel, or case, which has been or shall be ked as containing distilled spirits or wines, and which has been tied of its contents, and prior to the delivery thereof to the pur- er, or any removal thereof, the marks and numbers, which shall been set thereon by or under the direction of any officer of in- tion, shall be defaced and obliterated in the presence of some er of inspection or of the customs, who shall, on due notice be- given, attend for that purpose, at which time the certificate h ought to accompany such chest, vessel, or case, shall also be ned and canceled. Every person who shall obliterate, counter- alter, or deface any mark or number placed by an officer of in- tion upon any cask, vessel, or case, containing distilled spirits ines, or any certificate thereof; or who shall sell or in any way ate or remove any cask, vessel, or case, which has been emptied s contents, before the marks and numbers, set thereon pursu- o the provisions of the preceding section, shall have been de- l or obliterated, in presence of an officer of inspection; or who neglect or refuse to deliver the certificate issued to accompany

the cask, chest, vessel, or case, of which the marks and numbers sh have been defaced or obliterated in manner aforesaid, on being the to required by an officer of inspection or of the customs, shall f every such offense be liable to a penalty of one hundred dollars, wi costs of suit.

Act March 2, 1799, c. 22, § 44, 1 Stat. 660.

Notes of Decisions

Removal of casks after purchase.—The provision making it penal to sell, alienate, or remove an empty cask which has contained foreign distilled spirits before the marks set thereon had been defaced, does not apply to a removal by a person who receives it after a purchase. U. S. v. Halberstadt (C. 1835) Fed. Cas. No. 15,278; Id. (D. 1833) Fed. Cas. No. 15,277.

Cited without definite applicati In re Blumlein (C. C. 1892) 49 F 228, affirmed (1893) 55 Fed. 383, 5 C. A. 142.

§ 5579. (R. S. § 2887.) Forfeiture of omitted or missing articl except in case of accident or mistake.

If any package whatever which has been so reported is wantin and not found on board such vessel, or if the merchandise on boa such vessel does not otherwise agree with the report or manife delivered by the master of any such vessel, in every such case t master shall be liable to a penalty of five hundred dollars; exce that if it is made to appear to the satisfaction of the collector, nav officer, and surveyor, or to the major part of them where those of cers are established at any port, or to the satisfaction of the co lector alone where neither of the others is established, or in case trial for the penalty, to the satisfaction of the court, that no pa whatever of merchandise of such vessel has been unshipped, lande or unladen since it was taken on board, except as specified in t report or manifest, and pursuant to permits, or that the disagreeme is by accident or mistake, in such case the penalty shall not be i flicted. But in all such cases the master of any vessel shall be r quired and shall make a post entry or addition to the report manifest by him delivered of any and all merchandise omitted t be included and reported in such manifest; and it shall not be lawf to grant a permit to unlade any such merchandise so omitted befo such post entry or addition to such report or manifest has been mad

Act March 2, 1799, c. 22, § 57, 1 Stat. 671.

Provisions requiring surveyors to examine whether goods imported in a vessel correspond with the permits for landing the same, and to report di agreements to the collector and naval officer, if any, were made by R. S. 2627, ante, § 5365.

Notes of Decisions

Surplus of cargo.—A surplus of cargo, equally with a deficiency, is a disagreement with the manifest. U. S. v. Fairclough (C. C. 1823) Fed. Cas. No. 15,068.

Accident or mistake.—Defendant, to obtain the benefit of the proviso excusing from the penalty, must not only satisfy the court that no part of the cargo had been landed or unladen after it was taken on board as specified in the report, and pursuant to permits duly obtained, but also that the disagreement was by mistake or accident. U. S. v. Fairclough (C. C. 1823) Fe Cas. No. 15,068.

Goods found concealed on board aft the master has declared that the whol cargo is discharged are not protect from forfeiture. U. S. v. Cave (D. 1809) Fed. Cas. No. 14,760.

Cited without definite applicatio In re Blumlein (C. C. 1892) 49 Fe 228, affirmed (1893) 55 Fed. 383, 5 C. A. 142; Hogarth Shipping Co. Federal Sugar Refining Co. (D. C. 1909 174 Fed. 278, 281.

§ 5580. (R. S. § 2888.) Account of deliveries.

When the delivery of merchandise from on board of any vess is completed, copies of the accounts or entries which have been kep or made thereof, by the officer charged with the deliveries, sha be returned to the collector of the district, and the naval officer, any, within three days after such delivery has been completed, if a

port where such officer resides, and if at any other port as soon ne nature of the case will admit, not exceeding fifteen days. The unts or entries to be so returned shall comprise all deliveries e pursuant to permits, and all packages or merchandise sent to public stores; also each and every package remaining on board uch vessel for the purpose of being exported therein to a for- port, or to some other district of the United States.

Act March 2, 1799, c. 22, § 55, 1 Stat. 668.

ed without definite application, er v. Beard (1888) 8 Sup. Ct. 554, 124 U. S. 429, 31 L. Ed. 490; In re Blumlein (C. C. 1892) 49 Fed. 228, affirmed (1893) 55 Fed. 383, 5 C. C. A. 142.

581. (R. S. § 2889.) Proceedings upon returns of deliveries.

uch returns shall be signed by the inspectors respectively under se superintendence the deliveries have been made; and, after mination, and on being found correct, shall be countersigned ertified by the surveyor of the port; if any, at the port where deliveries have been made. The returns shall be transmitted him to the naval officer, if any; who shall compare the same the manifests and entries in his possession; and if any differ- appears, the particulars thereof shall be noted by indorsement he returns; and if no difference appears, it shall be so noted by indorsements. The naval officer shall transmit the returns to collector of the district; and on being returned to the collector, l be by him compared with the manifests and entries of the mer- ndise, which have been made by the owner, consignee, or his or or agent; and if any difference appears, the same shall be d by indorsement on such manifests specifying the particulars eof; and if no difference appears, it shall be noted by like in- sement, that the delivery corresponds with the entry or entries eof. The indorsement or memorandum shall, in each case, be scribed by the officer by whom the comparison was made.

Act March 2, 1799, c. 22, § 55, 1 Stat. 669.

ed without definite application, e Blumlein (C. C. 1892) 49 Fed. 228, affirmed (1893) 55 Fed. 383, 5 C. C. A. 142.

582. (R. S. § 2890.) Returns of weighers, gaugers, and meas- urers.

he weighers, gaugers, and measurers, employed in the service ne revenue, shall, within three days after any vessel is discharged, e returns of the articles by them respectively weighed, gauged, neasured, out of such vessel. Such returns shall be made by the ghers, gaugers, and measurers, in books to be prepared by them that purpose, and kept in the custom-houses.

Act March 2, 1799, c. 22, § 72, 1 Stat. 678.

ed without definite application, shaw v. Cadwalader (1892) 12 Sup. 852, 855, 145 U. S. 247, 36 L. Ed. 693; In re Blumlein (C. C. 1892) 49 Fed. 228, affirmed (1893) 55 Fed. 383, 5 C. C. A. 142.

583. (R. S. § 2891.) Distress of weather.

any vessel from any foreign port, compelled by distress of weath- or other necessity, shall put into any port of the United States, being destined for the same, the master, together with the mate person next in command, may, within twenty-four hours after arrival, make protest in the usual form upon oath, before a ary public or other person duly authorized, or before the collector he district where the vessel arrives, setting forth the cause or umstances of such distress or necessity. Such protest, if not made ore the collector, shall be produced to him, and to the naval cer, if any, and a copy thereof lodged with him or them. The ster shall also, within forty-eight hours after such arrival, make ort in writing to the collector, of the vessel and her cargo, as is

directed hereby to be done in other cases. And if it appear to t collector, by the certificate of the wardens of the port, or otl officers usually charged with, and accustomed to ascertain the co dition of vessels arriving in distress, if any, or by the certificate two reputable merchants, to be named for that purpose by the c lector, if there are no such wardens, or other officers duly qualifi that there is a necessity for unlading the vessel, the collector a naval officer, if any, shall grant a permit for that purpose, and sh appoint an inspector to oversee such unlading, who shall keep account of the same, to be compared with the report made by t master of the vessel.

Act March 2, 1799, c. 22, § 60, 1 Stat. 672.

Cited without definite application, 228, affirmed (1893) 55 Fed. 383, 5
In re Blumlein (C. C. 1892) 49 Fed. C. A. 142.

§ 5584. (R. S. § 2892.) Storage of goods in distress.

All merchandise so unladen from any vessel arriving in distre shall be stored under the direction of the collector, who, upon quest of the master of such vessel, or of the owner thereof, sha together with the naval officer, where there is one, and alone whe there is none, grant permission to dispose of such part of the car as may be of a perishable nature, if any there be, or as may be ne essary to defray the expenses attending such vessel and her carg But entry shall be made therefor, and the duties paid.

Act March 2, 1799, c. 22, § 60, 1 Stat. 672.

Provisions authorizing the Secretary of the Treasury to make regulatio for the management of bonded warehouses and prohibiting customs offic from having any personal interest in bonded warehouses are contained in A June 22, 1874, c. 391, § 24, post, § 5683.

Cited without definite application, 228, affirmed (1893) 55 Fed. 383, 5
In re Blumlein (C. C. 1892) 49 Fed. C. A. 142.

§ 5585. (R. S. § 2893.) Variance between report and delivery vessel in distress.

In case the delivery of the cargo does not agree with the repo thereof, made by the master of such vessel so arriving in distres and if the difference or disagreement is not satisfactorily account for in manner prescribed by this Title, the master of such vessel sha be liable to such penalties as in other like cases are prescribed.

Act March 2, 1799, c. 22, § 60, 1 Stat. 672.

§ 5586. (R. S. § 2894.) Reloading of vessel in distress.

The merchandise, or the remainder thereof, which shall not b disposed of, may be reladen on board the vessel so arriving in di tress, under the inspection of the officer who superintended the lan ing thereof, or other proper person; and the vessel may proce with the same to the place of her destination, free from any oth charge than for the storing and safe-keeping of the merchandis and fees to the officers of the customs as in other cases.

Act March 2, 1799, c. 22, § 60, 1 Stat. 672.

(R. S. § 2895. Superseded.)

This section was as follows:

"Whenever any Spanish vessel shall arrive in distress, in any port of t United States, having been damaged on the coast or within the limits of t United States, and her cargo shall have been unladen, in conformity wi the provisions of the four preceding sections, the cargo, or any part there may, if the vessel should be condemned as not seaworthy, or be deemed i capable of performing her original voyage, afterward be reladen on board a other vessel under the inspection of the officer who superintended the lan ing thereof, or other proper person. No duties, charges, or fees whatev shall be paid on such part of the cargo as may be reladen and carried awa either in the vessel in which it was originally imported, or in any other."

It was superseded by the provisions of the treaty with Spain of July 3, 190 33 Stat. 2105.

7. (R. S. § 2896.) Obstruction by ice.

en a vessel is prevented by ice from getting to the port or at which her cargo is intended to be delivered, the collector district in which such vessel may be obstructed may receive port and entry of such vessel, and, with the consent of the naval , where there is one, grant permits for unlading or landing erchandise imported in such vessel, at any place within his dis- most convenient and proper. The report and entry of such , and her cargo, or any part thereof, and all persons concerned n, shall be subject to the same regulations and penalties as if essel had arrived at the port of her destination, and had there eded to the delivery of her cargo.

ct March 2, 1799, c. 22, § 85, 1 Stat. 694.

Cited without definite application, Waring v. Mobile (1868) 8 Wall. 110, 120, 19 L. Ed. 342.

(R. S. § 2897. Repealed.)

his section authorized the Secretary of the Treasury, under regulations by prescribed, to permit the unloading of salt, imported from foreign places, the right bank of the Mississippi River, opposite New Orleans, at any point said bank between the upper and lower corporate limits of said city. It s repealed by Act March 3, 1897, c. 389, § 16, 29 Stat. 691.

8. (R. S. § 2898.) Tare.

estimating the allowance for tare on all chests, boxes, cases, , bags, or other envelope or covering of all articles imported lia- pay any duty, where the original invoice is produced at the of making entry thereof, and the tare shall be specified therein, ollector, if he sees fit, or the collector and naval officer, if any, y see fit, may, with the consent of the consignees, estimate the according to such invoice; but in all other cases the real tare be allowed, and may be ascertained under such regulations as ecretary of the Treasury may from time to time prescribe; but case shall there be any allowance for draught.

Act July 14, 1862, c. 163, § 16, 12 Stat. 558.

Notes of Decisions

nination to determine tare.—No n be laid down to determine the number of hides in a given ation that should properly be ed and tested in order to fix a llowance for tare on an entire nment, but in the case at bar, importations immediately in- , a fair number and selection of were examined and tested by an er and by the representatives importer, when ten out of 795, a time being selected at differ- ages of the count, and five out , chosen from the other lots, had o examined and tested. On the ce, an allowance of two pounds de for tare would have been a allowance on these two consign- Shallus v. U. S. (1911) 1 Ct. App. 316.

etermining an allowance for tare, s taken upon scales in compli- vith official duty must be accept- preference to those taken on without an official status and own to have been tested and to rect. U. S. v. Lozano, Son & 915) 6 Ct. Cust. App. 281.

ing by collector.—A guess or es- of a proper allowance for tare may not be substituted for a finding arrived at according to the regulations that control. American Sugar Refining Co. v. U. S. (1912) 3 Ct. Cust. App. 69.

Leakage and breakage.—The act authorizes deductions in measures in all cases for leakage and for breakage and reductions in weight for tare and draft. Marriott v. Brune (1850) 9 How. 619, 633, 13 L. Ed. 282.

Garlic tops.—Garlic consists of the bulb and top of the plant. No portion of the natural product as imported can properly be called tare, and particularly is this true since it is shown by the evidence that the tops serve the purpose of preserving the bulbs and are sold as constituting a part of the importation. Shallus v. U. S. (1911) 1 Ct. Cust. App. 316, T. D. 31408; U. S. v. Baker Castor Oil Co. (1911) 2 Ct. Cust. App. 338, T. D. 32076; Vitelli & Son v. U. S. (1912) 3 Ct. Cust. App. 171.

Jute in bales.—An allowance must be made, in estimating the duty on jute in bales, for the weight of jute tie ropes with which the bales are bound up; it appearing that between buyer

and seller these ropes are regarded as tare, and are never charged for, a deduction equal to their weight being made from the total weight of the bale, and only the net weight being billed. Fachri v. Magone (C. C. 1892) 53 Fed. 789.

Impurities.—The words "draft" and "draught" used in this and preceding acts of congress, do not mean the impurities contained in the imported articles, but mean the arbitrary allowance of certain deductions in handling for shrinkage or variation in scales. U. S. v. G. Falk & Bro. (1906) 27 Sup. Ct. 191, 193, 204 U. S. 143, 51 L. Ed. 411; Wright & Lawther Lead Co. v. Seeberger (C. C. 1890) 44 Fed. 258, 259, affirmed (1895) 15 Sup. Ct. 583, 157 U. S. 183, 39 L. Ed. 665.

Impurities ordinarily present in an article of merchandise do not constitute tare; only those impurities not ordinarily present in the merchandise as traded in may be the subject of an allowance for tare. U. S. v. Baker Castor Oil Co. (1911) 2 Ct. Cust. App. 338, citing Seeberger v. Wright & L. Oil & Lead Mfg. Co. (1895) 15 Su Ct. 583, 157 U. S. 183, 39 L. Ed. 66 Shallus v. U. S. (1911) 1 Ct. Cu App. 316.

In order for impurities to be allo ed for as tare, the importer must tablish by a preponderance of evider that, at the time the law was pass the impurities claimed as demandi an allowance were other than the or nary impurities commonly found that kind of merchandise as traded and that it was the general, unifor and definite custom of the trade to regard such impurities as part of t goods and to make an allowance the for. Wood & Selick v. U. S. (191 4 Ct. Cust. App. 228.

Where liquid in tins of fish was added, but was an oil exuding from t fish in the processes of canning, t oil taking into solution the inclos salt, forming thus a brine, there cou be no allowance on account of imp rities or for tare. Rosenstein Bros. U. S. (1913) 4 Ct. Cust. App. 401, c ing Shallus v. U. S. (1911) 1 Ct. Cu App. 316.

CHAPTER SIX

Appraisal

Sec.
5589. No delivery without appraisal.
5590. Number of packages to be opened.
5591. Appraisal at actual market value and wholesale price.
5592. Ascertainment of value.
5593. General appraisers; appointment, tenure, salary, and powers.
5594. Revision of reports of assistant appraisers; reappraisement; appeal to board of general appraisers.
5595. Decision of collector; appeal to board of general appraisers.
5596. Administration of oaths, examination of witnesses, and production of papers, etc.
5597. Failure to submit to examination or to produce papers; false swearing; penalty; forfeiture.
5598. Decisions of general appraiser; filing; publication of abstracts.
5599. Assessment of ad valorem duties.
5600. Additional duties on failure of seller, shipper, consignor, or manufacturer to submit books, etc., to inspection.
5601. Additional duties on failure of importer to submit books, etc., to inspection.
5602. Allowance for shortage, or damage; abandonment of goods.
5603. Depreciated currency.
5604. Value at date of shipment.
5605. Value at period of exportation.
5606. Different values in the same invoice.
5607. Best article fixes value.
5608. Appraisement of wool.
5609. Appraisement of gloves.
5610. Grades of sugar.
5611. Sampling of sugar.
5612. Samples of wool.
5613. Standard of vinegar.
5614. Hydrometers.
5615. Ascertainment of duties on grain
5616. Sampling and assaying lead ore
5617. Shipment of ores to samplin works.
5618. Expense of weighing, measurin or gauging.
5619. Deficiency.
5620. Bond to produce proof.
5621. Storing goods with incomplet manifests.
5622. Examination of medicines.
5623. Name of proprietor to be affixe to medicines.
5624. Return upon examination.
5625. Appeal from examination.
5626. Exportation of rejected article
5627. Appraiser as special examiner.
5628. Appraisement at New York.
5629. Examiners at New York.
5630. Appraisers, etc., at New Yor not to engage in business.
5631. Duties of appraisers at New York.
5632. Labor beyond usual hours.
5633. Appraisement by revenue officers
5634. Appraisement in other districts
5635. Regulations for appraisal.
5636. Definition of word "ton."
5637. What buildings may be leased.

589. (R. S. § 2899.) **No delivery without appraisal.**

No merchandise liable to be inspected or appraised shall be deliv-d from the custody of the officers of the customs, until the same been inspected or appraised, or until the packages sent to be ected or appraised shall be found correctly and fairly invoiced put up, and so reported to the collector. The collector may, vever, at the request of the owner, importer, consignee, or agent, e bonds, with approved security, in double the estimated value of h merchandise, conditioned that it shall be delivered to the order the collector, at any time within ten days after the package sent the public stores has been appraised and reported to the col-tor. If in the mean time any package shall be opened, without consent of the collector or surveyor given in writing, and then in presence of one of the inspectors of the customs, or if the pack-is not delivered to the order of the collector, according to the dition of the bond, the bond shall, in either case, be forfeited.

Act May 28, 1830, c. 147, § 4, 4 Stat. 410.

The effect of this section on the right of importers to make examinations to determine whether the right to abandon accrues, or whether by reason of total destruction there is a nonimportation in whole or in part, was prescribed by a proviso annexed to the amendment of the customs Administration Act of June 10, 1890, c. 407, § 23, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, which was re-enacted by the Underwood Tariff Act of Oct. 3, 1913, c. 16, III, X, post, § 5602.

Notes of Decisions

stody of merchandise.—From the nent of their arrival in port goods in legal contemplation in the cus-of the United States and every eeding which interferes with or ructs or controls that custody is iolation of the provisions. Harris Dennie (1830) 3 Pet. 292, 304, 7 L. 683.

e acknowledgment by the custom-se storekeeper that he held goods which duties had not been secured paid, subject to an attachment is-d out of a state court at the suit of reditor of the importer, is a de-ure from his duty not authorized law, and cannot vary the rights of parties. Id.

collector of the customs has a t to hold possession of imported ds until the duties are paid or se-ed according to law. Conard v. ific Ins. Co. (1832) 31 U. S. (6) 262, 8 L. Ed. 392; Tracy v. rtwout (1836) 35 U. S. (10 Pet.) 9 L. Ed. 354.

here a merchant leaves a sum of ey with the collector instead of goods, and an examination is made the appraisers before delivery, and importer binds himself to abide the lt of the appraisement "the same if the goods had been retained," , that neither party can take ad-age of the delivery as changing rights of the other. Porter v. rd (C. C. 1883) 15 Fed. 380, judg-t affirmed (1888) 8 Sup. Ct. 554, U. S. 429, 31 L. Ed. 490.

n appeals from appraisements by local appraiser of imported mer-ndise taken by the collector of cus-s, the general appraiser who made reappraisements did not have be-e him the merchandise in question, nor samples thereof, the merchandise had passed out of the possession and control of the importers, and the collector had not ordered its return, in accordance with the terms of a bond which had been given by the importers. Held, that the reappraisements were void, and that the duties should be assessed on the basis of the values found by the local appraiser, and not those found by the general appraiser. U. S. v. Murphy (C. C. 1898) 136 Fed. 811.

The collector at the port of entry of imported goods is made by law the custodian of such goods until the payment of the duties thereon, and his duty as such custodian is to be performed within his own district. His duties are prescribed by statute, and an order from the Treasury Department instructing him to send or remove the goods out of his district, "for submission to trade experts," is without legal authority, and will not justify a removal of the goods from the collector's district. The importer, having the right to a speedy appraisal by the officers designated by law and to withdraw the goods on payment of the duties, has a substantial right to have them remain in the custody of the collector at the port of entry, and may invoke the power of the courts by injunction to prevent their removal. Bruhl Bros. & Co. v. Wilson (C. C. 1903) 123 Fed. 957.

Bond for delivery.—Bailing of property seized, see § 1564 et seq., ante.

See § 1601, ante, as to interest on bonds for duties.

The authority of the collector to require a bond from an importer for double the value of the merchandise imported, to be forfeited for the non-

return unopened of any package of the invoice upon demand, includes the right to take a less stringent undertaking, such as a bond which provides for the return of any required package unopened or the payment of double its value as a condition of being discharged from the full penalty of the bond. U. S. v. Dieckerhoff (1906) 26 Sup. Ct. 604, 202 U. S. 302, 50 L. Ed. 1041, reversing Dieckerhoff v. U. S. (1905) 136 Fed. 545, 69 C. C. A. 255, and affirming U. S. v. Dieckerhoff (C. C. 1900) 103 Fed. 789.

Double the value of the package of an invoice of imported merchandise ordered by the collector to be returned, and not merely the actual damages sustained by the United States by reason of its nonreturn, is the measure of recovery for the breach of the obligation incurred in a redelivery bond taken by the collector, to return any required package unopened, or to pay double its value as a condition of being discharged from the full penalty of the bond. Id.

The enforcement of the penalty prescribed in a redelivery bond taken by a collector, for the nonreturn unopened of any required package of an invoice of imported merchandise, is not precluded by the provision of section 1599, ante. Id.

Breach of a bond for the return of goods not examined by customs officials does not affect the right of the importer to an allowance for damaged merchandise. No other or different penalty is contemplated by the bond or by said section than the damages provided by the bond. Habicht, Braun & Co. v. U. S. (C. C. 1909) 171 Fed. 441.

Certain packages of merchandise having been sent to the public store for examination, the remaining packages were delivered to the importers on bond conditioned that the obligors, within 10 days after the package or packages, designated by the collector and sent to the public store to be opened and examined, had been appraised and reported to him, should return t delivered packages, on demand, to t order of the collector without havi been opened. Held, that the bond d not require the demand to be made the collector within 10 days, but th there was no breach of the bond u less the 10 days elapsed without compliance with the collector's dema for return of the merchandise so d livered. U. S. v. Psaki (C. C. 191 181 Fed. 635.

Pending the execution of an ord for a reappraisement of an import tion of gloves, the importers, an ous to get their goods, proposed leave samples on which to make t appraisement, and give a bond to p "all duties and charges" finally asse sed upon the importation, waiving objections that might be made on t ground that the goods were not r tained by the United States until fin appraisement; and this arrangeme was entered into by permission of t Secretary of the Treasury. The fin appraisement resulted in such an a dition beyond the invoice and enter values that, under ordinary circun stances, the goods would be liable additional duty (section 5527, ante Held, that by the terms of the bond included the payment of such additio al duty, and that the importers are l able therefor. (1874) 14 Op. Att Gen. 658.

Order for return of merchandise.—I computing the 10 days within whic the order of the collector for return goods must be served upon the im porter, if the tenth day falls on Sun day, that day cannot be exclude Hermann v. U. S. (C. C. 1895) 66 Fe 721, 722, following Shefer v. Magon (C. C. 1891) 47 Fed. 872.

Cited without definite applicatio Davies v. Miller (1889) 9 Sup. Ct. 56 130 U. S. 284, 32 L. Ed. 932; Earn shaw v. U. S. (1892) 13 Sup. Ct. 14 15, 146 U. S. 60, 36 L. Ed. 887; D. M Ferry & Co. v. Same (1898) 85 Fe 550, 558, 29 C. C. A. 345.

(R. S. § 2900. Repealed.)

This section provided for additions to the invoice value of merchandise en tered, to raise it to the actual market value or wholesale price, and for a additional duty if the appraised value should exceed the declared value. I was repealed by the Customs Administrative Act of June 10, 1890, c. 407, 29, 26 Stat. 141, and similar and further provisions on the subject were mad by section 7 of that act, which, as amended by Act July 24, 1897, c. 11, § 32 30 Stat. 211, and the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 3 Stat. 95, was further amended by the Underwood Tariff Act of Oct. 3, 1913, c 16, § III, I, ante, § 5527.

§ 5590. (R. S. § 2901.) Number of packages to be opened.

The collector shall designate on the invoice at least one package of every invoice, and one package at least of every ten packages o merchandise, and a greater number should he or either of the appraisers deem it necessary, imported into such port, to be opened, examined, and appraised, and shall order the package so designated to the public stores for examination; and if any package be found by the appraisers to contain any article not specified in the invoice, and

or a majority of them shall be of opinion that such article was ted in the invoice with fraudulent intent on the part of the ship- owner, or agent, the contents of the entire package in which article may be, shall be liable to seizure and forfeiture on convic- thereof before any court of competent jurisdiction; but if the aisers shall be of opinion that no such fraudulent intent existed, the value of such article shall be added to the entry, and the es thereon paid accordingly, and the same shall be delivered to mporter, agent, or consignee. Such forfeiture may, however, be tted by the Secretary of the Treasury on the production of evi- e satisfactory to him that no fraud was intended.

Act Aug. 30, 1842, c. 270, § 21, 5 Stat. 565.

Special provisions relating to the number of packages to be sent for examina- on and appraisement at the port of New York were made by R. S. § 2939, ost, § 5628.

The number of packages to be opened in the examination of leaf tobacco was rescribed by a provision of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § Schedule F, par. 182, ante, § 5291, par. 182.

Forfeiture for false entry, etc., was provided for by the Customs Adminis- ative Act of June 10, 1890, c. 407, § 9, 26 Stat. 135, amended by the ayne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 97, superseded y the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, H, ante, § 5526.

The remission of forfeiture for undervaluation was prohibited by the Cus- oms Administrative Act of June 10, 1890, c. 407, § 7, amended by Act July 4, 1897, c. 11, § 32, the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, nd the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, I, ante, § 5527.

Notes of Decisions

ure of section.—This section is andatory, and official acts are not dated for want of strict compli- therewith. Origet v. Hedden) 15 Sup. Ct. 92, 96, 155 U. S. 39 L. Ed. 130; U. S. v. Ranlett) 19 Sup. Ct. 114, 117, 172 U. 3, 43 L. Ed. 393.

amination of packages, in general. appraisal of goods imported, un- made on a personal examination the appraisers, is invalid. Greely hompson (1850) 51 U. S. (10) 225, 13 L. Ed. 397.

ere a merchant appraiser made an ination of hemp, such as is usual- ade in buying and selling the ar- and satisfactory to himself, it not open to the importer to show he adopted a mode of examination icient to detect fraudulent pack- or diversities in the qualities of fferent parts of the bales of hemp. son v. Peaslee (1857) 61 U. S. Iow.) 571, 15 L. Ed. 1022.

ere two invoices and two entries made of a single importation, each is to be deemed as a separate action for the purpose of ap- ement and the assessment of du- hereon. Id.

an action by an importer to re- an alleged excess of duties col- l, it is competent for the importer ow that the appraisement was void vidence that the examination was onducted as required by law. Oel- ann v. Merritt (1887) 8 Sup. Ct. 157, 123 U. S. 356, 31 L. Ed. 164, sing judgment (C. C. 1884) 19 408; Mustin v. Cadwalader (1887) 8 Sup. Ct. 158, 123 U. S. 369, 31 L. Ed. 169.

Nonobservance of statute vitiates appraisement. Oelbermann v. Merritt (1887) 8 Sup. Ct. 151, 156, 123 U. S. 356, 31 L. Ed. 164.

Where a package of imported goods of the same kind invoiced as free of duty is found on examination to contain a large proportion of dutiable goods, indiscriminately mixed with free goods, the customs officer is justified in assessing duty upon the entire package at the rate to which the dutiable goods are subject, and it devolves upon the importer, if dissatisfied, to ask for a re-examination, and to separate the free from the dutiable goods, or furnish evidence of the proportion of each. U. S. v. Ranlett (1898) 19 Sup. Ct. 114, 172 U. S. 133, 43 L. Ed. 393.

The provision of this section is for the benefit of the government, and is not mandatory, and an importer cannot avoid the payment of duties assessed on the ground that the examination was insufficient, or not made in accordance with the statute, but, if dissatisfied, should apply for a re-examination, and may, on appeal, prove by evidence the facts he claims. Id.

An examination of goods by the appraisers is indispensable, but a personal examination of each article is not necessary. A fair selection of samples is sufficient. Gibb v. Washington (C. C. 1858) Fed. Cas. No. 5,-380.

Where samples are fairly selected from one in ten of the packages, and are fully identified, it is of no importance whether they were drawn from

the packages by the appraisers themselves, or by the official sampler of the appraisers' department. Yznaga v. Peaslee (C. C. 1860) Fed. Cas. No. 18,196.

Where the importer does not object, an appraisal by samples taken by a sampler where the appraisers did not see the packages, held sufficient. Id.

The collector may cause a re-examination and valuation of goods after an appraiser has passed the same. U. S. v. Eighty-Two Packages of Glass (D. C. 1857) Fed. Cas. No. 15,038.

Apart from any question of the right of the importer to challenge as unfair the quantity or condition of samples of merchandise selected by the government for test purposes, where officials charged with the responsibility of assessing and collecting duties take such samples of an imported commodity as they deem necessary to insure a proper test of the goods in conformity to law and the regulations of the treasury department, no fraud being alleged, the government will not be permitted here to challenge as unsatisfactory the quantity or condition of the samples so selected. U. S. v. Seattle Brewing & Malting Co. (1911) 1 Ct. Cust. App. 362.

Packages or samples selected by the collector and deposited in public stores are to be deemed as under the immediate continuing control and in the continuing physical custody of the appraiser, the general appraiser, or board of general appraisers, respectively, before whom a case may be pending in which these samples have been selected and detached for the purpose of an examination or of inspection and appraisement. Loeb v. U. S. (1911) 1 Ct. Cust. App. 385.

Reviewing the decision in Tilge & Co. v. U. S. T. D. 31507, the decision is adhered to. The court did not there hold an appraising officer had no jurisdiction to appraise any of the merchandise of a consignment unless he had examined the samples deposited at the public stores, nor did it hold that samples forming a part of the importation cannot, when duly authenticated, be accepted by appraising officers for jurisdictional purposes. It was there held, however, that no process was permissible "other than the law provides," and that while the law provides substitute processes, compliance with any of these was not averred in the case as presented for determination here, and the decision as rendered was based simply on noncompliance with the law's requirements. What would or would not constitute a proper waiver or stipulation to avoid the stricter operation of the statute will depend on the facts of record in the particular case. Tilge v. U. S. (1911) 2 Ct. Cust. App. 149.

—— **Proportion to be examined.** Whether the merchant appraisers hav substantially made an examination one package in ten of an importatio is a question of fact for the jur Greely's Adm'r v. Burgess (1855) 5 U. S. (18 How.) 413, 15 L. Ed. 45

The mere fact that all the cases an importation "were by the collect ordered to the public store, and th they were there at the time of the r appraisement," does not show a speci direction by the collector that should be examined, and render void reappraisement made without exami ing all the cases, though, under th section and section 5628, post, such r appraisement would be void if the co lector directed an examination of the cases, and it was not made. Orig v. Hedden (1894) 155 U. S. 228, Sup. Ct. 92, 39 L. Ed. 130.

An appraiser may not legally advan the value of imported merchandise n actually before him, or not represen ed by sufficient samples, even thou he have before him one package in 1 If these packages do not represe every variety of goods, such represe tation must be had by securing furth packages or samples, for examinatio U. S. v. Beer (1906) 150 Fed. 566, C. C. A. 368, affirming judgment (C. 1905) 142 Fed. 199.

The appraisement is void, where t appraisers do not, in substance and e fect, open and examine at least o package in every ten. Burgess v. Co verse (C. C. 1855) Fed. Cas. No. 2 154.

Plaintiff, in 1853, imported 1,3 boxes of tin plates of four differe kinds, and of different value, and o box of each kind was designated the collector for examination, and appraisal increased duties and a pena ty were imposed. Plaintiff paid t penalty and duties under protest, a brought suit to recover the amoun Held that, since no waiver of the r quirement that one in every ten box be examined and appraised was show the increased duties and penalty impo ed were illegal, and plaintiff was entitl to recover. Ystalifera Iron Co. v. Re field (C. C. 1883) 23 Fed. 650.

An examination of unstemmed Sum tra leaf tobacco by the appraiser, whi was restricted to 9 representative bal out of 54, and to about one-sixtie part of each of the 9 bales, was insuf cient to determine the dutiable grad for which reason the whole importati was dutiable at 35 cents per poun In re Rosenwald (C. C. 1894) 59 Fe 765, judgment reversed U. S. v. Rose wald (1895) 67 Fed. 323, 14 C. C. 399.

In making reappraisements of i ported merchandise the general a praisers had before them only t same packages that the collector customs had sent to the local apprai

er this section, and these pack-
id not represent every variety
goods under reappraisement.
that the reappraisements were
to the merchandise not actually
nor represented by samples
the general appraisers. Cur-
Stiner v. U. S. (C. C. 1904)
d. 807.

mporter received two lots of
ne kind of merchandise within a
onths. The first, being advanc-
value by the appraiser, was the
of reappraisement on appeal
importer, which resulted in the
nce of the advance, and further
aisement was waived by the im-
The appraiser also advanced
ue of the later shipment, with-
y examination of the merchan-
elf or of samples thereof, though
duly examine at least one pack-
ten of the invoice, as requir-
eld, that this appraisement was
U. S. v. Beer (C. C. 1905) 142
99, judgment affirmed (1906) 150
66, 80 C. C. A. 368.

proportion of slack in an impor-
of 175 tons of coal was suffi-
determined by testing a sample
g 113 pounds. U. S. v. Bond
1908) 161 Fed. 165.

question of what is a "reason-
mber" of skins to test in as-
ing the quantity of wool there-
ne that is to be determined by
timony of men qualified by ex-
e and knowledge to pass upon
bject. Without such evidence,
not be held to be selfevident that
mate based on an examination
ut of 20,000 skins was inade-
U. S. v. J. B. Thomas & Co.
1910) 178 Fed. 602.

ppraisement of a cargo of sugar,
solely on samples taken after
f the cargo had been sold and
ed, held insufficient. U. S. v.
n (D. C. 1857) Fed. Cas. No.
.

gh there may have been a fail-
the part of the collector strict-
mply with the provisions of this
and section 5628, post, never-
the board of general apprais-
uld be in duty bound, the goods
tion remaining subject to their
and open to their inspection and
ation, to resort, on appeal, to
t means at hand for making an
ement; and though it should
that one package in ten was
some instances examined by the
there being sufficient samples of
rchandise before them and these
been examined, there would be
ngly such a substitute process
law contemplates and permits.
s & Co. v. U. S. (1911) 2 Ct.
App. 355.

Presumption.—Where importers
tly testified that the board of general appraisers made no personal examination or investigation of invoices in question, as required, and no opposing evidence was presented, the facts must be regarded as proved, notwithstanding the presumption in favor of the correctness of official action, and the appraisement must be held invalid. U. S. v. Loeb (1901) 107 Fed. 692, 46 C. C. A. 562, writ of certiorari denied Loeb v. U. S. (1901) 21 S. Ct. 923, 181 U. S. 618, 45 L. Ed. 1030.

An appraiser, in exercising discretion as to the production of packages for examination, is presumed to have acted fairly, unless the contrary is shown. Renvy, Schmidt & Pliessner v. U. S. (C. C. 1903) 121 Fed. 441, 442.

Inasmuch as this section provides for an examination of imported merchandise by customs officers, and the customs regulations provide that collectors of customs shall procure samples in cases in which protests are filed by importers, it is to be assumed that the collector complied with these provisions and had samples in such cases. Hensel v. Bruckmann & Lorbacher v. U. S. (C. C. 1907) 160 Fed. 219.

The official sample of the goods made the subject of controversy being selected by a customs officer charged with the duty of making a selection, it will be presumed the sample so chosen is fairly representative of the merchandise. Knauth v. U. S. (1911) 1 Ct. Cust. App. 178.

The examiner weighed but one piece of the silk goods, though these were contained in two separate cases, the silks differing in color and in weight. The evidence clearly rebuts the presumption of correctness attaching to this official's finding, and shows, too, that the weight as stated in the importer's invoice to have been more fairly and justly determined. Sears, Roebuck & Co. v. U. S. (1912) 3 Ct. Cust. App. 447.

Adding value of article to invoice.—The provision that if appraisers find in an imported package "any article not specified in the invoice," its value shall be added to the entry does not apply to an importation of framed paintings invoiced as "paintings," where the invoice value is sufficient to include the frames, and it is customary so to describe paintings with frames. U. S. v. Hensel, Bruckmann & Lorbacher (C. C. 1896) 158 Fed. 645.

Cited without definite application, Buckley v. U. S. (1846) 4 How. 251, 261, 11 L. Ed. 961; Falk v. Robertson (1890) 11 Sup. Ct. 41, 42, 137 U. S. 225, 34 L. Ed. 645; Kennedy v. Magone (1895) 15 Sup. Ct. 814, 815, 158 U. S. 212, 39 L. Ed. 954; U. S. v. Dieckerhoff (1906) 26 Sup. Ct. 604, 605, 202 U. S. 302, 50 L. Ed. 1041;

U. S. v. Curnen & Stiner (1906) 146 Fed. 45, 76 C. C. A. 503; U. S. v. Hunter & Whitcombe (1907) 153 Fed. 873, 874, 83 C. C. A. 55; In re Blumlein (C. C. 1892) 49 Fed. 228, 230 (firmed [1893] 55 Fed. 383, 5 C. C. 142); Weil v. U. S. (C. C. 1902) 1 Fed. 592.

(R. S. § 2902. Repealed.)

This section prescribed the mode of appraisal of merchandise. It was pealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, Stat. 141, and similar and further provisions on the subject were made section 10 of that act, re-enacted in the same language by the Payne-Aldri Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 97, and the Underwood Ta Act of Oct. 3, 1913, c. 16, § III, K, post, § 5591.

§ 5591. (Act Oct. 3, 1913, c. 16, § III, K.) Appraisal at actu market value and wholesale price.

K. It shall be the duty of the appraisers of the United State and every of them, and every person who shall act as such a praiser, or of the collector, as the case may be, by all reasonab ways and means in his or their power to ascertain, estimate, a appraise (any invoice or affidavit thereto or statement of cost, of cost of production to the contrary notwithstanding) the actu market value and wholesale price of the merchandise at the time exportation to the United States, in the principal markets of t country whence the same has been imported, and the number yards, parcels, or quantities, and actual market value or wholesa price of every of them, as the case may require. (38 Stat. 185

This paragraph and the paragraph next following were subdivisions of se tion III of the Underwood Tariff Act, cited above.

See notes to subdivision B of said section, ante, § 5519.

This provision, as originally enacted in the Customs Administrative Act June 10, 1890, c. 407, § 10, 26 Stat. 136, was re-enacted in the same langua by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 97, whic was re-enacted without change by this act.

This provision was a substitute for R. S. § 2902, repealed by section 29 said Customs Administrative Act, 26 Stat. 141.

The words "value," "actual market value," and "wholesale price" were d fined by section III, R, of this act, post, § 5599.

The word "merchandise" was defined by R. S. § 2766, ante, § 5462.

Provisions for estimating duties on goods, in respect to which the cost exhibited in a depreciated currency, were made by R. S. § 2903, post, § 560

Provisions for estimating duties upon the value at the date of shipment we made by R. S. § 2904, post, § 5604.

A provision for appraising the value at the period of exportation was mad by R. S. § 2906, post, § 5605.

The provisions relating to entry of merchandise, made by section III, B- of this act, are set forth ante, §§ 5293-5311.

The provisions of the Customs Administrative Act, as amended by A July 24, 1897, c. 11, were made applicable to all articles coming into the Uni ed States from the Philippine Islands, by Act March 8, 1902, c. 140, § 8, ant § 5534.

Notes of Decisions

1. Appraisal in general.
2. —— Reasonable ways and means.
3. —— Actual value.
4. —— Market value in general.
5. —— Market value as affected by local taxes.
6. —— Nondutiable buying commissions.
7. —— Time of exportation.
8. —— Principal markets.
9. —— Country from which imported.
10. Decisions under former statutes.

1. Appraisal in general.—Paragraph 845 of the treasury regulations provides that appraisers shall make advances on invoices on the unit value declared on entry, in the currency in which the invoice is made out, in a specific sum per pound, yard, or other unit of value, and not by percentage, and in the weight, gauge, or measure expressed in the invoice, but that no average valu tion shall be made, and that the add tions shall be made by writing on th invoice, opposite each item advance the words, "Add to make market value, stating in numerals the amount nece sary to make the price per unit. He directory, and not mandatory, in th sense that neglect to conform theret would create an illegal appraisal. U. v. Loeb (1901) 107 Fed. 692, 46 C. A. 562, writ of certiorari denied Loe v. U. S. (1901) 21 Sup. Ct. 923, 181 U S. 618, 45 L. Ed. 1030.

The board of general appraisers mad a report as to importations of Swi laces, embroideries, and handkerchief adding percentages to value, as appea by the following example: "On items i

at 18 centimes, stitch rate, add on balance of goods, add 10%." lid not, however, carry out on the the value per aune (the Swiss n francs and centimes, though this easily be computed by the custom-officers. Held, that there was no on of the statute. Id.

collector is not bound to take the valuation of goods, supported owner's oath on the entry, as utiable value. Focke v. Lawrence 1852) Fed. Cas. No. 4,894.

re on the invoice the gross value goods is stated, and a deduction of specific packing charges, and t amount is then carried out as arket value of the goods per se, raisement which simply disallows harges, or adds them again to dutiable value, or states that they be added to make market value, an appraisement of the goods per t an addition of charges, and does stify the collector in exacting duty value of the goods increased by nount of such charges. Morris v. lader (C. C. 1887) 33 Fed. 243.

chandise purchased in Bohemia, the empire of Austria-Hungary, ich country the florin was the rd currency, was invoiced to the er at New York, and the values in rix marks and florins; the val-the florin of Austria-Hungary be-ated in the United States consul's cate, annexed to the invoice, as cents, estimated in United States ollars. Held, that the value of the andise in the entry should have estimated by the collector of the f New York in florins of Austria-ry reduced to United States cur-on the basis of 34.5 cents to the as declared by the director of the l States mint, and proclaimed by cretary of the treasury on the 1st nuary previous, and not in rix , at 23.8 cents to the rix mark, al-the total value of the goods in l States money was greater by the process of calculation. In re Mc- (C. C. 1891) 46 Fed. 360.

e oil imported in tins holding from a quart to five gallons, the quan-which when sold here is reckon-ording to the quarts or gallons of rious sizes, without regard to ex-easurement, and which is return-the gauger according to the quan-f the various sizes, though this re exceeds the true measure, by $^1/_{32}$, as testified by the gauger, out $^1/_{12}$, as claimed by the im-, is properly assessed on the quan-returned, in the absence of more testimony to furnish a guide for idation. Giglio v. U. S. (C. C. 91 Fed. 758.

method of calculation prescribed regulations of the Secretary of reasury to be followed by appraisers advancing the invoice value of im-l merchandise is not mandatory, and may be departed from without invalidating an appraisement. Meyer, Ebeling & Co. v. U. S. (C. C. 1905) 140 Fed. 334.

An appraiser, in advancing the invoice value of imported merchandise to raise it to its true market value, did so by totaling the invoice price and disallowing certain discounts to which the importers were entitled, instead of adding a specific sum to the invoice value of each item on the invoice, as required by the customs regulations. Held, that the appraisement was not thereby rendered illegal, and that the importers, if dissatisfied with the findings of the appraiser, should request a reappraisement. Id.

An appraisement of merchandise was void, where the appraiser advanced its value without examining the particular portion of the importation that was advanced, though his advance of a previous importation of like merchandise was sustained on reappraisement and such reappraisement was accepted by the importer without appeal. U. S. v. Beer (C. C. 1905) 142 Fed. 199, 201, affirmed (1906) 150 Fed. 566, 80 C. C. A. 368.

When part of evidence was taken before one general appraiser and part before another, who decided the case later, but by oversight failed to consider evidence taken before the first, this was only an error of procedure, not depriving him of jurisdiction. U. S. v. Chas. M. Taylor's Sons (C. C. 1909) 171 Fed. 152.

In determining which is the component of chief value, the value of each ingredient in the domestic markets of the United States should be the guide. (1881) 17 Op. Atty. Gen. 105.

This and other named sections held not to give importer the right to produce witnesses, etc., before the appraisers. (1886) 18 Op. Atty. Gen. 360.

It is not the intent of Congress that the United States should in any case exact as duties an amount greater than the value of the property imported. (1896) 21 Op. Atty. Gen. 326.

2. —— Reasonable ways and means.— The general regulations of the treasury department of 1884, and the instructions of the secretary of the treasury of June 9, 1885, prescribe, among other things, that a reappraisement shall not "assume the nature of a judicial inquiry," but that the appraisers shall arrive at their conclusions, from their own knowledge as experts, substantially in the same manner as in original appraisements; that no lawyers or custom-house brokers shall be present, and the importer shall be represented by "some one belonging to his house, familiar with the facts," who shall state the facts "concisely, and not argumentatively." Held, that these regulations are proper, and are consistent with the provision that the appraisers, "and every

person who shall act as such," by all reasonable means in their power, shall ascertain and appraise the actual market value and wholesale price in the principal markets of the country from which the goods were imported. Auffmordt v. Hedden (1890) 137 U. S. 310, 11 Sup. Ct. 103, 34 L. Ed. 674.

Where it was the duty of the appraiser, in order to enable him to fix the duty on certain imported merchandise, to inquire into the value thereof, he was entitled to the aid afforded in such inquiry by the production of a true and correct invoice. Hoeninghaus v. U. S. (1899) 19 Sup. Ct. 305, 308, 172 U. S. 622, 43 L. Ed. 576.

An appraising officer, having no knowledge as to the value of certain imported articles, sent samples to the appraiser at the port of New York for information. Held, that this was legal, and that the right so to do or to use any other available means was conferred by authority given appraising officers to "use all reasonable ways and means," in their power in ascertaining the value of merchandise. The Lace House v. U. S. (1905) 141 Fed. 869, 73 C. C. A. 103.

The appraiser, as the final and chief examining officer, has authority to ascertain, by all reasonable ways and means in his power, not only the actual value of imported merchandise but its character and quality as well, and this right of ascertainment carries with it the authority to demand and secure from sugar importers the settlement tests of all importations of sugar. (1900) 23 Op. Atty. Gen. 238.

3. —— **Actual value.**—Merchandise having been erroneously invoiced at an excessive value, the appraiser merely accepted that value as being sufficiently high, without making any effort to ascertain the true value. Held, that the appraisement was therefore invalid. U. S. v. Muller, Maclean & Co., 158 Fed. 405, 85 C. C. A. 515.

Where imported merchandise of a certain character was subject to specific duties at a rate to be regulated by the value thereof, and in no case less than 50 per centum ad valorem, the fact that the importation in question paid such rate did not relieve the appraiser from inquiring into and determining the value of such goods. Hoeninghaus v. U. S. (1899) 19 Sup. Ct. 305, 172 U. S. 622, 43 L. Ed. 576.

Merchandise was entered on a pro forma invoice which erroneously stated its value to be greatly in excess of its real value. On appraisement the appraiser approved the value so stated, because it was found to be sufficiently high, but did not find its real value. Held, that the appraisement was invalid because not in compliance with Customs Administrative Act June 10, 1890, c. 407, § 10, 26 Stat. 136, prescribing that it was the duty of appraisers to find "the actual market value" of i ported merchandise. U. S. v. Mull MacLean & Co. (C. C. 1907) 152 F 575.

Rate of duty on wine imported bottles, each containing more than pint and less than a quart, is control by actual cost of the wine, and not its cost estimated on the supposit that each bottle contained a quart Cavaroc v. Collector (C. C. 1871) F Cas. No. 2,529.

An importer is not estopped fr going below his entry value on any s gle item of his invoice. Yanada Spalding (C. C. 1885) 24 Fed. 21.

The description of merchandise in invoice as contained in "gallon" tins not to be taken as conclusive agai the importers, as fixing the amou contained in the tins for the asse ment of duty. Such descriptions do purport to indicate exactly the amou so contained, and it is the duty of g ernment officers to ascertain as nea as possible the quantity imported. S. v. Zucca & Co. (C. C. 1907) 1 Fed. 172.

4. —— **Market value in general.**— fixing the value of goods a discount cash should be allowed. Arthur Goddard (1877) 96 U. S. 145, 146, L. Ed. 814; Gray v. Lawrence (C. 1853) Fed. Cas. No. 5,722; Godd v. Arthur (C. C. 1876) Fed. Cas. 5,489. But see Riess v. Redfield C. 1859) Fed. Cas. No. 11,821; Le sohn Importing & Trading Co. v. S. (1914) 5 Ct. Cust. App. 204.

The market value of imported goo is to be determined by the general m ket value of goods of the same descr tion, without reference to the fact th the goods cost the particular impor a less amount because of special vantages which he had. In re Cliquo Champagne (1865) 3 Wall. 114, 1 142, 18 L. Ed. 116; Muser v. Mago (1894) 15 Sup. Ct. 77, 155 U. S. 2 39 L. Ed. 135, affirming judgment C. 1889) 41 Fed. 877.

The value with which the apprai is to be familiar is the current mar value or wholesale price of similar ticles in the principal markets of t country from which the merchandi has been imported.—Erhardt v. Bal (1906) 150 Fed. 529, 530, 80 C. C. 271.

The lowest cash price given by a m chant in a regular proposition for wi for export in quantities will fix a m ket value for the purpose of invoic wines in substance the same as th offered. In re Three Thousand O Hundred and Nine Cases of Cha pagne (D. C. 1867) Fed. Cas. 14,012.

The "actual market value" of wi at the "place" where they were proc ed or manufactured determined in case of wines dosed and prepared export. Id.

e there was no evidence that ds are ever sold in the open of the country of exportation han the price including the com- in controversy, the require- at this should be added to make value did not deprive the im- of any substantial right. The nent, accordingly, did not con- duress. Batten & Co. v. U. S. 5 Ct. Cust. App. 447.

ote on "Market value" under §

- Market value as affected by xes.—In ascertaining the mar- ue and wholesale price in Ger- f goods imported therefrom, it er to include the amount of the d "bonification of tax," which fect, a drawback or remission of y the German government on here manufactured in bond, and wn for export, and on which the uld have been payable if with- for consumption or sale in Ger- U. S. v. Passavant (1898) 18 . 219, 169 U. S. 16, 42 L. Ed.

ddition to the invoice value of trary and fictitious charge for duty at the place of exporta- erroneous. Riess v. Redfield 1859) Fed. Cas. No. 11,821.

French general internal revenue alcohol, which is not collected s exported, is a part of the du- value of such goods when pur- in the markets of France under visions of Customs Administra- 1890, but local taxes, designat- "droit de ville" and "octroi," vary with the locality, cannot y be considered as elements of value.—Rheinstrom v. U. S. (C.) 118 Fed. 303.

in regard to merchandise im- from France, that its "market does not include the amount of internal revenue imposts of that known as the "octroi tax" and oit de ville," which are not gen- their application, but vary with lity, and which are not collected nerchandise is exported. U. S. . Downing & Co. (C. C. 1904) d. 653, judgment affirmed Same llot & Co. (1905) 139 Fed. 1, C. A. 505, and Same v. R. F. g & Co. (1905) 139 Fed. 3, . A. 507.

provision that appraisers shall in "the actual market value holesale price of merchandise in the principal markets of ntry whence the same has been d," contemplates some value ing generally in the foreign coun- d not some varying local value, es not require that there should ded in the market value of goods d from France certain special known as "droit de ville" and ," which are remitted on expor- tation, but are not uniformly imposed throughout the country, nor uniform in amount. Id.

How actual market value determined in the case of wines sold by agents here for delivery at a certain sum, duty free. In re Twelve Hundred and Nine Quarter Casks, etc., of Wine (D. C. 1868) Fed. Cas. No. 14,279.

6. —— Nondutiable buying commissions.—A commission paid a commissionaire for receiving goods, comparing with samples, procuring cases, packing and shipping these goods, is a commission simply and as such is nondutiable. Stein v. U. S. (1910) 1 Ct. Cust. App. 36.

Reaffirming the doctrine that an item in an importer's invoice showing he had paid a commission to a commissionaire had been included there under duress, it is held that the figures on entered valuation certified to the appraiser by the collector wherein this payment was included did not constitute an opinion, judgment, and voluntary act of the importer, but something entirely different; the importer has been without a day in court when by a penalty threatened he is compelled to substitute the judgment of another for his own in declaring the value of his goods, and he is irremediably denied a legal right. Stein v. U. S. (1911) 1 Ct. Cust. App. 478.

Commissions element of value of goods. Muser v. Magone (1894) 15 Sup. Ct. 77, 79, 82, 155 U. S. 240, 39 L. Ed. 135; U. S. v. Kenworthy (1895) 68 Fed. 904, 907, 16 C. C. A. 61.

There is no authority for adding a commission paid by the importer to the market value. U. S. v. Herrman (1898) 91 Fed. 116, 33 C. C. A. 400, reversing judgment Hermann v. U. S. (C. C. 1897) 84 Fed. 151.

A so-called converters' commission was contended to have been improperly included by the appraising officers in the dutiable value of merchandise. Held, that the appraisement might be re-examined, and that evidence was admissible to show the nature of such commission. N. Erlanger, Blumgart & Co. v. U. S. (C. C. 1907) 152 Fed. 576, judgment affirmed (1907) 154 Fed. 949, 83 C. C. A. 463.

Merchandise was bought from so-called converters, who, after receiving the order, had the goods manufactured, dyed, and finished, and forwarded them, invoicing them at a certain price plus a commission. Held, that the converters were in fact the vendors of the merchandise, and that the amount of the commission should be included in the dutiable value of the goods. Id.

Leaving aside technical questions and treating the dutiability of commissions on its merits, regarding the substance rather than the form, it is clear it was not the intention of congress to impose a duty upon commis-

sions paid in connection with the purchase of goods abroad. When a payment is a commission proper must depend on the facts in the particular case. U. S. v. Bauer (1912) 3 Ct. Cust. App. 343.

The shippers were purchasing agents who bought the merchandise in foreign markets on cabled orders. The commissions charged for this service and included in the invoices were true nondutiable purchasing commissions in fact and in law. Vandiver v. U. S. (1915) 6 Ct. Cust. App. 80.

Commissions on imported merchandise, which do not grow out of costs, charges, and expenses, form no part of the dutiable value of merchandise under that act. (1890) 19 Op. Atty. Gen. 602.

7. —— **Time of exportation.**—The test of chief value is to be applied as values may be at the time of importation. Evidence that goods are identical with some previously imported is unpersuasive that the relative value of their components remains the same. U. S. v. Leerburger (1908) 160 Fed. 651, 87 C. C. A. 547, affirming judgment Leerburger v. U. S. (C. C. 1907) 155 Fed. 146.

The actual value of the articles at the time and place of shipment will control in fixing the duty. Davidson v. Draper (C. C. 1867) Fed. Cas. No. 3,604.

Sugar should be appraised at market value on the date of actual loading, and not at the date of sailing. U. S. v. McKean (D. C. 1857) Fed. Cas. No. 15,681a.

Where merchandise was shipped on September 28, but was entered at the port of entry in the United States under an invoice dated and certified at the port of shipment October 1, the date of the invoice controls, and the proportion between the standard of values in the two countries as fixed by the United States Treasury Department for the quarter beginning October 1 governs in computing the actual money value of the imported goods. Masson v. U. S. (1911) 1 Ct. Cust. App. 149.

8. —— **Principal markets.**—The provision that dutiable value shall be the market value "in usual wholesale quantities, at the time of exportation to the United States, in the principal markets of the country from whence imported," refers to the "principal market" where imported merchandise is bought and imported to the United States in wholesale quantities, rather than to markets where there may have been limited purchases. U. S. v. Haviland & Co. (C. C. 1909) 167 Fed. 414, judgment affirmed (1910) 177 Fed. 175, 100 C. C. A. 637, writ of certiorari denied (1910) 30 Sup. Ct. 573, 216 U. S. 618, 54 L. Ed. 640.

The entire output of a china manufacturer in Limoges was exported d rectly to the United States, except small amount of special classes, di posed of in Paris to European trad the wholesale business in Paris bei less than 4 per cent. of said export tions to the United States. Held, th for the goods shipped to Ameri Limoges, and not Paris, was the "pri cipal market." Id.

The evidence in a reappraiseme case, relative to china exported fr Limoges, was to the effect that per cent. of the entire output of t factory was exported directly to t United States, and that there was open market for such china at moges; but it showed the values ests lished at Paris, where the remaini 20 per cent. of the Limoges output w disposed of. This latter value, ho ever, was affected somewhat by t fact that the Paris house sold at bo wholesale and retail, and that t goods handled there differed materia from those sold at Limoges for expo to the United States. Held, that the was no evidence, that Paris was t principal market for the china th exported. Id.

The defendant imported into Alas from British Columbia certain quan ties of coke which it valued at $3. per ton, and upon which it paid du at 20 per cent. ad valorem. Subs quently the United States reapprais the coke, raised the value to $5 p ton, and brought this suit to recov the sum alleged to be due on the u dervaluation. Held, the value of t coke must be fixed in the princi markets and not at the ovens whe produced. U. S. v. Brown-Alaska C (1910) 4 Alaska, 89.

Varnish, of which a component pa of chief value is "distilled spirit which had been produced in the Un ed States and exported to Cana into warehouse, and, after being co pounded into varnish, is returned the United States, should be apprais according to the general Canadi markets, and not according to Can dian markets for articles in bo (1884) 18 Op. Atty. Gen. 43.

Reconsideration of former opini (18 Op. 43) in regard to the duty up certain shellac varnish imported fr Canada, and advised that the war house value in Canada is to be tak as a basis for computing the du thereon. (1885) 18 Op. Atty. Ge 109.

9. —— **Country from which impo ed.**—Certain goods were shipped Liverpool, landed at Bourdeaux, a when brought thence to the Unit States, were labeled as having be imported from Bourdeaux, invoiced a less sum than the actual cost there at Bourdeaux, in order to evade t duties. The information thus exclu ing all question of the continuity

oyage from Liverpool, the goods restored to the claimants, upon that the price in the invoice was en price at Bourdeaux, although rice at Liverpool was then much . U. S. v. One Hundred and Crates (1818) 16 U. S. (3 .) 232, 4 L. Ed. 377.

word "country" is used with ref- to state or nation, and an arti- ported from India is to be ap- d according to the value of the pal markets of British dominion, ot at Halifax, from which place brought into the United States. v. Peaslee (1855) 59 U. S. (18 521, 15 L. Ed. 474.

value of articles imported is to timated by their value at the pal markets of the country from they are exported at the time portation, without reference to ountry of their production. Id.

te and colored wools were sold er in the Bagdad market at one without any distinction as to col- is being in accord with immemo- practice in that market. Held, oth kinds of wool should be ap- d at the same price, in accord- with the manner of purchase, ut regard to any difference in val- hich may attach to each kind in other country. G. Gulbenkian & . U. S. (1907) 153 Fed. 858, 83 A. 40.

Decisions under former statutes. Aldridge v. Williams (1845) 44 (3 How.) 9, 11 L. Ed. 469; Rank- Hoyt (1846) 45 U. S. (4 How.) 11 L. Ed. 996; Greely v. Thomp- 1850) 51 U. S. (10 How.) 225, 13 . 397; Maxwell v. Griswold (1850) ow. 242, 254, 13 L. Ed. 405; Bart- . Kane (1853) 16 How. 263, 271, Ed. 931; Stairs v. Peaslee (1855) ow. 521, 525, 527, 15 L. Ed. 474; e v. Redfield (1859) 23 How. 170, 16 L. Ed. 418; Iasigi v. Collector 3) 68 U. S. (1 Wall.) 375, 17 L. 386; Hilton v. Merritt (1884) 3 Ct. 548, 110 U. S. 97, 28 L. Ed. 83; Oelbermann v. Merritt (1887) 123 U. S. 356, 8 Sup. Ct. 151, 31 L. Ed. 164; Mustin v. Cadwalader (1887) 123 U. S. 369, 8 Sup. Ct. 158, 31 L. Ed. 169; Auffmordt v. Hedden (1890) 137 U. S. 310, 11 Sup. Ct. 103, 34 L. Ed. 674 (affirming [C. C. 1886] 30 Fed. 360); Earnshaw v. U. S. (1892) 13 Sup. Ct. 14, 15, 146 U. S. 60, 36 L. Ed. 887; U. S. v. Sixteen Packages (C. C. 1819) Fed. Cas. No. 16,303; Griswold v. Lawrence (C. C. 1850) Fed. Cas. No. 5,837; Focke v. Lawrence (C. C. 1852) Fed. Cas. No. 4,894; Pierson v. Same (C. C. 1852) Fed. Cas. No. 11,158; Same v. Maxwell (C. C. 1852) Fed. Cas. No. 11,159; Barker v. Lawrence (C. C. 1852) Fed. Cas. No. 991; Wilson v. Same (C. C. 1852) Fed. Cas. No. 17,-816; Barnard v. Morton (C. C. 1853) Fed. Cas. No. 1,005; Goddard v. Maxwell (C. C. 1853) Fed. Cas. No. 5,492; Morlot v. Lawrence (C. C. 1853) Fed. Cas. No. 9,816; Morris v. Maxwell (C. C. 1853) Fed. Cas. No. 9,834; Maillard v. Lawrence (C. C. 1855) Fed. Cas. No. 8,972; Crowley v. Maxwell (C. C. 1856) Fed. Cas. No. 3,449; Harriman v. Same (C. C. 1856) Fed. Cas. No. 6,105; Forman v. Peaslee (C. C. 1857) Fed. Cas. No. 4,941; Bailey v. Goodrich (C. C. 1867) Fed. Cas. No. 735; Cobb v. Hamlin (C. C. 1868) Fed. Cas. No. 2,922; Morris v. Cadwalader (C. C. 1887) 33 Fed. 243; U. S. v. Gabriel (C. C. 1888) 36 Fed. 888; Muser v. Magone (C. C. 1889) 41 Fed. 877; U. S. v. Fourteen Packages of Pins (D. C. 1832) Fed. Cas. No. 15,151.

Cited without definite application, Ballard v. Thomas (1856) 19 How. 382, 383, 15 L. Ed. 690; Belcher v. Lawrason (1858) 21 How. 251, 255, 16 L. Ed. 123; Fennerstein's Champagne (1865) 3 Wall. 145, 147, 18 L. Ed. 121; U. S. v. Curnen & Stiner (1906) 146 Fed. 45, 76 C. C. A. 503; In re Schefer (C. C. 1892) 49 Fed. 216, 218; N. Erlanger, Blumgart & Co. v. U. S. (C. C. 1907) 152 Fed. 576, affirmed (1907) 154 Fed. 949, 83 C. C. A. 463.

92. (Act Oct. 3, 1913, c. 16, § III, L.) Ascertainment of value. When the actual market value, as defined by law, of any arti- of imported merchandise, wholly or partly manufactured and ect to an ad valorem duty, or to a duty based in whole or in on value, can not be ascertained to the satisfaction of the ap- sing officer, such officer shall use all available means in his er to ascertain the cost of production of such merchandise at time of exportation to the United States, and at the place of ufacture, such cost of production to include the cost of mate- and of fabrication, and all general expenses to be estimated at less than 10 per centum, covering each and every outlay of tsoever nature incident to such production, together with the ense of preparing and putting up such merchandise ready for ment, and an addition of not less than 8 nor more than 50 per um upon the total cost as thus ascertained; and in no case l such merchandise be appraised upon original appraisal or re- raisement at less than the total cost of production as thus as-

certained. The actual market value or wholesale price, as defi by law, of any imported merchandise which is consigned for sale the United States, or which is sold for exportation to the Uni States, and which is not actually sold or freely offered for sale usual wholesale quantities in the open market of the country exportation to all purchasers, shall not in any case be appraised less than the wholesale price at which such or similar imported m chandise is actually sold or freely offered for sale in usual who sale quantities in the United States in the open market, due allo ance by deduction being made for estimated duties thereon, cost transportation, insurance and other necessary expenses from place of shipment to the place of delivery, and a commission exceeding 6 per centum, if any has been paid or contracted to paid on consigned goods, or profits not to exceed 8 per centum a a reasonable allowance for general expenses (not to exceed 8 centum) on purchased goods. (38 Stat. 185.)

See notes to subdivisions B and K of said section, ante, §§ 5519, 5591.

These provisions, as originally enacted in the Customs Administrative of June 10, 1890, c. 407, § 11, 26 Stat. 136, were amended by changing language and by adding at the end of the section a provision making it "l ful for appraising officers in determining the dutiable value of such m chandise to take into consideration the wholesale price at which such or si lar merchandise is sold or offered for sale in the United States, due all ance being made for estimated duties thereon, the cost of transportation, ins ance and other necessary expenses from the place of shipment to the Uni States, and a reasonable commission if any has been paid, not exceeding per centum," by Act July 24, 1897, c. 11, § 32, 30 Stat. 211. The provisi of said section 11, as further amended by the Payne-Aldrich Tariff Act Aug. 5, 1909, c. 6, § 28, 36 Stat. 97, were substantially re-enacted as provisi of this act.

Section 11, as originally enacted in the Customs Administrative Act, s section 19 of that act, providing for assessment of ad valorem duties, w substitutes for R. S. § 2907, repealed by section 29 of that act. Said section as amended by the Payne-Aldrich Tariff Act, was substantially re-enacted the same language by section III, R, of this act, post, § 5599.

Notes of Decisions

Cost of production, in general.—This section applies only to articles made in a foreign country, and not sold there, and does not apply to merchandise manufactured for the importer abroad, where like merchandise may be bought by any one at the same place of manufacture. Muser v. Magone (C. C. 1889) 41 Fed. 877.

In the absence of proof of sales or offers to sell, market value may be ascertained by cost of raw material at the time and place of manufacture, with the cost of manufacture and a manufacturer's profit. In re Six Cases of Silk Ribbons (D. C. 1869) Fed. Cas. No. 12,914.

The cost of production, with the addition of a manufacturer's profit, is admissible as tending to show market value, when no evidence of sales can be given. U. S. v. Sixteen Cases of Silk Ribbons (D. C. 1870) Fed. Cas. No. 16,301.

Where there was no evidence of any concealment or fraud in the importation or of the absence of the ordinary means of ascertaining the foreign market value of the goods, an inquiry as to the contract price for the future delivery of goods at a store in New York free of all charges was prima facie incompetent, and in excess of the appraiso power. U. S. v. Doherty (D. C. 18 27 Fed. 730, 731.

Wholesale price.—It is not unfair the importer to employ, as a basis computing what was the true value the commodity on export abroad, wholesale selling price of a commod fixed by himself, and the very langu of the statute authorizes this to be do Beer v. U. S. (1911) 1 Ct. Cust. A 484.

That part of the section relating the proper ascertainment of dutia value by an inquiry as to the sale pr of the commodity in the United Sta is a definition of the powers gran appraising officers in appraisement p ceedings, and there is nothing conta ed there to limit the scope of that p vision to cases where no foreign mar value appears; it seems rather in f intended to aid appraising officers ascertain true foreign market valu Id.

Charges, expenses, and commissio—The evidence showed that manuf turers were accustomed to sell in foreign market to others than co mission men at a fixed price, includ in the price an item which they cal

nission." The item so charged he discount which the manufac- were accustomed to allow com- n merchants who purchased di- rom them. There was evidence in buying goods of a concern was a manufacturer and also mission house, the price of the purchased of them was the same those of their own manufacture or similar goods manufactured hers which they were selling on ission. Held, that the custom- officers, in appraising the goods, l properly include as a part of tual manufacturing price the en- um paid by the importers to the ission men or the manufacturers, rt of which was properly charge- s a commission. U. S. v. Herr- (1898) 91 Fed. 116, 33 C. C. A. reversing judgment Hermann v. (C. C. 1897) 84 Fed. 151.

board of general appraisers, in deducting from the price of merchandise when received in the United States all expenses, in order to determine the wholesale price after exportation in the foreign market, proceeded properly, it appearing that they were unable to find an open market price. Comacho v. U. S. (C. C. 1902) 115 Fed. 191.

In the absence of fraud or concealment in the importation, the appraiser can only inquire as to the contract price of goods for future delivery in this country, free of all charges, in the event of the ordinary means of ascertaining the market value of the goods in the country of exportation not being available. U. S. v. Doherty (D. C. 1886) 27 Fed. 730.

Cited without definite application, Cramer v. Arthur (1880) 102 U. S. 612, 618, 26 L. Ed. 259; Robertson v. Downing (1888) 8 Sup. Ct. 1328, 127 U. S. 607, 32 L. Ed. 269.

93. (Act June 10, 1890, c. 407, § 12, as amended, Act May 27, 1908, c. 205, § 3, and Act Aug. 5, 1909, c. 6, § 28.) General appraisers; appointment, tenure, salary, and powers.

ere shall be appointed by the President, by and with the ad- and consent of the Senate, nine general appraisers of mer- dise. Not more than five of such general appraisers shall be inted from the same political party. They shall not be engaged y other business, avocation, or employment. That the office of general appraisers shall be at the port of New York, and three em shall be on duty at that port daily as a board of general ap- ers.

l of the general appraisers of merchandise heretofore or hereafter inted under the authority of said Act shall hold their office during behavior, but may, after due hearing, be removed by the Presi- for the following causes, and no other: Neglect of duty, mal- nce in office, or inefficiency.

at hereafter the salary of each of the general appraisers of mer- dise shall be at the rate of nine thousand dollars per annum.

at the boards of general appraisers and the members thereof have and possess all the powers of a circuit court of the United s in preserving order, compelling the attendance of witnesses, the production of evidence, and in punishing for contempt.

l notices in writing to collectors of dissatisfaction of any decision of, as to the rate or amount of duties chargeable upon imported handise, including all dutiable costs and charges, and as to all and exactions of whatever character (except duties on tonnage), the invoice and all papers and exhibits, shall be forwarded to the d of nine general appraisers of merchandise at New York to be ule thereof assigned for hearing or determination, or both. The ident of the United States shall designate one of the board of general appraisers of merchandise as president of said board and rs in order to act in his absence. Said general appraisers of mer- dise shall be divided into three boards of three members each, e denominated respectively Board 1, Board 2, and Board 3. The dent of the board shall assign three general appraisers to each of boards and shall designate one member of each of said boards hairman thereof, and such assignment or designation may be by changed from time to time, and he may assign or designate all ds of three general appraisers where it is now or heretofore was ided by law that such might be assigned or designated by the

Secretary of the Treasury. The president of the board shall competent to sit as a member of any board, or assign one or t other members thereto, in the absence or inability of any one or t members of such board. Each of the boards of three general praisers, or a majority thereof, shall have full power to hear and termine all cases and questions arising therein or assigned there and the general board of nine general appraisers, each of the boa of three general appraisers, and each of the general appraisers merchandise, shall have all the jurisdiction and powers and proc as now, heretofore, and herein provided. The said board of n general appraisers shall have power to establish from time to ti such rules of evidence, practice and procedure, not inconsistent w the statutes, as may be deemed necessary for the conduct and u formity of its proceedings and decisions and the proceedings a decisions of the boards of three thereof; and for the production, ca and custody of samples and records of said board. The president the board shall have control of the fiscal affairs and the clerical fo of the board, make all recommendations for appointment, pron tion, and otherwise affecting said clerical force; he may at any ti before trial under the rules of said board assign or reassign any c for hearing, determination, or both, and shall designate a general praiser or a board of general appraisers, and, if necessary, a cl thereto, to proceed to any port within the jurisdiction of the Uni States for the purpose of hearing, or determining if authorized law, causes assigned for hearing at such port, and shall cause to prepared and duly promulgated dockets therefor. No member of a of said boards shall sit to hear or decide any case on appeal in decision of which he may have previously participated. The boa of three general appraisers, or a majority of them, who decided case, may, upon motion of either party made within thirty days n after their decision, grant a rehearing or retrial of said case when their opinion the ends of justice may require it. (26 Stat. 136. Stat. 406. 36 Stat. 98.)

This section as originally enacted in the Customs Administrative Act of J 10, 1890, c. 407, § 12, was as follows:

"There shall be appointed by the President, by and with the advice and c sent of the Senate, nine general appraisers of merchandise, each of wh shall receive a salary of seven thousand dollars a year. Not more than of such general appraisers shall be appointed from the same political pa They shall not be engaged in any other business, avocation, or employme and may be removed from office at any time by the President for inefficien neglect of duty, or malfeasance in office. They shall be employed at such p and within such territorial limits, as the Secretary of the Treasury n from time to time prescribe, and are hereby authorized to exercise the p ers, and duties devolved upon them by this act and to exercise, under general direction of the Secretary of the Treasury, such other supervis over appraisements and classifications, for duty, of imported merchandise may be needful to secure lawful and uniform appraisements and classificati at the several ports. Three of the general appraisers shall be on duty a board of general appraisers daily (except Sunday and legal holidays) at port of New York, during the business hours prescribed by the Secretary the Treasury, at which port a place for samples shall be provided, under s rules and regulations as the Secretary of the Treasury may from time to ti prescribe, which shall include rules as to the classes of articles to be posited, the time of their retention, and as to their disposition, which place samples shall be under the immediate control and direction of the board general appraisers on duty at said port."

Said Customs Administrative Act was amended by Act May 27, 1908, c. 2 cited above, by adding thereto, after section 30 thereof, a new section numbe as section 31 thereof, to read as follows:

"Sec. 31. That all of the general appraisers of merchandise heretofore hereafter appointed under the authority of said act shall hold their office dur good behavior, but may, after due hearing be removed by the President for following causes, and no other: Neglect of duty, malfeasance in office, or in ficiency.

"That hereafter the salary of each of the general appraisers of merchandise shall be at the rate of nine thousand dollars per annum.

"That the said boards of general appraisers and the members thereof shall have and possess all the powers of a circuit court of the United States in preserving order, compelling the attendance of witnesses, and the production of evidence, and in punishing for contempt."

These sections were combined and amended to read as set forth here by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, cited above.

This section was saved from repeal by the Underwood Tariff Act of Oct. 3, 1913, c. 16, by a proviso annexed to section IV, S, of that act, ante, § 5316.

A similar saving from repeal was made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 41, 36 Stat. 118.

Sections 13 and 14 of the Customs Administrative Act, as amended, were superseded by section III, M, N, of the Underwood Tariff Act, post, §§ 5594, 5595.

Provisions for the review of decisions of Boards of General Appraisers by the Circuit Courts, made by section 15 of the Customs Administrative Act of June 10, 1890, c. 407, were superseded by provisions for such review by the Court of Customs Appeals created by section 29 added to that act by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6. The provisions of said new section 29 were incorporated in and superseded by chapter 8 of the Judicial Code of March 3, 1911, set forth ante, §§ 1179–1190, and the sections next following section 15, originally sections 16, 17, 18, as amended, were designated respectively sections 15, 16, 17, in the Payne-Aldrich Tariff Act, but were re-enacted in said act without other change. These three sections were substantially re-enacted as provisions of section III, O, P, Q, of the Underwood Tariff Act, set forth post, §§ 5596–5598.

Previous provisions for appointment of general appraisers were made by R. S. § 2608, repealed by section 29 of the Customs Administrative Act, 26 Stat. 141.

Notes of Decisions

ature of office of general apprais-
-The general appraisers are offi- of the Treasury Department. 94) 21 Op. Atty. Gen. 85.

ppointment and removal of ap-sers.—Where the record shows the president deemed it his duty make changes in the board of ap-isers, the court must assume that changes were such as prescribed law, and that the president was led by the statute prescribing the unds on which the officer might removed. Shurtleff v. U. S. (1901) Ct. Cl. 34, affirmed (1903) 23 Sup. 535, 189 U. S. 311, 47 L. Ed. 828.

he method of ascertaining the ses for removal is within the dis-tion of the President, and no legal ility attaches to the government his failure to assign the particular tutory cause for which he removes appraiser. Id.

general appraiser sought to be re-ved from office by the President for of the causes specified as grounds such removal, is entitled to notice hearing. Id.

he general power of the President remove a federal official for any son he may think sufficient, even ugh such official was appointed by with the advice and consent of Senate, is not restricted, as re-ds general appraisers of merchan-e, to a removal for "inefficiency, lect of duty, or malfeasance in of-." Id.

he removal of a general appraiser the President without notice or opportunity to defend will be presumed to have been made for other causes than those specified as grounds for his removal. Id.

Appraisement made invalid by removal of appraiser and substitution of another. Greely v. Thompson (1850) 10 How. 225, 240, 13 L. Ed. 397.

Proper appointment of qualified appraiser presumed. Erhardt v. Ballin (1906) 150 Fed. 529, 80 C. C. A. 271.

There is no incompatibility between the office of general appraiser and the special service of expert for which such officer was detailed, the latter service being a mere employment without compensation, and not an office. (1902) 24 Op. Atty. Gen. 12.

The provision that a general appraiser "shall not be engaged in any other business, avocation, or employment," is not applicable to the case of a general appraiser detailed by the Secretary of the Treasury, without additional compensation, as "an expert to represent the United States in the international commission for the conversion of the present Chinese tariff into specific rates." That provision, in connection with other provisions of the law, means that such officer can not hold another office under the government or be engaged in other incompatible government service. Id.

Negligence or malfeasance.—If inefficiency, neglect of duty, or malfeasance in office is charged against a general appraiser, it is the duty of the Secretary of the Treasury to in-

vestigate the matter. (1894) 21 Op. Atty. Gen. 85.

Rehearings.—The denial by the board of a rehearing to permit the introduction of the record of another case involving similar or identical merchandise, this motion having been denied "for the present" at the hearing of the cause, and no further mention of it appearing in the record until after the publication of the board's decision, the record in this court showing with reasonable certainty the character and uses of the merchandise at bar, is not an abuse of the discretion vested in it by this section, permitting it to grant a rehearing "when in their opinion the ends of justice may require it," and rule 34 of its own rules of procedure, permitting the introduction of such record "within the discretion of the board." Bache & Co. v. U. S. (1916) 6 Ct. Cust. App. 507.

Cited without definite application, (1877) 15 Op. Atty. Gen. 260.

§ 5594. (Act Oct. 3, 1913, c. 16, § III, M.) Revision of reports of assistant appraisers; reappraisement; appeal to board of general appraisers.

M. The appraiser shall revise and correct the reports of the assistant appraisers as he may judge proper, and the appraiser, or, at ports where there is no appraiser, the person acting as such, shall report to the collector his decision as to the value of the merchandise appraised. At ports where there is no appraiser the certificate of the customs officer to whom is committed the estimating and collection of duties, of the dutiable value of any merchandise required to be appraised, shall be deemed and taken to be the appraisement of such merchandise. If the collector shall deem the appraisement of any imported merchandise too low, he may, within sixty days thereafter, appeal to reappraisement, which shall be made by one of the general appraisers, or if the importer, owner, agent, or consignee of such merchandise shall deem the appraisement thereof too high, and shall have complied with the requirements of law with respect to the entry and appraisement of merchandise, he may within ten days thereafter appeal for reappraisement by giving notice thereof to the collector in writing. Such appeal shall be deemed to be finally abandoned and waived unless within two days from the date of filing thereof the person who filed such notice shall deposit with the collector of customs a fee of $1 for each entry. Such fee shall be deposited and accounted for as miscellaneous receipts, and in case the appeal in connection with which such fee was deposited shall be finally sustained, in whole or in part, such fee shall be refunded to the importer, with the duties found to be collected in excess, from the appropriation for the refund to importers of excess of deposits. The decision of the general appraiser in cases of reappraisement shall be final and conclusive as to the dutiable value of such merchandise against all parties interested therein, unless the importer, owner, consignee, or agent of the merchandise shall deem the reappraisement of the merchandise too high, and shall, within five days thereafter, give notice to the collector, in writing, of an appeal, or unless the collector shall deem the reappraisement of the merchandise too low, and shall within ten days thereafter appeal for re-appraisement; in either case the collector shall transmit the invoice and all the papers appertaining thereto to the board of nine general appraisers, to be by rule thereof duly assigned for determination. In such cases the general appraiser and boards of general appraisers shall proceed by all reasonable ways and means in their power to ascertain, estimate, and determine the dutiable value of the imported merchandise, and in so doing may exercise both judicial and inquisitorial functions. In such cases the general appraisers and the Boards of General Appraisers shall give reasonable notice to the importer and the proper representative of the Government of the time and place of each and every hearing at which the parties or their attorneys shall have opportunity to introduce evidence and to hear and cross-examine the

itnesses for the other party, and to inspect all samples and all docu-entary evidence or other papers offered. Affidavits of persons whose tendance can not be procured may be admitted in the discretion of e general appraiser or Board of General Appraisers. The decision the appraiser, or the person acting as such (in case where no ob-ction is made thereto, either by the collector or by the importer, vner, consignee, or agent), or the single general appraiser in case no appeal, or of the board of three general appraisers, in all re-praisement cases, shall be final and conclusive against all parties d shall not be subject to review in any manner for any cause in y tribunal or court, and the collector or the person acting as such all ascertain, fix, and liquidate the rate and amount of the duties be paid on such merchandise, and the dutiable costs and charges ereon, according to law; and no reappraisement or re-reappraise-ent shall be considered invalid because of the absence of the mer-andise or samples thereof before the officer or officers making the ne, where no party in interest had demanded the inspection of ch merchandise or samples, and where the merchandise or samples re reasonably accessible for inspection. (38 Stat. 186.)

This paragraph and the eight paragraphs next following were subdivisions of section III of the Underwood Tariff Act, cited above.

See notes to subdivision B of said section, ante, § 5519.

These provisions were substituted for provisions of the same nature made by the Customs Administrative Act of June 10, 1890, c. 407, § 13, 26 Stat. 136, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 99.

Provisions as to the effect of the appraiser's certificate, made by R. S. § 2950, were superseded by these provisions.

Requirements similar to those of this section as to the deposit of a fee of $1 on appeal for reappraisement were made by article XI of the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Provisions similar to some extent to those of section 13 of said Customs Administrative Act of 1890 were made by R. S. §§ 2929, 2930, repealed by section 29 of that Act.

See notes to section 12 of said Customs Administrative Act, as amended, ante, § 5593.

Notes of Decisions

Smuggled goods.
Historical.
Notice, etc.
Presumptions.
Report of appraiser.
Conclusiveness of appraisal.
Reappraisement, in general.
— Assignment for determination.
— Examination of merchandise.
— Inspection of samples.
— Conclusiveness.
Decisions under earlier statutes.
Liquidation by collector.

Smuggled goods.—When property ect to forfeiture for smuggling or ate offenses is seized, the ap-ement should be in accordance section 5777, post, and not under section. (1903) 24 Op. Atty. 583; (1906) 25 Op. Atty. Gen.

Historical.—As to early history of lation, see Davies v. Miller (1889) p. Ct. 560, 130 U. S. 284, 32 L. 932.

Notice, etc.—Where appraisers fixed a time for a hearing, and notice thereof to the parties in-ted, the refusal to postpone the ng at the request of one of the parties is within their discretion, and the court will not interfere. U. S. v. Earnshaw (D. C. 1887) 30 Fed. 672.

4. Presumptions.—In the absence of evidence to the contrary, it will be presumed that an appraisement by a local appraiser was in conformity with law and was valid. U. S. v. Curnen & Stiner (1906) 146 Fed. 45, 76 C. C. A. 503.

5. Report of appraiser.—The appraiser may amend his report. Hilton v. Merritt (1884) 3 Sup. Ct. 548, 555, 110 U. S. 97, 28 L. Ed. 83, holding appraisal to be conclusive.

It is intended that the appraisement should be reduced to writing. The certificate of the appraising officer is the legal evidence of appraisement, and if it is not made the appraisement is illegal. The Lace House v. U. S. (1905) 141 Fed. 869, 73 C. C. A. 103.

The importers entered the goods upon affidavit and statement in the form of an invoice, giving bond as required by law. The collector sent this pro forma invoice to the appraiser, and upon the report of the assistant appraiser there appeared the words "Ap-

proved, E. S. Fowler, appraiser." Later the importers filed a consular invoice to cancel their bond, and in an accompanying verified statement asserted the incorrectness of the pro forma invoice, but made no application for reappraisement. The entry was liquidated on the basis of the value as given in the pro forma invoice. Held, the indorsement of "approved" by the appraiser shows a compliance with the requirement that he should ascertain, estimate, and appraise the actual market value of the merchandise and make a report thereon; furthermore, to hold thus is in accord with the regulations and practice in respect of pro forma invoices. U. S. v. Frank & Lambert (1911) 2 Ct. Cust. App. 239.

The mere citation to a former decision by the board by the appraiser in his report to the collector is not sufficient to identify the merchandise in the two cases. National Hat Pin Co. v. U. S. (1914) 5 Ct. Cust. App. 435. See, also, U. S. v. Eytinge (1913) 4 Ct. Cust. App. 266.

6. Conclusiveness of appraisal.—Appraisement conclusive as to dutiable value of goods. Bartlett v. Kane (1853) 16 How. 263, 271, 14 L. Ed. 931; Belcher v. Linn (1860) 24 How. 508, 522, 16 L. Ed. 754; Iasigi v. The Collector (1863) 1 Wall. 375, 384, 17 L. Ed. 686; Hilton v. Merritt (1884) 3 Sup. Ct. 548, 551, 110 U. S. 97, 28 L. Ed. 83; Oelbermann v. Merritt (1887) 8 Sup. Ct. 151, 154, 123 U. S. 356, 31 L. Ed. 164; Huffmordt v. Hedden (1890) 11 Sup. Ct. 103, 106, 107, 137 U. S. 310, 34 L. Ed. 674; U. S. v. Kenworthy (1895) 68 Fed. 904, 905, 908, 16 C. C. A. 61; Tappan v. U. S. (C. C. 1822) Fed. Cas. No. 13,749; Stewart v. Merritt (C. C. 1880) 2 Fed. 531, 533; Yanada v. Spalding (C. C. 1885) 24 Fed. 21; U. S. v. Leng (D. C. 1883) 18 Fed. 15, 19; U. S. v. Brown-Alaska Co. (1910) 4 Alaska, 89.

Where the importers did not avail themselves of the means pointed out by this section for the correction of an error in the appraisement of duties, the collection of duties according to the appraisement cannot be held illegal since the collector was bound to proceed thereon if the appraisement remained unquestioned. Schoenfeld v. Hendricks (1894) 14 Sup. Ct. 754, 755, 152 U. S. 691, 38 L. Ed. 601.

The evidence of the decision of appraisers is their official returns, and, if they acted without fraud and within their powers, their decision cannot be impeached by requiring them to disclose the reason for their conclusions, or by evidence of statements made by them. Muser v. Magone (1894) 15 Sup. Ct. 77, 82, 155 U. S. 240, 39 L. Ed. 135, affirming judgment (C. C. 1889) 41 Fed. 877.

Alleged error of the appraiser or collector, in that he has proceeded on a wrong principle, as by including in the appraisement charges forming no part of dutiable value, may be attacked by protest, and reviewed by the board of general appraisers. U. S. v. Passavant (1898) 18 Sup. Ct. 219, 169 U. S. 16, 42 L. Ed. 644.

While, as a general rule, the valuation of appraisers is conclusive on all parties, the appraisement may be impeached if the appraiser or collector proceeded on a wrong principle, contrary to law, or transcended the power conferred by statute, or did not comply therewith. U. S. v. Loeb (1901) 107 Fed. 692, 46 C. C. A. 562, writ of certiorari denied Loeb v. U. S. (1901) 21 Sup. Ct. 923, 181 U. S. 618, 45 L. Ed. 1030.

The provision making decisions of appraising officers final and conclusive, does not prevent inquiry as to whether such officers acted legally; and evidence is admissible to show that items independent of the actual value have been included in the appraised value. Appraisers may not cut off all inquiry into their action by merely stating that an item was added "to make market value." N. Erlanger, Blumgart & Co. v. U. S. (1907) 154 Fed. 949, 83 C. C. A. 463, affirming judgment (C. C. 1907) 152 Fed. 576.

Additions to entry made by importer to obtain possession of goods are not voluntary, and appraisement is not conclusive. Benkard v. Schell (C. C.) Fed. Cas. No. 1,307.

An error of the importers in designating the appraising officers in an application for an appraisement will be disregarded. Wight v. Curtis (C. C. 1845) Fed. Cas. No. 17,628.

The validity of an appraisement can be impeached outside the award only by testimony showing that the question referred was not decided, or some misconduct in the appraisers. Tucker v. Kane (C. C. 1850) Fed. Cas. No. 14,-220.

Duty of collector to assess duties upon appraisal value of merchandise, notwithstanding there is an invoice sworn to by the owner. Thomson v. Maxwell (C. C. 1852) Fed. Cas. No. 13,983.

The appraisement by the official appraiser held conclusive, notwithstanding a protest, where the importer asserted that he did not desire a reappraisement, and did not offer the fees therefor. Fielden v. Lawrence (C. C. 1853) Fed. Cas. No. 4,774.

An appraisement by part only of the public appraisers is valid unless protested against; and it is only necessary that those who certify to the appraisal should actually have made it. McCall v. Lawrence (C. C. 1855) Fed. Cas. No. 8,672.

An appraisement becomes of no effect only when there is another appraise-

t. Lehmaier v. Maxwell (C. C. 6) Fed. Cas. No. 8,214.

n appraisal by public appraisers is and conclusive, unless the importer s to the collector an absolute and onditional notice of his dissatis- ion with such appraisal. Schmaire Iaxwell (C. C. 1856) Fed. Cas. No. 60.

ne appraisal is not set aside by an eal, though the collector illegally ses to order a reappraisal. Id.

ne appraisers are not bound by pri- ppraisals of the value of goods of same kind imported by the same y. Goodsell v. Briggs (C. C. 1873) . Cas. No. 5,548.

n actual appraisement by the ap- ser is conclusive as to the value of importation in the absence of an eal to the merchant appraisers, the collector is required to assess duty upon such valuation. Saxon- Mills v. Russell (C. C. 1880) 1 118, 123, judgment affirmed (1885) p. Ct. 237, 116 U. S. 13, 29 L. Ed.

ne decision of the proper officer, r appeal and without fraud, as to dutiable value of imports, is final conclusive against the importer. vart v. Merritt (C. C. 1880) 2 531.

n assessment of merchandise com- ng 11 bales of hides and skins d together indiscriminately, as es of leather, raw," under Act July 1897, c. 11, § 1, Schedule N, par. will be affirmed where, notwith- ding the appraiser's demand that importers produce two bales be- s the sample bale, so as to enable to satisfy himself as to the rela- proportion of hides and skins, they to do so, and fail to show that the r bales contain the same proportion ides and skins as the sample bale. l v. U. S. (C. C. 1902) 115 Fed.

ne appraisement and liquidation of es by the appraiser and collector binding and conclusive in all collat- proceedings, and, in the absence ny reliquidation or reappraisement, not be disregarded or reviewed, ex- in the modes provided by law. r payment of the duties as liqui- d, a suit in the district court for es alleged to be due in excess of liquidation, on account of an alleg- untrue discount, fraudulently pro- d to be allowed in the appraisement value, cannot be sustained. U. S. cDowell (D. C. 1884) 21 Fed. 563.

ne rule that the appraisement and idation of duties by customs officers binding in all collateral proceed- , frequently applied in the United es district court as against impor- , must be equally applied in suits ight by the United States. Id.

the absence of material evidence he contrary, the method employed customs officials to determine the weight of commodities will be presumed to be correct. U. S. v. Gage Bros. (1911) 1 Ct. Cust. App. 439.

The board's authority was complete, and this had been properly invoked. The board was charged with the duty, and it had the power, to decide not alone the main issue concerning plateaux, but every other question of law or fact material in determining the case. The collector was without warrant of law in disregarding the board's decision. U. S. v. Kurtz, Stuboeck & Co. (1914) 5 Ct. Cust. App. 144.

Appeals are regulated or denied by statute and the determination of the tribunal of a question of law or fact is final unless an appeal be authorized either by the organic law or some effective statute. Larzelere & Co. v. U. S. (1915) 5 Ct. Cust. App. 510.

7. Reappraisement in general.—The importer had a right to appeal to another board of appraisers, differently constituted, and if he did not choose to resort to them, he cannot afterwards complain that there was an overestimate. Rankin v. Hoyt (1846) 45 U. S. (4 How.) 327, 11 L. Ed. 996.

While goods remain in the ownership of the importer, the collector of the customs has a reasonable time to fix their true dutiable value; and his right to reappraise them, in any case where, from neglect or want of evidence on the part of the appraisers, the appraisement has been under the proper dutiable value, is not lost merely because they have gone through one form of appraisement, and been delivered to the importer with a memorandum on the invoice that the entry was "right"; but the court expresses no opinion on a case where the goods "have passed beyond the reach of the collector." Iasigi v. Collector (1863) 68 U. S. (1 Wall.) 375, 17 L. Ed. 686.

An importer, having demanded a reappraisement, attended on the day set, but, the government not being ready, the hearing was adjourned indefinitely, with the understanding that the importer should be notified when a new day was fixed. About nine months later notice was mailed at New York to the importer in Philadelphia that the hearing would be held the next day at noon. The importer was then in Cuba, but the letter was received at his office by his clerk, who wrote, asking a postponement. The appraiser then telegraphed the clerk that the appraisement would take place on the fifth succeeding day, but no attention was paid thereto, and the appraisement was had soon after the day fixed, the importer being unrepresented. Held that, in view of the fact that the importer had left the country without making any provision for a hearing during his absence, the appraisers did not act unreasonably, and their decision must stand. Earnshaw v. U. S. (1892) 146 U. S. 60, 13 Sup.

Ct. 14, 36 L. Ed. 887, affirming (D. C. 1887) 30 Fed. 672.

The facts being undisputed, the reasonableness of the notice with respect to time was a question of law for the court. Id.

An importer is not entitled to be present during proceedings on appraisement, to hear or examine all the testimony, and to cross-examine the witnesses; and where he is invited by the appraisers to present his views in regard to the reappraisement, and to suggest questions to be put to the witnesses, he has no ground for complaint. Origet v. Hedden (1894) 155 U. S. 228, 15 Sup. Ct. 92, 39 L. Ed. 130.

Importers, by withdrawing their appeal to the merchant appraisers, and refusing to produce the documents connected with the importation as called for by the official appraisers, fix the correctness of the appraisement. Bartlett v. Kane (C. C. 1852) Fed. Cas. No. 1,077.

A notice that the appraisement is not satisfactory, and the importers will give evidence "if desired," is not sufficient to entitle them to a reappraisement. Lehmaier v. Maxwell (C. C. 1856) Fed. Cas. No. 8,214.

Where goods are entered and warehoused at one port, intended for reshipment and rewarehousing at another port, the entry is to be completed at the former port, and the collector of the second port has no power to make a reappraisement. Spring v. Russell (C. C. 1868) Fed. Cas. No. 13,261.

The reappraisement is an appraisal on view, and the reappraisers have the power to ascertain the value of the merchandise by reasonable ways and means, and to determine what witnesses, if any, it is proper for them to examine. Auffmordt v. Hedden (C. C. 1886) 30 Fed. 360, judgment affirmed (1890) 11 Sup. Ct. 103, 137 U. S. 310, 34 L. Ed. 674.

A United States general appraiser, when reappraising the value of imported merchandise, is not constrained at all by the rules that pertain to courts, but may reappraise such merchandise at a higher value than that fixed by the local appraiser, even though such reappraisement be had at the instance of the importer thereof, and not at that of a collector of customs. In re Megroz (C. C. 1892) 49 Fed. 828.

The fact that the return to the circuit court was not signed by the board of general appraisers who took the evidence does not overcome the presumption that the appraisers who heard the case decided it. Mexican Onyx & Trading Co. v. U. S. (C. C. 1895) 66 Fed. 732.

Where, in appraising goods, the appraiser made an addition to the entered value of the invoice by disallowing a commission of 2½ per cent., claimed as a discount for cash paid on the purchase, "to make market value," the discount being considered excessive, th importer's remedy was by appeal fo reappraisement, and not by protes Wanamaker v. Cooper (C. C. 1895 69 Fed. 329.

The board of general appraisers ha jurisdiction to correct a mistake in th appraisement, arising from a clerica error in invoicing the goods as wort so many marks instead of so man pfennigs. U. S. v. Benjamin (C. C 1896) 72 Fed. 51.

Under article 1126 of the treasu regulations of 1892, after an appraise ment has been completed, and a retu thereof made to the importer, and a cepted by him, the appraisement ca not be recalled, even for the corre tion of a clerical error, where the e fect of such correction is to chang the appraisal; and, if such action taken, the importer has the right t protest against the second valuatio on the ground that it amounts to new appraisement, and is without ju risdiction, and is not bound to give no tice of dissatisfaction, as provided i this section. U. S. v. Morewood & C (C. C. 1899) 94 Fed. 639.

The duty of determining whether o not the appraisement is too low is de volved upon the collector, and in th performance of such duty he acts ju dicially, and his discretion cannot b controlled by his superior officer hence, when he does not, in fact, dee the appraisement too low, an appe taken by him by direction of the se retary of the treasury confers no ju risdiction on the board of three gener appraisers to review such apprais ment, and he is a competent witne to rebut the presumption of jurisdi tion arising from the fact of appeal b showing that it was not taken in th exercise of his own judgment. U. S v. Loeb (C. C. 1900) 99 Fed. 728.

Formal notice to the board of di satisfaction by either the importer o collector was not needed to give it ju risdiction, transmission to it of th designated papers being sufficient, an hence the fact that a collector wa satisfied, but ordered a reappraisemen pursuant to instructions from th treasury department, would not null fy its action. U. S. v. Loeb (1901) 10 Fed. 692, 46 C. C. A. 562, writ of cer tiorari denied Loeb v. U. S. (1901) 2 Sup. Ct. 923, 181 U. S. 618, 45 L. Ed 1030.

Certain proceedings on reappraise ment held by general appraisers on ap peal by the importers from the finding of the local appraiser were held to b invalid because the general appraiser had not examined the merchandise o samples thereof. It appeared tha though the importers could not hav produced either the merchandise or ac tual samples thereof, they had offere evidence equivalent to the presence o the actual samples, which was rejecte by the general apraisers. Held, tha

should be assessed on the im-
rs' entered value, and not on that
l by the local appraiser, though
appraisement was valid. Curnen
tiner v. U. S. (C. C. 1904) 136
807.

til there has been a legal reap-
ement taking the place of an orig-
and valid appraisement by a local
aiser, such appraisement stands,
is not to be affected and set aside
use there was an appeal for re-
aisement, but no valid reappraise-
was had. U. S. v. Curnen &
r (1906) 146 Fed. 45, 76 C. C. A.

here an importer appealed from
appraisement, of the local apprais-
o reappraisement, but the reap-
ement proceedings were void, the
aised value appealed from, and not
nvoice value, becomes the dutiable
e. Id.

o months after a reappraisement
ion had been made by a Board of
ral Appraisers, the board amend-
t in order to correct an error.
, that the correction was illegal.
. v. Thomas Leeming & Co. (C.
907) 153 Fed. 489.

here a general appraiser through
sight fails to consider a portion of
evidence in a reappraisement case,
aggrieved party's remedy is by ap-
for reappraisement by a Board of
eral Appraisers, rather than by
est as provided in section 5595,
U. S. v. Chas. M. Taylor's Sons
C. 1909) 171 Fed. 152.

here the original appraisement by
cal appraiser is not shown incor-
it is immaterial that a reappraise-
held on appeal was invalid, if the
found was the same in each pro-
ing; because in such event the
nal appraised value would be tak-
s the dutiable value. Grubnau v.
(C. C. 1909) 171 Fed. 284, judg-
affirmed (1910) 176 Fed. 904,
C. C. A. 374.

appraisement proceedings under
section are separate and distinct
protest proceedings under section
, post, and where the legality of a
praisement is challenged by pro-
ings under the latter section, the
e reappraisement record does not
me a part of the record in the lat-
proceedings, unless expressly ad-
ed. Harris v. U. S. (C. C. 1910)
Fed. 475.

here cannot be a reappraisement,
appeal, unless there has been an
y of the goods, and such entry
be presumed from the circum-
ces on reappraisal. In re Twenty-
t Cases of Wine (D. C. 1867)
Cas. No. 14,281.

porter not liable for expenses of
praisement. Iselin v. Hedden (D.
886) 28 Fed. 416, 417, reversed 31
266.

to reappraisement of goods deliv-
ered to importer, see U. S. v. Phillips (D. C. 1891) 46 Fed. 466, 467.

Under this section and sections 5595, 5714, post, where imports have been appraised by an appraiser, the collector has no jurisdiction to reappraise the same, and though authorized to institute a proceeding within a year to reliquidate the duties, and to examine the importer as a witness for that purpose, he has no jurisdiction in that proceeding to compel the importer to testify with reference to the value of the goods, and so lay a foundation for reappraisement under the guise of a reliquidation; and this though the original appraisement was induced by fraud. U. S. v. Calhoun (D. C. 1911) 184 Fed. 499.

Reappraisement can be conducted only by the appraising officers, and not by the collector. Id.

If a reappraisement by a board of general appraisers be held valid it is unnecessary to inquire into the validity of preceding appraisements of the same merchandise. Beer v. U. S. (1911) 1 Ct. Cust. App. 484.

An appraiser, after having once performed the duty of appraisement in respect of any particular merchandise and after having made his return thereof to the collector, has no authority of his own volition to make another appraisement of the same merchandise. U. S. v. Frank & Lambert (1911) 2 Ct. Cust. App. 239; U. S. v. Bennett & Loewenthal (1911) 2 Ct. Cust. App. 249.

There is no contention that the reappraisement board was without jurisdiction, that it was guilty of fraud, or that it added independent items not dutiable to make the appraised value. The board had before it evidence as to the course of business of manufacturers and customers where the chocolate was handled in Switzerland and at the time this was exported. That evidence related both to the quantities and prices of the commodity in business transactions in Switzerland and it cannot acordingly be held that the board's finding was based wholly upon the "conventional agreement" by which it had been sought to control the sale of chocolate in that country. Neither the board of general appraisers sitting as a classification board nor this court has authority on the record in this case to review the appraisement as made. Wolff v. U. S. (1911) 1 Ct. Cust. App. 181; Horace Day Co. v. U. S. (1912) 3 Ct. Cust. App. 152.

This section contains the word rereappraisement, appearing there once. The language of the subsection as a whole clearly indicates the word "rereappraisement" was used where it occurs in the sense of reappraisement. Gallagher & Ascher v. U. S. (1913) 4 Ct. Cust. App. 308.

Any question of the regularity of the reappraisement proceedings in this

cause might have been waived. Maddaus v. U. S. (1912) 3 Ct. Cust. App. 330. The former decision was rested upon the unmistakably clear waiver in writing filed by the appellants, and this as construed in the light of a uniform current of decisions of this court. Gallagher & Ascher v. U. S. (1913) 4 Ct. Cust. App. 404.

The review of legislation affecting a collector's right to "appeal" to reappraisement reveals no statutory method governing him in making his appeal; but viewing this legislation as a whole it is held that it is an appeal if he complies with the regulation authorizing him, if he is dissatisfied with the appraisement, he may and shall transmit the invoice and all the papers appertaining thereto to the board of nine general appraisers. The transmission by a collector of another port by mailing is a compliance with the statute. Larzelere & Co. v. U. S. (1915) 5 Ct. Cust. App. 510.

The board of general appraisers, in passing upon the reappraisement of certain items of an invoice which had been referred to it for decision, had no authority to pass upon items which were not embraced in the case submitted, and should have confined itself to those items only which were covered by the importers' appeal. (1890) 19 Op. Atty. Gen. 665.

A general appraiser, acting under a collector's direction for the reappraisement, must confine himself to the particular items of the importation on account of which a reappraisement was ordered. (1891) 20 Op. Atty. Gen. 39.

The action of a collector in denying a reappraisement because the importer refused to answer proper interrogatories propounded to him may be reviewed, first by the board of general appraisers on a protest, and next by the circuit court on an application for review. (1899) 22 Op. Atty. Gen. 456.

8. —— Assignment for determination.—Where a board of three general appraisers has acquired jurisdiction over a case through the transmission by the collector of the papers in the case, it is then the duty of that board to "examine and decide the case thus submitted," as prescribed by said section; it may not afterward surrender its jurisdiction to another board; and a rule adopted by the general appraisers is invalid which, in order to prevent conflicting decisions, provides for the transfer of a case from one board to another when the majority of all the general appraisers is of opinion that a proposed decision in the case by one board conflicts with a previous decision. Thomas Prosser & Son v. U. S. (1907) 158 Fed. 971, 86 C. C. A. 175, reversing order (C. C. 1907) 154 Fed. 721.

The powers and duties of the board of appraisers and the law affecting these are stated and discussed. Th record in this case shows there wa a hearing by board 1, to whom the cas had been lawfully committed for hear ing and determination and the juris diction of which is not challenged The decision here complained of, how ever, was rendered by another board having no appellate jurisdiction ove board 1 and the assumed jurisdictio of which is directly challenged. Th judgment of the second board is voi and the case is still pending befor board 1 for determination and decision U. S. v. Park & Tilford (1913) 4 Ct Cust. App. 293.

In this cause the only warrant tha board 1 had for deciding the questio at issue was a so-called order of trans fer made by the president of the board of general appraisers. This order wa made after and not before trial, a prescribed by statute, and it conferre no authority on board 1 to determin the issues involved in the protests Moreover, as appears from the record no opportunity was given, either t the government or the importers, t appear and be heard. U. S. v. Saunders (1914) 5 Ct. Cust. App. 270.

9. —— Examination of merchandise.—The importer has a right to be present when the reappraisers view his goods to see that they are his goods, and t make such statements as are pertinent to the case. Auffmordt v. Hedden (C. C. 1886) 30 Fed. 360, judgment affirmed (1890) 11 Sup. Ct. 103, 137 U. S. 310, 34 L. Ed. 674.

A reappraisement of value may be made without a re-examination of the goods themselves, where the items to be corrected, such as an alleged false discount in the invoice, do not depend on any inspection of the goods. U. S. v. McDowell (D. C. 1884) 21 Fed. 563.

10. —— Inspection of samples.—In proving the character of imported merchandise, it is not essential that actual samples of the importations should be produced. Such proof may be supplied by witnesses familiar with the goods, testifying from their recollection as to the invoice descriptions. U. S. v. Herrmann (1907) 154 Fed. 196, 83 C. C. A. 179, affirming decree Herrmann v. U. S. (C. C. 1906) 145 Fed. 843.

On appeals from appraisements by the local appraiser of imported merchandise taken by the collector of customs, the general appraiser who made the reappraisements did not have before him the merchandise in question, nor samples thereof, the merchandise had passed out of the possession and control of the importers, and the collector had not ordered its return, in accordance with the terms of a bond which had been given by the importers under section 2899, R. S., section 5589, ante. Held, that the reappraisements were void, and that the duties should

assessed on the basis of the values ınd by the local appraiser, and not ›se found by the general appraiser. S. v. Murphy (C. C. 1898) 136 Fed. L.

n the proof of the character of im- rted goods it is not established that nples should be produced. Proof other means is permissible. eims Co. v. U. S. (C. C. 1909) 169 d. 662, judgment affirmed U. S. v. eims Co. (1909) 175 Fed. 778, 99 C. A. 350.

n an action by the government to ›over duties from the importer, ich action is based on a reliquida- n, the fact that the appraiser who de the re-examination cannot at trial identify particular samples as onging to particular invoices is im- terial when the goods consist of ses for optical instruments, which exactly alike in all the invoices, d at the time of making the re-ex- ination the appraiser had each sam- marked as from the particular in- ce. U. S. v. Fox (D. C. 1893) 53 d. 531.

The general rule that upon the re- amination and reliquidation of duties packages of goods must themselves present, does not apply in the case lenses for optical instruments, when ere is no question as to their value, d it appears that a single specimen is perfect representation of the whole portation. Id.

n the case at bar, it being fairly ablished by the evidence that the mber of packages required by law re sent to the public stores for ex- ination and that these were in due urse examined by the reappraise- nt board, their finding must be here irmed. Loeb v. U. S. (1911) 1 Ct. st. App. 385.

The changes made in the law gov- ning appraisements of merchandise ports of entry do not warrant the erence that it is unnecessary in re- praisement proceedings for a board three general appraisers to examine samples of the merchandise when appraised. Id.

Irrespective of the particular desig- tion of the official or officials to om "a case" is submitted in pro- edings to appraise merchandise, it nnot be said "the case" has been amined when the exhibits or sam- es deposited as a part of the case ve not been examined; and the stat- e is mandatory that on appraise- nt or reappraisement the exhibits samples shall be examined. Loeb U. S. (1911) 1 Ct. Cust. App. 385, tinguishing Erhardt v. Schroeder 894) 15 Sup. Ct. 45, 155 U. S. 124, L. Ed. 94; U. S. v. Ranlett (1898) Sup. Ct. 114, 172 U. S. 132, 43 L. l. 393.

Where the goods in controversy had ne into commerce and had been ere consumed, in reappraisement proceedings, on a failure to produce the samples of these goods selected and deposited at the public stores, it is not permissible for the government to substitute consular samples forwarded according to a practice of the Treasury Department from the place of export abroad. Tilge v. U. S. (1911) 1 Ct. Cust. App. 462.

That samples selected by the collector at the port of entry and deposited at the public stores should be examined on a reappraisement is a mandatory requirement of the law. Id.

An irregularity in complying with the legal requirements as to the sufficiency of samples of goods before a board of reappraisement will be deemed to have been waived if the importer was present and made no objection to the irregularity. Harris v. U. S. (1912) 3 Ct. Cust. App. 5, citing Oelrichs & Co. v. U. S. (1911) 2 Ct. Cust. App. 355.

The decision in Oelrichs v. U. S. (1911) 2 Ct. Cust. App. 355, does not modify the decision in Tilge v. U. S. (1911) 1 Ct. Cust. App. 462. Not only was there no sample before the appraising officer or a legal substitute therefor, but the record discloses that the jurisdiction of the appraising officer was protested because of that fact. Until the jurisdictional requirements of the statute have been complied with there can be no "decision," as contemplated by the statute to be accepted as final in character. Maddaus v. U. S. (1912) 3 Ct. Cust. App. 330.

There was a chemical analysis of the glycerin of the importation. Proof of this was excluded because a sample of the glycerin analyzed was not produced. To make the production of a sample a condition precedent to the admission of proof of the analysis was error. The failure to produce a sample might affect the weight, but not the competency of the evidence offered. U. S. v. Alpers & Mott (1913) 4 Ct. Cust. App. 19.

In view of the stipulation and waiver, the absence of samples in the proceeding on appeal before the board of three general appraisers did not invalidate this board's finding. Gallagher & Ascher v. U. S. (1913) 4 Ct. Cust. App. 308.

The protest itself shows that the reappraisement by the single general appraiser was made without a sample of the importation or the merchandise before him and there was no waiver of production of samples. The appraisement by the single general appraiser was accordingly invalid and the appraisement of the local appraiser became again operative. U. S. v. Scanlan (1914) 5 Ct. Cust. App. 290.

11. —— Conclusiveness.—Upon a difference of opinion between the collector and the importers as to what duties should be paid upon an importa-

tion of green sugar, which was invoiced as "concentrated molasses," it was agreed that the question should be decided by the board of general appraisers at New York upon an examination of samples to be submitted to them. The sugar was subject to an export duty, but the molasses was not. The appraisers decided that the invoice and entry were erroneous both in respect to the description and value of the article in question, and, to correct the error, "added the export duty" in determining the valuation. Held that, in the absence of fraud, the decision of the appraisers as to the character of the article, and the dutiable value of the importations, was final and conclusive. Belcher v. Linn (1860) 65 U. S. (24 How.) 508, 16 L. Ed. 754.

The board of appraisers is entitled to the benefit of the general rule that some presumption is to be indulged in favor of the propriety and legality of the action of inferior tribunals, and that with respect to their methods of procedure they are vested with a certain discretion, which will be respected by the courts except in cases of manifest abuse thereof. Earnshaw v. U. S. (1892) 13 Sup. Ct. 14, 15, 146 U. S. 60, 36 L. Ed. 887.

A federal circuit court has no jurisdiction to review a decision of the board of general appraisers upon a question involving merely the valuation, and not the classification or rate of duty on imported merchandise. Passavant v. U. S. (1893) 13 Sup. Ct. 572, 574, 148 U. S. 214, 37 L. Ed. 426, affirming judgment In re Passavant (C. C. 1892) 50 Fed. 788.

It was within the power of Congress to provide that the decision of the board of general appraisers should be final as to the dutiable value of merchandise without a right of appeal to the courts. Id.

After the board of general appraisers had decided that merchandise was dutiable on the basis of the mental value of the currency of the invoice, and the entry had been reliquidated accordingly by the collector, no appeal having been taken in the time prescribed by law, the Secretary of the Treasury ordered a further reliquidation at a higher value, under the authority of section 6536, post. Held, that the action of the Secretary, rather than the unappealed decision of the board, was conclusive. Klumpp v. Thomas (1908) 162 Fed. 853, 89 C. C. A. 543, writ of certiorari denied (1908) 29 Sup. Ct. 688, 212 U. S. 579, 53 L. Ed. 659.

Under the provision that decisions by the board of general appraisers in reappraisement cases shall be "final and conclusive," it was clearly intended that such decisions shall not be open to judicial review, except to inquire whether the appraisers have exceeded the authority conferred upon them by law or have otherwise acted illegally or fraudulently; and where there was no charge that the board of appraisers had acted illegally in denying the importers a hearing and opportunity to produce testimony in the matter, and there was some evidence to support the board's conclusions as to value, its reappraisement was conclusive under said section. Grubnau v. U. S. (1910) 176 Fed. 904, 100 C. C. A. 374, affirming judgment (C. C. 1909) 171 Fed. 284.

Though a reappraisement by a board of general appraisers is "final and conclusive," it may be impeached, if based on a wrong principle or contrary to law, or power conferred by statute has been transcended; and where the board misinterprets a portion of the evidence a legal error is committed, making it necessary to see if the error works injustice, and proceedings for review may be initiated by protest under section 5595, post. U. S. v. Haviland & Co. (C. C. 1909) 167 Fed. 414, judgment affirmed (1910) 177 Fed. 175, 100 C. C. A. 637, writ of certiorari denied (1910) 30 Sup. Ct. 573, 216 U. S. 618, 54 L. Ed. 640.

A reappraisement decision by a board of general appraisers was founded on indirect evidence, the result reached being based upon portions of the evidence read apart from the context, upon unwarranted deductions, and assumptions unsupported by the proof, and upon arbitrary deductions to equalize certain conditions peculiar to the case, and many of the propositions urged in support of the conclusions made were based upon conjecture and guesswork. Held, that this was not such proof as is contemplated by the statute, and that, there being no legal evidence to justify the reappraisement, it should be set aside. Id.

Where, in making a reappraisement of imported merchandise, a board of general appraisers acts outside of or contrary to law, or proceeds upon a wrong principle or without any evidence to sustain their findings, their decision may be set aside. Id.

The decision of the general appraiser, in cases of reappraisement, is final as to the dutiable value of the merchandise reappraised, against all parties interested, unless the owner, consignee, or agent of the merchandise is dissatisfied and gives the required notice to the collector of such dissatisfaction, or unless the collector deems the appraisement too low, and in either case the collector must transmit the invoice and papers to the board of general appraisers to examine and decide the case, and their decision, or that of the majority, is final and conclusive. U. S. v. Strauss (D. C. 1893) 55 Fed. 388, 390.

The provision that an appraisal of goods by an appraiser shall be final

conclusive against all parties, and not be subject to review in any er for any cause, in any tribunal ourt, does not exclude a reapement previously provided for in same subsection. U. S. v. Cal- (D. C. 1911) 184 Fed. 499.

e power of a board of general aisers to review on appeal a find- f facts is not limited in its exer- to cases where new and addition- cts or exhibits are there submit- but embraces the case in its en- , with or without new and addi- l facts or exhibits appearing; and e finding of a collector is not usive against an importer when, ppeal to a board of general ap- ers, precisely the same case is presented for decision that was nted at the port of entry. U. S. erkins (1911) 1 Ct. Cust. App.

is not the province of a classifi- n board to retry questions of determined by a board of reap- ement, and additional testimony d before the classification board properly excluded. Oelrichs & . U. S. (1911) 2 Ct. Cust. App. distinguishing G. Gulbenkian & . U. S. (1907) 153 Fed. 858, 83 A. 40.

e collector, acting under instruc- from the Treasury Department, ed to adopt a valuation found by general appraisers upon re-reap- ement and assessed duty upon the found by the local appraiser as ed by a single general appraiser. presumption is that the reapprais- oard of three acted in accordance law and there is nothing in the d to overcome this presumption. appeal must fail. U. S. v. Brad- & Co. (1914) 5 Ct. Cust. App.

e Secretary of the Treasury and tors of customs are bound by ification decisions of the board of al appraisers, when unappealed only so far as such decisions af- the goods immediately before the for classification. (1903) 25 Atty. Gen. 81.

Decisions under earlier statutes.— Greely's Adm'r v. Burgess (1855) S. (18 How.) 413, 15 L. Ed. 455; euffer v. Robertson (1886) 116 499, 6 Sup. Ct. 462, 29 L. Ed. Oelbermann v. Merritt (1887) U. S. 356, 8 Sup. Ct. 151, 31 L. 64; Mustin v. Cadwalader (1887) J. S. 369, 8 Sup. Ct. 158, 31 L. Ed. Hedden v. Iselin (1892) 142 U. 6, 12 Sup. Ct. 330, 35 L. Ed. 1155; t v. Hedden (1894) 155 U. S. 228, p. Ct. 92, 39 L. Ed. 130; Magone iget (1895) 70 Fed. 778, 17 C. C. 3, 35 U. S. App. 744; Erhardt v. n (1906) 150 Fed. 529, 80 C. C. 1; Tucker v. Kane (C. C. 1850) Cas. No. 14,220; Bangs v. Max- (C. C. 1853) Fed. Cas. No. 841; Vaccari v. Same (C. C. 1855) Fed. Cas. No. 16,810; Bannendahl v. Redfield (C. C. 1858) Fed. Cas. No. 964; Yznaga v. Peaslee (C. C. 1860) Fed. Cas. No. 18,-196; Yanada v. Spalding (C. C. 1885) 24 Fed. 21; Hedden v. Iselin (C. C. 1887) 31 Fed. 266; U. S. v. One Thousand Three Hundred and Eighty-Two Hogsheads of Sugar (D. C. 1862) Fed. Cas. No. 15,962; Iselin v. Hedden (D. C. 1886) 28 Fed. 416.

13. Liquidation by collector.—The value of an import is determined by the appraisal, and the duty fixed by law must be assessed by the collector upon the value so determined. Wills v. Russell (C. C. 1873) Fed. Cas. No. 17,773.

In suit by the United States to recover duties as liquidated, proof of an appeal before the liquidation cannot affect the operation of the liquidation, nor can proof of a protest, unless followed by an appeal taken after the liquidation. Watt v. U. S. (C. C. 1878) Fed. Cas. No. 17,292.

The "ascertainment and liquidation" of the tax implies the same thing. The term "liquidation," as used in the statute and in the law generally, signifies, to clear up; as by settlement and payment. Laidlaw v. Abraham (C. C. 1890) 43 Fed. 297, 298.

Iron ore was imported in 1881, a certain sum being then paid as duties, after the appraiser had raised the valuation. In 1890 the collector decided that an additional amount was due, and an action was brought to recover the same. The importers claimed that their original payment was a liquidation, and that the action was barred within one year thereafter. Held, that the liquidation was not complete until the collector had acted in the matter, and that there was no provision of law requiring him to liquidate within any particular time, or to give notice to the importer thereof. U. S. v. De Rivera (C. C. 1896) 73 Fed. 679.

Customs officers sent to the address given by the importer in his entry a notice of an advance on the invoice value as made by the appraiser. Held, that due diligence had been shown in this regard, and that the importer could not object to the assessment of duty on the basis of the advance, on the ground that he had not received the notice by reason of an error in the address. U. S. v. Independent Importing Co. (C. C. 1908) 165 Fed. 63.

Entry was made on a pro forma invoice and the value stated therein was approved by the appraiser, who also, however, approved the lower value given in a consular invoice subsequently produced by the importer. Held, that duty should have been assessed on the basis of the latter value. U. S. v. Bennett & Loewenthal (C. C. 1909) 176 Fed. 580.

Heavy goods were appraised on the wharf and delivered to the importer up-

on payment of duty as invoiced and the execution of a bond to return the goods, if required, within 10 days; no samples being retained, and no demand within the 10 days being made. Afterwards the valuation was raised, and an additional duty was assessed upon the goods, by the assessor's return, and the importers notified thereof, who made a demand for a reappraisement. A merchant appraiser having been appointed, and not reporting, and the general appraiser having stated that, owing to the lack of samples, a reappraisement was impossible a liquidation was made in accordance with the original return. Held, that the liquidation was invalid and no suit was maintainable for balance shown thereby. U. S. v. Phillip (D. C. 1891) 46 Fed. 466.

Cited without definite application Arnson v. Murphy (1883) 3 Sup. Ct 184, 186, 109 U. S. 238, 27 L. Ed. 920 U. S. v. Beebe (1901) 106 Fed. 75, 76 45 C. C. A. 230 (writ of certiorari denied [1901] 21 S. Ct. 922, 180 U. S. 640 45 L. Ed. 711).

§ 5595. (Act Oct. 3, 1913, c. 16, § III, N.) Decision of collector appeal to board of general appraisers.

N. The decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, or upon merchandise on which duty shall have been assessed, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within thirty days after but not before such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within fifteen days after the payment of such fees, charges, and exactions, if dissatisfied with such decision imposing a higher rate of duty, or a greater charge, fee, or exaction, than he shall claim to be legally payable, file a protest or protests in writing with the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. Such protest shall be deemed to be finally abandoned and waived unless within thirty days from the date of filing thereof the person who filed such notice or protest shall have deposited with the collector of customs a fee of $1 with respect to each protest. Such fee shall be deposited and accounted for as miscellaneous receipts, and in case the protest in connection with which such fee was deposited shall be finally sustained in whole or in part, such fee shall be refunded to the importer, with the duties found to be collected in excess, from the appropriation for the refund to importers of excess of deposits. No agreement for a contingent fee in respect to recovery or refund under protest shall be lawful. Compliance with this provision shall be a condition precedent to the validity of the protest and to any refund thereunder, and a violation of this provision shall be punishable by a fine not exceeding $500, or imprisonment for not more than one year, or both.

Upon such payment of duties, protest, and deposit of protest fee, the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of nine general appraisers, for due assignment and determination as provided by law; such determination shall be final and conclusive upon all persons interested therein, and the record shall be transmitted to the proper collector or person acting as such, who shall liquidate the entry accordingly, except in cases where an appeal shall be filed in the United States Court of Customs Appeals within the time and in the manner provided for by law. (38 Stat. 187.)

See notes to subdivisions B and M of this section, ante, §§ 5519, 5594.

These provisions were substituted for provisions of similar nature made by the Customs Administrative Act of June 10, 1890, c. 407, § 14, 26 Stat. 137,

amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 at. 100.

Requirements similar to those of this section as to the deposit of a fee of $1 the filing of protest were made by article XI of the Plan of Reorganition of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, 355, § 1, ante, § 5327.

The Court of Customs Appeals, mentioned in this section, was created and jurisdiction defined by provisions of the Payne-Aldrich Tariff Act of Aug. 1909, c. 6, § 28, 36 Stat. 91, 105, which were incorporated in and superseded chapter 8 of the Judicial Code of March 3, 1911, c. 231, §§ 188–199, set rth ante, §§ 1179–1190.

Provisions relating to decisions of the collector, and appeals therefrom the Secretary of the Treasury, were made by R. S. §§ 2931, 2932, repealed section 29 of the Customs Administrative Act, 26 Stat. 141.

See note to section 12 of that act, as amended, set forth ante, § 5593.

Notes of Decisions

nality of collector's decision.
— Presumption of validity.
peal to secretary of treasury.
otest—In general.
— Specific grounds of objection.
— Sufficiency.
— Affirmance of classification where correct classification is not stated in protest.
— Alternative grounds.
— Amendment of protest.
— Abandonment of protest.
— Protest fee.
— Necessity of protest.
— Service of protest.
— Signature.
— Time for filing.
— Waiver of requirement for protest.
— Written protest.
— Decisions under earlier statutes.
— Prospective protests under Acts of 1845 and 1857.
rwarding protest to board of appraisers.
peal to board of appraisers.
quidation after decision of general appraisers.
peal to courts—Jurisdiction.
— Right to appeal.
— Security for costs.
— New evidence on appeal.
— Assignment of error.
— Review of questions of fact.
— Questions of law.
— Harmless error.
— Disposition of care.
terest on duties.

Finality of collector's decision.—A tor's decision that a yacht is an ted article is reviewable on a lior possession filed by the owner, thstanding the customs administe act. Ex parte Fassett (1892) p. Ct. 295, 298, 142 U. S. 479, 35 l. 1087.

e proclamation of the secretary of easury, of July 1, 1892, fixing the s of foreign money for the ensuing er (Act Oct. 1, 1890, § 52), fixed old florin of Austria-Hungary at 2, and the silver florin at $0.32, g the statement: "Silver, the nomtandard; paper, the actual standhe depreciation of which is measby the gold standard." The invoicecertain goods imported during the er were made out in paper florins, there was no consular certificate the value of such florins. In reducing the currency of the invoice to money of the United States, the collector estimated the paper florin at $0.482, the value of the gold florin. On appeal the board of general appraisers, after taking testimony, held that the florin should have been estimated at $0.32, the value of the silver florin. Held, that the proclamation of the secretary, and consequently the action of the collector, were conclusive, for which reason the board of appraisers had no authority to review the decision of the latter, and that, as the board acted without authority, the circuit court had jurisdiction to review their decision. U. S. v. Klingenberg (1894) 14 Sup. Ct. 790, 793, 153 U. S. 93, 38 L. Ed. 647, reversing In re Klingenberg (C. C. 1893) 57 Fed. 195.

The liquidation of duties by the collector of customs is not necessarily final until after the goods have been delivered to the importer. American Cigar Co. v. U. S. (1906) 146 Fed. 484, 77 C. C. A. 40, reversing judgment Falk v. U. S. (C. C. 1904) 145 Fed. 574, and judgment reversed U. S. v. G. Falk & Bro. (1907) 27 Sup. Ct. 191, 204 U. S. 143, 51 L. Ed. 411.

A reliquidation of duties by a collector, like an original liquidation, is conclusive on the owner or importer, unless notice of objection is given within the statutory time. U. S. v. Mexican International R. Co. (1907) 151 Fed. 545, 81 C. C. A. 61.

An importer of wool subject to a duty under Tariff Act July 24, 1897; c. 11, § 1, schedule K, 30 Stat. 182, dividing wool into classes, and fixing a duty based on valuation, must conform to the statutory method, on the appraiser increasing the valuation over the amount stated in the invoice, and thereby subjecting the importer to a higher duty; and where he fails to take the requisite steps to secure a correction of the errors, if any, the decisions of the appraiser and collector as to value, classification, rate, and amount are final, and the importer may not recover excessive duties paid. Gulbenkian v. U. S. (1911) 186 Fed. 133, 108 C. C. A. 245, affirming judgment (C. C. 1909) 175 Fed. 860.

Under prior statutes, see Hutton v.

Schell (C. C. 1868) Fed. Cas. No. 6,-961.

The facts that imported goods were subject to a lower rate of duty than that charged upon them, and that the action of the principal appraiser was irregular, because he did not see the goods, cannot be set up by the importer in an action to recover the difference between the amount paid and that of the final liquidation, where he was notified by the collector of the liquidation of the entries at the higher rate, and did not take an appeal to the secretary of the treasury. Chase v. U. S. (C. C. 1882) 9 Fed. 882.

The collector may reconsider his classification of imports after they have passed into consumption. George W. Knowles & Sons v. U. S. (C. C. 1903) 122 Fed. 971, decree reversed U. S. v. George Knowles & Son (1903) 126 Fed. 737, 62 C. C. A. 62.

The statute gives the importer the right of appeal if "dissatisfied" with the collector's decision. The collector's decision is not final and conclusive against the government, and under the statute is not to be deemed final and conclusive against the importer. An appeal would have for its object the judicial ascertainment and enforcement of the lawful rate for the just protection of the parties to the proceedings, of the importer as well as of the government. A review of the legislation and of the judicial constructions the pertinent clause of the statute has received, sustains the right of the importer to appeal. He has a right to have his merchandise correctly assessed. U. S. v. Schwartz & Co. (1912) 3 Ct. Cust. App. 24.

The legislative and judicial history of the customs administrative act is reviewed. The customs administrative law markedly differentiates between actual market value and dutiable actual market value, and makes it the duty of the appraising officer to determine the first, the duty of the collector to determine the last. The goods here—feathers—were packed in inside boxes and there had been additional packing charges, though all mention of these was omitted from the consular invoice. The collector, on being later apprised of the fact of omission, reliquidated the entry by adding thereto the packing charges. There was in this no interference with or change of the invoice entered or appraised valuation; the collector simply exercised his right of adding to the appraised value to make dutiable value these packing charges. U. S. v. Spingarn Bros. (1913) 5 Ct. Cust. App. 2 (citing Beard v. Porter [1888] 8 Sup. Ct. 556, 124 U. S. 437, 31 L. Ed. 492); U. S. v. Francklyn (1913) 4 Ct. Cust. App. 54.

The words "rate and amount of duties" occurring in the statute define a class of decisions against which protest will lie for any cause distinctly and specifically stated and are not a limitation of the grounds upon which a collector's decision can be assailed. U. S. v. American Exp. Co. (1914) 5 Ct. Cust. App. 351.

2. —— **Presumption of validity.**—Decision of collector and Secretary of Treasury is conclusive until contrary is shown. Chicago Tire & Spring Work v. Spalding (1886) 6 Sup. Ct. 498, 501 116 U. S. 541, 29 L. Ed. 720.

The presumption is in favor of the correctness of the collector's classification, and the burden is on the importer to show that it is not correct. U. S. v. Rosenwald (1895) 67 Fed. 323, 14 C. C. A. 399, reversing judgment In re Rosenwald (C. C. 1894) 59 Fed. 765.

Where an importer, on the trial of an action at law in the circuit court to recover the amount of duties paid under protest, fails to introduce any competent evidence of one of the essential facts in relation to the goods alleged in his protest, and on which he based his claim for a different classification, the presumption of correct classification will prevail, and the direction of a verdict for the defendant is proper. Davies v. Miller (1898) 91 Fed. 647, 34 C. C. A. 37.

The classification by a collector of customs of imported goods under a tariff law is presumably correct. Vandiver v. U. S. (1907) 156 Fed. 961, 84 C. C. A. 522.

In proceedings against the assessment of duty, the question to be decided is not whether the collector was wrong, but whether the importer is right; and the burden is on him to establish the correctness of his contention. Legg v. U. S. (1908) 163 Fed. 1006, 90 C. C. A. 176.

Plaintiff has the burden of proving that the chief use of the goods is such as to bring them within the schedule under which he alleges they are dutiable. Hagedon v. Seeberger (C. C. 1889) 38 Fed. 401, writ of error dismissed (1893) 13 Sup. Ct. 1047, 149 U. S. 776, 37 L. Ed. 962.

The presumption of correctness of a decision of a collector of customs is not rebutted by testimony of the officer making the classification that he was in much doubt as to whether he had not erred in his finding of fact on which the classification was based. J. H. Thorpe & Co. v. U. S. (C. C. 1892) 154 Fed. 864.

On appeal from a decision of the collector, the burden is on the importer to prove that his contention is right; and, if he fails, the action of the collector stands, even though the collector also has selected the wrong paragraph. Tiffany v. U. S. (C. C. 1901) 105 Fed. 766.

The burden of proof is on plaintiffs to show by a preponderance of testimony that the goods did not properly belong to the class to which they were assigned, and that they were dutiable only as

ed in the protest. Fisk v. See-
r (D. C. 1889) 38 Fed. 718; Walk-
Same, Id. 724.

action of the customs officer in
g goods in a class other than that
ich they were entered, in deciding
they were altered from the ordi-
condition in which they were cus-
rily imported in 1883, and that
alteration was made to evade duty,
ma facie evidence of each of these
U. S. v. Patton (D. C. 1891)
ed. 461, judgment affirmed Patton
S. (1895) 16 Sup. Ct. 89, 159 U.
0, 40 L. Ed. 253.

re is such a presumption in fa-
of a collector's finding as to the
l character of a commodity that
presumption is to be overcome
by a preponderance of proof that
rticle in question was something
than it was declared by the col-
to be. Fougera v. U. S. (1911)
Cust. App. 146.

collector's finding is presump-
correct, and, in the absence of re-
g evidence, is final. U. S. v. Vi-
& Son (1914) 5 Ct. Cust. App.
Hollender & Co. v. U. S., Id. 158,
Id. (1913) 4 Ct. Cust. App. 406;
nal Hat Pin Co. v. U. S. (1914)
Cust. App. 435; U. S. v. Gerdau
1915) 6 Ct. Cust. App. 7; Same
tman & Co., Id. 131; Wanamaker
S., Id. 21; Merck & Co. v. Same,
2; Mamluck & Co. v. U. S. (1916)
Cust. App. 556.

Appeal to secretary of treasury.—
ions prior to customs administra-
ct: Arnson v. Murphy (1883) 109
238, 3 Sup. Ct. 184, 27 L. Ed.
John Shillito Co. v. McClung
2) 51 Fed. 868, 2 C. C. A. 526 (af-
g judgment [C. C. 1891] 45 Fed.
Watt v. U. S. (C. C. 1878) Fed.
No. 17,292; Chung Yune v. Shurt-
C. C. 1882) 10 Fed. 239; U. S. v.
(C. C. 1882) 11 Fed. 76, 79; Arn-
. Murphy (C. C. 1884) 24 Fed.
(judgment affirmed [1885] 6 Sup.
85, 115 U. S. 579, 29 L. Ed. 491);
r v. Merritt (C. C. 1887) 29 Fed.
writ of error dismissed Merritt v.
r [1891] 11 Sup. Ct. 1024, 140 U.
9, 35 L. Ed. 600); McLean v.
r (C. C. 1887) 31 Fed. 602, 606;
v. Cousinery (D. C. 1874) Fed.
No. 14,878; Same v. Leng (D. C.
18 Fed. 15; Same v. Earnshaw
C. 1891) 45 Fed. 782.

Protest—In general.—Alleged er-
of the appraiser or collector, in
he has proceeded on a wrong prin-
as by including in the appraise-
charges forming no part of duti-
value, may be attacked by protest,
reviewed by the board of general
aisers. U. S. v. Passavant (1898)
up. Ct. 219, 221, 169 U. S. 16, 42
d. 644.

en an importer intends to rely
the similitude clause of the tariff
or the purpose of identifying his
merchandise with some enumerated article of the tariff schedules, and means to place his objection to the action of the collector on the ground that collector has not given due effect to that provision, he should state the fact in his protest. Hahn v. Erhardt (1897) 78 Fed. 620, 24 C. C. A. 265, appeal dismissed Erhardt v. Hahn (1897) 89 Fed. 1016, 32 C. C. A. 606.

The board of general appraisers had before it several protests relating to the classification of certain merchandise, one of which stated objections to the collector's assessment that were not stated in the other protests. Held, that the presence of the former protest was of no moment as affecting the construction of the latter protests. U. S. v. H. Bayersdorfer & Co. (1903) 126 Fed. 732, 62 C. C. A. 16.

The general rule that an appraisement by the local appraiser is final and conclusive, unless reviewed by reappraisement proceedings, there is an exception in case the appraiser proceeded on a wrong principle, as by advancing the value of merchandise not examined by him. In such case the importer may pursue the remedy prescribed in this section. U. S. v. Beer (1906) 150 Fed. 566, 80 C. C. A. 368, affirming judgment (C. C. 1905) 142 Fed. 199.

Goods dutiable under one paragraph of a tariff act were asserted by an importer in his protest to be dutiable under another paragraph. But the language of the protest indicated an intention to cite the former. Held, that the protest should be construed as referring to the former. U. S. v. Leerburger (1908) 160 Fed. 651, 87 C. C. A. 547.

Upon an importation of ginger ale in bottles, the collector added the value of the bottles to that of the ale, for the purpose of assessing the duty. Held, that the question of the propriety of such action was one of classification, and was properly raised by protest. Dickson v. U. S. (C. C. 1895) 68 Fed. 534.

The act of the collector in stating, in his return to the board of appraisers, that the requirements of the law have been complied with by the importers, does not operate as a waiver of objections upon the ground of an insufficient protest. The protest being a statutory necessity, it is beyond the power of the collector to waive it. U. S. v. Schefer (C. C. 1896) 71 Fed. 959.

While an appraisement is final and not reviewable by the courts, yet the alleged inclusion of something not properly a part of market value, and not dutiable at all, may be challenged by protest, and re-examined by the courts on appeal. Hermann v. U. S. (C. C. 1897) 84 Fed. 151, following Oberteuffer v. Robertson (1886) 6 Sup. Ct. 462, 116 U. S. 499, 29 L. Ed.

706, and judgment reversed U. S. v. Herrman (1898) 91 Fed. 116, 33 C. C. A. 400.

The action of a collector in declining to accept the proclaimed value of a foreign standard coin, and in adopting another standard, thereby increasing the amount of duty on imported merchandise, does not relate to a disputed appraisement, but to the "amount of duties," and is reviewable, on the protest of the importer, by the board of general appraisers and the circuit court. U. S. v. J. Allston Newhall & Co. (C. C. 1899) 91 Fed. 525.

Where an importer filed a protest against a tentative liquidation of an entry, this action does not preclude him from filing another protest against the final liquidation subsequently, regardless of whether, at the time of making the first protest, he regarded the first liquidation as final, and not tentative. U. S. v. Franklin Sugar Refining Co. (C. C. 1905) 137 Fed. 677.

The provision in Customs Administrative Act, that the decision of the collector of customs as to duties "shall be final and conclusive," unless the duties are paid under protest, and proceedings brought for their recovery before the board of general appraisers, does not require that on an action by the government for unpaid duties the importer should be limited to the proceedings prescribed in said section. He may defend on the ground that the assessment in question was illegal. U. S. v. Tiffany (C. C. 1905) 137 Fed. 971, judgment reversed Same v. Tiffany & Co. (1906) 151 Fed. 473, 81 C. C. A. 11.

Certain imported merchandise, covered by an entry embracing three invoices, was all subjected to the same rate of duty, which, it appeared, was excessive as to one of the invoices. In protesting against the rate of duty, the importer specified one of the two invoices on which duty was correctly assessed. Held, that the protest should be considered restricted to the invoice which it specified. U. S. v. Hartley & Graham (C. C. 1905) 140 Fed. 969.

On an action against an importer for unpaid duties, it is proper to stay the trial in order to permit the importer to pay the duties under protest, so as to allow the board of general appraisers to pass upon the correctness of the assessment in question. U. S. v. Tiffany & Co. (C. C. 1907) 154 Fed. 740.

Mere delay in the payment of duties on imported merchandise does not deprive the board of general appraisers of power to pass upon the question of the proper classification of imported merchandise, where protest has been filed within the time prescribed in said section. Id.

When duties paid under protest were refunded according to a second classification, the office of the protest is then fulfilled, and it could not ther after operate to extend the peri within which the government mig make a third reliquidation of the d ties. U. S. v. Fox (D. C. 1893) Fed. 531.

Where an importer has removed bond to his own warehouse a consig ment of merchandise, and it is the found that more than 10 per cent. the consignment had been rendered transit totally valueless he is not r mitted as of course to proceedi alone under section 5602, post, b may seek his remedy as well by pr test under this section. U. S. v. H bicht (1910) 1 Ct. Cust. App. 53.

Where an assessment had been pr tested and the entry had been retain for reliquidation, and on January 1907, the collector reliquidated the i voice, a second reliquidation on D cember 4, 1908 was barred. U. S. Goldberg (1911) 2 Ct. Cust. App. 14 citing U. S. v. Leng (D. C. 1883) 1 Fed. 15.

A protest may cover one or more en tries of goods described in more tha one invoice. U. S. v. McCoy (1914) Ct. Cust. App. 264.

The written protest or notice is re quired only for the purpose of institut ing a proceeding before the board o general appraisers to review the deci sion of a collector or appraiser (1894) 21 Op. Atty. Gen. 92.

The action of a collector in denyin a reappraisement because the importe refused to answer proper interrogato ries propounded to him may be re viewed, first, by the board of genera appraisers on a protest, and next b the circuit court on an application fo review. (1899) 22 Op. Atty. Gen. 456

5. —— **Specific grounds of objection** —Technical precision held not require in protests, but the objections to th assessment must be stated so distinct ly and specifically that when fairl construed they will show the claims o the protestant and so notify the col lector what these claims are. Herrma v. Robertson (1894) 14 Sup. Ct. 686, 687, 152 U. S. 521, 38 L. Ed. 538; Presson v. Russell (1894) 14 Sup. Ct. 728, 729, 152 U. S. 577, 38 L. Ed. 559; Shaw v. Prior (C. C. 1895) 68 Fed. 421, 423; Bing & Co.'s Successors v. U. S. (1912) 3 Ct. Cust. App. 211, citing Carter v. U. S. (1910) 1 Ct. Cust. App. 64; U. S. v. Ewing & Clancey (1912) 3 Ct. Cust. App. 339; Same v. Bauer, Id. 343; Dieckerhoff, Raffloer & Co. v. U. S. (1913) 4 Ct. Cust. App. 230; U. S. v. Stirn (1914) 5 Ct. Cust. App. 140, citing Lichtenstein v. U. S. (1910) 1 Ct. Cust. App. 79; Oelrichs v. Same (1912) 3 Ct. Cust. App. 232; U. S. v. Neustadtl (1914) 5 Ct. Cust. App. 283; Brown & Co. v. U. S., Id. 396; U. S. v. Sheldon & Co., Id. 427; Vandiver v. U. S. (1915) 6 Ct. Cust. App. 80; U. S. v. Kuyper & Co., Id. 142; Michelin Tire Co. v. U. S. (1915)

283, distinguishing Bowling Green rage & Van Co. v. U. S. (1912) 3 Cust. App. 309.

protest specifically objecting to the of 50 per cent. assessed on sweet- l chocolate, and claiming that the ls "are dutiable at two cents per nd," is sufficiently specific without ting out the particular paragraph er which the importer claims that goods should be classified, where re are but two other paragraphs ling with chocolate, under either which the duty is two cents a pound, that the collector could not have n perplexed by the omission to e a particular paragraph. U. S. v. ambier (1898) 18 Sup. Ct. 771, 773, U. S. 621, 42 L. Ed. 1167.

here is no necessity for exacting n nice precision in the protest of an orter, or such accurate knowledge he law by him, as to debar him from ef from an erroneous classification excessive assessment by the col- or because he fails to designate cor- ly the provision under which the sification should have been made. S. v. Shea, Smith v. Co. (1902) 114 . 38, 51 C. C. A. 664.

ertain importers, in protesting inst the assessment of customs y, based their objections on an in- licable paragraph of the tariff act, named the correct rate of duty, appening that the rate provided in paragraph was the same as in the agraph that should have been refer- to in the protest. There was noth- in the terms of the protest to di- the attention of the collector of toms to the proper paragraph or to gest that the importers had inad- tently referred to the wrong para- ph and had intended to refer to the t one. Held, that the protest was sufficiently distinct and specific. S. v. Fleitmann (1905) 137 Fed. , 69 C. C. A. 624, reversing judg- t (C. C. 1904) 131 Fed. 396.

'here an importer protests against assessment of duty on the ground an alleged application of the simili- e clause of Tariff Act Aug. 27, 1894, 49, § 4, unless the protest contains erence to said provision, it is not iciently distinct and specific. U. S. Dearberg Bros. (1905) 143 Fed. , 74 C. C. A. 226, reversing order C. 1904) 135 Fed. 245.

protest against the imposition of y on moss, under section 4 of Act 0, which claims that it should either dutiable under paragraph 24, or free er paragraph 653, as the impor- s were unable to detect that it had lergone any process of manufacture, ufficiently definite and precise, if the ss was free either under paragraph or paragraph 560. Shaw v. Prior C. 1895) 68 Fed. 421.

mporters protested against the ac- n of a collector of customs in con- sidering a certain amount as the entered value, and asserted that he had erred in failing to regard the fact that said amount included some nondutiable items. Held, that this statement of objections was sufficiently distinct and specific. A. J. Woodruff & Co. v. U. S. (C. C. 1896) 154 Fed. 861.

A protest by importers, which fails to show whether the objection is to the valuation or the classification, is not sufficiently definite. Cottier v. U. S. (1900) 101 Fed. 423.

Where the only question of difference between an importer and a collector with reference to the assessment for duty of goods entered on July 24, 1897, c. 11, was as to whether they were dutiable under the act of 1894 or that of 1897, they having been first appraised under the former and afterwards reclassified under the latter, a protest by the importer, on payment of the duty, which distinctly states his claim that they should have been assessed under the former act, is sufficient, although it does not specify the particular provisions of either act which were held or claimed to be applicable. In re Hagop Bogigian Co. (C. C. 1900) 104 Fed. 75.

Certain long-haired Russian calfskins were classified as dutiable as "hides of cattle," under paragraph 437, Act 1897, when they should have been classified as free of duty, under paragraph 664 of said act, covering "skins of all kinds, raw." The importers' protest against the assessment of the collector did not refer to the proper paragraph (664), but only to paragraphs 561 and 562 of said act, which relate respectively to "furs, undressed," and "fur skins." Held, that this was a sufficient compliance with the requirement that protests shall set forth "distinctly and specifically" the importer's objections to the collector's decisions. Weil v. U. S. (C. C. 1900) 124 Fed. 1006.

A protest against the assessment of duty which does not point out distinctly and specifically the proper rate of duty is not sufficient. Fuld & Co. v. U. S. (C. C. 1906) 143 Fed. 920, judgment reversed (1907) 152 Fed. 165, 81 C. C. A. 417.

In his protest against the assessment of duty, an importer asserted that the goods were "dutiable under Act July 24, 1897, c. 11, § 1, par. 400, at the rate or rates therein provided according to thickness, cutting size," etc. The only articles dutiable under that paragraph according to the conditions thus specified were lithographic prints. Held, that the protest was sufficiently specific and distinct, that it should be treated as a reference to the provision for lithographic prints, and that, as the collector presumably had samples of the goods and could thereby ascertain their cutting size, etc., it was not necessary to point out the particu-

lar rate that was applicable. Hensel, Bruckmann & Lorbacher v. U. S. (C. C. 1907) 160 Fed. 219.

Protests each covering 24 separate provisions of the tariff, which carry about 50 different rates of duty, are invalid, as not setting forth the importers' objections "distinctly and specifically." J. H. Lichtenstein & Co. v. U. S. (C. C. 1909) 175 Fed. 1016.

The substitution of the word "reasons" for "grounds" in the act held not to exact a more specific protest than formerly on the part of the importer. Carter v. U. S. (1910) 1 Ct. Cust. App. 64, distinguishing Hermann Boker & Co. v. Same (C. C. 1905) 140 Fed. 115.

6. —— **Sufficiency.**—A protest against the payment of a duty of 60 per cent. on an importation of "cotton gloves mixed with silk, * * * although the article is only liable to a duty of 35% less 10% being composed of cotton and silk, cotton chief part, the duty of 60% being only legal where silk is the chief part," shows that it was the importers' intention to object to the goods being classified under Act June 30, 1864, § 8, as silk gloves, or Act March 3, 1865, § 3, as readymade clothing of silk, or of which silk shall be the component material of chief value, and is a sufficient compliance with the statute. Act Feb. 26, 1845. It is not necessary that the protest should specify under what provision the goods were dutiable. Heinze v. Miller (1892) 12 Sup. Ct. 604, 606, 144 U. S. 28, 36 L. Ed. 333.

Goods imported in 1881, composed of calf hair and cotton, of which the hair constituted more than 85 per cent. in weight, being dutiable under R. S. § 2504, Schedule M, as "manufactures of hair," a protest against a classification of them under the first clause of section 2499, as nonenumerated, which claims only that they should be classified under the second clause of section 2499, is insufficient. Herrman v. Robertson (1894) 14 Sup. Ct. 686, 152 U. S. 521, 38 L. Ed. 538, affirming Herman v. Same (C. C. 1889) 41 Fed. 881.

When an importer protests that his invoices are dutiable under a certain paragraph of the tariff act, he is not thereby concluded, so as to prevent the board of appraisers from adjudging that a part of the invoices is dutiable under that paragraph, and a part under the classification adopted by the collector. In re Crowley (1893) 55 Fed. 283, 5 C. C. A. 109, distinguishing Davies v. Arthur (1877) 96 U. S. 148, 24 L. Ed. 758, and affirming judgment (C. C. 1892) 50 Fed. 465.

A protest claiming free entry of an importation of tapioca flour under paragraph 646 of the tariff act of August 27, 1894, which provides for the free entry of tapioca, was sufficient to advise the collector that the exemption from duty was in fact claimed under paragraph 677 of the act of July 2 1897, which contains an identical pr vision, where such act was the one th in force and which governed the in portation. Shaw v. U. S. (1903) 1 Fed. 443, 58 C. C. A. 425, reversi judgment (C. C. 1902) 117 Fed. 366.

On appeal by the United States fro a decision of the board of general a praisers, which reversed the asses ment of duty by a collector of custom where no statement of error was ma by the appellant in regard to the su ficiency of the protest on which t proceedings before said board were ba ed, held that this fact constituted waiver by the United States of an a leged defect in the protest. U. S. Brown, Durrell & Co. (1903) 127 Fe 793, 62 C. C. A. 473.

No new rule obtains in respect to t terms of protests against decisions collectors of customs in the assessme of duty. If the protest fail to satis the requirements of said section, t collector's decision should be affirme U. S. v. Fleitmann (1905) 137 Fe 476, 69 C. C. A. 624.

A protest in which an importer clai ed a "refund of duty on * * skins" held a sufficient reference the provision in the free list of th tariff act for "skins of all kinds." U S. v. Helmrath (1906) 145 Fed. 36, 7 C. C. A. 261, affirming judgment Helm rath v. U. S. (C. C. 1904) 135 Fe 912.

Certain importers protested agains the assessment of duty on an impor tation, stating in their protest merel the contention that the merchandis was dutiable under a certain paragrap of the tariff act, with no mention of th grounds of their objections or of th rate of duty claimed to be applicable and the paragraph cited was the on under which duty had been assessed and was a long one, containing man subdivisions and different rates o duty. Held, that the protest was in sufficient. Hermann Boker & Co. v U. S. (1906) 145 Fed. 1022, 74 C. C A. 681, affirming judgment (C. C. 1905 140 Fed. 115.

An importer's protest read: "Pro test is hereby made against * * your decision assessing duty at 35 pe cent. ad valorem, or other rate o rates, on lithographic prints, krippen mechanical cards, etc., covered by en tries below named. * * * This pro test is intended to apply separately an collectively to every part of goods as sessed under paragraph 418, as wel as to all other goods assessed at 3 per cent. ad valorem." Held, that th protest was not insufficient because n part of the importation in question wa assessed at the rate of 35 per cent under paragraph 418 (Act July 24 1897, c. 11, § 1), or elsewhere, bu should be construed as relating to lith ographic prints and booklets assesse

her rates and under another para-
n than were mentioned in the pro-
Fuld & Co. v. U. S. (1907) 152
165, 81 C. C. A. 417, reversing
nent (C. C. 1906) 143 Fed. 920.
terial dutiable at 50 cents per
l as "woven fabrics * * * in
gum," under the first clause of a
paragraph, were asserted in an
rter's protest to be dutiable "at 60
per pound * * * under the
clause, * * * being woven fab-
n the piece, dyed." This rate and
iption ("dyed") pertained to the
d clause, and not the first. Held,
the protest referred sufficient-
the first clause. U. S. v. Leer-
er (1908) 160 Fed. 651, 87 C. C.
17, affirming judgment Leerburger
S. (C. C. 1907) 155 Fed. 146.
protest referring to "hats made
so-called artificial silk" cannot be
rued as relating to hats made
real horsehair. U. S. v. Wana-
r (1910) 175 Fed. 900, 99 C. C. A.
reversing Wanamaker v. U. S. (C.
909) 169 Fed. 664.
e collector classified certain
nk steel," used in the manufacture
oots and shoes, under paragraph
of Act Oct. 1, 1890, and also im-
l an additional duty of one-quarter
cent per pound on the goods, as
l-rolled" steel, under paragraph
The importer protested against
additional duty, and on appeal the
l of general appraisers held that
original classification was wrong,
that the goods should have been
ed under paragraph 140, as "oth-
teel," etc. They also found that
were not subject to the addi-
l duty, but that the protest was
ficient, because it failed to point
he proper classification. Held that,
e objection was made only to the
ional duty, and not to the original
ification, the importer was not
d to point out the error in the
r, and the protest was sufficient.
e) Houdlette (C. C. 1891) 48 Fed.

protest which points out the rea-
why certain goods should be ad-
ed free of duty is not bad because
fers to a statute not in existence
e time. Boussod Valadon Co. v.
. (C. C. 1895) 66 Fed. 718, judg-
t reversed U. S. v. Boussod-Vala-
Co. (1896) 71 Fed. 503, 18 C. C.
23.
protest filed by apparent strangers
he goods, without any intimation
it was done for the person who
e in the invoice that he was the
er, is ineffectual; nor will the fact
the owner is connected with one
he departments of the establish-
t of the persons making the pro-
authorize the inference that they
agents of the goods. Abegg v. U.
C. C. 1896) 71 Fed. 960.
ragraph 308 of Act 1894 makes

lithographic prints dutiable except, inter alia, "when forming a part of a periodical or newspaper and accompanying the same." Held, that a protest against the imposition of a duty on prints, claimed to come within the exception, was not objectionable because it stated that the prints in question were "free," since, though the word "free" was not used in the paragraph, the effect of the exception was to leave them free. Richards v. U. S. (C. C. 1899) 91 Fed. 516.

The collector having classified certain glass jars containing preserves as "vials," under paragraph 88 of the act of 1894, the importers protested that under said paragraph there was no duty on any filled bottles, or on "bottles exceeding ¾ of a cent per pound. Our bottles are not vials. They are not merchandise, but the envelopes of merchandise, and pay no separate duty." Held, that this was a sufficient protest. Smith v. U. S. (C. C. 1899) 91 Fed. 757.

A protest against the classification of gloves as lambskin, under paragraph 441 of the tariff act of July 24, 1897, on the ground that they should be "assessed under paragraph 439 as Schmaschen gloves," was sufficient, and distinctly informed the collector of the position of the importer, since paragraphs 439 and 440 must necessarily be construed together. In re Claflin (C. C. 1902) 113 Fed. 944.

Where an importer has protested against the imposition of duties alleged to be excessive, and there is no way of distinguishing the merchandise properly assessed from that which is subject to the duty claimed by the importer, the protest must be overruled as to all the merchandise. John B. Ellison & Sons v. U. S. (C. C. 1905) 136 Fed. 969, judgment affirmed J. B. Ellison & Sons v. U. S. (1906) 142 Fed. 732, 74 C. C. A. 64, writ of certiorari denied Ellison v. U. S. (1906) 26 Sup. Ct. 763, 202 U. S. 615, 50 L. Ed. 1172.

Where certain imported merchandise was erroneously classified as wool wearing apparel, instead of as manufactures in chief value of fur, a protest against the classification stating as reasons merely that the merchandise was "dutiable at the appropriate rate and under the proper paragraph according to the component material of chief value," held insufficient. Rosenberg v. U. S. (C. C. 1906) 146 Fed. 84.

Goods, which should have been classified free of duty under a paragraph relating to "jute bagging," were asserted in the importers' protest to be free under a paragraph relating to "burlaps," and there was no suggestion that the importers at the time of filing the protest had in mind the former provision. Held, that the protest did not set forth the importers' objections "distinctly and specifically." Corbitt &

Macleay Co. v. U. S. (C. C. 1907) 153 Fed. 648.

A protest is sufficient which, though imperfectly expressed, may be understood when read in connection with the statute referred to therein; and the fact that the collector understood the protest is relevant. Lothrop v. U. S. (C. C. 1908) 164 Fed. 99.

Where the importer protests against the rate assessed on his importation and points out the provisions of law under which he contends the articles in question are properly dutiable and indicates these with sufficient clearness for the collector by mere computation or examination of the goods to determine their classification, he has in all essential respects complied with this section. Carter v. U. S. (1910) 1 Ct. Cust. App. 64.

Where the importer claimed his importation was dutiable as petroleum under Act 1897, at the rate of duty imposed by Germany on petroleum, and it appeared the rate was levied on the importation as paraffin and as vaseline oil, each of which was then dutiable at other and differing rates in Germany, a protest as to petroleum alone is not sufficiently exact; it does not show that that which was in the mind of the protesting importer was brought to the knowledge of the collector. Bliven v. U. S. (1911) 1 Ct. Cust. App. 205.

Decisions prior to the customs administrative act, see Converse v. Burgess (1855) 59 U. S. (18 How.) 413, 416, 15 L. Ed. 455 (affirming Burgess v. Converse [C. C. 1855] Fed. Cas. No. 2,-154); Curtis v. Fiedler (1862) 67 U. S. (2 Black.) 461, 480, 17 L. Ed. 273; Gelpcke v. City of Dubuque (1863) 68 U. S. (1 Wall.) 175, 17 L. Ed. 520; Nichols v. U. S. (1868) 74 U. S. (7 Wall.) 122, 19 L. Ed. 125; Davies v. Arthur (1877) 96 U. S. 148, 152, 153, 24 L. Ed. 758; Arthur v. Morgan (1884) 112 U. S. 495, 5 Sup. Ct. 241, 244, 28 L. Ed. 825; Porter v. Beard (1888) 8 Sup. Ct. 554, 555, 124 U. S. 429, 31 L. Ed. 490 (affirming judgment [C.C. 1883] 15 Fed. 380); Schell's Ex'rs v. Fauché (1891) 138 U. S. 562, 11 Sup. Ct. 376, 34 L. Ed. 1040 (affirming Fauché v. Schell [C. C. 1887] 33 Fed. 336); Rossman v. Hedden (1891) 12 Sup. Ct. 925, 145 U. S. 561, 36 L. Ed. 817 (affirming [C. C. 1888] 37 Fed. 99); Heinze v. Arthur's Ex'rs (1892) 144 U. S. 28, 12 Sup. Ct. 604, 36 L. Ed. 333; Hubbard v. Soby (1892) 13 Sup. Ct. 13, 14, 146 U. S. 56, 36 L. Ed. 886; Herrman v. Robertson (1894) 152 U. S. 521, 14 Sup. Ct. 686, 38 L. Ed. 538 (affirming [C. C. 1889] 41 Fed. 881); Presson v. Russell (1894) 152 U. S. 577, 14 Sup. Ct. 728, 38 L. Ed. 559; Willison v. Hoyt (C. C. 1841) Fed. Cas. No. 17,772; Mason v. Kane (C. C. 1851) Fed. Cas. No. 9,241; Cornett v. Lawrence (C. C. 1852) Fed. Cas. No. 3,241; Durand v. Same, Id. 4,187; Focke v. Same Id. 4,894; Loewenstein v. Maxwell, Id. 8,462; Norcross v. Greely, Id. 10,294; Pierson v. Lawrence, Id. 11,158; Same v. Maxwell, Id. 11,159; Swanston v. Morton, Id. 13,677; Thomson v. Maxwell, Id. 13,983; Tucker v. Same, Id. 14,224; Wilson v. Lawrence, Id. 17,816; Bangs v. Maxwell (C. C. 1853) Fed. Cas. No. 841; Christ v. Same Id. 2,698; Craig v. Same, Id. 3,334; Fielden v. Lawrence, Id. 4,774; Goddard v. Maxwell, Id. 5,492; Hertz v. Same, Id. 6,432; Kriesler v. Morton Id. 7,933; Sadler v. Maxwell, Id. 12,207; Stalker v. Same, Id. 13,283; Maillard v. Lawrence (C. C. 1855) Fed. Cas. No. 8,972; Steegman v. Maxwell Id. 13,344; Vaccari v. Same, Id. 16,810; Crowley v. Same (C. C. 1856) Fed. Cas. No. 3,449; Schmaire v. Same, Id. 12,460; Schuchardt v. Lawrence, Id. 12,484; Baxter v. Maxwell (C. C. 1857) Fed. Cas. No. 1,126; Drake v. Redfield, Id. 4,065; Lillie v. Same, Id. 8,351; Ponsot v. Maxwell Id. 11,267; Pousot v. Lawrence, Id. 11,352; Marshall v. Redfield (C. C. 1858) Fed. Cas. No. 9,131; Boker v. Same (C. C. 1859) Fed. Cas. No. 1,606a; Scheerdt v. Schell, Id. 12,444; Boker v. Bronson (C. C. 1860) Fed. Cas. No. 1,605; Hutton v. Schell (C. C. 1868) Fed. Cas. No. 6,961; Frazee v. Moffitt (C. C. 1882) 18 Fed. 584, 585; Muser v. Robertson (C. C. 1883) 17 Fed. 500, 502; Herman v. Schell (C. C. 1884) 18 Fed. 891; Smith v. Same (C. C. 1886) 27 Fed. 648, 651; Cummins v. Robertson (C. C. 1886) 27 Fed. 654, 655; Legg v. Hedden (C. C. 1889) 37 Fed. 861 (judgment reversed [1892] 13 Sup. Ct. 1049, 149 U. S. 779, 37 L. Ed. 959); Laidlaw v. Abraham (C. C. 1890) 43 Fed. 297; U. S. v. Curley (C. C. 1895) 66 Fed. 720; Fisk v. Seeberger (D. C. 1889) 38 Fed. 718; Walker v. Seeberger, Id. 724; Brown v. U. S. (1865) 1 Ct. Cl. 377.

7. —— **Affirmance of classification where correct classification is not stated in protest.**—See Presson v. Russell (1894) 14 Sup. Ct. 728, 729, 152 U. S. 577, 38 L. Ed. 559; In re Herter Bros. (1892) 53 Fed. 913, 4 C. C. A. 107 (reversing judgment [C. C. 1891] 50 Fed. 72); In re Collector of Customs (1893) 55 Fed. 276, 5 C. C. A. 101 (affirming In re Sherman [C. C. 1892] 49 Fed. 224); In re Guggenheim Smelting Co. (1901) 112 Fed. 517, 50 C. C. A. 374 (writ of certiorari denied U. S. v. Guggenheim Smelting Co. [1902] 22 Sup. Ct. 942, 186 U. S. 485, 46 L. Ed. 1260); U. S. v. H. Bayersdorfer & Co. (1903) 126 Fed. 732, 62 C. C. A. 16; U. S. v. George Knowles & Sons (1903) 126 Fed. 737, 62 C. C. A. 62 (reversing decree George W. Knowles & Sons v. U. S. [C. C. 1903] 122 Fed. 971); Willison v. Hoyt (C. C. 1841) Fed. Cas. No. 17,772; Durand v. Lawrence (C. C. 1852) Fed. Cas.

4,187; Norcross v. Greely, Id. 94; Swanston v. Morton, Id. 13,-; Thomson v. Maxwell, Id. 13,983; son v. Lawrence, Id. 17,816; Kries-v. Morton (C. C. 1853) Fed. Cas. 7,933; Roller v. Maxwell, Id. 12,-; Burgess v. Converse (C. C. 1855) . Cas. No. 2,154; McCall v. Law-e, Id. 8,672; Maillard v. Same, Id. 2; Baxter v. Maxwell (C. C. 1857) . Cas. No. 1,126; Boker v. Redfield C. 1859) Fed. Cas. No. 1,606a; ies v. Arthur (C. C. 1875) Fed. No. 3,611; Chung Yune v. Kelly C. 1882) 14 Fed. 639; Legg v. den (C. C. 1889) 37 Fed. 861 (judg-t reversed [1892] 13 Sup. Ct. 1049, U. S. 779, 37 L. Ed. 959); McNab eeberger (C. C. 1889) 39 Fed. 759; e Austin (C. C. 1891) 47 Fed. 873; e Kursheedt Mfg. Co. (C. C. 1893) Fed. 469; U. S. v. Curley (C. C.) 66 Fed. 720; Tuska v. U. S. C. 1897) 84 Fed. 442; Hempstead . S. (C. C. 1899) 94 Fed. 484; U. Pilditch (C. C. 1900) 99 Fed. 938; le & Co. Chemists' Corp. v. U. S. C. 1901) 108 Fed. 216; In re Sol-Process Co. (C. C. 1905) 134 Fed. Vandiver v. U. S. (1912) 2 Ct. t. App. 505; Sonneborn's Sons v. e (1912) 3 Ct. Cust. App. 54; Oel-s & Co. v. Same (1912) 3 Ct. Cust. 232 (citing Bliven v. Same [1911] t. Cust. App. 205); U. S. v. Dan-& Marston (1912) 2 Ct. Cust. App. U. S. v. Park & Tilford (1912) t. Cust. App. 350; Same v. Ringk o. (1912) 3 Ct. Cust. App. 353 (dis-uishing Tilge & Co. v. U. S. [1912] t. Cust. App. 97); U. S. v. Chat-ooga Brewing Co. (1912) 3 Ct. t. App. 375.

n action to recover back duties on certain goatskins was tried lly on the theory that the skins e classifiable either as "rugs," as claimed by the collector, or as ns dressed and finished," as stated he protest. Held, that the collec-was in no position to seek a reversal he judgment on the ground that the ds were properly classifiable as s." Seeberger v. Schlesinger (1894) U. S. 581, 14 Sup. Ct. 729, 38 L. 560.

appealing from a decision of the rd of general appraisers, an impor-set forth in his petition a claim ed on a paragraph of the tariff act referred to in his protest filed with collector and passed on by said rd. Held, that this is not permissi-U. S. v. H. Bayersdorfer & Co. 03) 126 Fed. 732, 62 C. C. A. 16, ersing decree Bayersdorfer & Co. J. S. (C. C. 1903) 122 Fed. 968.

protest not only expressly referred collector to a paragraph, but aver-the merchandise to be of a kind vided for in that paragraph alone, claim was made thereunder, Held, protestant was bound by this spe-c allegation, and his protest could not avail to give him the benefit of yet another and different paragraph of the law. U. S. v. Troy Laundry Machinery Co. (1914) 5 Ct. Cust. App. 430.

8. —— **Alternative grounds.**—An importer may protest against a classification on alternative grounds, where the proper classification is doubtful, and the fact that his protest is sustained on one of the grounds does not estop him from appealing on the ground that the other states the correct classification. Koechl v. U. S. (1898) 91 Fed. 110, 33 C. C. A. 363.

The voluntary refunding to an importer whose protest was in the alternative, of the excess of duty collected according to one of his claims, and the discontinuance of a suit brought for the collection of such excess, in the absence of any release or evidence of accord and satisfaction, will not preclude him from maintaining another suit to recover the remaining excess according to his other claim. Robertson v. Edelhoff (1899) 91 Fed. 642, 34 C. C. A. 34.

Calling certain articles "musical instruments" in an alternative clause of a protest does not estop the importer from claiming that they are dutiable as "toys," as asserted in another clause of his protest. Blumenthal v. U. S. (C. C. 1896) 72 Fed. 48.

While alternative grounds of dissatisfaction may properly be stated in protests against decisions by collectors of customs, this rule does not permit the enumeration of a long list of paragraphs, many of which are entirely remote, with the purpose of covering everything. It is not enough that the provision ultimately relied upon can be found somewhere in the protest. J. H. Lichtenstein & Co. v. U. S. (C. C. 1909) 175 Fed. 1016.

A protest, blanket in form, covering various classes of articles, not included in the importation or importations in question, fails to state the importer's claim with such clearness and certainty as to acquaint the collector with the real grounds of the complaint, and is insufficient. Protests are to be construed liberally and alternative claims are allowable, but the requirement of law that the importer shall set forth in the protest distinctly and specifically and in respect to each entry or payment the reason for his objection thereto may not be ignored. Lichtenstein v. U. S. (1910) 1 Ct. Cust. App. 79.

The merchandise was classified by the collector as bagging made of jute butts and waste, and was assessed for duty under paragraph 355, Act 1909. The protest claimed alternatively under two paragraphs, to wit, 358 and 480, of that act. On the date set for hearing the government asked that a consent order sustaining the protest should be entered of record. The protestants objected to

this, insisting on a hearing and a decision upon the question of law involved. The board denied this, and, directing a submission of the case without a trial of the issues of fact, sustained the protest. An assessment was ordered under the provisions of paragraph 358. The appeal was taken from the order sustaining the protest. American Manufacturing Co. v. U. S. (1913) 3 Ct. Cust. App. 495.

The order sustaining the protest was not made by the consent of both parties, nor upon the express admission by the government of any of the facts alleged in the protest. This was not a consent order in the legal acceptation of the term; it was not an order legally following on an express admission of fact by one of the contending litigants. The protestant had the right to show by evidence whether the merchandise belonged to one or the other of the two classes, as alleged in the protest. Id.

9. —— Amendment of protest.—A protest against the classification of imports and exaction of duty made within the 10 days specified by Customs Administrative Act cannot, after the expiration of the 10 days, be amended, so as to claim that the classification should have been other than first claimed in the protest. In re Sherman (C. C. 1892) 49 Fed. 224, judgment affirmed In re Collector of Customs (1893) 55 Fed. 276, 5 C. C. A. 101.

10. —— Abandonment of protest.—Alleged errors of the board of general appraisers detrimental to the government cannot be reviewed on an appeal taken by the importer, where he abandons his opposition to the decision, and the government itself took no steps to procure a review. U. S. v. Lies (1898) 18 Sup. Ct. 780, 170 U. S. 628, 42 L. Ed. 1170, affirming judgment (1896) 20 C. C. A. 651, 74 Fed. 546.

When the board of general appraisers, upon the protest of an importer against a collector's classification of imported merchandise, has sustained such protest in one particular, and in all others affirmed the collector's decision, and the importer has thereupon duly applied to the circuit court for a review of the questions involved, no statement of errors being filed by the government, the court cannot, upon the importer's conceding that there was no error in the decision of the board of general appraisers, proceed to review that decision, so far as favorable to the importer, but must affirm it as it stands. U. S. v. Lies (1896) 74 Fed. 546, 20 C. C. A. 651.

The importers, in a protest case pending before the board of general appraisers, having failed, after due notice, to introduce the evidence necessary to sustain their contention, the board thereupon overruled the protest, and the importers appealed to the Circuit Court. Held, that the decision of the board should be affirmed, thoug it appeared that the contention of th importers was correct. John Donat Co. v. U. S. (C. C. 1900) 124 Fed. 46

11. —— Protest fee.—The requir ment of payment of protest fee does n apply to cases in which the right t protest accrued under the act of 190 U. S. v. Brown & Roese (1915) 6 C Cust. App. 382.

The right to protest having accru under Act 1909 the saving clause paragraph S of section 4 of Act 191 declaring that the repeal or modific tion of existing laws shall not affe any right accrued, and that all righ under former laws may be enforced the same manner as if said repeal modification had not been made, ent tles the protestant to proceed witho new burdens not imposed by the form act. U. S. v. Brown & Roese (1915 6 Ct. Cust. App. 382, citing Becht v. U. S. (1879) 101 U. S. 597, 25 Ed. 1019.

12. —— Necessity of protest.—Pr test as condition precedent to actio against collector for duties prior to th passage of the Customs Administrativ Act of 1890, see Maxwell v. Griswol (1850) 10 How. 242, 255, 13 L. E 405; Lawrence v. Caswell (1851) 1 How. 488, 496, 14 L. Ed. 235; Curti v. Fiedler (1862) 67 U. S. (2 Black 461, 17 L. Ed. 273; Nichols v. U. S (1868) 7 Wall. 122, 126, 19 L. Ed. 125 Savage v. Same (1875) 92 U. S. 38 386, 23 L. Ed. 660; Cadwalader v Partridge (1890) 11 Sup. Ct. 182, 13 U. S. 553, 34 L. Ed. 783; Saltonstall v Russell (1894) 14 Sup. Ct. 733, 73 152 U. S. 628, 38 L. Ed. 576; Bur roughs v. Erhardt (1898) 88 Fed. 25 31 C. C. A. 524; Erhardt v. Winte (1899) 92 Fed. 918, 35 C. C. A. 84 Griswold v. Lawrence (C. C. 1850 Fed. Cas. No. 5,837; Kriesler v. Mor ton (C. C. 1855) Fed. Cas. No. 7,934 Maillard v. Lawrence, Id. 8,972; Mar shall v. Redfield (C. C. 1858) Fed. Cas No. 9,131; Boker v. Redfield (C. C 1859) Fed. Cas. No. 1,606a; Moke v Barney (C. C. 1865) Fed. Cas. No 9,698; Greenleaf v. Schell (C. C. 1868 Fed. Cas. No. 5,782; U. S. v. Schles inger (C. C. 1882) 14 Fed. 682, 68 (judgment affirmed [1887] 7 Sup. Ct 442, 444, 120 U. S. 109, 30 L. Ed. 607) U. S. v. Clement (D. C. 1843) Fed Cas. No. 14,815; Same v. Chase (D. C 1879) Fed. Cas. No. 14,787; Same v Earnshaw (D. C. 1882) 12 Fed. 283 284; Iselin v. Hedden (D. C. 1886) 2 Fed. 416; Schlesinger v. U. S. (1863) 1 Ct. Cl. 16; (1889) 19 Op. Atty. Gen. 238; (1895) 21 Op. Atty. Gen. 251.

The importer may seek his remedy for erroneous assessment only through the method prescribed, which requires that the duties shall be paid under protest and the matter brought before the Board of General Appraisers for de-

sion. Louisville Pillow Co. v. U. S. 1906) 144 Fed. 386, 75 C. C. A. 324.

A collector of customs reliquidated the ty on imported merchandise at an creased rate, and brought an action r the amount thus becoming due. The nporters defended on the ground that e rate assessed was illegal. Held, at questions as to rate could not be ised in such proceedings; that the ard of general appraisers was created a special tribunal having, subject to view by the courts, exclusive jurisdicon over controversies as to the rate duty on importations; that the imrters' only remedy was to pay under otest the duties found due by the llector; and that unless they did this e collector's decision was "final and nclusive" as provided in said section. S. v. Tiffany & Co. (1906) 151 Fed. 3, 81 C. C. A. 11, reversing judgment C. C. 1905) 137 Fed. 971.

The owner of a cargo of sugar brought om the Philippine Islands, who voltarily paid the duty assessed thereon imported merchandise, without obction or protest, cannot maintain an tion against the collector to recover e same on the ground that the sug was not imported, and the duty was erefore wrongfully and illegally exted. Flint Eddy & American Tradg Co. v. Bidwell (C. C. 1903) 123 ed. 200.

Where excessive customs duties are id under a mistake of law and witht protest, the payment is voluntary, d there can be no recovery. Gulbenan v. U. S. (C. C. 1909) 175 Fed. 860, dgment affirmed (1911) 186 Fed. 133, 8 C. C. A. 245.

13. —— **Service of protest.** — See andmange v. Schell (C. C. 1887) 32 ed. 655; Fauche v. Schell (C. C. 1887) Fed. 336, judgment affirmed Schell Fauche (1891) 11 Sup. Ct. 376, 138 S. 562, 34 L. Ed. 1040.

14. —— **Signature.**—See Gray v. Lawnce (C. C. 1853) Fed. Cas. No. 5,722; orio v. Peaslee (C. C. 1855) Fed. s. No. 4,890; Grandmange v. Schell C. C. 1887) 32 Fed. 655; Brown v. S. (1865) 1 Ct. Cl. 377.

15. —— **Time for filing.**—A reliquidan has all the validity of the original uidation, and, when made, becomes e liquidation in lieu of the original, d must be treated as such under Cusms Administrative Act, providing that otests against the assessment of duty ust be filed within 10 days after "liquition." Louisville Pillow Co. v. U. S. 906) 144 Fed. 386, 75 C. C. A. 324; re Brown, Durrell & Co. (C. C. 1903) 1 Fed. 605 (decree affirmed U. S. v. rown, Durrell & Co. [1903] 127 Fed. 3, 62 C. C. A. 473); Dickson v. U. S. C. C. 1904) 131 Fed. 573 (judgment firmed U. S. v. Dickson [1905] 139 ed. 251, 71 C. C. A. 377).

The provision is clear and unambiguous, and was inserted for a definite purpose, and a protest filed before the ascertainment and liquidation of the duties cannot be considered. U. S. v. Charles H. Wyman & Co. (1907) 156 Fed. 97, 84 C. C. A. 123; In re Bailey (C. C. 1901) 112 Fed. 413.

When the limit fixed by the act for filing a protest expires on Sunday, it is not a seasonable compliance with the requirement when the protest is filed on the Monday ensuing. Shefer v. Magone (C. C. 1891) 47 Fed. 872; Psaki Bros. v. U. S. (1913) 3 Ct. Cust. App. 479, distinguishing Monroe Cattle Co. v. Becker (1893) 13 Sup. Ct. 217, 147 U. S. 47, 37 L. Ed. 72.

For the purpose of ascertaining the date for filing protests, importers are bound to take notice of the dates given in the liquidation bulletin publicly posted as prescribed by the customs regulations; and, in case of conflict between the bulletin and notations on the entry, they should be governed by the former. U. S. v. Charles H. Wyman & Co. (1907) 156 Fed. 97, 84 C. C. A. 123.

By a customhouse error the date of liquidation was stated in an entry as being later than it was in fact, and a representative of the importer was thereby misled; but the correct date was given in both a notice sent to the importer and the liquidation bulletin posted for inspection by importers. Held, that the error did not have the effect of extending the period for filing protests. Id.

When the practice at the customhouse permits the giving of notice of a protest by leaving it in a certain office, and such a notice is left in the proper place, after business hours, on the last day but one for giving notice, the last day being a holiday, on which the customhouse is closed by special order, though not by law, and the notice remains in the office during such last day, it is in time, and entitled to consideration. Frankenburg v. U. S. (C. C. 1896) 77 Fed. 606.

At the time of the original liquidation of duty on an importation of merchandise, the importers failed to protest against the exaction of duty on certain charges; but later, on the reliquidation of the entry solely to include a damage allowance, they filed a protest against the duty on the charges, which had not been affected in any way by the reliquidation. Held, that the protest was filed in time. Sgobel & Day v. Robertson (C. C. 1903) 126 Fed. 577.

Where, under instructions of the Secretary of the Treasury, and upon due notice to the importers, an entry of imported merchandise was tentatively liquidated, while the final liquidation was held in abeyance over a year, pending the possibility of a change of rates, held, that the final liquidation was the liquidation within 10 days after which the importers might legally file a protest, under Customs Administrative Act.

U. S. v. Franklin Sugar Refining Co. (C. C. 1905) 137 Fed. 677.

Where an importer's protest against the inclusion of certain bottles charges in an assessed valuation had been sustained and a reliquidation by the collector ordered, the importer interposed a new protest with the collector, asserting his right to a new assessment on the contents themselves of the bottles and at a lower rate than that which had been originally fixed. Held, in the proceedings that ensued on reliquidation the collector made no "decision" from which an appeal would lie; he was acting ministerially, and the importer having failed within the time prescribed by law to protest against the original assessment as to the value of the contents of the bottles and to appeal therefrom, that assessment is res adjudicata. Smith v. U. S. (1911) 1 Ct. Cust. App. 489.

As to decisions under earlier statutes, see Marriott v. Brune (1850) 50 U. S. (9 How.) 619, 13 L. Ed. 282 (affirming Brune v. Marriott [C. C. 1849] Fed. Cas. No. 2,052); Curtis v. Fiedler (1862) 2 Black, 461, 479, 17 L. Ed. 273; Davies v. Miller (1888) 130 U. S. 284, 9 Sup. Ct. 560, 32 L. Ed. 932; Merritt v. Cameron (1890) 11 Sup. Ct. 174, 175, 137 U. S. 542, 34 L. Ed. 772 (distinguishing Westray v. U. S. [1873] 85 U. S. [18 Wall.] 322, 21 L. Ed. 763); Cadwalader v. Partridge (1890) 137 U. S. 553, 11 Sup. Ct. 182, 34 L. Ed. 783; Barney v. Rickard (1895) 15 Sup. Ct. 642, 646, 157 U. S. 352, 39 L. Ed. 730 (following Same v. Watson [1875] 92 U. S. 449, 23 L. Ed. 730, and reversing judgment Rickard v. Barney [C. C. 1887] 32 Fed. 581); Saltonstall v. Birtwell (1895) 66 Fed. 969, 970, 14 C. C. A. 205, 33 U. S. App. 52 (affirming Birtwell v. Saltonstall [C. C. 1894] 63 Fed. 1004, and judgment affirmed [1896] 17 Sup. Ct. 19, 164 U. S. 54, 41 L. Ed. 348); American Cigar Co. v. U. S. (1906) 146 Fed. 484, 77 C. C. A. 40 (reversing judgment Falk v. U. S. [C. C. 1904] 145 Fed. 574, and judgment reversed U. S. v. G. Falk & Bro. [1907] 27 Sup. Ct. 191, 204 U. S. 143, 51 L. Ed. 411); Brune v. Marriott (C. C. 1849) Fed. Cas. No. 2,052; Crocker v. Redfield (C. C. 1859) Fed. Cas. No. 3,400; Moke v. Barney (C. C. 1865) Fed. Cas. No. 9,698; Foster v. Simmons (C. C. 1878) Fed. Cas. No. 4,982a; Keyser v. Arthur, Id. 7,749; Frost & Adams v. Saltonstall (C. C. 1887) 129 Fed. 481; Strange v. Barney (C. C. 1888) 35 Fed. 196, 199.

16. —— Waiver of requirement for protest.—The provision of section 14 of the customs administrative act that the decision of the collector as to the duty to be paid on imported merchandise shall be final and conclusive unless protest shall be filed "within 10 days after, but not before, such ascertainment and liquidation of duties," is peremptory, and the collector has no power to waive the same, and accept a protest filed afte the expiration of the time fixed. In re Guggenheim Smelting Co. (1901) 11 Fed. 517, 50 C. C. A. 374, writ of certiorari denied U. S. v. Guggenheim Smelting Co. (1902) 22 Sup. Ct. 942 186 U. S. 485, 46 L. Ed. 1260.

There was no evidence to prove either the handwriting or the authority o the individual who wrote the firm name to the protest and added his initial t the signature. Held, that the acceptance of the protest by the collector wa no waiver, as he was under no obligatio to inquire into the authority of the person protesting before he received th written protest. Grandmange v. Schel (C. C. 1887) 32 Fed. 655.

17. —— Written protest.—Written protest was required in actions to recover duties paid prior to customs administrative act of 1890. See Elliot v. Swartwout (1836) 35 U. S. (10 Pet.) 137, 9 L. Ed. 373; Curtis v Fiedler (1862) 2 Black, 461, 479, 1 L. Ed. 273; Nichols v. U. S. (1868 74 U. S. (7 Wall.) 122, 19 L. Ed. 125 Andreae v. Redfield (1878) 98 U. S 225, 228, 25 L. Ed. 158; Drake v. Redfield (C. C. 1857) Fed. Cas. No. 4,065 Crocker v. Same (C. C. 1859) Fed Cas. No. 3,400; Greenleaf v. Schel (C. C. 1868) Fed. Cas. No. 5,782; Bodart v. Same (C. C. 1888) 33 Fed. 82 (writ of error dismissed [1891] 11 Sup Ct. 1017, 140 U. S. 673, 35 L. Ed 598); U. S. v. Clement (D. C. 1843) Fed. Cas. No. 14,815.

18. —— Decisions under earlier statutes.—See Barney v. Watson (1875) 92 U. S. 449, 23 L. Ed. 730; U. S. v Goldenberg (1897) 18 Sup. Ct. 3, 168 U. S. 95, 42 L. Ed. 394; Saltonstal v. Birtwell (1895) 66 Fed. 969, 14 C C. A. 205; Dieckerhoff v. Miller (1899) 93 Fed. 651, 35 C. C. A. 525; Ogden v Maxwell (C. C. 1855) Fed. Cas. No 10,458; Haynes v. Brewster (D. C 1891) 46 Fed. 471; (1891) 20 Op Atty. Gen. 183.

19. —— Prospective protests under Acts of 1845 and 1857.—See Marriott v. Brune (1850) 50 U. S. (9 How.) 619, 13 L. Ed. 282 (affirming Brune v. Marriott [C. C. 1849] Fed. Cas. No. 2,052); Benkard v. Schell (C. C.) Fed. Cas. No. 1,307; Steegman v. Maxwell (C. C. 1855) Fed. Cas. No. 13,344; Warren v. Peaslee, Id. 17,198; Baxter v. Maxwell (C. C. 1857) Fed. Cas. No. 1,126; Fowler v. Redfield (C. C. 1862) Fed. Cas. No. 5,003; Hutton v. Schell (C. C. 1868) Fed. Cas. No. 6,961; Ullman v. Murphy (C. C. 1873) Fed. Cas. No. 14,325; Wetter v. Schell, Id. 17,470; Herman v. Schell (C. C. 1884) 18 Fed. 891; Fauche v. Schell (C. C. 1887) 33 Fed. 336 (judgment affirmed Schell v. Fauche [1891] 11 Sup. Ct. 376, 138 U. S. 562, 34 L. Ed. 1040); Sorchan v. Schell (C. C. 1887) 33 Fed. 580 (judgment affirmed Schell's Ex'rs v. Johnson [1891] 11 Sup. Ct. 1027,

U. S. 697, 35 L. Ed. 598, and writ rror dismissed Schell's Ex'rs v. tz [1891] 11 Sup. Ct. 1028, 140 . 697, 35 L. Ed. 596); Haynes v. vster (D. C. 1891) 46 Fed. 471, 476.

Forwarding protest to board of aisers.—There was a delay of sev- years by customs officers in for- ing an importer's protests to the d of general appraisers for de- n, and during this period the value ne importer's evidence became im- ed. Held, that no right against government arose by reason of this , particularly when not intentional egligent. Franklin Sugar Refining v. U. S. (C. C. 1907) 153 Fed. 653.

here a collector of customs sus- ed an importer's protest against assessment of duty, instead of smitting the protest to the board eneral appraisers for decision, the isions of the act were as well com- with as they would have been by smission of the case to the board. enkian v. Stranahan (C. C. 1907) Fed. 836.

collector of customs is not liable mporters for the failure of his ecessor to send the importers' pro- to the board of general apprais- Id.

is a breach of duty for a collector ustoms to refuse to forward to the d of general appraisers protests h have been filed and for this ch the protestant is entitled to ages. Kendall v. Lyman (C. C.) 161 Fed. 652.

ly nominal damages are recover- for a breach of the duty of a col- or of customs to forward an im- er's protest to the board of gen- appraisers, where the breach is nical, and actual damage has not sustained. Id.

protest serves the purpose not of a notice to the collector of al- d errors in his classification or ssment so that he may correct his sion if so minded, but as well the ose of an appeal to the board of eral appraisers in case the col- or declines or fails to make his sion conform to the protest. And the limit fixed by the regulations in which the collector must pass the protest, namely, 30 days, has red, the jurisdiction of the board eneral appraisers attaches and the ority of the collector in the prem- is suspended, and this whether the es have been transmitted or not. S. v. Straus & Sons (1914) 5 Ct. t. App. 147.

. Appeal to board of appraisers.— sdiction of the board of general ap- sers authorizing an appeal to the d from a decision of a collector "as he rate and amount of the duties geable upon imported merchandise," aid under protest, does not extend to an appeal from a decision as to duties on goods imported from Porto Rico and the Hawaiian Islands, when the sole question is whether those places were foreign countries within the meaning of the tariff laws. Goetze v. U. S. (1901) 21 Sup. Ct. 742, 743, 182 U. S. 221, 45 L. Ed. 1065, reversing judgment (C. C. 1900) 103 Fed. 72.

The remedy by an appeal to the board of general appraisers from a decision of the collector does not extend to a review of the question whether the article was imported or not, or whether it was or was not brought from a foreign country. De Lima v. Bidwell (1901) 21 Sup. Ct. 743, 182 U. S. 1, 45 L. Ed. 1041.

The board of general appraisers has jurisdiction to review the action of the collector in regard to the date at which the value of foreign coin is to be estimated in determining dutiable value. Wood v. U. S. (1896) 72 Fed. 254, 18 C. C. A. 553, distinguishing U. S. v. Klingenberg (1894) 14 Sup. Ct. 790, 153 U. S. 93, 38 L. Ed. 647.

The board had jurisdiction to review the action of the collector in reliquidating the entry in this case, although it was done pursuant to an order of the Secretary of the Treasury. U. S. v. Lucius Beebe & Sons (1903) 122 Fed. 762, 58 C. C. A. 562, affirming judgment U. S. v. Beebe (C. C. 1902) 117 Fed. 670.

The board of general appraisers is required first of all to determine its jurisdiction, including the validity of the protest. U. S. v. Brown, Durrell & Co. (1903) 127 Fed. 793, 62 C. C. A. 473, affirming decree In re Brown, Durrell & Co. (C. C. 1903) 121 Fed. 605.

The board of general appraisers, acting within its jurisdiction, is an independent tribunal, empowered to pass upon certain controversies between the government and the importer, and in this respect is not subordinate to the Treasury Department. Stone v. Whitridge, White & Co. (1904) 129 Fed. 33, 64 C. C. A. 47, reversed U. S. v. Whitridge (1905) 25 Sup. Ct. 406, 197 U. S. 135, 49 L. Ed. 696.

The action of a collector of customs in assessing duty on the cost of repairs of vessels, as provided in section 3114, R. S., section 5826, post, is subject to review by the board of general appraisers. U. S. v. Geo. Hall Coal Co. (1906) 142 Fed. 1039, 71 C. C. A. 685, affirming judgment (C. C. 1905) 134 Fed. 1003.

In the event that a board of general appraisers, after acquiring jurisdiction of a case, refuses to "examine and decide," as prescribed in said section, an importer would be entitled to apply to the proper court for a mandamus to require the board to exercise its jurisdiction. Thomas Prosser & Son v. U. S. (1907) 158 Fed. 971, 86 C. C. A.

175, reversing order (C. C. 1907) 154 Fed. 721.

Where importers rested after introducing evidence as to certain items of goods at a hearing before the board of general appraisers, the board was justified in assuming that their claim was abandoned as to other items. J. S. Plummer & Co. v. U. S. (1908) 166 Fed. 730, 92 C. C. A. 420, affirming judgment (C. C. 1907) 160 Fed. 284.

The jurisdiction conferred on the board of general appraisers to review the decision of the collector as to the rate and amount of duties extends only to merchandise lawfully entered and regularly invoiced and appraised; and they have no jurisdiction, in the case of goods seized and libeled for forfeiture in the federal courts, to review the collector's determination of duty to be paid thereon, as required by section 1564, ante, in order to secure delivery of such goods to the claimant. In re Chichester (C. C. 1891) 48 Fed. 281.

The board of general appraisers should possess expert knowledge of their own, and their decision should be based upon such knowledge and the evidence submitted, or upon no evidence at all, or in the absence of the importer and his witnesses. In re Muser (C. C. 1892) 49 Fed. 831, applying Rector of Holy Trinity v. U. S. (1892) 12 Sup. Ct. 511, 143 U. S. 457, 36 L. Ed. 226.

A collector of customs assessed duty in accordance with the findings of the local appraiser who had examined the merchandise. In reviewing the collector's action the Board of General Appraisers reversed his decision without any new evidence, though the question involved was one of fact. Held, that the board may make a different finding from the local appraiser without taking additional evidence, and that its action was without error. U. S. v. Strauss Bros. & Co. (C. C. 1904) 128 Fed. 473, judgment reversed (1905) 136 Fed. 185, 69 C. C. A. 201.

In an action by importers against the collector of customs, in a Circuit Court, for the recovery of excessive duties, a verdict was directed for the importers for a part of the claims made, and against them for the remainder, judgment being rendered and satisfied on that basis. Held, that the entire matter thus became res adjudicata, and the importers could not by subsequent proceedings before the Board of United States General Appraisers, have a further recovery on the merchandise as to which said verdict had been adverse. U. S. v. J. G. Johnson & Co. (C. C. 1906) 145 Fed. 1018.

The board of general appraisers has jurisdiction over cases relating to the exaction of fees on packed packages, though no entry of such packages may ever have been made at the custom house. U. S. v. American Express Co. (C. C. 1907) 154 Fed. 996.

The board cannot properly direct the admission of merchandise free of duty under a paragraph of the law not made the basis of any claim by the importer. The burden is on the importer to show that his goods were properly dutiable according to the paragraph or paragraphs he has protested are applicable. U. S. v. Danker & Marston (1912) 2 Ct. Cust. App. 462.

A convention with Great Britain provides that the merchandise imported under it shall be subject to all customs duties or customs regulations enforced in the United States and that the merchandise shall be delivered to the addressee upon payment by him of the duties properly chargeable thereon. This provision waives the necessity of a formal entry, except when this is required, and a right of appeal to a classification board remains. U. S. v. General Electric Co. (1913) 4 Ct. Cust. App. 287.

The importer having made out a prima facie case that the goods received at his factory and used there were the goods imported, it was error to refuse to allow him to show the nature and character of the goods he did in fact receive and the use to which these were put. American Glue Co. v. U. S. (1913) 5 Ct. Cust. App. 36.

The board of general appraisers is a judicial tribunal, clothed with judicial powers to determine the classification of imported goods and the rate of duty thereon, and its decisions on questions of classification or rates are open only to direct and not collateral attack by parties to the proceedings. U. S. v. Kurtz, Stuboeck & Co. (1914) 5 Ct. Cust. App. 144.

The board has jurisdiction to hear and determine protests against a collector's decision assessing a rate and amount of duty upon imported merchandise on the ground that the appraisement is irregular or invalid, and a demand for a reappraisement operates after the manner of supersedeas. U. S. v. American Exp. Co., (1914) 5 Ct. Cust. App. 351.

The appellant was required to pay for the services of inspectors who supervised the loading of a vessel at night and on Sundays and holidays. This section was not intended to confer jurisdiction upon the board in any cases other than those related to duties or charges on imported goods, and the charges here could not be reviewed. Atlantic Transport Co. v. U. S. (1914) 5 Ct. Cust. App. 373.

The board of general appraisers have no jurisdiction, after the lapse of nearly two years, to reconsider their decision on a protest on the ground that certain matter contained in the protest was overlooked. It was the duty of the importer to watch for the decision of the board. (1895) 21 Op. Atty. Gen. 144.

The board of general appraisers has

diction to decide whether cartage ges as made by a collector of cus- are proper. (1895) 21 Op. Atty. 262.

an application for an abandonment utiable goods under section 5602, the board of general appraisers jurisdiction to review the collector's ion, which review is final for all oses, since the importers did not al. (1896) 21 Op. Atty. Gen. 402.

. **Liquidation after decision of gen- appraisers.**—Where the board of ral appraisers sustains an impor- protest against the assessment of by a collector of customs, it be- s the duty of the collector to re- date the entry in accordance with board's decision. U. S. v. Dickson 5) 139 Fed. 251, 71 C. C. A. 377, ming judgment Dickson v. U. S. C. 1904) 131 Fed. 573.

e board of general appraisers sus- ed an importer's protests, direct- that the collector should reliquidate duties at the rates appearing to pplicable "from the invoices, sam- or record," or, in the absence of cient data, should reliquidate at the of 40 per cent. ad valorem. Held, the terms of this decision did not ire the collector to consider data ide of the record made before the rd. U. S. v. Hunter & Witcombe 7) 153 Fed. 873, 83 C. C. A. 55.

. **Appeal to courts—Jurisdiction.**— stions arising under tonnage tax are referred to commissioner of gation. In re Laidlaw (C. C. 1890) Fed. 401; North German Lloyd S. Hedden (C. C. 1890) 43 Fed. 17, Laidlaw v. Abraham (C. C. 1890) Fed. 297, 299.

e jurisdiction of the Circuit Courts he United States in respect to cus- s duties prior to the enactment of Customs Administrative Act, was urrent with that given the Board of ed States General Appraisers by act. U. S. v. J. G. Johnson & Co. C. 1906) 145 Fed. 1018.

e penalty of a bond given for the rn of goods not examined by cus- s officials is not enforceable in a eeding of this kind, the court de- ng to assume jurisdiction of ques- s arising out of the alleged breach he conditions of such a bond. U. . Habicht (1910) 1 Ct. Cust. App.

e court may at any stage raise the stion of jurisdiction of the subject- ter, and the determination of the l court that it has jurisdiction adds ing to the force of its judgment. ntic Transport Co. v. U. S. (1914) t. Cust. App. 373.

. —— **Right to appeal.**—Decision he board of general appraisers as the classification is subject to re- on application by the collector e without first obtaining authority n the secretary of the treasury. "Zante Currants" (C. C. 1896) 73 Fed. 183.

A reliquidation of duties, pursuant to a decision of the board of general appraisers, does not extend the time for taking an appeal from the liquidation, nor give a new right of appeal. Stern v. U. S. (C. C. 1896) 77 Fed. 607.

Where importers who failed through inadvertence to appear on the hearing of an appeal taken by them to the board of general appraisers, which entered a default, and affirmed the action of the collector, afterward applied for and obtained an order from the Circuit Court directing further testimony to be taken, and the government made no objection to such order, and appeared pursuant thereto, and cross-examined the witnesses, it waived the right to raise the objection thereafter that the appellants were concluded by the default before the board of appraisers. In re F. W. Myers & Co. (C. C. 1903) 123 Fed. 952.

Where importers had failed to proceed for the recovery of excessive duties by filing protests, and thus securing a decision by the board of general appraisers, they are precluded from recovery in the Circuit Court as a court of claims under Tucker Act March 3, 1887, ante, § 1136. Gulbenkian v. U. S. (C. C. 1909) 175 Fed. 860, judgment affirmed (1911) 186 Fed. 133, 108 C. C. A. 245.

25. —— **Security for costs.**—An application for review prosecuted in good faith, but without the required security for costs, will not be dismissed if the ordinary bond is filed on motion to dismiss. In re Certain Merchandise (C. C. 1894) 64 Fed. 576.

26. —— **New evidence on appeal.**—Where a decision of a collector of customs as to the dutiability of imported merchandise is under review by the board of general appraisers or the courts, his findings of fact, when based on no other evidence than that afforded by the articles themselves, may be reversed without any further evidence. The collector, the board, and the courts are all equally entitled to avail themselves of such information as may be derived from an inspection of the articles in connection with the facts of common knowledge and experience, of which judicial notice may be taken. U. S. v. Strauss Bros. & Co. (1905) 136 Fed. 185, 69 C. C. A. 201, reversing judgment (C. C. 1904) 128 Fed. 473.

Certain importers appeared before the board of general appraisers in support of their protests against the decision of the collector, but as to one of said protests they offered no evidence before the board. Held, that they had a right to appeal to the circuit court, and that the right to bring new evidence was coextensive with the

right to appeal. Lesser v. U. S. (C. C. 1897) 89 Fed. 197.

Where the board of general appraisers overruled a protest in a case in which the importer has failed to produce any evidence in support of his contention, and the importer appeals to the Circuit Court, the court will permit the importer to introduce evidence on the appeal, if it appears that it was not the importer's fault that the evidence was not presented to the board. Cowl v. U. S. (C. C. 1900) 124 Fed. 475.

If an importer desires to have his case heard by the board of general appraisers without evidence, on the facts presented to the board by the collector of customs, he may submit it in that form; and on appeal from the board to the Circuit Court, the fact that no evidence was introduced before the board or in the Circuit Court is not ground for dismissal of the appeal. Lehigh Mfg. Co. v. U. S. (C. C. 1907) 153 Fed. 596.

Importers should present to the board of general appraisers all the evidence which they can produce, and on appeal to the Circuit Court little weight should be given additional cumulative evidence which could easily have been laid before the board. John Bromley & Sons v. U. S. (C. C. 1907) 154 Fed. 399.

27. —— **Assignment of error.**—A question as to whether certain articles were subject to a different duty than that fixed by certain rates considered by the trial court cannot be first raised on appeal to the supreme court. Badger v. Ranlett (1882) 106 U. S. 255, 1 Sup. Ct. 346, 27 L. Ed. 194; Id. (1882) 1 Sup. Ct. 350, 154 U. S. 677, 27 L. Ed. 196, note.

Alleged errors of the board of general appraisers detrimental to the government cannot be reviewed on an appeal taken by the importer, where he abandons his opposition to the decision, and the government itself took no steps to procure a review. U. S. v. Lies (1898) 18 Sup. Ct. 780, 170 U. S. 628, 42 L. Ed. 1170, affirming judgment (1896) 20 C. C. A. 651, 74 Fed. 546.

The court will not consider the question of the correctness of a general appraisers' decision as to the rate of duty imposed upon certain goods, when no statement of errors against the decision of the board of general appraisers had been filed in the circuit court by the importer. In re Crowly (C. C. 1892) 50 Fed. 465. judgment affirmed In re Crowley (1893) 55 Fed. 283, 5 C. C. A. 109.

On appeal from the board of general appraisers the Circuit Court will not consider whether a protest decided by the board was sufficient, unless the question of insufficiency is raised by the assignment of errors. U. S. v. Hempstead (C. C. 1910) 180 Fed. 956.

On appeal from the board of gener appraisers, error was assigned on th point that the board had erred in hold ing the merchandise in question to b free of duty. Held, that this assign ment related to the merits, and wa not sufficiently comprehensive to in clude the point of the sufficiency of th protest passed on by the board. Id.

This court will not review rulings o the board not assigned as error. U. S v. Halle Bros. Co. (1916) 6 Ct. Cus App. 543.

28. —— **Review of questions of fac**—A finding of fact made by the boar of general appraisers, while not con clusive upon the court on appeal, i entitled to the same weight as the find ing of a master in equity, and unles wholly unsupported, or clearly contra ry to the weight of evidence, shoul be sustained. Marine v. Lyon (1895 65 Fed. 992, 13 C. C. A. 268; U. S. v W. N. Proctor & Co. (1906) 145 Fed 126, 76 C. C. A. 96 (affirming judg ment W. N. Proctor & Co. v. U. S. [C C. 1905] 139 Fed. 586); In re Bing (C C. 1894) 66 Fed. 727; Morris Europe an & American Exp. Co. v. U. S. (C C. 1899) 94 Fed. 643; Myers v. Sam (C. C. 1901) 110 Fed. 940; Nevin v Same (1914) 5 Ct. Cust. App. 423 Semon Bache & Co. v. Same (1915) 5 Ct. Cust. App. 496; U. S. v. Interna tional Forwarding Co. (1915) 6 Ct Cust. App. 25.

Findings of fact by the board of gen eral appraisers, based upon conflicting testimony, as to the commercial desig nation of certain articles, cannot be reviewed by the courts. White v. U. S. (1896) 72 Fed. 251, 18 C. C. A. 541 (affirming judgment [C. C. 1895] 65 Fed. 788); Gabriel & Schall v. Same (1903) 123 Fed. 296, 59 C. C. A. 352 (affirming judgment Gabriel v. Same [C. C. 1902] 114 Fed. 401); In re Buffalo Natural Gas Fuel Co. (C. C. 1896) 73 Fed. 191 (judgment affirmed U. S. v. Buffalo Natural Gas Fuel Co. [1897] 78 Fed. 110, 24 C. C. A. 4); Belcher v. U. S. (C. C. 1898) 91 Fed. 975; Leerburger v. Same (C. C. 1902) 113 Fed. 976; Butler Bros. v. U. S. (1913) 4 Ct. Cust. App. 90.

The circuit court of appeals will not review a finding of facts by the board of general appraisers, not controverted by new evidence in the circuit court, unless manifestly unsupported by the evidence or clearly against the weight thereof. Apgar v. U. S. (1896) 78 Fed. 332, 24 C. C. A. 113; Vandiver v. Same (1907) 156 Fed. 961, 84 C. C. A. 522; U. S. v. Komada & Co. (1908) 162 Fed. 465, 89 C. C. A. 385; A. Bader & Co. v. U. S. (C. C. 1902) 116 Fed. 541; Neresheimer v. Same (C. C. 1903) 131 Fed. 977, judgment reversed Neresheimer & Co. v. Same (1904) 136 Fed. 86, 68 C. C. A. 654.

In the circuit court the return of the board of appraisers will not be disturbed as to findings upon doubtful ques-

: of fact; but when a finding of is wholly without evidence to sup- it, or when it is clearly contrary e weight of evidence, it is the du- f the court to disregard it. In re Blankensteyn (1892) 56 Fed. 474, C. A. 579 (reversing judgment C. 1892] 49 Fed. 220); Boussod don Co. v. U. S. (C. C. 1895) 66 718 (judgment reversed U. S. v. ssod-Valadon Co. [1896] 71 Fed. 18 C. C. A. 223).

der sections 14 and 15 of Cus- Administrative Act 1890, the de- n of the collector, of the board of ral appraisers, and of the circuit t on appeal therefrom is limited to rmining "the rate and amount" of s chargeable, and does not extend e question whether or not an ar- is imported merchandise. Ex par- Tassett (1892) 12 Sup. Ct. 295, 142 U. S. 479, 35 L. Ed. 1087.

ngress may, as it has done, pro- for determination by a board of ral appraisers and allow the deci- s of that board to be reviewable ourts in such particulars only as be prescribed by law. Fong Yue v. U. S. (1893) 13 Sup. Ct. 1016, , 149 U. S. 698, 37 L. Ed. 905.

ndings of fact by a board of gen- appraisers were reviewed by the t on appeal, where it appeared the decision was made by general aisers who did not hear the testi- y, which was all taken before an- r general appraiser, who did not elf sign the decision. Neresheim- Co. v. U. S. (1904) 136 Fed. 86, C. C. A. 654, reversing judgment sheimer v. Same (C. C. 1903) 131 977.

here there is a conflict in the ev- ce as to the character of an im- ed article, much weight should be n to the fact that there has been arlier ruling by the Board of Gen- Appraisers which has long been iesced in by importers of that ar- . U. S. v. Komada & Co. (1908) Fed. 465, 89 C. C. A. 385.

hether an imported article is or is known in commerce by the word or s used in the act imposing the is a question of fact for the jury, not a question of construction; in the case of an appeal from a sion of the board of general ap- sers, it must be determined by the t as a question of fact. "Zante rants" (C. C. 1896) 73 Fed. 183.

here, on appeal from the decision he board of general appraisers af- ing the collector's classification of orted merchandise, there is no ev- ce to overthrow the classification, decision of the board must stand. H. Bailey & Co. v. U. S. (C. C.) 122 Fed. 751.

e method employed by administra- officers of the customs in ascer- ing the dutiable quantity of im- ed merchandise should not be dis- turbed, except upon a clear showing of unfairness or injustice. U. S. v. Zucca & Co. (C. C. 1907) 154 Fed. 172.

The customs laws contemplate finality at some point in all appraisement proceedings and finality is by law attached on appeal to an appraisement by the board of general appraisers, when the appeal comes to the board from a finding of a general appraiser, and a decision of that board on the actual market value of the merchandise in question is conclusive against all parties interested therein. Wolff v. U. S. (1911) 1 Ct. Cust. App. 181.

Where a board of three general appraisers, with jurisdiction of the subject-matter and the persons, have proceeded in conformity to law to appraise an importation of goods, their finding is not reviewable by any classification board or by this court. Beer v. U. S. (1911) 1 Ct. Cust. App. 484.

The burden of proof never shifts, but where the importer has sustained that burden prima facie, proving his case by a preponderance of evidence, the government is thereby called to offset that evidence by proof of equal weight tending either to sustain the collector's action or to prove the goods are not dutiable as claimed. U. S. v. Edson Keith & Co. (1914) 5 Ct. Cust. App. 82.

A flat rate agreed on by the government for drayage charges is not conclusive against an importer. His liability is for the payment of the regular rate for service of the sort at the same time and place. On the present record the proof, while not conclusive, is sufficient to support the board's decision that the regular rate at the port of Baltimore for services of the kind in issue was 6 cents, and not 18 cents. U. S. v. Masson (1914) 5 Ct. Cust. App. 307, citing Id. (1913) 4 Ct. Cust. App. 363.

At the trial importers' counsel stated that as to certain protests no samples of the gloves covered by them could be had, and they were abandoned. Subsequently, however, by stipulation these protests were reopened, and it was agreed the rate on the goods in question should be determined by the rule laid down in the Wertheimer Case. This became an agreed statement of facts, and the rule in the Wertheimer Case should have been applied. Altman & Co. v. U. S. (1914) 5 Ct. Cust. App. 412, citing U. S. v. Wertheimer & Co. (1913) 4 Ct. Cust. App. 338.

No controversy being made, the board's decision that there was no proof to controvert the collector's classification of these articles was affirmed. U. S. v. Sears, Roebuck & Co. (1915) 6 Ct. Cust. App. 376.

29. —— Questions of law.—In an action to recover duties paid under protest, the appraisement, though conclu-

sive in respect to errors of judgment and mistaken ideas of quality or value, or the elements entering into the cost of manufacture, may yet be inquired into in respect to any alleged illegality in the action of the appraisers, such as adding illegal items to make up increased value, or proceeding upon principles of valuation which the statutes condemn. Magone v. Origet (1895) 70 Fed. 778, 17 C. C. A. 363, following Robertson v. Frank Bros. (1889) 10 Sup. Ct. 5, 132 U. S. 17, 33 L. Ed. 236, Passavant v. U. S. (1893) 13 Sup. Ct. 572, 148 U. S. 214, 37 L. Ed. 426, and Muser v. Magone (1894) 15 Sup. Ct. 77, 155 U. S. 240, 39 L. Ed. 135.

The collector classified certain window and other glass under Schedule B (paragraph 112 of Act Oct. 1, 1890) and the importer protested, claiming that on the voyage part of the glass was broken into pieces which could not be used without remanufacture, and was therefore exempt from duty, under paragraph 590 of the free list. Before the board of general appraisers the importer offered to prove the number of pounds of glass thus broken, but the board refused the offer, deciding that the claim was in legal effect one for reduction of duties on account of damages to part of the goods, and that such a claim was inadmissible, under section 5602, post. The facts were undisputed, and the board found as a fact that part of the glass was broken on the voyage. Held, that the proceeding before the board was in the nature of a demurrer by the collector to the protest; that the board had authority to determine the question of law thus presented without admitting the evidence; and that, on an appeal from its decision, the circuit court had authority to review and reverse the same, notwithstanding the absence of evidence in the record to support the finding as to the broken glass. In re Bache (C. C. 1893) 54 Fed. 371, judgment reversed U. S. v. Bache (1894) 59 Fed. 762, 8 C. C. A. 258.

The rule stated in some of the cases, that the court will not reverse the decision of the board, even if against the weight of the evidence, where there is sufficient evidence to warrant its finding, has little if any application to cases in which additional testimony of an important character is taken in the circuit court, and where the ultimate and decisive question is as much one of law as of fact. "Zante Currants" (C. C. 1896) 73 Fed. 183.

A finding by the board of general appraisers that an article is or is not similar to another article, within the similitude clause of the tariff act, is a conclusion of law rather than one purely of fact, and is therefore reviewable by the courts. Dana v. U. S. (C. C. 1899) 91 Fed. 522.

Similitude is a fact, and when found by the board of general appraisers upon competent evidence, on a proper issue, the finding should not be disturbed. But whether there was any occasion in the particular instance for resorting to the similitude section is a question of law, which the court may determine. U. S. v. Hahn (C. C. 1899) 91 Fed. 755.

The action of the collector of a port, declining to accept the proclaimed value of a foreign standard coin, and in adopting the value declared in the consular certificate, thereby increasing the amount of customs duty to be paid upon imported merchandise, although approved by the secretary of the treasury, is reviewable, on the protest of the importer, by the board of general appraisers and by the circuit court. U. S. v. Beebe (C. C. 1900) 103 Fed. 785, judgment affirmed (1901) 106 Fed. 75, 45 C. C. A. 230, writ of certiorari denied U. S. v. Lucius Beebe & Sons (1901) 21 Sup. Ct. 922, 180 U. S. 640, 45 L. Ed. 711.

Liquidation of duties contrary to statute and in excess of officers' powers reviewable. U. S. v. Thurber (D. C. 1886) 28 Fed. 56, 57.

30. —— **Harmless error.** — Certain gummed paper for adhesive purposes was erroneously assessed for duty as surface-coated paper, under Tariff Act Aug. 28, 1894, c. 349, § 1, Schedule M, par. 308, 28 Stat. 532, and the importer protested against this assessment, claiming the merchandise to be dutiable under paragraph 313 of said act (28 Stat. 533), as a manufacture "of paper, or of which paper is the component material of chief value, not specially provided for." This claim having been sustained by the Board of General Appraisers, the government appealed, contending that the proper classification should have been under paragraph 310 of said act, which relates to "paper not specially provided for," but provides the same rate as said paragraph 313. Held that as the rate was the same in both paragraphs, the government had nothing to complain of. U. S. v. Hunter (C. C. 1900) 124 Fed. 1005.

31. —— **Disposition of case.** — The court, after deciding, upon the weight of evidence, the value of the matter in dispute in a revenue case, will not continue the case for the party to produce further evidence. U. S. v. The Union (1832) 8 U. S. (4 Cranch) 216, 2 L. Ed. 600.

The board sustained the more favorable of the two alternative contentions made in an importer's protest. The government appealed to the Circuit Court, asserting in the assignment of errors that the board's decision was erroneous, and that the merchandise should have been held to have been properly assessed. Held, that the court might decide the merchandise to be dutiable in accordance with importer's alternative contention, notwithstanding the absence of a specific assignment on

t point by the government. U. S. v. ters' Fur Exchange (C. C. 1907) Fed. 595.

party litigant in an appellate tri- al must stand upon the case as he le it in the lower court; and a case not be remanded because the rec- discloses simply a failure to make of. Larkin Co. v. U. S. (1912) 2 Cust. App. 483, citing Stegeman Same (1911) 1 Ct. Cust. App. 208.

2. Interest on duties.—Interest is overable by the United States on aid duties, where the amount due is idated and clearly ascertained and nand has been duly made on the im- ter. U. S. v. Mexican Internation- R. Co. (C. C. 1907) 154 Fed. 519; ne v. Urmston (C. C. 1907) 154 l. 522.

On the reliquidation of duties at a her rate, interest on the additional ount assessed should be computed m the date of demand on the im- ter. United States v. Mexican In- national R. Co. (C. C. 1907) 154 Fed.).

nterest recoverable by the United ites on unpaid duties should be com- ed at the rate allowed by the laws the state into which the importation made. Id.

The United States is entitled to in- est on duties due from an importer. S. v. Tiffany & Co. (C. C. 1907) 154 d. 740.

As to interest on bonds for duties, § 1601, ante.

Cited without definite application, Iasigi v. The Collector (1863) 1 Wall. 375, 382, 17 L. Ed. 686; Arthur v. Unkart (1877) 96 U. S. 118, 121, 24 L. Ed. 768, holding that burden of proof is upon the plaintiff; Wright v. Blakeslee (1879) 101 U. S. 174, 179, 25 L. Ed. 1048; James v. Hicks (1884) 4 Sup. Ct. 6, 8, 110 U. S. 272, 28 L. Ed. 144; Oberteuffer v. Robertson (1886) 6 Sup. Ct. 462, 471, 116 U. S. 499, 29 L. Ed. 706; Barney v. Oelrichs (1891) 11 Sup. Ct. 414, 415, 138 U. S. 529, 34 L. Ed. 1037; Schoenfeld v. Hendricks (1894) 14 Sup. Ct. 754, 755, 152 U. S. 691, 38 L. Ed. 601 (affirming Loeb v. Hendricks [C. C. 1893] 57 Fed. 568); Marine v. Lyon (1894) 62 Fed. 153, 155, 10 C. C. A. 315; U. S. v. Curnen & Stiner (1906) 146 Fed. 45, 76 C. C. A. 503; Same v. Heil Chemical Co. (1910) 178 Fed. 537, 102 C. C. A. 47; Treat v. Farmers' Loan & Trust Co. (1911) 185 Fed. 760, 108 C. C. A. 98; Stewart v. Merritt (C. C. 1880) 2 Fed. 531, 533; White v. Arthur (C. C. 1882) 10 Fed. 80, 88; U. S. v. Seidenberg (C. C. 1883) 17 Fed. 227, 229; Fairbanks v. Spaulding (C. C. 1884) 19 Fed. 416; Kahn v. Herold (C. C. 1906) 147 Fed. 575, 580; U. S. v. American Express Co. (C. C. 1910) 177 Fed. 735; Same v. Campbell (D. C. 1882) 10 Fed. 816, 818.

Cited as to Act June 10, 1890, c. 407, § 14, 26 Stat. 137, without definite application, U. S. v. Whitridge (1905) 25 Sup. Ct. 406, 407, 197 U. S. 135, 49 L. Ed. 696.

5596. (Act Oct. 3, 1913, c. 16, § III, O.) Administration of oaths, examination of witnesses, and production of papers, etc.

O. The general appraisers, or any of them, are hereby authorized administer oaths, and said general appraisers, the boards of gen- al appraisers, the local appraisers, or the collectors, as the case ay be, may cite to appear before them, and examine upon oath any wner, importer, agent, consignee, or other person touching any mat- r or thing which they, or either of them, may deem material respect- g any imported merchandise then under consideration or previously ported within one year, in ascertaining the classification or dutiable lue thereof or the rate or amount of duty; and they, or either of em, may require the production of any letters, accounts, contracts, invoices relating to said merchandise, and may require such testi- ony to be reduced to writing, and when so taken it shall be filed d preserved for use or reference until the final decision of the col- ctor, appraiser, or said board of appraisers shall be made respecting e valuation or classification of said merchandise, as the case may ; and such evidence shall be given consideration in all subsequent oceedings relating to such merchandise. (38 Stat. 188.)

See notes to subdivisions B and M of this section, ante, §§ 5519, 5594.

This provision, originally enacted in the Customs Administrative Act of June 10, 1890, c. 407, § 16, 26 Stat. 138, was designated as section 15, and re-enacted without other change, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 100, which was substantially re-enacted by this act.

In addition to the authority of the Boards of General Appraisers and the members thereof, under this section, they were given the powers of a Circuit Court in preserving order, compelling attendance of witnesses and production of evidence, and in punishing for contempt, by section 12 of the Customs Administrative Act of June 10, 1890, c. 407, § 12, as amended by Act May 27,

1908, c. 205, § 3, and further amended by the Payne-Aldrich Tariff Act Aug. 5, 1909, c. 6, § 28, ante, § 5593.

Provisions similar to those of this subdivision and subdivision P of th section, post, § 5597, relating to the examination of witnesses, etc., by apprai ers and other officers, were made by R. S. §§ 2922, 2924, repealed by sectio 29 of the Customs Administrative Act of 1890, 26 Stat. 141.

Notes of Decisions

Citation and commission to take testimony.—In a proceeding by a collector to reliquidate duties, where an importer whose goods have been appraised and surrendered on payment of the duty is cited for examination under this section, the collector has no power under section 5714, post, to examine into the question of valuation; the appraisal made being final and conclusive. Bornn Hat Co. v. U. S. (C. C. A. 1914) 215 Fed. 709, affirming judgment U. S. v. Calhoun (D. C. 1911) 184 Fed. 499.

When a general discretionary power, without qualification, is conferred by statute, the exercise of the officer's discretion is limited to the evident purposes of the act, and to a sound legal discretion, excluding all arbitrary, capricious, inquisitorial, and oppressive proceedings. U. S. v. Doherty (D. C. 1886) 27 Fed. 730.

Where a defendant corporation was cited to appear before the collector and produce books and papers for examination in a proceeding which the collector had jurisdiction to institute, it was no excuse for the corporation's disobedience of the collector's order to appear and produce books and papers that the collector intended to extend the proceedings to matters over which he had no jurisdiction. U. S. v. Calhoun (D. C. 1911) 184 Fed. 499.

Where proceedings were instituted by a collector to reliquidate duties on goods imported by a corporation engaged in business and having books of account, citation was properly issued therein to the corporation directing it to appear in such proceedings and produce its books of account. Id.

The right of a collector to examine an importer in a proceeding for a reliquidation of duties within a year after importation, conferred by this section, is not limited or affected by the fact that the provision for forfeiture in case of default contained in section 5597, post, does not apply to examinations in aid of reliquidation. Id.

Without considering the judicial nature of the Board of United States General Appraisers or the power that might be found to inhere in the board as a tribunal to issue commissions to take testimony, it would plainly appear that the statute under the authority of which it was established empowers the board to issue such a commission; and that a rule adopted by the board empowering one of its members to issue such a commission is well within the scope of the board's authority. U. S. v. Hoffman-La Roche Chemical Works (1911) 1 Ct. Cust. App. 276.

Evidence in general.—It was an off of "evidence" where an importer a peared before the board of general a praisers and submitted an affida made by a person in a foreign count H. Mendelson & Co. v. U. S. (190 154 Fed. 33, 83 C. C. A. 145, reversi judgment (C. C. 1906) 146 Fed. 78.

The circuit court has no authority enjoin the appraisers from taking e dence anywhere as to the value of importation, or carrying the goods of the district for that purpose. Goo sell v. Briggs (C. C. 1873) Fed. C No. 5,548.

The provision of section 15 of A June 10, 1890, c. 407, § 15, for taki additional evidence by a single appra er, under order of the court, is inter ed, not to secure additional findings the board, but to enable the import or collector to controvert or to susta the certifications of the board as to t facts involved in the case. In re Ste bach (C. C. 1890) 44 Fed. 413, 419.

There is nothing in the law gove ing the board of general appraise which requires that there should original testimony heard by them every case on appeal, and such tes mony is unnecessary where the reco and exhibits sent up by the collect furnish sufficient basis for their de sion. In re Hempstead (C. C. 189 95 Fed. 967.

Under Act May 27, 1908, c. 205, § 35 Stat. 404, amending Customs A ministrative Act, § 15, it was prescri ed that "hereafter" the parties litiga should be required to introduce their evidence before the board of ge eral appraisers, and cut off the rig under said amended act, of a new tr in the Circuit Court on appeal fro the board. Held, that this provisi applied to cases decided by the boa after May 27, 1908, even though, pri to that date, they had arisen and bee submitted to the board for decisio Beer v. U. S. (C. C. 1910) 181 Fe 402.

The appraiser, though an officer the court, does not sit in court in th taking of testimony, but he acts on as a referee, whose duty it is to tak the evidence and return it to the cour In re Lyman (D. C. 1893) 55 Fe 29, 32.

The testimony relied upon as take in a former case should have been, af er due notice, ordered into the recor here. Failure to do this was a sub stantial irregularity, since it deprive government's counsel of the opportu nity to present opposing testimony. U S. v. Quong Chun & Co. (1914) 5 C

t. App. 198, citing Same v. Lun ng & Co. (1912) 3 Ct. Cust. App.

he importers should not have been pelled to have their case adjudged an incomplete record of evidence y sought rightly to complete; more- r, the board erred in considering ords improperly received in evi- ce. U. S. v. Baiz & Co. (1914) 5 Cust. App. 319.

nd as there was no proof actually ore the board upon which a conclu- n could be rested that molded and blown glass was the component ma- ial of chief value, the knowledge of board itself could not support its clusion. U. S. v. Burley & Tyrrell . (1914) 5 Ct. Cust. App. 401.

This and other named sections, con- ered, and held that, in the absence any regulation of the Secretary of Treasury to that effect, the law es not permit importers to appear fore the appraisers, with counsel or erwise, for the purpose of producing tnesses to be examined in their own half, or to cross-examine witnesses lled by such appraisers. The entire atter is under the control of the Sec- tary, and subject to such rules and gulations as he may from time to ne establish in relation thereto. 886) 18 Op. Atty. Gen. 360.

The collector is the authority to de- rmine whether an interrogatory is oper and the refusal to answer is stified. (1899) 22 Op. Atty. Gen. 456.

The board of general appraisers were arranted in refusing to hear and pass on the question whether the import- was justified in refusing to answer terrogatories under sections 16 and of the Customs Administrative Act.

There can be no doubt of the col- ctor's right, under section 16 of the ustoms Administrative Act, to call for ttlement tests of sugar importations, d for practical purposes it is imma- rial whether the appraiser obtains is information directly from the im- rter or through his superior, the col- ctor. (1900) 23 Op. Atty. Gen. 238.

— Competency of witnesses.—For- gn market value of goods may be roven by testimony of domestic mer- ants. Alfonso v. U. S. (C. C. 1843) ed. Cas. No. 188.

— Presumption and burden of proof. In the absence of evidence that al- hol was not used in the preparation the import, it will be presumed, support of the collector's assess- ent, that it was so used. U. S. v. chering (1903) 123 Fed. 65, 59 C. C. . 283, reversing judgment (C. C. 902) 119 Fed. 473.

Customhouse documents are prima cie evidence of the facts which call- d for their issue. McGlinchy v. U. S. C. C. 1875) Fed. Cas. No. 8,803.

— Admissibility — The board of eneral appraisers has the same pow- er which belongs to a court to allow the substitution of a copy for the original of a document forming part of the record of a case submitted to it, when such original is proved to have been lost. Marine v. Lyon (1895) 65 Fed. 992, 13 C. C. A. 268.

In determining the rate and amount of duty under a tariff act, it is competent to prove what is the commercial designation of the article known to the trade, but a witness may not testify that the commodity falls within or without a class. In re Smith (C. C. 1893) 55 Fed. 476, 478.

There is no provision for any relaxation of the ordinary rules of evidence in taking proofs before United States General Appraisers and ex parte affidavits are not admissible before a General Appraiser sitting as referee for the introduction of evidence in the Circuit Court, as provided in Customs Administrative Act, § 15. James F. White & Co. v. U. S. (C. C. 1896) 154 Fed. 175.

The board of general appraisers in deciding as to the polariscopic test of certain sugar drainings, based its findings on evidence of tests other than the government tests made according to the treasury regulations. Held, that the Board was not restricted to evidence of the government tests alone. U. S. v. Lueder (C. C. 1906) 146 Fed. 149, judgment reversed (1907) 154 Fed. 1, 83 C. C. A. 131.

An official report by a government chemist, which was made at the request of the board of general appraisers, and related to merchandise involved in a case pending before the board, held incompetent because ex parte, not under oath and not subject to cross-examination. U. S. v. O. G. Hempstead & Son (C. C. 1907) 153 Fed. 483.

Though Customs Administrative Act, § 15, providing appeals from the board of general appraisers to the Circuit Court, makes competent evidence admitted by the board, the court may attach very slight weight to such evidence. Knauth, Nachod & Kuhne v. U. S. (C. C. 1907) 155 Fed. 144.

Where a rule had been promulgated by the board of general appraisers providing that in classification proceedings the record and testimony in one case might be admitted as the record and testimony in another, if a like case, but providing, too, for a re-examination and cross-examination of witnesses if moved for, proceedings on such a substituted record could only be proper after due notice, so that witnesses might be re-examined or cross-examined as might or might not be desired. U. S. v. Oberle (1911) 1 Ct. Cust. App. 527.

A board of reappraisement is not a judicial tribunal and may use information acquired on previous appraisements. Shallus v. U. S. (1913) 5 Ct.

Cust. App. 317, citing Wolff v. Same (1911) 1 Ct. Cust. App. 181.

The board of general appraisers admitted as evidence in a case testimony taken previously in another case. This was done over the objection of counsel, who had not appeared in the previous case nor had opportunity of cross-examining the witnesses therein; and the articles involved in the two cases were not shown to be the same. Held, that such evidence should not have been admitted. Knauth, Nachod & Kuhne v. U. S. (C. C. 1907) 155 Fed. 144.

Where parol testimony does not contradict, but merely supplies an omission, the rule against its admission, in the absence of any statutory or regulative requirement of a record, will not be enforced. U. S. v. American Exp. Co. (1914) 5 Ct. Cust. App. 351.

The question at issue was whether the stem or the bowl of the imported glassware constitutes value in chief of the merchandise. The relative values were not shown by the testimony. Evidence taken on the hearing of other protests and regarded as material must be offered and received in conformity with established rules and after opportunity has been afforded counsel to re-examine or cross-examine witnesses. U. S. v. Burley & Tyrrell Co. (1914) 5 Ct. Cust. App. 401.

The reports made by local appraisers to collectors concerning merchandise, when they are made within the line of duty, become part of the record in the case, and as such may be considered upon the trial of a protest before the board. Tower Mfg. & Novelty Co. v. U. S. (1915) 6 Ct. Cust. App. 267.

A report made by an appraiser after the lapse of the 30 days fixed by law wherein reports must be made, is extraofficial, and is not entitled to be considered a part of the record in the case. Id.

—— **Weight.**—As to evidence required to convict of perjury at customhouse, see U. S. v. Wood (1840) 14 Pet. 430, 436, 10 L. Ed. 527.

As to an importation of mixed hides and skins, separation of the pieces weighing less than 12 pounds, which were free of duty, was made by weighers experienced in handling skins, who actually weighed only the pieces as to which they were in doubt. Held, that proof of the results by this method was sufficient to show the amount entitled to free entry. U. S. v. Helmrath (1906) 145 Fed. 36, 75 C. C. A. 261, affirming judgment Helmrath v. U. S. (C. C. 1904) 135 Fed. 912.

While commercial designation for the purpose of tariff classification is that known and used by importers and large dealers, and not that of the retail trade, a retail dealer is not for that reason incompetent to testify upon the subject, but the weight to be given to the testimony of any witness depends upon his intelligence and knowledge of the subject, and a retail dealer may, from the magnitude of his business and purchases, be better qualified to testify than some importers. Nordlinger v. U. S. (C. C. 1902) 115 Fed. 828, judgment reversed U. S. v. Nordlinger (1903) 121 Fed. 690, 58 C. C. A. 438, writ of certiorari denied Nordlinger v. U. S. (1903) 23 Sup. Ct. 848, 191 U. S. 575, 48 L. Ed. 308.

Where importations of hides and skins, mixed together, were sorted by experienced men, who determined whether they were under or over 12 pounds, the dividing line between hides and skins, by handling alone, except with doubtful pieces, on which they used the scales, and it appeared that the pieces considered by them to be skins were treated as such, being sold on that basis, held that the evidence of these facts justified a finding that such pieces were actually skins, and not hides. Helmrath v. U. S. (C. C. 1904) 135 Fed. 912, judgment affirmed U. S. v. Helmrath (1906) 145 Fed. 36, 75 C. C. A. 261.

A series of sales or a single sale, or offers to sell in the usual course of trade, are among the best evidence of market value. In re Six Cases of Silk Ribbons (D. C. 1869) Fed. Cas. No. 12,914.

Where only one witness has testified to the commercial designation of an article, this is insufficient evidence to prove an accepted use of the term in commerce. U. S. v. Oberle (1911) 1 Ct. Cust. App. 527.

The leather bags of an importation were contained in cases that were not sent to the public stores for examination. The importer's contention was that the bags did not contain toilet articles, but were assessed for duty as if they did contain them. The goods having gone into consumption and the veracity of the witness who testified being unquestioned, it was sufficient proof of the actual character of the leather bags, when there was produced and submitted by the importer a memorandum known as a "stock list" that contained a complete and accurate description of the articles in question, with the cost and sale prices thereof. It was not necessary to corroborate this testimony by offering samples of the merchandise. Stern Bros. v. U. S. (1912) 2 Ct. Cust. App. 405 (citing U. S. v. Herrmann [1907] 154 Fed. 196, 83 C. C. A. 179); Bradley Martin v. U. S. (1911) 1 Ct. Cust. App. 134.

One witness testified that the articles are porcelain pyrometer tubes and a previous decision of the board upon the rate of assessment was submitted at the hearing. The record in the former case was not put in evidence.

other witness was examined, and sample of the merchandise was in-duced in evidence or retained by e appraiser. There was a failure to stain the protest and the collector's sessment must stand as correct. U. v. Eytinge & Co. (1913) 4 Ct. Cust. p. 266, distinguishing Herrmann v. S. (C. C. 1906) 145 Fed. 843, and ndegrift & Co. v. U. S. (1912) 3 . Cust. App. 219.

There was sufficient in the appraiss reports or the collector's letters, ken together, upon which to predicate a finding of fact and so to bring the particular statute into operation. Abraham & Straus v. U. S. (1914) 5 Ct. Cust. App. 311.

The testimony of a single witness unimpeached, whether or not corroborated by other circumstances in the case, may be held sufficient to sustain or reverse a judgment. Schmitt v. U. S. (1914) 5 Ct. Cust. App. 312.

Cited without definite application, Hilton v. Merritt (1884) 3 Sup. Ct. 548, 552, 110 U. S. 97, 28 L. Ed. 83.

5597. (Act Oct. 3, 1913, c. 16, § III, P.) Failure to submit to examination or to produce papers; false swearing; penalty; forfeiture.

P. If any person so cited to appear shall neglect or refuse to atnd, or shall decline to answer, or shall refuse to answer in writing ıy interrogatories, and subscribe his name to his deposition, or to roduce such papers when so required by a general appraiser, or a oard of general appraisers, or a local appraiser, or a collector, he ıall be liable to a penalty of not less than $20 nor more than $500; ıd if such person be the owner, importer, or consignee, the appraiseent which the Board of General Appraisers or local appraiser, or llector where there is no appraiser, may make of the merchandise ıall be final and conclusive; and any person who shall willfully and orruptly swear falsely on an examination before any general apraiser, or Board of General Appraisers, or local appraiser or colctor, shall be deemed guilty of perjury; and if he is the owner, imorter, or consignee, the merchandise shall be forfeited, or the value ıereof may be recovered from him. (38 Stat. 188.)

See notes to subdivisions B and M of this section, ante, §§ 5519, 5594.

This provision, originally enacted in the Customs Administrative Act of June 10, 1890, c. 407, § 17, 26 Stat. 139, was designated as section 16, and re-enacted without other change, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 100, which was substantially re-enacted by this act.

Provisions for additional duties on failure to submit books, etc., to inspection were made by subdivisions U, V, of this section, post, §§ 5600, 5601.

Notes of Decisions

Refusal to answer questions.—A colctor may, under his power to requidate duties, cite an importer to ppear for examination, and for his ailure to appear he is subject to the enalty imposed by this section. Sornn Hat Co. v. U. S. (1914) 215 'ed. 709, 132 C. C. A. 87, affirming ıdgment U. S. v. Calhoun (D. C. 911) 184 Fed. 499.

Where there was no evidence of any oncealment or fraud in the importaion, or of the absence of the ordiary means of ascertaining the maret value of the goods, and inquiry as o the contract price for the future devery of goods at a store in New York, ree of all charges was held to be rima facie incompetent, and no penlty was incurred by refusal to anwer. U. S. v. Doherty (D. C. 1886) 7 Fed. 730.

An importer refusing to answer a proper question respecting imported merchandise has not complied with the requirements of law, and is not entitled to a reappraisement, but the original appraisement becomes final and conclusive under section 17 of the act above named. (1899) 22 Op. Atty. Gen. 456.

False swearing.—Importer, making affidavit that nothing had been concealed or suppressed whereby the United States might be defrauded, held guilty of perjury if he had knowledge of any document which, if known, would have led the United States to fix the customs duties higher than those based on the values stated in the consular invoice. U. S. v. Salen (D. C. 1914) 216 Fed. 420.

5598. (Act Oct. 3, 1913, c. 16, § III, Q.) Decisions of general appraiser; filing; publication of abstracts.

Q. All decisions of the general appraisers and of the boards of eneral appraisers, respecting values and rates of duty, shall be pre-

served and filed, and shall be open to inspection under proper regula tions to be prescribed by the Secretary of the Treasury. All dec sions of the general appraisers shall be reported forthwith to the Sec retary of the Treasury and to the Board of General Appraisers o duty at the port of New York, and the report to the board shall b accompanied, whenever practicable, by samples of the merchandise i question, and it shall be the duty of the said board, under the direc tion of the Secretary of the Treasury, to cause an abstract to be mad and published of such decisions of the appraisers as they or he ma deem important, to be published either in full, or if full publicatio shall not be requested by the Secretary or by the board, then by a abstract containing a general description of the merchandise in ques tion, a statement of the facts upon which the decision is based, an of the value and rate of duty fixed in each case, with reference, when ever practicable, by number or other designation, to samples deposite in the place of samples at New York, and such abstracts shall b issued from time to time, at least once in each week, for the informa tion of customs officers and the public. (38 Stat. 188.)

See notes to subdivisions B and M of this section, ante, §§ 5519, 5594.

This provision, originally enacted in the Customs Administrative Act o June 10, 1890, c. 407, § 18, 26 Stat. 139, was designated as section 17, an re-enacted without other change, by the Payne-Aldrich Tariff Act of Aug. 5 1909, c. 6, § 28, 36 Stat. 101, which was substantially re-enacted by this act.

Notes of Decisions

Decision as rule of action. — While the Treasury Department may accept decisions of the board of general appraisers as a rule of action to be followed in the classification of other importations, it is not compelled by law to do so. (1893) 20 Op. Atty. Gen. 648.

The Secretary of the Treasury and collectors of customs are bound by classification decisions of the board of general appraisers, when unappealed from, only so far as such decisions affect the goods immediately before the board for classification. (1903) 25 Op. Atty. Gen. 81.

The Secretary of the Treasury has authority, and it is his duty, to instruct collectors of customs to wha extent, if at all, they are to be guided by the conclusions, general doctrines, and expressions contained in any opinion by the board of general appraisers, except as regards the merchandise concerning which the decision was made. Id.

Where there is conflict between a decision of the circuit court on appeal from the board of general appraisers, and a subsequent decision of the board, the Secretary of the Treasury should give greater consideration to the decision of the court. Id.

§ 5599. (Act Oct. 3, 1913, c. 16, § III, R.) Assessment of ad valorem duties.

R. Whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price thereof, at the time of exportation to the United States, in the principal markets of the country from whence exported; that such actual market value shall be held to be the price at which such merchandise is freely offered for sale to all purchasers in said markets, in the usual wholesale quantities, and the price which the seller, shipper, or owner would have received, and was willing to receive, for such merchandise when sold in the ordinary course of trade in the usual wholesale quantities, including the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, and if there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in the bona fide transportation of such merchandise to the United States,

itional duty shall be levied and collected upon such material or cle at the rate to which the same would be subjected if separately orted. That the words "value," or "actual market value," or holesale price," whenever used in this Act, or in any law relating to appraisement of imported merchandise, shall be construed to be the ual market value or wholesale price of such, or similar merchandise nparable in value therewith, as defined in this Act. (38 Stat. 189.)

See notes to subdivisions B and M of this section, ante, §§ 5519, 5594.

These provisions were substituted for provisions of the same nature made by the Customs Administrative Act of June 10, 1890, c. 407, § 19, 26 Stat. 139, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 101.

Provisions of subdivision S of this section, relating to withdrawal of goods from bonded warehouse, are set forth post, § 5656.

The provisions of subdivision T of this section, relating to burden of proof in suits for enforcement of customs laws, are set forth post, § 5791.

Section 19 of the Customs Administrative Act of June 10, 1890, c. 407, and section 11 of that act, were substitutes for R. S. § 2907, repealed by section 29 of that act, 26 Stat. 141; and the provisions as to the construction of the words "value" or "actual market value" were substitutes for the similar provisions of R. S. § 2952, also repealed by said section 29.

See notes to subdivision L of this section, ante, § 5592.

Notes of Decisions

Historical.
"Ad valorem" defined.
Market value in general.
Determination of value.
Coverings, containers, etc.
Containers of liquids.
Additional duty.
Costs, charges, and expenses.
Decisions under former statutes.
—— Increase in value and decrease in quantity.

. **Historical.**—Review of legislation ing the basis for estimating ad va- em duties, passed prior to Act rch 3, 1883 (22 Stat. 488). (1884) Op. Atty. Gen. 633.

2. **"Ad valorem" defined.**—The term d valorem," as used in the customs ws, does not always mean the actual lue of the article at the place of ex- rtation. U. S. v. Clement (D. C. 43) Fed. Cas. No. 14,815.

3. **Market value in general.**—The arket value of imported goods for rpose of assessing customs duties is be determined by the general mar- t value of goods of the same de- ription, without reference to the fact at the goods cost the particular im- rter a less amount because of spe- l advantages which he had. Muser Magone (1894) 155 U. S. 240, 15 p. Ct. 77, 39 L. Ed. 135.

"Actual market value" is the price which the manufacturer holds his ods for sale in ordinary course of ade. In re Six Cases of Silk Rib- ns (D. C. 1869) Fed. Cas. No. 12,- 4.

"Market value" is the price at which e manufacturer holds the goods for le, and which purchasers are willing pay in the ordinary course of trade, d evidence is not admissible to show at there was not in fact such an ac- al market value. U. S. v. Sixteen ases of Silk Ribbons (D. C. 1870) ed. Cas. No. 16,301.

Where imported merchandise offered for entry has depreciated from its invoice value, the rate of duty is to be determined by considering not alone this section, but effect must be given section 5527, ante, and the duty should not be assessed in any case upon an amount less than the invoice or entered value. Ullman v. U. S. (1910) 1 Ct. Cust. App. 61.

By current or actual market value or wholesale price, as used in the statute, is to be understood the amount of money the article commanded in the foreign market in the condition in which it is there customarily sold and purchased. (1884) 17 Op. Atty. Gen. 633.

See note on "market value" under § 5591.

4. **Determination of value.**—The orders of the secretary of the treasury to a collector fixing the time at which the value of goods imported is to be taken, for the purpose of estimating ad valorem duties, are no justification to the collector as against third persons. Greely v. Thompson (1850) 51 U. S. (10 How.) 225, 13 L. Ed. 397; Maxwell v. Griswold (1850) 51 U. S. (10 How.) 242, 13 L. Ed. 405.

Where it was the duty of the appraiser, in order to enable him to fix the duty on certain imported merchandise, to inquire into the value thereof, he was entitled to the aid afforded in such inquiry by the production of a true and correct invoice. Hoeninghaus v. U. S. (1899) 19 Sup. Ct. 305, 172 U. S. 622, 43 L. Ed. 576.

In determining the dutiable market value of imported merchandise, it is within the authority of the designated customs officers to inquire into the origin of disputed items claimed by the importers to be commissioned and charges, and to ascertain whether they are truly such, or part of the whole-

sale price which the importers paid for the merchandise. U. S. v. Kenworthy (1895) 68 Fed. 904, 16 C. C. A. 61, reversing judgment (D. C. 1894) 59 Fed. 570.

Under this section, requiring appraised value to include, besides coverings, etc., "all other costs, charges and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States," an invoice item described as a "converter's commission" was so included. Held, that this inclusion was proper, so far as it covered converters' services in having the goods dyed and finished, and in the absence of evidence to the contrary it would be presumed to be correct as to any other elements of the item. N. Erlanger, Blumgart & Co. v. U. S. (1907) 154 Fed. 949, 83 C. C. A. 463, affirming judgment (C. C. 1907) 152 Fed. 576.

This section, providing in effect that imported merchandise subject to an ad valorem duty shall be valued in the condition in which it is imported, requires that the value of the added threads should be computed. Quaintance v. U. S. (1911) 2 Ct. Cust. App. 215.

Under prior law, see (1890) 19 Op. Atty. Gen. 602.

5. **Coverings, containers, etc.**—Chocolate and cocoa dutiable, including covering, see paragraph 231.

Cigarettes dutiable, including wrappers, see paragraph 185.

Duty on bottles at same rate as contents, etc., see § 5291, par. 83, ante.

Eggs frozen dutiable, including wrappers, see paragraph 263.

Peas in cartons, papers, etc., dutiable, including weight of covering, see paragraph 209.

Picture frames held not dutiable as coverings. See § 5291, par. 176, ante.

Poultry dutiable, including covering, see paragraph 229.

These spools were not designed for use otherwise than in the bona fide transportation of the artificial silk yarn which they contained, and as used they entered into the cost and value of their contents as appraised and assessed for duty. They are not "containers or coverings" as those terms appear in this section, and they are not ratable for duty as a separate entity under the fundamental rule that forbids double taxation. They are dutiable as a part of the contents themselves. Karthaus v. Frick (C. C. 1840) Fed. Cas. No. 7,615; U. S. v. Ringk & Co. (1913) 4 Ct. Cust. App. 349; Same v. Vandegrift & Co. (1913) Id. 355.

Under Act July 24, 1897, c. 11, § 1, Schedule G, par. 281, providing for a duty on chocolate, and that "the weight and value of all coverings other than plain wooden shall be included in the dutiable weight and value" thereof, the dutiable value of chocolate packed in tin boxes should be arrived at by adding the number of pounds of the chocolate and the tin coverings and the outside wooden boxes in which it is packed for transit should not be included, pursuant to the method of estimating the value prescribed by this section, since the later statute plainly intends that the wooden coverings should be free from duty, and the interior coverings alone treated for duty purposes as if they were chocolate. U. S. v. Volkmann (1901) 107 Fed. 109, 46 C. C. A. 169, affirming judgment Volkman v. U. S. (C. C. 1900) 9[illegible] Fed. 264.

Ordinarily the containers, coverings and packing charges of goods subject to a specific duty are not dutiable unless expressly provided for by act of Congress, as in the case of bottles. James A. Hayes & Co. v. U. S. (1906) 150 Fed. 63, 80 C. C. A. 17, writ of certiorari denied U. S. v. James A. Hayes & Co. (1907) 28 Sup. Ct. 261, 207 U. S. 595, 52 L. Ed. 356.

Paper articles, resembling pocket books in outward appearance, contained pockets filled with needles, and they were completed structures before the needles were added. Held, that they were not dutiable as coverings of the needles, nor dutiable as entireties composed of paper and metal (needles), but that they and the needles they contained should be classified separately, as though imported independently. U. S. v. Dieckerhoff, Raffloer & Co. (1908) 160 Fed. 449, 87 C. C. A. 410, affirming judgment Dieckerhoff, Raffloer & Co. v. U. S. (C. C. 1907) 151 Fed. 957.

A charge of a specific duty upon an article in a particular form or vessel is a charge upon the whole article, as described, including the vessel or material described as containing it. Karthaus v. Frick (C. C. 1840) Fed. Cas. No. 7,615.

This section, in requiring, as to imported merchandise subject to a duty regulated by its value, the inclusion in such value of the cost of the coverings, provides no method for apportioning the cost of the coverings when they contain merchandise of different kinds. Held, that such method of apportionment must be adopted as seems most equitable and just, and that, with regard to hosiery in lots of different values, contained in the same outside cases, where each dozen of the hosiery occupied about the same space, the cost of the cases should be distributed among the different lots according to the number of dozens of the hosiery and not according to value. Rice v. U. S. (C. C. 1892) 123 Fed. 195.

Tin match boxes, containing high-grade matches, and used to protect them from dampness and accidental ignition, and being of the usual quality and shape, and like those in which similar matches are sold abroad, will

onsidered as designed for the bona transportation of the matches, and dutiable. Appeal of Slattery (C. 893) 59 Fed. 450.

ses containing needles, imported n entirety, and designed to be sold 'furnished needle cases," must be sified as integral articles, according their components of chief value. namaker v. Cooper (C. C. 1895) Fed. 465.

determining the market value of article purchased abroad in usual rings, such as oats in bags, the act ires that the value of the article whole, including the covering, shall aken, though the covering, if sep- ely imported, would be free of duty. S. v. Wood (C. C. 1898) 85 Fed.

cture frames of wood, fitted to the ures, are incidents of the pictures dutiable at the same rate, as part their value, and not separately, as ufactures of wood. Hensel v. U. (C. C. 1899) 91 Fed. 523.

lass jars containing preserves and ing one pint or less held not viols, dutiable as part of the market e of the merchandise as provid- y the terms of this section. Smith J. S. (C. C. 1899) 91 Fed. 757.

ottles holding more than one pint nerchandise subject to an ad valo- duty are not themselves subject to . Merck v. U. S. (C. C. 1899) Fed. 432.

s to importations of goods in bot- , which are dutiable under one pro- on of the tariff act and the bottles er another, the value of the cases taining the goods should be distrib- d between the bottles and their tents according to the value of each, value of the bottles for this pur- e being inclusive of the cost of ir fittings, consisting of corks, caps, sules, labels, and wiring. Francis Leggett & Co. v. U. S. (C. C. 1905) Fed. 970.

reappraisement return by a board general appraisers as to the value imported chocolate failed to state ether the value of the coverings was uded in the value stated in the re- n. Held, that it should be presum- that such value was included, not- hstanding that Tariff Act July 24, 7, c. 11, § 1, Schedule G, par. 281, vides that the dutiable value of colate shall not include the value plain wooden coverings. U. S. v. omas Leeming & Co. (C. C. 1907) Fed. 489.

he term "coverings" extends to con- ners of liquids and similar sub- nces, such as tins, kegs, jars, and rines. Kimpton v. U. S. (C. C. 08) 165 Fed. 236, 237, reversed 09) 171 Fed. 78, 96 C. C. A. 182, affirmed (1909) 171 Fed. 79, 96 C. A. 183.

elatin capsules containing a medi- cine are not "coverings," within the meaning of the tariff laws, not being for transportation, but an essential part of the article. U. S. v. Lehn & Fink (C. C. 1909) 172 Fed. 171.

The clause "shall not be dutiable unless their contents are dutiable" in a proviso to paragraph 195, Act 1909, does not affirmatively or otherwise impose any duties. U. S. v. Matagrin (1911) 1 Ct. Cust. App. 309.

The proviso to paragraph 195, Act 1909, is perhaps broader than it was necessary to make it, but it is apt nevertheless, and it is held to have been intended to save for operation this section, making dutiable other containers than those enumerated in paragraph 195. Id.

In view of the legislative history of the clause and its judicial interpretation, and in view of the common significance of the language employed, the cylindrical containers as described in paragraph 151, § 1, Act 1909, cannot be taken to remove small tin cans with contents of tomatoes and of tomato sauce from the operation of this section, though these tins are cylindrical in shape and they were dutiable ad valorem under this section. U. S. v. Garramone (1911) 2 Ct. Cust. App. 30.

Where the containers are cylindrical iron drums that it is necessary to cut into two parts in order to remove their contents, and when so cut in two appear to have no value and do not enter into or become a part of the merchandise of this country for any purpose whatever, they are not dutiable under paragraph 151, Act 1909, as cylindrical or tubular tanks or vessels for containing purposes and separately from their contents, but rather as usual containers possessing no value apart from their contents, and their value should be assessed along with the contained merchandise at ad valorem rates under paragraph 3, pursuant to this section. U. S. v. Braun Chemical Co. (1911) 2 Ct. Cust. App. 57.

The provisions of existing law relative to containers impose a duty, for example, on boxes, as boxes alone, when these are imported as merchandise. When they are brought in as usual containers of ad valorem goods they are subject to the specific administrative provision applicable to them when used in that way; and boxes covered with surface-coated paper and composed wholly or in chief value of paper or papier-mâché, containing nettings, are dutiable under this section, as usual containers. Spielman v. U. S. (1911) 2 Ct. Cust. App. 61.

This section makes provision for a duty on containers, but paragraph 195 of Act 1909 carries a specific provision for certain sorts of containers, and lacquered metal boxes, with compartments and hinged lids, containing paints, though the lids be used as palettes, are dutiable

under that paragraph. Illfelder & Co. v. U. S. (1911) 2 Ct. Cust. App. 299.

On a review of the decisions and after allowing due weight to the fact that there has been a legislative adoption of a long-continuing customs practice, it is held that the value of dutiable coverings should be added in determining the proper dividend to be used for ascertaining the rate of duty. The value of the coverings should be added to the value per se of the cement; but in the absence of express provision, may not be considered in determining the weight of the merchandise. U. S. v. Francklyn (1913) 4 Ct. Cust. App. 54.

The legislative history of this paragraph makes it clear that containers under paragraph 195, Act 1909, are such as are ordinarily employed in the transportation of merchandise. The goods of the importation are not containers in that sense. Woolworth & Co. v. U. S. (1913) 4 Ct. Cust. App. 242.

The importer of woolens incurred certain costs for their inspection and damping in London and the collector added these costs to the entered value. In this he exceeded his authority. These costs so incurred are not charges and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, as provided for in this section. U. S. v. Van Ingen & Co. (1914) 5 Ct. Cust. App. 432, distinguishing Same v. Spingarn Bros. (1913) 5 Ct. Cust. App. 2.

The dutiable value of dry colors, or paints in the form of a fine powder, imported in air-tight kegs, barrels, casks, and tins, includes the value of the containers under Act 1897, as shown by this section. Cassela Color Co. v. U. S. (1915) 6 Ct. Cust. App. 405, distinguishing Austin, Nichols & Co. v. Same (1909) 171 Fed. 79, 96 C. C. A. 183, and Austin v. Same (1911) 1 Ct. Cust. App. 465.

6. Containers of liquids.—Glass bottles filled with merchandise liable to ad valorem duties cannot be regarded as "coverings" in view of the elaborate provision made by Act Aug. 27, 1894, c. 348, 28 Stat. 508, for a specific tax on glass bottles, filled or unfilled, whether their contents are subject to ad valorem or specific duties. U. S. v. Austin Nicholls & Co. (1902) 22 Sup. Ct. 918, 186 U. S. 298, 46 L. Ed. 1173.

This section does not apply to filled bottles containing olive oil, which is subject to a specific duty, though filled bottles are specifically enumerated as subject to an ad valorem duty in Tariff Act July 24, 1897, c. 11, § 1, Schedule B, par. 99. James A. Hayes & Co. v. U. S. (1906) 150 Fed. 63, 80 C. C. A. 17, writ of certiorari denied U. S. v. James A. Hayes & Co. (1907) 28 Sup. Ct. 261, 207 U. S. 595, 52 L. Ed. 356.

The value of stone bottles filled with ad valorem goods (ink) should not be added to the dutiable value of their contents, to make up the dutiable value of the imported merchandise; such bottles not being "coverings," within the meaning of the act. Kimpton v. U. S. (1909) 171 Fed. 78, 96 C. C. A. 182, reversing judgment (C. C. 1908) 165 Fed. 236. See (1911) 1 Ct. Cust. App. 477.

The provision that the value of "cases * * * and similar coverings" shall be added to the dutiable value of their contents includes tin cans and stoneware receptacles. Austin, Nichols & Co. v. U. S. (1909) 171 Fed. 79, 96 C. C. A. 183, affirming judgment Kimpton v. Same (C. C. 1908) 165 Fed. 236.

The duties on filled glass bottles, prescribed by Act March 3, 1883, c. 121, Schedule B, 22 Stat. 495, were not repealed by the provision that the duty on ad valorem goods shall be assessed upon their actual market value, including the value of "all cartons, cases, crates, boxes, sacks, and coverings of any kind." U. S. v. Austin Nicholls & Co. (1902) 22 Sup. Ct. 918, 186 U. S. 298, 46 L. Ed. 1173.

Containers of liquids or semiliquids do not come within the descriptive language "cartons, cases, crates, boxes, and coverings of any kind." Austin v. U. S. (1911) 1 Ct. Cust. App. 465.

The construction of section 19, Customs Administrative Act 1890, has been established in the light of the rule ejusdem generis, and the containers named have been limited to coverings of dry or solid merchandise. U. S. v. Peabody & Co. (1912) 3 Ct. Cust. App. 130.

7. Additional duty.—Small glass jars without necks, having straight inside walls and metal tops, are not unusual coverings for Roquefort cheese, nor can they be classified as bottles or bottle glassware, under paragraph 103 of Act Oct. 1, 1890. U. S. v. Leggett (1895) 66 Fed. 300, 13 C. C. A. 448.

Coverings or cases made of silk, leather, or paper, and containing needles, such cases being ornamental articles, arranged as permanent receptacles for the needles, are dutiable according to their component material of chief value, as manufactures of silk, leather, or paper, and are not entitled to free entry, as usual coverings of the needles, under this section. U. S. v. Mathews (1897) 78 Fed. 345, 24 C. C. A. 127.

The "additional duty" provided for unusual coverings used "otherwise than in the bona fide transportation" of their contents to the United States is not a substitute for the usual duty on coverings which accrues by including their cost in the dutiable value of their contents, as also provided in said section; but both duties should be imposed, the latter because the coverings subserve a use in transportation, and the former because they subserve an additional use after transportation. U. S. v. Park & Tilford (1907) 152 Fed. 142, 81 C. C. A. 360, reversing judgment (C. C. 1905) 142 Fed. 202.

heap cups and saucers were import- in paper boxes, closed by brass ps, each box containing only a sin- pair, wrapped in tissue paper. Held, er the provision, that the coverings imported goods designed for use er than in the bona fide transporta- of the goods shall pay a duty, if coverings were intended for use in nsportation only, and for no other , and were not intended to enhance value, increase the sale, or facilitate selling, they were free; otherwise, y were subject to duty. Meyer v. pper (C. C. 1890) 44 Fed. 55.

Vooden cases with cardboard parti- ns, in which opal glass bottles were ked and imported, are not subject to litional duty as "unusual coverings," as designed for any other use than bona fide transportation of said bot- s. U. S. v. Richards (C. C. 1895) Fed. 730.

Vhere needles not subject to duty imported in cases of a form in ich they have been imported for m 16 to 20 years, the court will not justified in finding that such cases re designed for a different use. erefore they are admissible free, and subject to duty according to the terials of which they are made. tthews v. U. S. (C. C. 1896) 72 Fed.

Brass boxes for mourning pins, ough costing more than the pins, held be not unusual coverings, and not erefore subject to separate or addi- nal duty. Dieckerhoff v. U. S. (C. 1897) 84 Fed. 443.

Glass tubes, in which chloride of ethyl, ed by surgeons and dentists as a al anæsthetic, is imported, are so ade that the liquid, which is very latile, can be directly applied there- om in the form of a spray or vapor to e part to be treated, being volatilized the warmth of the hand. After the ntents are exhausted, the tubes are orthless, and are thrown away. Held, at the fact of such use does not ren- r the tubes separately dutiable as an usual form of holding or covering de- gned for use otherwise than in the na fide transportation of the liquid. re Hempstead (C. C. 1899) 96 Fed. .

Certain patent tin cases or chests own as "Toohey's Patent Excelsior a Caddies," which are used as cov- ings in the transportation of tea, and hich, after having subserved that pur- se, are used, and are designed to be ed, for other purposes, are subject to ditional duty. Jackson v. Siegfried C. C. 1901) 126 Fed. 837.

Where boxes used as coverings for ported tobacco were not the usual verings in which such tobacco was ported, but were of no value, and ere thrown away or destroyed after e tobacco had been removed, they ere not taxable under additional duty provision. Laverge v. U. S. (C. C. 1902) 119 Fed. 481.

So-called furnished needle cases, consisting of books or cases for holding needles during transportation and while the needles in them are being used, are not usual coverings, being used otherwise than in bona fide transportation of the needles. Guthman, Solomons & Co. v. U. S. (C. C. 1906) 148 Fed. 332.

Congress will not be presumed to have intended an importer could bring in free of duty durable metal drums of considerable value containing creosote oil, and mingle these drums when emptied of their contents with other articles of commerce in the trade of the United States; and such metal drum containers are dutiable. Pacific Creosoting Co. v. U. S. (1911) 1 Ct. Cust. App. 312.

To be admitted free of duty as a container of merchandise on which a specific duty is imposed, an article should not only be a container, but should be the usual container employed in transporting the goods. The importer failed to overcome by a preponderance of evidence the presumption of the correctness of the collector's finding that the beams in question were unusual containers, if containers they were, and therefore that presumption must prevail. Further, it is admitted that the beams were designed for some other use than the bona fide transportation of the merchandise to the United States. Under such circumstances additional duty would have been properly assessable on the beams even if they had been within the category of containers described by this section. U. S. v. Stirn (1912) 3 Ct. Cust. App. 62.

The law does not contemplate that these coverings, whose only design, purpose, or use other than for transportation is for displaying the harmonicas, should pay additional duty. The provision for additional duty must be taken to be intended to prevent the importation, under the guise of coverings or containers, of unusual articles having a substantial, material, and valuable use for other purposes than merely holding or covering merchandise in the bona fide transportation thereof. U. S. v. Hohner (1913) 4 Ct. Cust. App. 122.

8. Costs, charges, and expenses.—Where an importer has caused rice purchased abroad by him to be ground before shipment into granules of sufficient fineness to entitle it, under the rulings of the treasury department, to be entered at a lower rate of duty than unground rice, the cost of granulation forms part of the dutiable value of the article, and cannot be deducted therefrom by the importer as a nondutiable charge. Bullock v. Magone (C. C. 1889) 39 Fed. 191.

A royalty fee paid for use of machinery, which formed no part of its price held not a part of its dutiable

value. U. S. v. Leigh (C. C. 1889) 39 Fed. 764, 765.

The export tax imposed by a foreign government is not one of the "costs, charges, and expenses" referred to in this section. (1894) 21 Op. Atty. Gen. 108.

9. Decisions under former statutes.—See Sampson v. Peaslee (1857) 20 How. 571, 575, 15 L. Ed. 1022; Knight v. Schell (1860) 65 U. S. (24 How.) 526, 16 L. Ed. 760 (affirming [C. C. 1860] Fed. Cas. No. 7,887); Belcher v. Linn (1860) 65 U. S. (24 How.) 533, 16 L. Ed. 758; Kimball v. Collector (1870) 77 U. S. (10 Wall.) 436, 19 L. Ed. 964; Arthur v. Goddard (1877) 96 U. S. 145, 24 L. Ed. 814; Schmidt v. Badger (1883) 1 Sup. Ct. 530, 533, 107 U. S. 85, 27 L. Ed. 328; Arthur v. Pastor (1883) 109 U. S. 139, 3 Sup. Ct. 96, 27 L. Ed. 882; Oberteuffer v. Robertson (1886) 6 Sup. Ct. 462, 466, 467, 116 U. S. 499, 29 L. Ed. 706 (reversing judgment [C. C. 1885] 24 Fed. 852); Robertson v. Downing (1888) 127 U. S. 607, 8 Sup. Ct. 1328, 1329, 32 L. Ed. 269; Badger v. Cusimano (1889) 130 U. S. 39, 9 Sup. Ct. 431, 432, 32 L. Ed. 851; Robertson v. Frank Bros. Co. (1889) 132 U. S. 17, 10 Sup. Ct. 5, 33 L. Ed. 236; Same v. Bradbury (1889) 132 U. S. 491, 10 Sup. Ct. 158, 33 L. Ed. 405; U. S. v. Kenworthy (1895) 68 Fed. 904, 16 C. C. A. 61 (reversing judgment [D. C. 1894] 59 Fed. 570); Magone v. Origet (1895) 70 Fed. 778, 17 C. C. A. 363; Benkard v. Schell (C. C.) Fed. Cas. No. 1,307; Tappan v. U. S. (C. C. 1822) Fed. Cas. No. 13,749; U. S. v. May, Id. 15,752; Karthaus v. Frick (C. C. 1840) Fed. Cas. No. 7,615; Armstrong v. Hoyt (C. C. 1841) Fed. Cas. No. 544a; Hoffman v. Williams (C. C. 1842) Fed. Cas. No. 6,579; Alfonso v. U. S. (C. C. 1843) Fed. Cas. No. 188; Grinnell v. Lawrence (C. C. 1848) Fed. Cas. No. 5,831; Brune v. Marriott (C. C. 1849) Fed. Cas. No. 2,052; Wilbur v. Lawrence (C. C. 1851) Fed. Cas. No. 17,635; Wilson v. Maxwell, Id. 17,824; Norcross v. Greely (C. C. 1852) Fed. Cas. No. 10,294; Barnard v. Morton (C. C. 1853) Fed. Cas. No. 1,005; Griswold v. Maxwell, Id. 5,838; Gant v. Peaslee (C. C. 1855) Fed. Cas. No. 5,212; Millar v. Millar, Id. 9,546; Munsell v. Maxwell, Id. 9,932; Vaccari v. Same, Id. 16,810; Warren v. Peaslee, Id. 17,198; Forman v. Peaslee (C. C. 1857) Fed. Cas. No. 4,941; Gibb v. Washington (C. C. 1858) Fed. Cas. No. 5,380; Riess v. Redfield (C. C. 1859) Fed. Cas. No. 11,821; Bliss v. Same (C. C. 1860) Fed. Cas. No. 1,549; Davidson v. Draper (C. C. 1867) Fed. Cas. No. 3,604; Cobb v. Hamlin (C. C. 1868) Fed. Cas. No. 2,922; Hutton v. Schell, Id. 6,961; Harding v. Whitney (C. C. 1869) Fed. Cas. No. 6,052; Saxonville Mills v. Russell (C. C. 1880) 1 Fed. 118, 122, 124 (judgment affirmed [1885] 6 Sup. Ct. 237, 116 U. S. 13, 29 L. Ed. 554); Russell v. Worthington (C. C. 1885) 23 Fed. 248; Meyers v. Shurtleff, Id. 577; Glanz v. Spalding (C. C. 1885) 24 Fed. 20; Tryon v. Hartranft (C. C. 1887) 31 Fed. 443; Rosenstein v. Magone (C. C. 1888) 34 Fed. 120 (judgment affirmed Magone v. Rosenstein [1892] 12 Sup. Ct. 391, 142 U. S. 604, 35 L. Ed. 1130); Bullock v. Magone (C. C. 1889) 39 Fed. 191; Martindale v. Cadwalader (C. C. 1889) 42 Fed. 403; Winters v. Same, Id. 405; Stephenson v. Cooper (C. C. 1890) 44 Fed. 53; Ullmann v. U. S. (C. C. 1910) 177 Fed. 567; U. S. v. Sixty-Five Packages of Glass (D. C. 1838) Fed. Cas. No. 16,305a; Same v. Clement (D. C. 1843) Fed. Cas. No. 14,815; Barnard v. Morton (D. C. 1850) Fed. Cas. No. 1,006; U. S. v. Eighty-Two Packages of Glass (D. C. 1857) Fed. Cas. No. 15,038; Same v. Two Thousand One Hundred and Seventeen Bushels of Malt (D. C. 1881) 8 Fed. 224; Same v. Thurber (D. C. 1886) 28 Fed. 56; (1884) 17 Op. Atty. Gen. 633; (1885) 18 Op. Atty. Gen. 288; (1886) 18 Op. Atty. Gen. 468; (1886) 18 Op. Atty. Gen. 483; (1886) 18 Op. Atty. Gen. 510; (1886) 18 Op. Atty. Gen. 515; (1887) 19 Op. Atty. Gen. 18; (1890) 19 Op. Atty. Gen. 543.

10. —— Increase in value and decrease in quantity.—See § 5619, post.

Ad valorem duties are to be estimated on the quantity which arrives, and not upon the quantity shipped, even under provision (see section 5527, ante) "that under no circumstances shall the duty be assessed upon an amount less than the invoice value," these words referring to the price, and not to the quantity. Marriott v. Brune (1850) 50 U. S. (9 How.) 619, 13 L. Ed. 282; U. S. v. Southmayd (1850) 50 U. S. (9 How.) 637, 13 L. Ed. 290; Lawrence v. Caswell (1851) 54 U. S. (13 How.) 488, 14 L. Ed. 235; Schuchardt v. Lawrence (C. C. 1856) Fed. Cas. No. 12,484; Austin v. Peaslee (C. C. 1857) Fed. Cas. No. 666; U. S. v. Nash (C. C. 1869) Fed. Cas. No. 15,856; Weaver & Sterry v. Saltonstall (C. C. 1889) 38 Fed. 493.

And this, even if the probable loss from leakage and drainage was taken into consideration, in fixing the price abroad. U. S. v. Southmayd (1850) 50 U. S. (9 How.) 637, 13 L. Ed. 290.

Duty should be charged only on quantity which arrives here. Marriott v. Brune (1850) 9 How. 619, 632, 13 L. Ed. 282; Weaver & Sterry v. Saltonstall (C. C. 1889) 38 Fed. 493.

Sugar imported from Brazil, which has diminished in weight by a decrease of moisture, but improved in quality thereby, so that the quantity received here is worth as much as the original quantity shipped in Brazil, may be appraised for duties according to the grade of the sugar as it is received here, instead of its grade as it was shipped

n Brazil, since the article upon which must be laid is that which is "im- ed." American Sugar-Refining Co. . S. (1901) 21 Sup. Ct. 830, 181 U. 10, 45 L. Ed. 1024, affirming judg- t (1900) 99 Fed. 716, 40 C. C. A.

the appraisal for duty, under Act 4, of Brazilian sugar bought and ped when green, and which neces- y loses weight and increases in val- per pound, by drainage during the ge, such increase in value may prop- be taken into account. The pro- n of section 19 of Customs Admin- tive Act 1890, that, where merchan- is subject to an ad valorem duty, duty shall be assessed upon its val- n the principal markets of the coun- from whence imported, "and in the ition in which such merchandise is e bought and sold for exportation," ot intended to limit the appraiser n condition which existed at the of the purchase, but was immedi- y to become altered until a new lition and value were reached, but, hown by the context, is intended to y to the condition of preparedness shipment of the merchandise when ght; it being further provided that to its value in the condition bought shall be added the cost of coverings, and all other costs, charges, and expenses incident to placing it in condition for shipment. American Sugar Refining Co. v. U. S. (1900) 99 Fed. 716, 40 C. C. A. 84, affirming judgment (C. C. 1899) 91 Fed. 646, and affirmed (1901) 21 Sup. Ct. 830, 181 U. S. 610, 45 L. Ed. 1024.

Duties are to be paid only on the actual quantity of merchandise which is imported and not on the original quantity bought and shipped. But, where merchandise has shrunk in weight, and such shrinkage has added a percentage of value, so that the actual quantity which arrives is worth more per pound in the markets of the country from which it came than the original quantity thereof bought and shipped was worth, the actual quantity should be appraised at its increased value per pound, and duty assessed on the value so appraised, although the invoice describes the original quantity as worth less per pound. Reiss v. Magone (C. C. 1889) 39 Fed. 105.

Cited without definite application, Cramer v. Arthur (1880) 102 U. S. 612, 26 L. Ed. 259.

600. (Act Oct. 3, 1913, c. 16, § III, U.) Additional duties on failure of seller, shipper, consignor, or manufacturer to submit books, etc., to inspection.

J. If any person, persons, corporations, or other bodies, selling, ping, consigning, or manufacturing merchandise exported to the ited States, shall fail or refuse to submit to the inspection of a y accredited investigating officer of the United States, when so uested to do, any or all of his books, records, or accounts per- ing to the value or classification of such merchandise, then the retary of the Treasury, in his discretion, is authorized while such ure or refusal continues to levy an additional duty of 15 per centum valorem on all such merchandise when imported into the United tes: Provided, however, That such additional duties shall not be osed in case the laws of the country of exportation provide for administration, by its duly authorized officers, of oaths to invoices, statements of cost, before certification by consuls, and for punish- nt for false swearing under said oaths, whenever consuls are di- ted by the Secretary of State, under section twenty-eight hundred sixty-two of the Revised Statutes, to require such oaths before tification of the invoices. (38 Stat. 189.)

See notes to subdivisions B and M of this section, ante, §§ 5519, 5594.

R. S. § 2862, mentioned in this section, is set forth ante, § 5546.

Provisions for additional duties when appraised value exceeds declared value were made by subdivision I of this section, ante, § 5527.

601. (Act Oct. 3, 1913, c. 16, § III, V.) Additional duties on failure of importer to submit books, etc., to inspection.

. If any person, persons, corporations, or other bodies, engaged he importation of merchandise into the United States or engaged dealing with such imported merchandise, shall fail or refuse to mit to the inspection of a duly accredited investigating officer of United States, upon request so to do from the chief officer of toms at the port where such merchandise is entered, any or all his books, records, or accounts pertaining to the value or classifi- ion of any such imported merchandise, then the Secretary of the

Treasury, in his discretion, is authorized while such failure or refusal continues, to assess additional duty of 15 per centum on all merchandise consigned to or imported by, or shipped, or intended for delivery, to such person, persons, corporations, or other bodies so failing or refusing. (38 Stat. 190.)

See notes to subdivisions B and M of this section, ante, §§ 5519, 5594.

§ 5602. (Act Oct. 3, 1913, c. 16, § III, X.) Allowance for shortage, or damage; abandonment of goods.

X. No allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction, or injury to fruit or other perishable articles imported into the United States whereby their commercial value has been destroyed, unless under regulations prescribed by the Secretary of the Treasury. Proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise. The provisions hereof shall apply whether or not the merchandise has been entered, and whether or not the duties have been paid or secured to be paid, and whether or not a permit of delivery has been granted to the owner or consignee. Nor shall any allowance be made for damage, but the importers may within ten days after entry abandon to the United States all or any portion of goods, wares, or merchandise of every description included in any invoice and be relieved from the payment of duties on the portion so abandoned: Provided, That the portion so abandoned shall amount to 10 per centum or more of the total value or quantity of the invoice. The right of abandonment herein provided for may be exercised whether the goods, wares, or merchandise have been damaged or not, or whether or not the same have any commercial value: Provided further, That section twenty-eight hundred and ninety-nine of the Revised Statutes, relating to the return of packages unopened for appraisement, shall in no wise prohibit the right of importers to make all needful examinations to determine whether the right to abandon accrues, or whether by reason of total destruction there is a nonimportation in whole or in part. All merchandise abandoned to the Government by the importers shall be delivered by the importers thereof at such place within the port of arrival as the chief officer of customs may direct, and on the failure of the importers to comply with the direction of the collector or the chief officer of customs, as the case may be, the abandoned merchandise shall be disposed of by the customs authorities under such regulations as the Secretary of the Treasury may prescribe, at the expense of such importers. Where imported fruit or perishable goods have been condemned at the port of original entry within ten days after landing, by health officers or other legally constituted authorities, the importers or their agents shall, within twenty-four hours after such condemnation, lodge with the collector, or the person acting as collector, of said port, notice thereof in writing, together with an invoice description and the quantity of the articles condemned, their location, and the name of the vessel in which imported. Upon receipt of said notice the collector, or person acting as collector, shall at once cause an investigation and a report to be made in writing by at least two customs officers touching the identity and quantity of fruit or perishable goods condemned, and unless proof to ascertain the shortage or nonimportation of fruit or perishable goods shall have been lodged as herein required, or if the importer or his agent fails to notify the collector of such condemnation proceedings as herein provided, proof of such shortage or nonimportation shall not be

med established and no allowance shall be made in the liquidation duties chargeable thereon. (38 Stat. 190.)

See notes to subdivisions B and M of this act, ante, §§ 5519, 5594.

These provisions, as originally enacted in the Customs Administrative Act of June 10, 1890, c. 407, § 23, 26 Stat. 140, were as follows:

"No allowance for damage to goods, wares and merchandise imported into the United States shall hereafter be made in the estimation and liquidation of duties thereon; but the importer thereof may, within ten days after entry, abandon to the United States all or any portion of the goods, wares, and merchandise included in any invoice, and be relieved from the payment of duties on the portion so abandoned: Provided that the portion so abandoned shall amount to ten per centum or over of a total value or quantity of the invoice; and the property so abandoned shall be sold by public auction or otherwise disposed of for the account and credit of the United States under such regulations as the Secretary of the Treasury may prescribe."

That section was amended by Act May 17, 1898, c. 341, 30 Stat. 417, by adding thereto a provision as follows:

"All merchandise so abandoned by the importer thereof shall be delivered by such importer at such place within the port of arrival as the chief officer of customs may direct, and on the failure of the importer to comply with the directions of the collector in this respect the abandoned merchandise shall be disposed of by the collector at the expense of such importer."

Said section 23 of the Customs Administrative Act was further amended, and designated as section 22, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 102, which was re-enacted in the same language by this act.

R. S. § 2899, mentioned in this section, is set forth ante, § 5589.

Notes of Decisions

llowance for shortage or damage in eral.—See § 5619, post.

'antage in case of ale, see paragraph .

hat portion of a cargo of pine ap- found decayed on arrival at port not dutiable, though the loss was than 10 per cent. of the total in- ce. Lawder v. Stone (1902) 23 Sup. 79, 81, 187 U. S. 281, 47 L. Ed. 178.

he rule that fruit imported in a ten and wholly worthless condition s not constitute dutiable merchan- applies as well to fruit in packages to fruit in bulk, and in the assess- nt of duty on fruit imported in pack- s allowance should be made for the ayed portions. Stone v. Shallus 06) 143 Fed. 486, 74 C. C. A. 506, rming judgment (C. C. 1905) 137 l. 674.

'he rule that fruit imported in a rot- and wholly worthless condition does constitute dutiable merchandise ap- s as well to fruit in packages as to it in bulk; and in the assessment of y on fruit imported in packages al- ance should be made for the de- ed portions, even though not separat- from the sound, but all being sold ether at auction. U. S. v. Villari, chell & Co. (1908) 160 Fed. 77, 87 C. A. 233.

'he terms "quantity" and "whole ntity," in Schedule M, § 2504, R. S., ating to duties on imported fruit, l making an allowance for loss on ay which exceeds 25 per cent. of "quantity," relate to the whole im- tation of fruit, and not to the quan- y in each particular package dam- d. Scattergood v. Tutton (C. C. 80) 2 Fed. 28.

Where a part of a cargo of cocoanuts ported in bulk were found rotten and broken so as not to be countable, held, that this destruction of specific items of the invoice was not a damage to the merchandise for which no allowance could be made if under 10 per cent., but that duties could only be exacted on the number actually received, excluding the worthless débris. Shaw v. Dix (C. C. 1896) 72 Fed. 166, 168.

The rule that the duty on fruit should be assessed only on the sound and merchantable portion, allowance being made for such as is rendered worthless, and unsalable through decay, held to apply to fruit in packages, even though the decayed portion is not separated, but, after being removed for the purpose of estimating its quantity, is replaced in the package and sold with the good fruit. Courtin, Golden & Co. v. U. S. (C. C. 1906) 143 Fed. 551.

The facts disclosing that 29 cases and 59 boxes of glacé fruit, more than 10 per cent. of the entire consignment, were entered in a wholly worthless condition, there was no importation as to this portion of the merchandise, and the importer complying with all conditions as to recovery is entitled to the relief he demands. U. S. v. Habicht (1910) 1 Ct. Cust. App. 53.

Merchandise the usefulness of which as a commercial commodity has been entirely destroyed and that has been condemned and destroyed as unsanitary is not an article of merchandise of value imported into this country and can have no dutiable status. Id.

A cargo, or part thereof, so far destroyed as to be of no commercial value at the time the importation is brought within the customs district is not, as to the destroyed portion, deemed an "importation of merchandise" within the tariff laws of the United States, and

therefore no duty accrues or can be collected thereon. U. S. v. Shallus (1911) 2 Ct. Cust. App. 332.

The section makes express provision for an allowance in the estimation and liquidation of duties upon fruit, when by reason of decay, destruction, or injury during transportation there is a shortage or in fact a nonimportation thereof, its commercial value being destroyed. Vandegrift & Co. v. U. S. (1912) 3 Ct. Cust. App. 198.

What allowance, if any, should be made on an importation is primarily a question of fact to be determined like any other relevant fact in the case. U. S. v. Zito (1912) 3 Ct. Cust. App. 209, citing U. S. v. Shallus (1911) 2 Ct. Cust. App. 332.

The section, relating to allowances on nonimportations, was not founded upon any previous tariff act, but originated in the absence of any express statute levying duty upon the described commodities. U. S. v. Zito (1912) 3 Ct. Cust. App. 209, citing Lawder v. Stone (1902) 23 Sup. Ct. 79, 187 U. S. 281, 47 L. Ed. 178.

The section was intended to provide and does provide for an allowance in the estimation and liquidation of duties upon fruit when, by reason of decay, destruction, or injury during transportation, a shortage occurs, resulting, in fact, in a nonimportation, the commercial value of a designated and reasonably ascertainable quantity of the goods having been destroyed. Harris & Co. v. U. S. (1912) 3 Ct. Cust. App. 265.

From the record it appears that certain fruit was condemned on August 12th. The claim for an allowance on the fruit so condemned was made prior thereto, on August 11th. But the statute requires notice shall be given by the importer in such cases after, not before, condemnation. The notice was insufficient. Steiner v. U. S. (1913) 4 Ct. Cust. App. 24.

The importation of grapes for the Boston market were entered partly at Boston, partly at New York for transshipment thence to Boston. Were the grapes immediately transshipped from New York "landed" there or in Boston? The fair inference from the acts and regulations that govern is that the "landing" referred to in subsection 22 of section 28, Act 1909, is the landing at the port of actual destination; in this case, at the port of Boston. U. S. v. Harris & Co. (1913) 4 Ct. Cust. App. 116.

The importation was of dates and a part of the cargo was condemned and destroyed at the port of entry. Regardless of the regulations promulgated by the Secretary of the Treasury and putting aside the question of the validity or of the application here of these regulations, the importer is without remedy for the reason there was a failure to comply with the mandatory requirements of the statute itself. Houlder v. U. S. (1913) 4 Ct. Cust. App 247, citing Lauricella v. U. S. (1913 4 Ct. Cust. App. 253.

There was such a shortage or nonim portation here that as to that it was no to be deemed "an importation of mer chandise." U. S. v. Bush & Co. (1913 4 Ct. Cust. App. 519.

To protect the revenues, claims c this character should be clearly mad out. U. S. v. Fenton, Jr. (1914) 5 C Cust. App. 173, citing U. S. c. Brow (1911) 2 Ct. Cust. App. 189.

Where the importers of grapes, par of which are claimed to have been rot ten, did not comply with this sectio and the regulation of the Secretary c the Treasury that notice of an intentio to claim an allowance must be file with the collector within 48 hours afte the arrival of the importing vessel, th allowance will not be made. Harris c Co. v. U. S. (1915) 6 Ct. Cust. App 420.

Where claim was seasonably filed an no evidence to support it was filed wit the collector within 10 days after th arrival of the importing vessel, as re quired by this section and regulatio the allowance will not be made; an the fact that the appraiser made no re port on the claim to the collector, as re quired by regulation, does not relie the claimant of the duty to make proo within 10 days and allow him to make i afterwards. Id.

The terms "quantity" and "whol quantity," as employed in Schedule M (R. S. [2d Ed.] p. 476), are not to b understood as covering all the frui imported in any one vessel shipped t one consignee, if coming from differen consignors. Each consignment, not onl from one party, but of each separat kind of fruit specified in the statut is to be considered as the "quantity, and as the "whole quantity," therei specified. (1881) 17 Op. Atty. Gen 203.

It is not the intent of Congress tha the United States should in any cas exact as duties an amount greater tha the value of the property imported (1896) 21 Op. Atty. Gen. 326.

Duty paid upon lead contained i certain imported copper ores, which lead entirely disappeared in the smelt ing of the ore, cannot be refunded (1909) 27 Op. Atty. Gen. 354.

—— Time of destruction of goods.— The general principle of law is tha duty attaches to imports immediatel after their arrival within the limits o our ports, and while to ascertain th condition of perishable merchandise w may perhaps go beyond the date whe the vessel containing the goods drop anchor, it would be going very far t go beyond the date of actual entry o the goods. G. Cuccio Di G. & Co. v U. S. (C. C. 1909) 172 Fed. 304.

An importation of lemons was not en tered until six days after arrival, an

not examined until they had lain on dock for a week. Held that, as much probably occurred by rotting during period, the loss discovered at such nination is not a sufficient basis for rmining the condition of the fruit at time of importation. Id.

ne destruction or loss of the whole or part of a cargo of imported merndise after it enters the line of the oms district and before it is uned from the vessel or entered or endered from the custody of the oms is not thereby exempted from payment of duties, unless by reason express statute or regulation and n as provided in that statute or regulon. U. S. v. Shallus (1911) 2 Ct. t. App. 332.

o allowance can be made for goods have gone into the possession of importer and that are later conned by a board of health. U. S. v. (1912) 3 Ct. Cust. App. 209.

he evidence here tends to show there a shortage, but entirely fails to w that the packages when landed e in the condition they were found he time they reached the importers' e of business. U. S. v. Brown & (1913) 4 Ct. Cust. App. 102, citing (1911) 2 Ct. Cust. App. 189.

he destruction of goods after their ortation, although no bond has been cuted, does not absolve the importer the consignee from his personal liay to the government for the payt of duties. Wolfe v. Howard Ins. (1847) 3 N. Y. Super. Ct. (1 Sandf.)

bandonment of goods—Decisions er prior statutes.—See U. S. v. e Case Paintings, Engravings, Manufactures of Metal (1900) 99 l. 426, 39 C. C. A. 586; (1896) 21 Atty. Gen. 326; (1899) 22 Op. y. Gen. 542.

hat portion of a cargo of pineapples ch on arrival within the limits of a t of entry of the United States was nd to be so decayed as to be utterly rthless is not dutiable, though the s was less than 10 per cent. of the al invoice, as entirely worthless ares are not within the provision as abandonment. Lawder v. Stone 02) 23 Sup. Ct. 79, 187 U. S. 281, L. Ed. 178, reversing judgment ne v. Lawder (1900) 101 Fed. 710, C. C. A. 621.

Vindow glass broken in transit is dable as window glass, unless there an abandonment to the government. U. S. v. Bache (1894) 59 Fed. 2, 8 C. C. A. 258, reversing In re che (C. C. 1893) 54 Fed. 371.

here is not such a difference beeen fruit imported in bulk and that ported in packages as that this sen, relating to the abandonment of naged merchandise, should apply in e latter case, though not in the mer. The rule that fruit separable m the whole quantity, which by decay has lost all value, should be considered as not imported, and that duty should be assessed only on the quantity arriving in good condition, applies to fruit imported in packages as well as in bulk, and without regard to whether the entire package is landed in a worthless state. Stone v. Shallus (C. C. 1905) 137 Fed. 674, judgment affirmed (1906) 143 Fed. 486, 74 C. C. A. 506.

The provision forbidding an allowance for damage in the assessment of duties, unless the loss exceeds 10 per cent. of the invoice, does not apply in the case of decayed fruit which is in a wholly worthless condition when imported; and the wholly decayed fruit imported in packages may be culled out, and duty paid on the merchantable quantity remaining, regardless of its percentage. Stone v. Shallus (1906) 143 Fed. 486, 74 C. C. A. 506.

Two cargoes of cocoanuts in bulk were imported, invoiced at specified prices per thousand. On discharging, the number of cocoanuts fell short of the number stated in the invoice, the missing quantity appearing to be contained in a mass of broken and rotten cocoanuts not countable. Held, that such shortage, resulting from the entire destruction of specific items of the invoice, was not a damage to the merchandise, under this section, for which no allowance could be made unless it amounted to 10 per cent. of the total quantity of the invoice, but that duties could be exacted only on the number of cocoanuts actually received as merchandise, excluding the worthless débris. Shaw v. Dix (C. C. 1896) 72 Fed. 166, distinguishing U. S. v. Bache (1894) 59 Fed. 762, 8 C. C. A. 258.

In ascertaining the quantity of decay in imported fruit, the importers did not avail themselves of the provisions of regulations prescribed by the Secretary of the Treasury under this section. Held, that they were not obliged to do so, as that section relates to abandonment, and not to cases of allowance for nonimportation, as for fruit worthless on importation. Villari, Mitchell & Co. v. U. S. (C. C. 1906) 147 Fed. 766.

Where portions of an importation were so damaged by sea water as to be entirely valueless, nothing was left to abandon. Habicht, Braun & Co. v. U. S. (C. C. 1909) 171 Fed. 441.

Where an importer has removed in bond to his own warehouse a consignment of merchandise, and it is there found that more than 10 per cent. of the consignment had been rendered in transit totally valueless, he is not remitted as of course to proceeding alone under this section, but may seek his remedy as well by protest under section 5595, ante. U. S. v. Habicht (1910) 1 Ct. Cust. App. 53.

Duty had accrued on these goods before delivery to the importer. By request he was given permission to un-

load over the vessel's side, at his own risk, and the goods passed thus out of the custody and control of the customs officers. Loss occurred by sinking in consequence of a collision after payment of duty thereon and after the receipt of the merchandise by the importer. This section provides abandonment as an additional remedy, clearly imports that the goods sought to be abandoned thereunder shall be at that very time deliverable. These goods, lost as described, were of course not deliverable, and under the facts it would have been gratuitous to give notice requiring delivery. Thomas & Pierson v. U. S. (1913) 4 Ct. Cust. App. 51.

In an application for an abandonment of goods, the board of general appraisers had jurisdiction to review the collector's decision, which review is final for all purposes, since the importers did not appeal. (1896) 21 Op. Atty. Gen. 402.

Ascertainment of damage.—In proof of the amount of decay in an importation of fruit in packages, evidence was given as to the percentage of decay in certain sample packages which represented each of the lots in question, had been used as the basis of auction sales, and consisted of at least 10 per cent. of all the packages. Held, that the percentage thus shown for the sample packages might be taken as showing the amount of decay in the other packages also. U. S. v. Villari, Mitchell & Co. (1908) 160 Fed. 77, 87 C. C. A. 233.

For the purpose of ascertaining the percentage of decay in importations of fruit, the importers opened at least one package in ten of the consignments from each shipper; and the percentage thus estimated was assumed to prevail throughout the other packages, and was accepted by the bidders at the auction sales held immediately on the dock. Held, that this method of averaging constituted a reasonably certain and sufficient mode of proof, and should be accepted by the customs officers as a proper basis for making allowance for the decayed fruit. Courtin, Golden & Co. v. U. S. (C. C. 1906) 143 Fed. 551.

Before being unladen, but after being free from customs supervision, certain imported fruit was condemned by local health authorities whenever a considerable portion of any crate appeared to be decayed, and the entire contents of such crates were condemned, and required to be dumped in the sea, no portion thereof becoming a subject of commerce within the United States. Held, that such condemned fruit should be treated as a nonimportation, and as not dutiable. U. S. v. Courtin & Golden (C. C. 1907) 153 Fed. 594.

Evidence as to the amount of decay in imported rotten fruit consisted merely of proof as to the percentage of decay in 5 per cent. of the package imported. Held that, as the exac facts relative to the entire importatio might have been ascertained, the evi dence as to the packages examine should not be extended to the pack ages not examined. Denunzio Frui Co. v. U. S. (C. C. 1908) 164 Fed. 90

Proof of discovery of shortage b an unofficial examination after pack ages have been discharged from vesse and after surrender of manual posses sion of the packages by customs offi cers is not sufficient by itself to sup port a claim that the goods have no been imported. U. S. v. Brown (1911 2 Ct. Cust. App. 189.

It is not contended by either part that macaroni is a perishable artic within the meaning of the first part subsection 22 of section 28, Act 190 The evidence disclosed by the reco justifies the conclusion that the ma aroni for which allowance was ma was, before arrival in port, not mere damaged, but destroyed, and that ther fore as to the destroyed portion the was no importation. U. S. v. Paste & Co. (1912) 3 Ct. Cust. App. 164.

The Secretary of the Treasury empowered to make regulations rel tive to shortage or nonimportation merchandise, but the law itself r quires that "proof to ascertain su destruction or nonimportation shall lodged with the collector of custo * * * within 10 days after the lan ing of the merchandise." A regul tion intended to exclude from the co sideration of a collector proof that h been so duly filed would be invali Vandegrift & Co. v. U. S. (1912) Ct. Cust. App. 198.

Entries in the books of a steamsh company were offered in evidence prove the condition of an importatio on its arrival. A manager who did n make the entries in question, and wh had no personal knowledge of the fact is an incompetent witness to prove th entries by. U. S. v. Brown & C (1913) 4 Ct. Cust. App. 102.

Nonimportation of a part of th cargo of lemons was claimed. Th provision of the statute is that "proof of destruction or nonimportation "sha be lodged with the collector of cu toms," etc. There is no limitation the language of the statute of the kin of proof or otherwise save as to tim when this proof may be made by th importer. The statute allows ten day to introduce such proof; to limit th to five, as is sought in the treasur regulation, is in excess of statutor power. Lauricella v. U. S. (1913) Ct. Cust. App. 253, distinguishin Vandegrift & Co. v. U. S. (1912) Ct. Cust. App. 198.

Part of the consignment of potato was condemned at the port of entr by the board of health as unfit for use Certificates to this effect were mad by the inspector May 24, 1912. O

14, preceding, the importer had ed notice that he made application ave the merchandise assorted. No r notice was given. The requirets of the statute as to notice are datory, and they were not com- with. Shallus v. U. S. (1914) 5 Cust. App. 73, citing Houlder v. . (1913) 4 Ct. Cust. App. 247.

ecisions under prior acts.—See ton v. Collector (1866) 72 U. S. Wall.) 113, 18 L. Ed. 544; U. S. v. ps (1883) 2 Sup. Ct. 389, 107 U. S. 27 L. Ed. 505; Earnshaw v. Cadder (1892) 145 U. S. 247, 12 Sup. 851, 36 L. Ed. 693; Hollender v. one (1893) 149 U. S. 586, 13 Sup. 932, 37 L. Ed. 860; Lawder v. e (1902) 23 Sup. Ct. 79, 84, 187 S. 281, 47 L. Ed. 178; Stone v. der (1900) 101 Fed. 710, 711, 41 C. C. A. 621 (reversed [1902] 23 Sup. Ct. 79, 187 U. S. 281, 47 L. Ed. 178); Wight v. Curtis (C. C. 1845) Fed. Cas. No. 17,628; Shelton v. Austin (C. C. 1860) Fed. Cas. No. 12,752; U. S. v. Phelps (C. C. 1879) Fed. Cas. No. 16,040; U. S. v. Cook (D. C. 1853) Fed. Cas. No. 14,852; Merritt v. One Package of Merchandise (D. C. 1886) 30 Fed. 195, 198 (affirmed [C. C. 1887] 32 Fed. 111); (1875) 15 Op. Atty. Gen. 7; (1881) 17 Op. Atty. Gen. 203; (1895) 21 Op. Atty. Gen. 121; (1899) 22 Op. Atty. Gen. 542.

Cited without definite application, Earnshaw v. Cadwalader (1892) 12 Sup. Ct. 851, 855, 145 U. S. 247, 36 L. Ed. 693; American Sugar Refining Co. v. U. S. (1901) 21 Sup. Ct. 830, 831, 181 U. S. 610, 45 L. Ed. 1024.

603. (R. S. § 2903.) Depreciated currency.

The President may cause to be established fit and proper regulas for estimating the duties on merchandise imported into the ited States, in respect to which the original cost shall be exited in a depreciated currency, issued and circulated under aurity of any foreign government.

Act March 2, 1799, c. 22, § 61, 1 Stat. 673.

The values of foreign coins proclaimed by the Secretary of the Treasury were required to be followed in estimating the value of merchandise by Act Aug. 27, 1894, c. 349, § 25, post, § 6536.

Invoices were required to be made out in the currency of the place or country from which the importation is made, or, if purchased or agreed to be purchased, in the currency actually paid or agreed upon to be paid therefor, by the Customs Administrative Act of June 10, 1890, c. 407, § 2, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, and further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, C, ante, § 5520.

Notes of Decisions

epeal of act.—Act March 2, 1799, § in relation to regulations for estiing duties where cost is exhibited oreign depreciated currency, is not ealed by Act May 22, 1846. Grant Maxwell (C. C. 1851) Fed. Cas. No. 9.

eductions.—Deductions should be aled from nominal value of imports foreign depreciated currency. Loestein v. Maxwell (C. C. 1852) Fed. . No. 8,462; Alsop v. Same (C. C. 3) Fed. Cas. No. 263; Id. (C. C. 6) Fed. Cas. No. 264.

stablishment of regulations.—See § 6, post, as to value of foreign coins. he proclamation of Secretary of asury as to value of foreign money. mer v. Arthur (1880) 102 U. S. , 617, 26 L. Ed. 259.

ursuant to this section, regulations e established declaring that, where standard value of a foreign curren- has been proclaimed by the secre- y of the treasury in the manner proed by law, such value shall control estimating customs duties, unless lectors have been otherwise instruct- or unless a depreciation of the value that currency, "expressed in an ince from the standard of that currency, shall be shown by consular certificate thereto attached." Held, that the proclamation and certificate are conclusive. Id.

Under the power to make regulations for estimating duties in the case of depreciated foreign currency, the president cannot fix an arbitrary value for foreign currency, without regard to its intrinsic value. De Forest v. Redfield (C. C. 1860) Fed. Cas. No. 3,746.

Consular certificates accompanying invoices.—An importer is not entitled to an allowance for depreciation of the Austrian currency, unless his invoice is accompanied by a consular certificate of the value of such currency. Rich v. Maxwell (C. C. 1853) Fed. Cas. No. 11,759; Dutilh v. Same (C. C. 1853) Id. 4,207, 4,208.

The presentation of the consular certificate subsequent to payment of the duties is ineffectual. Dutilh v. Maxwell (C. C. 1853) Fed. Cas. No. 4,208.

The collector need not demand such certificate, but it must be offered by the importer, or a bond to produce it. Rich v. Maxwell (C. C. 1853) Fed. Cas. No. 11,759.

In the case of importations about a month apart, held sufficient where a

consular certificate was presented with the first importation only. Reynolds v. Same (C. C. 1853) Fed. Cas. No. 11,731.

A consular certificate as to the value of foreign currency, attached to an invoice, may be contradicted by the importer. De Forest v. Redfield (C. C. 1860) Fed. Cas. No. 3,746.

Estimating value.—Board of general appraisers has jurisdiction to review the collector's action as to the date at which the value of money is to be estimated in determining dutiable value. Wood v. U. S. (1896) 72 Fed. 254, 256, 18 C. C. A. 553.

An importer has no claim to have the valuation of his goods reduced to the equivalent of a depreciated currency except in the manner indicat in this section, and where the on regulations made under the authori of this section which are produced a the treasury regulations of 1857, t importer must make out a case in t manner indicated therein entitling hi to a valuation at the reduced amou before he can recover. Cousinery Schell (C. C. 1887) 34 Fed. 272, 27

Cited without definite applicatio Heinemann v. Rollins (1887) 7 Sup. C 446, 120 U. S. 82, 30 L. Ed. 605; U. v. Whitridge (1905) 25 Sup. Ct. 40 408, 197 U. S. 135, 49 L. Ed. 696; S. v. Lucius Beebe & Sons (1903) 1 Fed. 762, 768, 58 C. C. A. 562; U. v. J. Allston Newhall & Co. (C. 1899) 91 Fed. 525, 528.

§ 5604. (R. S. § 2904.) Value at date of shipment.

When the duty upon any imports shall be subject to be levied up on the true market-value of such imports in the principal market of the country from whence the importation has been made, or a the port of exportation, the duty shall be estimated and collected upo the value on the day of actual shipment, whenever a bill of ladin shall be presented showing the date of shipment, and which shall b certified by a certificate of the United States consul, [commercia agent,] or other legally authorized deputy.

Act March 2, 1861, c. 68, § 28, 12 Stat. 197.

The words of this section, "commercial agent," inclosed in brackets, wer superseded by the abolition of the grade of commercial agent by Act April 5 1906, c. 1366, § 3, ante, § 3140.

Appraisers were required to ascertain "the actual market value and whole sale price of merchandise at the time of exportation" by the provisions o section III, K, of the Underwood Tariff Act, ante, § 5591.

Notes of Decisions

Time of valuation.—See § 5591, ante, note as to time of exportation.

A shipment of goods from one point to another within a country for transshipment beyond that country is not a true exportation, and such a shipment becomes a true exportation only and takes its valuation as of the date the vessel with these goods on board is cleared for the United States. Roessler & Hasslacher Chemical Co. v. U. S. (1911) 1 Ct. Cust. App. 290, distinguishing Almy v. State of Cali fornia (1860) 24 How. 169, 16 L. Ed 644.

Cited without definite application Greely v. Thompson (1850) 51 U. S (10 How.) 225, 13 L. Ed. 397; Max well v. Griswold (1850) 51 U. S. (1 How.) 242, 13 L. Ed. 405; Fenner stein's Champagne (1865) 3 Wall. 14 18 L. Ed. 121; Saxonville Mills v. Rus sell (1885) 116 U. S. 13, 6 Sup. Ct. 237 29 L. Ed. 554.

(R. S. § 2905. Repealed.)

This section provided that merchandise subject to ad valorem duty, etc. imported from a country in which it had not been manufactured or produced should be appraised according to the current market value or wholesale price in the country of production or manufacture. It was repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, re-enacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 104.

§ 5605. (R. S. § 2906.) Value at period of exportation.

When an ad-valorem rate of duty is imposed on any imported merchandise, or when the duty imposed shall be regulated by, or directed to be estimated or based upon, the value of the square yard, or of any specified quantity or parcel of such merchandise, the collector within whose district the same shall be imported or entered shall cause the actual market-value, or wholesale price thereof, at the period of the exportation to the United States, in the principal markets of the country from which the same has been imported,

: appraised, and such appraised value shall be considered the : upon which duty shall be assessed.

Act March 3, 1865, c. 80, § 7, 13 Stat. 493.

Notes of Decisions

iod of exportation.—See notes un- 5591, ante, as to appraisal, etc. riod of exportation" means the hen the vessel sails, not the one hich the bill of lading is given. son v. Peaslee (1857) 61 U. S. Iow.) 571, 15 L. Ed. 1022; Ir- v. Redfield (1859) 64 U. S. (23) 170, 16 L. Ed. 418 (overruling v. McKean [D. C. 1857] Fed. Cas. 5,681a); Detrick v. Balfour (C. 81) 8 Fed. 468, 471.

ds are to be appraised as at the of their exportation. Morris v. ell (C. C. 1853) Fed. Cas. No. 9,-

date of consular certification of voice is only prima facie evidence date of exportation, and the pre- ion arising therefrom is rebut- Lawrence, Son & Gerrish v. U. . C. 1903) 127 Fed. 750, judg- reversed U. S. v. Lawrence, Son rrish (1905) 137 Fed. 466, 69 C. 614.

e of exportation.—The value with the appraiser is to be familiar current market value or whole- price of similar articles in the pal markets of the country from the merchandise has been import- Erhardt v. Ballin (1906) 150 529, 530, 80 C. C. A. 271.

chandise bought in Canton was ed by junk to Hong Kong, for hipment to a vessel that sailed e United States several weeks The invoice was certified by the d States consul at Canton. Held, Canton was the place of exporta- Lawrence, Son & Gerrish v. U. S. . 1903) 127 Fed. 750, judgment ed U. S. v. Lawrence, Son & Ger- (1905) 137 Fed. 466, 69 C. C. A.

§ 5591, ante, as to place of ex- ion.

alty fees.—Where machinery sub- to letters patent in the United and Great Britain was manufac- and sold to the importer in England, the royalty fees for its use paid by the purchaser in this country, which formed no part of the price in England, were not a part of its dutiable value. U. S. v. Leigh (C. C. 1889) 39 Fed. 764.

Conclusiveness of appraisal.—Where goods were invoiced at a certain price, with a certain discount for cash, the decision of the collector that such price without the discount should be the assessable value is not an appraisement of the market value, and hence is not conclusive. Arthur v. Goddard (1877) 96 U. S. 145, 24 L. Ed. 814.

The appraisal of imported merchandise by the customs officers is final and conclusive on the importer, unless impeached on the ground of fraud. Hilton v. Merritt (1883) 110 U. S. 97, 3 Sup. Ct. 548, 28 L. Ed. 83.

Decision of appraiser as to cost of transportation, etc., held not conclusive. Robertson v. Frank Bros. Co. (1889) 10 Sup. Ct. 5, 7, 132 U. S. 17, 33 L. Ed. 236.

The determination of appraisers that the market value can be ascertained to their satisfaction, which will be assumed from their finding such value, is conclusive. Muser v. Magone (1894) 15 Sup. Ct. 77, 80, 155 U. S. 240, 39 L. Ed. 135, affirming judgment (C. C. 1889) 41 Fed. 877.

Appraisal conclusive as to value of importation in the absence of appeal. Saxonville Mills v. Russell (C. C. 1880) 1 Fed. 118, 119, 123, affirmed (1885) 6 Sup. Ct. 237, 116 U. S. 13, 29 L. Ed. 554.

See § 5594, ante, as to appraisal.

Cited without definite application, Ballard v. Thomas (1856) 19 How. 382, 383, 15 L. Ed. 690; Oberteuffer v. Robertson (1886) 6 Sup. Ct. 462, 465, 467, 116 U. S. 499, 29 L. Ed. 706; Oelbermann v. Merritt (1887) 8 Sup. Ct. 151, 154, 123 U. S. 356, 31 L. Ed. 164; The Lace House v. U. S. (1905) 141 Fed. 869, 875, 73 C. C. A. 103; U. S. v. Curnen & Stiner (1906) 146 Fed. 45, 48, 76 C. C. A. 503; Meyers v. Shurtleff (C. C. 1885) 23 Fed. 577, 579.

(R. S. § 2907. Repealed.)

This section provided that, in determining the dutiable value of merchandise, here should be added to the cost, or to the actual wholesale price or general arket value at the time of exportation in the principal markets of the country hence the same had been imported, the cost of transportation, shipment, etc., e value of the sack, box, or covering in which the merchandise was contained, ommission, brokerage, export duty, and all other actual or usual charges for utting up, preparing, and packing for transportation or shipment. It was epealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 6 Stat. 141, and similar and further provisions on the subject were made by ections 11 and 19 of that act, amended by Act July 24, 1897, c. 11, § 32,) Stat. 211, and further amended by the Payne-Aldrich Tariff Act of Aug. 5, 909, c. 6, § 28, 36 Stat. 97, 101, and the Underwood Tariff Act of Oct. 3, 913, c. 16, § III, L. R. ante, §§ 5592, 5599.

(R. S. §§ 2908, 2909. Repealed.)

These sections imposed additional duties,—section 2908, where additions ma to the entered value for charges, which were to be regarded as part of t actual value of the merchandise, should exceed by ten per cent. the declar value; and section 2909, where the appraised value of merchandise subject ad valorem duty, etc., should exceed by ten per cent. the invoice value. T latter section was stricken out by Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 24 and both sections were repealed by the Customs Administrative Act of Ju 10, 1890, c. 407, § 29, 26 Stat. 141, re-enacted by the Payne-Aldrich Tar Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 104; and other provisions on the su ject were made by section 7 of the Customs Administrative Act amended Act July 24, 1897, c. 11, § 32, 30 Stat. 211, and further amended by secti 28 of the Payne-Aldrich Tariff Act and section III, I, of the Underwo Tariff Act, ante, § 5527.

Notes of Decisions

See Robertson v. Bradbury (1889) 10 Sup. Ct. 158, 132 U. S. 491, 33 L. Ed. 405.

§ 5606. (R. S. § 2910.) Different values in the same invoice.

When merchandise of the same material or description, but different values, is invoiced at an average price, and not otherwis provided for, the duty shall be assessed upon the whole invoice the rate to which the highest valued goods in such invoice are su ject.

Act March 2, 1861, c. 68, § 32, 12 Stat. 197.

Notes of Decisions

Rule in general.—Though part of an importation might be subject to a lower rate of duty than the remainder, such differentiation is precluded, where the identity of such part is not proved, and the importation must be treated as a whole. J. B. Ellison & Sons v. U. S. (1906) 142 Fed. 732, 74 C. C. A. 64, affirming judgment John B. Ellison & Sons v. U. S. (C. C. 1905) 136 Fed. 969, and writ of certiorari denied Ellison v. Same (1906) 26 Sup. Ct. 763, 202 U. S. 615, 50 L. Ed. 1172.

Where merchandise is dutiable at rates varying according to certain prescribed conditions, and such conditions are not determinable by the customs officers on inspection of the goods, the collector may assess duty at the highest rate which the circumstances will warrant, leaving it to the importer to inform the collector of the true conditions by satisfactory evidence. Buehne Steel Wool Co. v. U. S. (1907) 159 Fed. 107, 86 C. C. A. 297, reversing decree U. S. v. Buehne Steel Wool Co. (C. C. 1907) 154 Fed. 93, and writ of certiorari denied U. S. v. Buehne Steel Wool Co. (1908) 28 Sup. Ct. 763, 210 U. S. 435, 52 L. Ed. 1137.

This section is a rule for the assessment of rates of duty, and not a rule for the appraisement of values, and has no application except to cases where the goods that have been invoiced at an average rate are not merely of different values, but are also subject to different rates of duty, in which case the duty is to be assessed upon the whole invoice at the rate to which the highest valued goods are subject. (1907 26 Op. Atty. Gen. 119.

Coal.—An importation consisted of mixture of bituminous coal and slac in the proportion of about two to on Held, that the two classes of merchan dise should be subjected to the rat of duty respectively provided therefo in the tariff, on the basis of this pro portion, regardless of their intermingle condition; that, as such proportio could be fixed by the use of scale an screen on a single tub, the law woul not cast on the importer the burden the useless separation of the two kind of coal. U. S. v. Bond (C. C. 1908 161 Fed. 165.

Glassware.—In an importation of number of crates of glassware whic were consolidated on one invoice at lump sum, where the several crate were of different values, but charge able with the same rate of duty, th assessment of duty should not be mad upon the basis of the highest value goods, but all the glassware is charge able with the same rate of duty, an similarly with regard to a number o cases of pickles imported at the sam time which were also placed on on invoice though of different values, bu subject to the same rate of duty; th provisions of the section having no ap plication in either case. (1907) 26 Op Atty. Gen. 119.

Cited without definite application U. S. v. Ranlett (1898) 19 Sup. Ct. 114 118, 172 U. S. 133, 43 L. Ed. 393.

07. (R. S. § 2911.) Best article fixes value.

henever articles composed wholly, or in part, of wool or cotton, imilar kind, but different quality, are found, in the same pack- charged at an average price, it shall be the duty of the apprais- o adopt the value of the best article contained in such package, so charged, as the average value of the whole.

Act July 14, 1832, c. 227, § 13, 4 Stat. 593.

Notes of Decisions

eal of act.—This section was not led by section 10 of the adminis- e customs act, but is still in force. Schefer (C. C. 1892) 49 Fed. 216.

stion raised by protest.—A pro- against appraisements made of ted merchandise in accordance this section, raises, within the ing of section 5595, ante, a ques- as to the construction of the law he facts respecting the classifica- of such merchandise, and the rate ty imposed thereon under such classification. In re Schefer (C. C. 1892) 49 Fed. 216.

Teas.—Ascertaining weight of teas exported, where the chests were of different weights and tares, and teas of different values. U. S. v. Aymar (C. C. 1871) Fed. Cas. No. 14,483.

Cited without definite application, Falk v. Robertson (1890) 11 Sup. Ct. 41, 42, 137 U. S. 225, 34 L. Ed. 645; U. S. v. Ranlett (1898) 19 Sup. Ct. 114, 118, 172 U. S. 133, 43 L. Ed. 393.

08. (R. S. § 2912.) Appraisement of wool.

hen wool of different qualities is imported in the same bale, bag, ackage, it shall be appraised by the appraiser, to determine the of duty to which it shall be subjected, at the average aggregate e of the contents of the bale, bag, or package; and when bales ifferent qualities are embraced in the same invoice at the same es whereby the average price shall be reduced more than ten per um below the value of the bale of the best quality, the value of whole shall be appraised according to the value of the bale of best quality; and no bale, bag, or package shall be liable to a rate of duty in consequence of being invoiced with wool of lower e.

Act March 2, 1867, c. 197, § 1, 14 Stat. 559, 560.

Wool was included in the Free List of the Underwood Tariff Act of Oct. 3, 913, c. 16, § I, par. 650, ante, § 5291, par. 650.

Notes of Decisions

raisal in general.—Where the tor under the authority of the f 1832, directed certain wool to ppraised to ascertain whether it to be imported free from duty, ust be guided by such appraise- and a subsequent finding of the that the value of the wool was than the appraisal would not ren- is acts illegal. Rankin v. Hoyt 3) 45 U. S. (4 How.) 327, 11 L. 996.

ere sheepskins are imported with ool on, the wool and pelt cannot parated, and appraised separate- Coggill v. Lawrence (C. C. 1850) Cas. No. 2,956.

ere wool is packed in hides of value therewith, which are an e of value in the market, the t of the hides will not be de- d in ascertaining the cost of the per pound. Saxonville Mills v. ell (C. C. 1870) Fed. Cas. No. 3.

e provision that the rate of duty ool of different qualities imported in the same package shall be determined according to the average aggregate value of the contents of the package applies where it does not appear that the wool was mixed for the purpose of obtaining a lower rate of duty. Stone & Downer Co. v. U. S. (C. C. 1906) 147 Fed. 603, 604.

Where two kinds of wools are changed in condition by mixing them in the same bale, in order to make the mixture subject to the lower duty provided for the poorer kind, held (1) that, within the meaning of Act 1897, par. 356, only the better kind is changed "for the purpose of evading the duty to which it would otherwise be subject," because the poorer kind would be subject to the same rate, whether mixed or not; (2) that, therefore, the further provision in the same paragraph that wool changed for such purpose shall pay "twice the duty to which it would otherwise be subject," would apply only to the better kind, and not the poorer; and (3) that the duty which is thus doubled is that which would have been applicable to

the better kind if imported in its natural condition. Id.

Cited without definite application, Falk v. Robertson (1890) 11 Sup. Ct. 41, 42, 137 U. S. 225, 34 L. Ed. 64 U. S. v. Ranlett (1898) 19 Sup. C 114, 118, 172 U. S. 133, 43 L. E 393.

§ 5609. (R. S. § 2913.) Appraisement of gloves.

In the appraisement of kid and all other gloves imported into th United States there shall be no discrimination in determining t appraisement the foreign market-value of such goods, wheth protected by trade-mark or not; and in no case shall gloves so pr tected by trade-mark be appraised at a less foreign market-val than the like goods not so protected; and no sale or pretended sa of such goods shall be held to fix the value of the same.

Act March 3, 1873, c. 232, § 4, 17 Stat. 559.

Cited without definite application, Mitchell Store Building Co. v. Carroll (1914) 34 Sup. Ct. 410, 411, 232 S. 379, 58 L. Ed. 650.

§ 5610. (R. S. § 2914.) Grades of sugar.

The standard by which the color and grades of sugar are to regulated, shall be selected and furnished to the collectors of su ports of entry as may be necessary by the Secretary of the Treasu from time to time, and in such manner as he may deem expedient.

Act June 30, 1864, c. 171, § 1, 13 Stat. 202.

The free admission of sugar was authorized by provisos annexed to pa graphs 177, 178, of Schedule E of section I of the Underwood Tariff Act Oct. 3, 1913, c. 16, ante, § 5291, pars. 177, 178.

Notes of Decisions

Classification of sugars.—The Treasury Department having promulgated detailed and comprehensive regulations respecting the use of the polariscope in testing sugar on importation, these regulations are to be taken not as instructions or orders to be followed at discretion, but on the contrary have the force of law, are uniform in their operation, general in application to all importations of sugar, binding alike on importers and on the officials of the Treasury. American Sugar Refining Co. v. U. S. (1911) 1 Ct. Cust. App. 228.

It is the collector's duty to classify sugars, and this classification is based upon the appraiser's report, which embraces not only the question of value but the general result of his exami tion, including the character and qu ity of the sugars. (1900) 23 Op. At Gen. 238.

Under Schedule E of the tariff of July 24, 1897 (30 Stat. 168), sp cific rates of duties are laid upon i ported sugars graduated according the polariscopic tests. These tes while made by officers and expe subordinate to the appraiser, are ported to him, and by him, after certainment of the quality and va of the sugar, reported to the collec for classification. Id.

Cited without definite applicati Merritt v. Welsh (1881) 104 U. 694, 695, 26 L. Ed. 896.

§ 5611. (R. S. § 2915.) Sampling of sugar.

The Secretary of the Treasury shall, by regulation, prescri and require that samples from packages of sugar shall be taken the proper officers, in such manner as to ascertain the true qual of such sugar; and the weights of sugar imported in casks or box shall be marked distinctly by the custom-house weigher, by scori the figures indelibly on each package.

Act Dec. 22, 1870, c. 6, 16 Stat. 397.

See note to R. S. § 2914, ante, § 5610.

Cited without definite application, Merritt v. Welsh (1881) 104 U. S. 694, 695, 26 L. Ed. 896; Falk v. Robertson (1890) 11 Sup. Ct. 41, 43, 1 U. S. 225, 34 L. Ed. 645.

§ 5612. (R. S. § 2916.) Samples of wool.

For the purpose of carrying into effect the classification of wo and hair of animals, prescribed by Schedule L, Title "Duties up Imports," a sufficient number of distinctive samples of the vario kinds of wool or hair embraced in each of the three classes name selected and prepared under the direction of the Secretary of t

easury, and duly verified by him, the standard samples of which all be retained in the Treasury Department, shall be deposited in e custom-houses and elsewhere, as he may direct; which samples all be used by the proper officers of the customs, to determine e class to which any imported wool or hair belongs.

Act March 2, 1867, c. 197, § 1, 14 Stat. 560.
See note to R. S. § 2912, ante, § 5608.

5613. (R. S. § 2917.) Standard of vinegar.

The standard for vinegar shall be taken to be that strength which quires thirty-five grains of bicarbonate of potash to neutralize e ounce troy of vinegar; and all import duties that may be imposed law on vinegar imported from foreign countries shall be collected cording to this standard.

Act June 6, 1872, c. 315, § 6, 17 Stat. 237.

5614. (R. S. § 2918.) Hydrometers.

The Secretary of the Treasury may, under the direction of the esident, adopt such hydrometer as he may deem best calculated to omote the public interest for the purpose of ascertaining the proof liquors; and, after such adoption, the duties imposed by law upon stilled spirits shall be collected according to proof ascertained by y hydrometer so adopted.

Act Jan. 12, 1825, c. 4, 4 Stat. 79.

ited without definite application, Collector of Customs (1892) 49 Fed. nisville Public Warehouse Co. v. 561, 567, 1 C. C. A. 371.

5615. (R. S. § 2919.) Ascertainment of duties on grain.

For the purpose of estimating the duties on importations of grain, e number of bushels shall be ascertained by weight, instead of by easuring; and sixty pounds of wheat, fifty-six pounds of corn, y-six pounds of rye, forty-eight pounds of barley, thirty-two unds of oats, sixty pounds of pease, and forty-two pounds of buckheat, avoirdupois weight, shall respectively be estimated as a bushel.

Act July 18, 1866, c. 201, § 38, 14 Stat. 187.

5616. (Act March 2, 1895, c. 189, § 1.) Sampling and assaying lead ores.

The Secretary of the Treasury shall prescribe regulations for the mpling and assaying of lead ores imported into the United States, d such regulations shall provide that the method of sampling d assaying such ores shall be the same as that usually adopted for mmercial purposes by public sampling works in the United States; d he is authorized to incur the necessary expense out of the appropriation for the collection of the revenue from customs: Proled, That no part of the expense herein authorized and directed all be incurred for the erection of sampling works by the United ates. (28 Stat. 933.)

This was a provision of the sundry civil appropriation act for the fiscal year 1896, cited above.

The sampling of ores at bonded smelting warehouses was provided for by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, N, subsec. 1, post, § 5673.

Notes of Decisions

Assays.—This section was not realed by implication by paragraph 1 of the tariff act of 1897 (Act July 1897), which provides that ores ntaining lead on their arrival "shall sampled according to commercial thods," that the government assayshall make a "proper assay" of the mple on which the duties shall be uidated, and authorizes the secrety to make necessary regulations for enforcing such provisions. In re Puget Sound Reduction Co. (C. C. 1899) 96 Fed. 90.

It being shown by uncontradicted testimony that what is known as the "fire process," which gives the quantity of lead in an ore that can be saved by smelting, is exclusively used in making assays for commercial purposes, and is known as the "commercial method," instructions issued by the

treasury department adopting for customs purposes what is known as the "wet process" of assaying, which shows the actual quantity of lead in an ore, making no allowance for loss in smelting, require the payment of a higher duty than is contemplated by the tariff act, and are in contravention of the positive requirement of the act of 1895. Id.

While paragraph 181 of the tariff act of July 24, 1897 (30 Stat. 166), which imposes a duty on imported lea ores, contemplates the determinatio of the quantity of metal in the ore b assay, by paragraph 182 of that act th determination of the quantity of met contained in imported lead bullion to be by official weighing only, and th application of assay to lead bullio under the current Treasury regula tions for bonded smelters and refine is without warrant of law. (1902) 2 Op. Atty. Gen. 45; (1903) Id. 569.

§ 5617. (Act June 8, 1896, c. 373.) Shipment of ores to samplin works.

The Secretary of the Treasury is hereby authorized to expen from the appropriation for collecting the revenue from customs, t provide for the purchase of the necessary land, and for the constru tion and equipment of sampling works thereon, or for the leasing o suitable buildings and equipment for the sampling and assaying o imported silver ores and other ores containing lead at El Pas Texas; Northport, Washington; and Bonner's Ferry, Idaho, and such other ports as in the judgment of the Secretary of the Trea ury the interests of the revenue demand, the sum of forty-five thou sand dollars, to be available for the fiscal year eighteen hundre and ninety-seven: Provided, That the Secretary of the Treasury hereby authorized, in case of importation of said ores at ports which no facilities are provided, to send a portion thereof to an port having said facilities, at which port said portion may be sample and assayed. The collector at the port of importation shall there upon liquidate the entry upon said assay. In no instance, howeve shall a less portion than one-fifth of any importation of ores b sampled and assayed. (29 Stat. 270.)

This was a provision of the deficiency appropriation act for the fiscal yea 1896, cited above.

A standard gauge for sheet and plate iron and steel, to be used in determi ing duties and taxes, was established by Act March 3, 1893, c. 221, post, 8903, 8905.

The transportation under bond of lead bearing ores was provided for b par. 152 of section I of the Underwood Tariff Act of Oct. 3, 1913, c. 16, ant § 5291, par. 152.

See note to Act March 2, 1895, c. 189, § 1, ante, § 5616, as to sampling ore

§ 5618. (R. S. § 2920.) Expense of weighing, measuring, or gaug ing.

In all cases in which the invoice or entry does not contain th weight, or quantity, or measure of merchandise, now weighed, o measured, or gauged, the same shall be weighed, gauged, or meas ured at the expense of the owner, agent, or consignee.

Act July 30, 1846, c. 74, § 4, 9 Stat. 43.

Notes of Decisions

Expense of gauging.—In an action to recover gauger's fees paid by an importer, held, that where an importer or merchant does not accurately state the quantity of his goods, whether stated in known units employed in this country, or in known foreign units, and the result of the gauging shows that the gauging was necessary in order to determine the fact that the quantity was not accurately stated, th importer or merchant must bear th expense. Casado v. Schell (C. C 1887) 33 Fed. 332.

Cited without definite applicatio Kennedy v. Magone (1895) 15 Sup. C 814, 816, 158 U. S. 212, 39 L. Ed. 954 Balfour v. Sullivan (C. C. 1883) 1 Fed. 231, 233.

§ 5619. (R. S. § 2921.) Deficiency.

If, on the opening of any package, a deficiency of any article shal be found, on examination by the appraisers, the same shall be cer

d to the collector on the invoice, and an allowance for the same made in estimating the duties.

Act Aug. 30, 1842, c. 270, § 21, 5 Stat. 565.

Notes of Decisions

lowance for deficiency.—See § 2, ante.

ie general rule is that revenue can ollected only upon the quantity or ght of the taxable subject-matter h is actually imported and receiv- by the importer so as to come in- the consumption of the country. erican Cigar Co. v. U. S. (1906) Fed. 484, 77 C. C. A. 40 (judg- t reversed U. S. v. G. Falk & Bro. 7] 27 Sup. Ct. 191, 204 U. S. 143, L. Ed. 411); Balfour v. Sullivan C. 1883) 17 Fed. 231, 233; Reiss Magone (C. C. 1889) 39 Fed. 105,

llowance should be made for defi- cy arising from loss where value the goods is measured by weight, not from mere shrinkage. Rob- on v. Bradbury (1889) 10 Sup. Ct. , 132 U. S. 491, 33 L. Ed. 405.

he actual amount arriving, and not amount shipped is liable for duty, the absence of proof that the loss transit improved the quality of the ds. Brune v. Marriott (C. C. 1849) l. Cas. No. 2,052; Schuchardt v. vrence (C. C. 1856) Fed. Cas. No. 184; Austin v. Peaslee (C. C. 1857) l. Cas. No. 666; U. S. v. Nash (C. 1869) Fed. Cas. No. 15,856.

lthough included in the invoice, ds lost on the voyage are not sub- to duty. U. S. v. Nash (C. C. 9) Fed. Cas. No. 15,856.

Vhere a cargo of coke, imported m Wales, by reason of evaporation the moisture contained in it during voyage, weighed several tons less n when shipped, held, that duties ld only be legally collected on the ual weight at the time of the im- tation, and not on the weight shown the invoice. Balfour v. Sullivan C. 1883) 17 Fed. 231.

'he importer is not required to show y there is a deficiency or how it urred. Id.

A treasury regulation that duties ll be collected according to the in- ce, unless the importer accounts, proofs, for the discrepancy between amount shown by the invoice and actual weight at the time of im- tation, is no defense to an action recover the duties exacted from the porter on the difference between the ount actually imported and the ount shown by the invoice to have n shipped. Id.

Vhere an importation has shrunk in ight, and such shrinkage has added percentage of value, so that the ac- l quantity which arrives is worth re per pound in the foreign market n the original quantity, the actual ntity should be appraised at its in- ased value per pound, and duty as- sessed upon the value thereof appraised, although the invoice describes the original quantity as worth less per pound. But, to warrant such an assessment of duty, the appraiser must first find that the actual quantity was worth per pound such sum as would warrant the amount of duties assessed. Reiss v. Magone (C. C. 1889) 39 Fed. 105, 108.

Section 5602, ante, is not inconsistent with the general provisions of this section. Shaw v. Dix (C. C. 1896) 72 Fed. 166, 168.

A report by the assistant appraiser that, upon examination of certain imported merchandise, he found a deficiency in the quantity called for by the invoice, is sufficient on which to base an allowance for such deficiency in estimating the duties. U. S. v. Park (C. C. 1896) 77 Fed. 608.

The Congress has by remedial statute established a rule of evidence in determining the condition of merchandise at the time this crosses the customs line, and the quantity of the merchandise existing at the precise moment of importation, if made an issue, becomes a fact to be proved, as any other fact in issue, by evidence. U. S. v. Shallus (1911) 2 Ct. Cust. App. 332.

Where the quantity which actually arrives is found by the customs officers to be less than the invoiced quantity, a deduction of the excess of the latter over the former, in adjusting the duties, is not an allowance within the meaning of the proviso mentioned. (1883) 17 Op. Atty. Gen. 613.

See note under § 5591, ante, "Increase in value and decrease in quantity."

—— Leakage.—Act 1799, c. 22, § 59, providing that "there shall be an allowance of 2 per cent. leakage on the quantity which shall appear by the gauge to be contained in any cask of liquors subject to duty by the gallon," does not now apply to brandy, then subject to a specific duty, but since subjected, by the tariff act of 1846, to an ad valorem duty. Lawrence v. Caswell (1851) 54 U. S. (13 How.) 488, 14 L. Ed. 235.

Where merchandise is detained at the custom house for the purpose of appraisement, the importer is not entitled to recover on account of leakage or deterioration. Belcher v. Linn (1860) 65 U. S. (24 How.) 508, 16 L. Ed. 754.

The word "liquors," as used in the proviso of Schedule H of the tariff act of March 3, 1883 (22 Stat. 505), prohibiting any allowance for breakage, leakage, or damage in respect to

"wines, liquors, cordials, or distilled spirits," is simply a misspelling of the word "liqueurs," and does not include beer. Hollender v. Magone (1893) 149 U. S. 586, 13 Sup. Ct. 932, 37 L. Ed. 860, reversing (C. C. 1889) 38 Fed. 912.

Where the quantity or weight stated in the invoice has been diminished by leakage or similar loss, the duty should be chargeable on the quantity actually imported into the country. American Sugar Refining Co. v. U. S. (1900) 99 Fed. 716, 718, 40 C. C. A. 84, affirmed (1901) 21 Sup. Ct. 830, 181 U. S. 610, 45 L. Ed. 1024.

The dutiable value in case of loss by leakage is ascertained by deducting from the dutiable value of the invoice amount the amount of deficiency shown by the returns of the official weigher and gauger. Brune v. Marriott (C. C. 1849) Fed. Cas. No. 2,052.

The amount of the beer in the containers not entirely filled was determined by experts, who sounded the casks and estimated the shortage. All of the half barrels were inspected for shortage by the importer, the steamship company, the customs gauger, and the customs stamper. The impo in his own behalf bottled 2,040 barrels out of 30,068 and, protes claimed the result as it appeared t the true gauge of the beer. method was liable to too much e to warrant such a finding of cont valid as against the gauger's, sust ed as that is by the collector's, d sion. Hollender & Co. v. U. S. (19 4 Ct. Cust. App. 406.

The effect of the proviso in the of March 3, 1883 (22 Stat. 505), claring "that there shall be no all ance for breakage, leakage, or dam on wines, liquors, cordials, or disti spirits," was to repeal all the pr sions previously in force which auth ized such allowance; but it nevert less permits the duties to be asses on the actual quantity of merchan imported, whether in casks or bott (1883) 17 Op. Atty. Gen. 613.

Allowance for leakage, breakage, e of wines, see paragraph 244.

Cited without definite applicati Lawder v. Stone (1902) 23 Sup. 79, 82, 187 U. S. 281, 47 L. Ed. 1 Merwin v. Magone (1895) 70 Fed. 7 778, 17 C. C. A. 361.

(R. S. §§ 2922–2924. Repealed.)

R. S. § 2922, provided for the examination by the appraisers or other offic of any owner, importer, consignee, or other person, as to the market value wholesale price of any merchandise imported, and for the production of lette accounts, or invoices relating to the same. R. S. § 2923, imposed a penalty failure to submit to such examination or to produce such papers, and made appraisement conclusive. And R. S. § 2924, made false swearing on such examination perjury, and forfeited the merchandise of an owner, importer, consignee, guilty thereof. All these sections were repealed by the Customs A ministrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, and similar p visions were made by sections 16 and 17 of that act, amended by the Pay Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 100, and the Underwo Tariff Act of Oct. 3, 1913, c. 16, § III, O, P, ante, §§ 5596, 5597.

§ 5620. (R. S. § 2925.) Bond to produce proof.

Whenever, in the opinion of the Secretary of the Treasury, may be necessary in order to carry into full effect the laws for t collection of the revenue, he may authorize the collector of any di trict into which merchandise, subject to duty, may be importe to require the owner, importer, or consignee of such merchandis to give bond, in a sum not exceeding the value of such merchandis that he will produce or cause to be produced, within a reasonab time, to be fixed by the Secretary, such proof as the Secretary ma deem necessary, and as is in the power of the owner, importe or consignee, to obtain, to enable the collector to ascertain the cla or description of manufacture, or rate of duty, to which such me chandise is justly liable.

Act May 28, 1830, c. 147, § 8, 4 Stat. 411.

§ 5621. (R. S. § 2926.) Storing goods with incomplete manifest

All merchandise, of which incomplete entry has been made, an entry without the specification of particulars, either for want the original invoice, or for any other cause, or which has receive damage during the voyage, shall be conveyed to some warehous or storehouse, to be designated by the collector, in the parcels packages containing the same, there to remain with due and re sonable care, at the expense and risk of the owner or consigne under the care of some proper officer, until the particulars, cos

value, as the case may require, shall have been ascertained her by the exhibition of the original invoice thereof, or by ap-aisement, at the option of the owner, importer, or consignee; d until the duties thereon shall have been paid, or secured to be id, and a permit granted by the collector for the delivery thereof.

Act March 2, 1799, c. 22, § 52, 1 Stat. 665.

Notes of Decisions

Modification of section.—Act May 1, 6, c. 89, 19 Stat. 49, permitting the ry of packed packages without the duction of an invoice, modified this tion; and the latter provision does apply to such packages. U. S. v. erican Express Co. (C. C. 1907) Fed. 996.

Storage.—The presumption is that officers mentioned in a United tes statute, who are to carry out its visions, are officers of the United tes, if there are any officers of the ited States such as are described the statutes. (1870) 13 Op. Atty. n. 244.

The port wardens of the port of New rk, appointed under the State laws, not the officers meant by the words oper officers of the port or dis-t," found in the section as former-enacted. The officers there meant the customs officers of the port or trict, appointed pursuant to the laws the United States. Id.

See § 5647, post, as to storing goods want of invoice.

— **Charges.**—Where an importer oses to enter goods of less value n $1,000 without a certified invoice, rges for cartage to the appraiser's res and for storage and labor at h stores may properly be exacted the government. Kennedy v. Ma-e (C. C. 1890) 41 Fed. 768, 769, rmed (1895) 15 Sup. Ct. 814, 158 S. 212, 39 L. Ed. 954.

Where merchandise is entered by ap-isement without invoice, and the en-is incomplete for want of particu-s, and is taken into custody of the lector of the port and conveyed to warehouse, the charges for storage l labor are legal. Hemplead v. dwalader (C. C. 1890) 42 Fed. 529, .

A fee charged by a collector of customs on packed packages to defray expense incurred in administering the law relative to such packages is not such as is authorized by this section. U. S. v. American Express Co. (C. C. 1907) 154 Fed. 996.

Because of the absence of an invoice, the collector on liquidation charged, under this section, a certain sum for cartage, labor, and storage incidental to the removal and custody of the importation. The cartage was paid for by the government, while the other services were rendered by government employés. The entry was confessedly incomplete, an invoice being necessary, and so it was within the authority of the collector under the section cited to cause the merchandise to be removed at the expense of the owners to a warehouse or storehouse, there to remain until due appraisement was had or, at the option of the owners, the original invoice produced; and this is true though there was only one case of merchandise, valued at less than $100. Davies, Turner & Co. v. U. S. (1912) 3 Ct. Cust. App. 450.

Appraisement.—Where consignee, on pointing out imperfection in invoice and desiring to have it corrected, is told that he must enter goods at value expressed in invoice, and in no other way, he is not bound to ask for the appraisement provided for by this section. Robertson v. Bradbury (1889) 10 Sup. Ct. 158, 132 U. S. 491, 33 L. Ed. 405.

Penalties.—The penalties prescribed by section 51 of the act of 1799 for collecting duties do not apply to this section. Peisch v. Ware (1808) 4 Cranch, 347, 364, 2 L. Ed. 643.

Cited without definite application, U. S. v. Sommers (1909) 171 Fed. 57, 96 C. C. A. 299.

(R. S. § 2927. Repealed.)

This section provided for the appraisal of articles damaged during the voyage, and for allowances for such damages in estimating duties. It was repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, and allowances for damages to merchandise imported were forbidden, and abandonment of damaged merchandise after entry and relief from payment of duties thereon was provided for by section 23 of that act, which section, as amended, was re-enacted by the Underwood Tariff Act, § III, X, ante, § 5602.

(R. S. § 2928. Superseded.)

This section, providing for appraisement of merchandise taken from any wreck and of damages sustained during the course of the voyage, was superseded by the provisions of the Customs Administrative Act of June 10, 1890, c. 407, § 23, 26 Stat. 140, which, as amended and designated as section 22 of said act, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, were re-enacted by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, X, ante, § 5602.

(R. S. §§ 2929–2932. Repealed.)

These sections provided for revision by the principal appraisers of reports assistant appraisers, and for reappraisement on the order of the collector; appeals from appraisements; and for appeals from decisions of the collector the Secretary of the Treasury. They were repealed by the Customs Admi trative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141; and other visions for revision of appraisements, reappraisements, appeals from decisi of appraisers and of collectors to the board of general appraisers, and rev of their decisions, were made by sections 12–18 of that act, which, as amen by Act May 27, 1908, c. 205, § 3, and the Payne-Aldrich Tariff Act of Aug 1909, c. 6, § 28, were incorporated in chapter 8 of the Judicial Code, §§ 1 199, ante, §§ 1179–1190, and the Underwood Tariff Act of Oct. 3, 1913, c. § III, M–Q, ante, §§ 5594–5598, except said section 12, which is set forth a § 5593.

§ 5622. (R. S. § 2933.) Examination of medicines.

All drugs, medicines, medicinal preparations, including medici essential oils and chemical preparations, used wholly or in part medicine, imported from abroad, shall, before passing the custo house, be examined and appraised, as well in reference to their qu ity, purity, and fitness for medical purposes, as to their value a identity specified in the invoice.

Act June 26, 1848, c. 70, § 1, 9 Stat. 237.

The oaths to be taken by special examiners of drugs, etc., was prescribed R. S. § 2611, ante, § 5355; and their salaries were fixed by the Plan Reorganization of the Customs Service pursuant to provisions of Act Aug. 1912, c. 355, § 1, ante, § 5327.

Notes of Decisions

Standard of drugs.—The drugs and medicine act of 1848 and the food and drugs act of June 30, 1906 (34 Stat. 768), are, generally speaking, cumulative, and should both be given effect and an importation of drugs should not be admitted if it fails to conform to the standard established by the former or to the tests imposed under the latter. (1907) 26 Op. Atty. Gen. 311.

In applying the drugs and medicine act of June 26, 1848, to importations originating in Italy, that standard of strength and purity to be enforced is that established by the pharmacopoeia of the United States, and not that of Italy or any other foreign country. Id.

Drugs imported from Italy, although meeting the standard required by the drugs and medicine act of 1848, are still subject to the provisions of the food and drugs act of 1906 regard adulteration, misbranding, and f labeling, and to any test that may applied to them by the direction of Secretary of Agriculture in accorda with section 11 of the latter act.

Importations originating in any the countries whose pharmacopo are mentioned in section 5624, p must conform to the pharmacopoeia the country of their origin; but if p duced in any other country, wh pharmacopoeias are not thus standa ized, then the pharmacopoeia of United States must control. Id.

Cited without definite applicat Buttfield v. Stranahan (1903) 24 S Ct. 349, 354, 192 U. S. 470, 48 L. 525; Smeltzer v. St. Louis & S. F. Co. (C. C. 1908) 158 Fed. 649, 6

§ 5623. (R. S. § 2934.) Name of proprietor to be affixed to me cines.

All medicinal preparations, whether chemical or otherwise, usu ly imported with the name of the manufacturer, shall have the tr name of the manufacturer and the place where they are prepar permanently and legibly affixed to each parcel by stamp, label, otherwise; and all medicinal preparations imported without su names so affixed shall be adjudged to be forfeited.

Act June 26, 1848, c. 70, § 2, 9 Stat. 238.

§ 5624. (R. S. § 2935.) Return upon examination.

If, on examination, any drugs, medicines, medicinal preparatio whether chemical or otherwise, including medicinal essential o are found, in the opinion of the examiner, to be so far adulterat or in any manner deteriorated, as to render them inferior in streng and purity to the standard established by the United States, Ed burgh, London, French, and German pharmacopœias and dispen tories, and thereby improper, unsafe, or dangerous to be used f

edicinal purposes, a return to that effect shall be made upon the voice, and the articles so noted shall not pass the custom-house, nless, on a re-examination of a strictly analytical character, called r by the owner or consignee, the return of the examiner shall e found erroneous, and it is declared as the result of such analysis, at the articles may properly, safely, and without danger, be used r medicinal purposes.

Act June 26, 1848, c. 70, § 3, 9 Stat. 238.

Notes of Decisions

Pharmacopoeia controlling.—Importions originating in any of the counies whose pharmacopoeias are menoned in this section must conform to e pharmacopoeia of the country of eir origin; but if produced in any other country, whose pharmacopoeias are not thus standardized, then the pharmacopoeia of the United States must control. (1907) 26 Op. Atty. Gen. 311.

5625. (R. S. § 2936, as amended, Act Feb. 27, 1877, c. 69, § 1.) Appeal from examination.

The owner or consignee shall at all times, when dissatisfied with he examiner's return, have the privilege of calling, at his own exense, for a re-examination; and the collector, upon receiving a eposit of such sum as he may deem sufficient to defray such exense, shall procure some competent analytical chemist possessing he confidence of the medical profession, as well as of the colleges f medicine and pharmacy, if any such institutions exist in the State which the collection-district is situated, to make a careful analyis of the articles included in the return, and a report upon the same nder oath. In case this report, which shall be final, shall declare he return of the examiner to be erroneous, and the articles to be f the requisite strength and purity, according to the standards eferred to in the next preceding section, the entire invoice shall e passed without reservation, on payment of the customary duties.

Act June 26, 1848, c. 70, § 4, 9 Stat. 238. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 247.

This section, as enacted in the Revised Statutes, was amended by inserting after the word "situated" the words "to make," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

Notes of Decisions

Repeal.—The provisions that imporations found to conform to standard mposed shall be "passed without resrvation, on payment of the customary uties," are repealed by implication as applied to importations which are subject to rejection under tests of the food and drugs act. (1907) 26 Op. Atty. Gen. 311.

§ 5626. (R. S. § 2937.) Exportation of rejected articles.

If the examiner's return, however, shall be sustained by the analysis and report, the articles shall remain in charge of the collector, nd the owner or consignee, on payment of the charges of storage nd other expenses necessarily incurred by the United States, and n giving a bond with sureties satisfactory to the collector to and the articles out of the limits of the United States, shall have he privilege of re-exporting them at any time within the period of six months after the report of the analysis; but if the articles shall not be sent out of the United States within the time specified, the collector, at the expiration of that time, shall cause the same to be destroyed, and hold the owner or consignee responsible to the United States for the payment of all charges, in the same manner as if the articles had been re-exported.

Act June 26, 1848, c. 70, § 4, 9 Stat. 238.

§ 5627. (R. S. § 2938.) Appraiser as special examiner.

One of the assistant appraisers at the port of New York, to be appointed with special reference to his qualifications for such du-

ties, shall, in addition to the duties that may be required of him b the appraiser, perform the duties of a special examiner of drugs medicines, chemicals, and so forth.

Act July 27, 1866, c. 284, § 3, 14 Stat. 302.

The number of assistant appraisers at the port of New York was prescribe by R. S. § 2536, the provisions of which were superseded by the Plan of Reor ganization of the Customs Service pursuant to the provisions of Act Aug. 24 1912, c. 355, § 1, ante, § 5327.

The oath to be taken by a special examiner of drugs, etc., was prescribed b R. S. § 2611, ante, § 5355.

§ 5628. (R. S. § 2939.) Appraisement at New York.

The collector of the port of New York shall not, under any cir cumstances, direct to be sent for examination and appraisemen less than one package of every invoice, and one package at leas out of every ten packages of merchandise, and a greater numbe should he, or the appraiser, or any assistant appraiser, deem i necessary. When the Secretary of the Treasury, however, fron the character and description of the merchandise, may be of th opinion that the examination of a less proportion of packages wil amply protect the revenue, he may, by special regulation, direct a less number of packages to be examined.

Act July 27, 1866, c. 284, § 1, 14 Stat. 302.

Notes of Decisions

Nature of section.—This section is not mandatory, so that though, without any special direction, a less number than one out of ten packages of an invoice is examined, the examination is not void. Erhardt v. Schroeder (1894) 15 Sup. Ct. 45, 47, 155 U. S. 124, 39 L. Ed. 94.

This section is permissive, and not mandatory. U. S. v. Rosenwald (1895) 67 Fed. 323, 327, 14 C. C. A. 399.

Manner of appraisement.—The mere fact that all the cases of an importation "were by the collector ordered to the public store, and that they were there at the time of the reappraisement," does not show a specific direction by the collector that all should be examined, and render void a reappraisement made without examining all the cases, though, under R. S. § 2901, ante, § 5590, and this section, such reappraisement would be void if the collector directed an examination of all the cases, and it was not made. Origet v. Hedden (1894) 15 Sup. Ct. 92, 155 U. S. 228, 39 L. Ed. 130.

An importer is entitled to have no greater portion of the importation produced and examined on appeal to the board of general appraisers than this section directs shall be sent to the appraiser. Renvy, Schmidt & Plussner v. U. S. (C. C. 1903) 121 Fed. 441, 442.

Though there may have been a failure on the part of the collector strictl to comply with the provisions of sec tions 2901 and 2939, R. S., section 5590 ante, and this section, governing th special designation of merchandise fo examination and appraisement, never theless the board of general appraiser would be in duty bound, the goods i question remaining subject to their con trol and open to their inspection an examination, to resort, on appeal, to th best means at hand for making an ap praisement; and though it should ap pear that one package in ten was no in some instances examined by th board, there being sufficient sample of the merchandise before them an these having been examined, ther would be accordingly such a substitut process as the law contemplates an permits. Oelrichs & Co. v. U. S. (1911) 2 Ct. Cust. App. 355.

Repeal.—Act July 27, 1866, c. 284 repealed Act March 3, 1851, c. 32, § 5 so far as that section relates to th appraisers and assistant appraisers fo the port of New York, but no further (1870) 13 Op. Atty. Gen. 312.

Cited without definite application U. S. v. Dieckerhoff (1906) 26 Sup. Ct 604, 606, 202 U. S. 302, 50 L. Ed. 1041 In re Blumlein (C. C. 1892) 49 Fed 228, 230, affirmed (1893) 55 Fed. 383 5 C. C. A. 142; Curnen & Stiner v. U S. (C. C. 1904) 136 Fed. 807, 808, 809

§ 5629. (R. S. § 2940.) Examiners at New York.

The Secretary of the Treasury may, on the nomination of the appraiser, appoint such number of examiners at the port of New York as the Secretary may in writing determine to be necessary, to aid each of the assistant appraisers in the examination, inspection, and appraisement of merchandise. No person shall be appointed such examiner who is not, at the time of his appointment,

ctically and thoroughly acquainted with the character, quality, value of the article in the examination and appraisement of ch he is to be employed; nor shall any such examiner enter n the discharge of his duties, as such, until he shall have taken subscribed an oath faithfully and diligently to discharge such ies.

Act July 27, 1866, c. 284, § 4, 14 Stat. 303.

The number and compensation of examiners in the district of New York were prescribed by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Notes of Decisions

port.—A report in regard to valu- n of imported merchandise signed n examiner or clerk appointed pur- t to this section, and approved by appraiser, is not in compliance with the requirements of section 2615, R. S. ante, § 5349, which requires that the assistant appraiser make such report. (1894) 20 Op. Atty. Gen. 731.

530. (R. S. § 2941.) Appraisers, etc., at New York not to engage in business.

o appraiser, assistant appraiser, examiner, clerk, verifier, sam-, messenger, or other person employed in the departments of raisal at the port of New York, or any of them, shall engage be employed in any commercial or mercantile business, or act agent for any person engaged in such business, during the term his appointment.

Act July 27, 1866, c. 284, § 5, 14 Stat. 303.

General appraisers were prohibited from engaging in business by the Customs Administrative Act of June 10, 1890, c. 407, § 12, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, ante, § 5593.

631. (R. S. § 2942.) Duties of appraisers at New York.

ll provisions relating to the duties of appraisers, or to any pro- dings consequent or dependent upon the action of such ap- isers and not inconsistent with the provisions relating to the raiser and assistant appraisers at the port of New York, shall be strued to apply to them.

Act July 27, 1866, c. 284, § 8, 14 Stat. 303.

(R. S. § 2943. Repealed.)

This section provided that one of the assistant appraisers at the port of New York should be detailed for the supervision of examination of merchandise damaged on the voyage of importation, and to make examinations and appraisals and to report, etc. It was repealed, with R. S. § 2927, which provided for appraisal of such goods, and other sections, by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, re-enacted and designated as section 28 by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 104.

632. (R. S. § 2944.) Labor beyond usual hours.

f at any time, from an increase of importation, or from any other se, there shall be found upon the floors of the public stores in the of New York an accumulation of merchandise awaiting ap- isement, the appraiser shall, under regulations established by Secretary of the Treasury, direct the assistant appraisers, and ers associated with them in this branch of the public business, devote time beyond the usual business hours, in each day, during light, to their respective duties, so that the business of appraise- nt may be faithfully and more promptly dispatched.

Act July 27, 1866, c. 284, § 9, 14 Stat. 303.

(R. S. § 2945. Repealed.)

This section imposed a penalty on any merchant chosen by the collector to make any appraisement required under any act respecting imports and tonnage, who should, after due notice, decline or neglect to assess at such appraisement. This section was repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141.

Provisions for the appointment of merchant appraisers and for a penalt refusal to serve, made by R. S. §§ 2609, 2610, were superseded by provi relating to appraisers, made by the Customs Administrative Act of Jun 1890, c. 407, § 13, which, as amended by the Payne-Aldrich Tariff Act of 5, 1909, c. 6, § 28, were incorporated in the Underwood Tariff Act of Oc 1913, c. 16, § III, M, ante, § 5594.

§ 5633. (R. S. § 2946.) Appraisement by revenue officers.

When merchandise is entered at ports where there are no praisers, the mode hereinbefore prescribed of ascertaining the for value thereof shall be carefully observed by the revenue officer whom is committed the estimating and collection of duties.

Act Aug. 30, 1842, c. 270, § 22, 5 Stat. 566.

§ 5634. (R. S. § 2947.) Appraisement in other districts.

The Secretary of the Treasury shall have authority to direct appraisers for any collection-district to attend in any other col tion-district for the purpose of appraising any merchandise imp ed therein.

Act March 1, 1823, c. 21, § 16, 3 Stat. 735.

Similar authority was conferred on the Secretary of the Treasury by Plan of Reorganization of the Customs Service pursuant to the provision Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Provisions for the performance of duties of appraisers and assistant appr ers during vacancy in or absence from office were made by Act March 3, 1 c. 1413, §§ 1, 2, ante, §§ 5395, 5396.

(R. S. § 2948. Superseded.)

This section providing that additional duties are not to be deemed fines, for distribution to customs officers, became inoperative by the repeal of provisions for payment of moieties of fines, etc., to informers or officers, by Anti-Moiety Act of June 2, 1874, c. 391, § 2, set forth post, § 5796.

§ 5635. (R. S. § 2949.) Regulations for appraisal.

The Secretary of the Treasury from time to time shall establ such rules and regulations, not inconsistent with the laws of United States, to secure a just, faithful, and impartial appraisal all merchandise imported into the United States, and just and pr er entries of such actual market-value or wholesale price there and of the square yards, parcels, or other quantities, as the case m require, and of such actual market-value or wholesale price of ea of them. The Secretary of the Treasury shall report all such ru and regulations, with the reasons therefor, to the then next sessi of Congress.

Act July 14, 1832, c. 227, § 9, 4 Stat. 592. Act Aug. 30, 1842, c. 270, § 5 Stat. 566.

Notes of Decisions

Regulations in general.—An official judgment of the Secretary and Assistant Secretary of the Treasury as to the duty to be exacted on importations of sugar under Tariff Acts July 24, 1897, and Oct. 3, 1913, and the commercial treaty with Cuba of Dec. 11, 1902, as made effective by Act Dec. 17, 1903, cannot be controlled by injunction. State of Louisiana v. McAdoo (1914) 34 Sup. Ct. 938, 234 U. S. 627, 58 L. Ed. 1506.

The power of the secretary of the treasury to prescribe rules and regulations does not authorize him to impose a duty not provided for by congress, in repayment of a drawback. Balfour Sullivan (C. C. 1884) 19 Fed. 578.

The secretary of the treasury, w a view to facilitate the work of lectors of the port, may not make s regulations as would seem to negat existing laws. Pascal v. Sullivan C. 1884) 21 Fed. 496.

Cited without definite applicati Hilton v. Merritt (1884) 3 Sup. Ct. 5 552, 110 U. S. 97, 28 L. Ed. 83; Oelb mann v. Merritt (1887) 8 Sup. Ct. 1 154, 123 U. S. 356, 31 L. Ed. 164; A mordt v. Hedden (1890) 11 Sup. 103, 106, 137 U. S. 310, 34 L. Ed. 6 U. S. v. Loeb (C. C. 1900) 99 F 723, 728.

(R. S. § 2950. Superseded.)

This section provided that the certificate of the appraiser should be deem to be the appraisement. It was superseded by the provisions relating to

praisers made by the Customs Administrative Act of June 10, 1890, c. 407, § 13, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, and the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, M, ante, § 5594.

§ 5636. (R. S. § 2951.) Definition of word "ton."

Wherever the word "ton" is used in this chapter, in reference to weight, it shall be construed as meaning twenty-hundred-weight, each hundred-weight being one hundred and twelve pounds avoirdupois.

Act March 2, 1861, c. 68, § 26, 12 Stat. 196.

The words "merchandise," "port," and "master" were defined by R. S. §§ 2766, 2767, 2768, ante, §§ 5462–5464.

Cited without definite application, Earnshaw v. Cadwalader (1892) 12 Sup. Ct. 851, 855, 145 U. S. 247, 36 L. Ed. 693.

(R. S. § 2952. Repealed.)

This section defined the words "value" and "valued" as used in this chapter. It was repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, and the construction of the words "value," or "actual market value," when used in any law relating to the appraisement of imported merchandise, was prescribed by section 19 of that act, which section, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, was substantially re-enacted by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, R, ante, § 5599.

§ 5637. (R. S. § 2953.) What buildings may be leased.

Nothing herein contained shall be construed to prevent the leasing or hiring of such buildings or accommodations as may be required for the use of the United States appraisers for the due examination and appraisal of imported merchandise at the ports where such officers are provided by law, nor to prohibit the leasing or hiring by collectors of the customs, for short periods, with the approval of the Secretary of the Treasury, of such stores as may be required for custom-house purposes at any of the smaller revenue ports of the United States.

Act March 28, 1854, c. 30, § 7, 10 Stat. 272.

CHAPTER SEVEN

The Bond and Warehouse System

Sec.
5638. Lease of warehouses authorized.
5639. Restrictions.
5640. Use of leased warehouses.
5641. Limitation of leases.
5642. Cellars, vaults, and yards.
5643. Storage of grain.
5644. Private warehouses.
5645. Bond of proprietor.
5646. Deposit of merchandise at option of owners.
5647. Deposit for want of invoice.
5648. Deposit upon nonpayment of duties.
5649. Unclaimed merchandise may be stored in bonded warehouses.
5650. Deposit of imported liquors in bonded warehouse.
5651. Stamps and brands to be effaced on emptying packages of imported liquors; penalty for failure.
5652. Dealing in or using empty casks or packages used to contain imported liquors, with stamps, etc., thereon; penalty.
5653. Importations in vessels.
5654. For Albany.
5655. Custody of goods not unladen in time.
5656. Withdrawal for consumption; perishable or explosive articles.
5657. Withdrawal for exportation; sale of abandoned goods after custody for three years.
5657a. Extension of time during which merchandise for exportation to Mexico may remain in bonded warehouse.
5658. Distribution of proceeds.
5659. Sale after one year.
5660. Distribution of proceeds.
5661. Sale of perishable articles.
5662. Sale upon depreciation.
5663. Return of duties upon exportation from warehouse.
5664. Restriction upon exportation for drawback.
5665. Permit for exportation.
5666. Manner of withdrawal.
5667. Lien for freight.
5668. Supplies to vessels of war.

Sec.
5669. Supplies for vessels in foreign trade or in trade between Atlantic and Pacific ports.
5670. Materials for construction, etc., and supplies for vessels employed in fisheries or in whaling.
5671. Bonded warehouses for storage and cleansing of imported rice.
5671a. Bonded warehouses for storage and cleansing of imported garbanzo; withdrawals for domestic consumption; compensation of customs officers and storekeepers.
5672. Bonded manufacturing warehouses.
5673. Smelting works as bonded warehouse.
5674. Articles shipped to Philippines entitled to drawback.
5675. Drawback on articles re-exported to Philippines.
5676. No allowance for leakage, etc.
5677. Abatement and refund in case of injury by casualties.
5678. Penalty for obliterating marks.
5679. Penalty for unlawfully opening warehouse.
5680. Penalty for fraudulent remov etc.
5681. Report of merchandise in wa house.
5682. Warehouse regulations.
5683. Regulations for bonded wa houses, general order stor etc.; customs officers not have interest.
5684. Public cartage to be let to lo est bidder; regulations.
5685. Withdrawal for rewarehousing another district.
5686. Penalty for failure to transpo
5687. Withdrawal for exportation Mexico.
5688. Through port of Lavaca.
5689. By Eagle Pass.
5690. Transportation in bond to forei countries.
5691. Transportation over foreign t ritory.
5692. Exemption from fees.
5693. Forfeiture for relanding export merchandise.
5694. Bonded privileges for export tions to British Columbia Northwest Territory.

§ 5638. (R. S. § 2954.) Lease of warehouses authorized.

The Secretary of the Treasury may, at his discretion, lease suc warehouses as he deems necessary for the storage of unclaime goods, or goods which for any other reason are required by law t be stored by the Government.

Res. Feb. 14, 1850, No. 4, § 1, 9 Stat. 560.

The establishment of bonded warehouses for the storage and cleansing of i ported rice intended for exportation was authorized by Act March 24, 1874, 65, post, § 5671.

Provisions for manufacturing goods for export in bonded warehouses, and f smelting works as bonded warehouses, were made by the Underwood Tariff A of Oct. 3, 1913, c. 16, § IV, M, N, post, §§ 5672, 5673, which superseded simil provisions made by preceding tariff acts.

Cited without definite application, U. S. v. 25 Packages of Panama Hats (1913) 34 Sup. Ct. 63, 64, 231 U. 358, 58 L. Ed. 267.

§ 5639. (R. S. § 2955.) Restrictions.

No leases shall be entered into by the United States for any war houses for the storage of warehoused or unclaimed merchandise a any port where there may exist any private bonded warehouses Provided, That such buildings may be leased as may be require for the use of appraisers for the examination and appraisal of im ported merchandise at ports where such officers are provided b law; and collectors may lease, for short periods, at any of the smal er ports, such stores as may be required for custom-house purpose with the approval of the Secretary of the Treasury.

Act March 28, 1854, c. 30, § 7, 10 Stat. 272.

Other provisions relating to the leasing or hiring of buildings, etc., for th use of appraisers, or by collectors, for short periods, for custom house pu poses, at small ports, were made by R. S. § 2953, ante, § 5637.

Customs officers were prohibited from owning or being interested in bonde warehouses by Act June 22, 1874, c. 391, § 24, post, § 5683.

§ 5640. (R. S. § 2956.) Use of leased warehouses.

All warehouses hired by the collector, naval officer, or surveyo shall be on public account, and paid for by the collector as suc and shall be appropriated exclusively to the use of receiving fo

gn merchandise, subject, as to the rates of storage, to regulation the Secretary of the Treasury.

Act March 3, 1841, c. 35, § 6, 5 Stat. 432.

5641. (R. S. § 2957.) Limitation of leases.

No collector or other officer of the customs shall enter into any ntract or agreement for the use of any building to be thereafter ected as a public store or warehouse, and no lease of any building be so used shall be taken for a longer period than three years, r shall rent be paid, in whole or in part, in any case, in advance.

Act March 28, 1854, c. 30, § 7, 10 Stat. 272.

Cited without definite application,
Holt v. Nixon (1905) 141 Fed. 952, 953, 73 C. C. A. 268.

5642. (R. S. § 2958.) Cellars, vaults, and yards.

Cellars and vaults of stores for the storage of wines and distilled irits only, and yards for the storage of coal, mahogany, and other oods and lumber, may, at the discretion of the Secretary of the easury, be constituted bonded warehouses for the storage of such ticles under the same regulations and conditions as required in e storage of other merchandise; the cellars or vaults shall be exusively appropriated to the storage of wines or distilled spirits, d shall have no opening or entrance except the one from the eet, on which separate and different locks of the custom-house d the owner or proprietor of the cellars or vaults shall be placed.

Act March 28, 1854, c. 30, § 1, 10 Stat. 271.

5643. (R. S. § 2959.) Storage of grain.

Parts of such building as shall be approved by the Secretary of e Treasury may be bonded for the storage of grain, under such les, regulations, and conditions as he may prescribe for the serity of the revenue.

Act July 18, 1866, c. 201, § 37, 14 Stat. 187.

5644. (R. S. § 2960.) Private warehouses.

Private warehouses shall be used solely for the purpose of storg warehoused merchandise, and shall be previously approved by e Secretary of the Treasury, and be placed in charge of a proper ficer of the customs, who, together with the owner and proprietor the warehouse, shall have the joint custody of all the merchandise ored in the warehouse; and all the labor on the merchandise so ored must be performed by the owner or proprietor of the wareuse, under the supervision of the officer of the customs in charge the same, at the expense of the owner or proprietor.

Act March 28, 1854, c. 30, § 1, 10 Stat. 270.

See, also, the Warehouse Act Aug. 11, 1916, c. 313, part C, post, §§ 8747¾–8747¾pp.

Notes of Decisions

Rights and authority of warehouseman.—After the duty on imported goods ich have been deposited in a private nded warehouse has been paid and withdrawal permit issued, the govnment has no further concern with e goods, and the right to withhold or iver same rests with the warehouseen alone. (1895) 21 Op. Atty. Gen. 2.

The collector of customs has no aurity to interfere or direct the United ites storekeeper to interfere in a ntroversy between the importers and e warehouseman and deliver the ods. Id.

The Secretary of the Treasury is under no obligation and can not properly grant authority to compel a warehouse company to deliver certain goods for export, where, notwithstanding the permit of the collector, delivery is refused because of the nonproduction of a warehouse certificate. (1898) 22 Op. Atty. Gen. 152.

A warehouse is a private institution in charge of a public officer, and the Secretary of the Treasury may establish rules and regulations not inconsistent with law for the due execution of the laws relating thereto and to secure a just accountability under the same. Id.

The private rights of the warehouse-

man and those having relations with him as such are in no wise affected by this joint custody, providing the rights of the government in and about the collection of its customs are not interfered with. Id.

Under former act.—See Corkle v. Maxwell (C. C. 1856) Fed. Cas. No. 3231; Harriman v. Maxwell (C. C. 1856) Fed. Cas. No. 6,105; Clark Peaslee (C. C. 1860) Fed. Cas. 2,831; Ogden v. Barney (C. C. 18 Fed. Cas. No. 10,454.

Cited without definite applicati Franklin Sugar Refining Co. v. U. (1906) 26 Sup. Ct. 720, 722, 202 U. 580, 50 L. Ed. 1153.

§ 5645. (R. S. § 2961.) Bond of proprietor.

Before any of the stores or cellars, owned or occupied by p vate individuals, shall be used as a warehouse for merchandise i ported by other merchants or importers, the owner, occupant, lessee thereof shall enter into bond, in such sums and with su sureties as may be approved by the Secretary of the Treasury, e onerating and holding harmless the United States and its office from or on account of any risk, loss, or expense of any kind description, connected with or arising from the deposit or keepi of the merchandise in the warehouses; and all imports deposit in any public or private warehouse authorized by this Title sha be at the sole and exclusive risk and expense of the owner or in porter.

Act March 28, 1854, c. 30, § 3, 10 Stat. 271.

Notes of Decisions

Validity of bonds.—A bond voluntarily given to the United States as security is valid and binding, if the United States, in their political and corporate capacity, have a legal, pecuniary interest in the performance of its condition, although not expressly required or authorized by any act of congress. U. S. v. Howell (C. C. 1826) Fed. Cas. No. 15,405; Same v. Humason (C. C. 1879) Fed. Cas. No. 15,420; Same v. Garlinghouse (D. C. 1870) Fed. Cas. No. 15,189.

Though the bond given by the owner of a warehouse does not in all respects comply with the requirements of the statute, yet, if there be a substantial compliance and the building is constructed, secured, and used as a bond warehouse, and is entered as such the treasury "Registry of Warehouse Customs," it must be deemed a bon ed warehouse in the settlement of th collector's accounts and the ascertai ment of the compensation due to hi Ellsworth v. U. S. (1878) 14 Ct. C 382.

The validity of a bond of security gi en to the United States, so far as it de pends upon the capacity of the partie to make it, is to be governed by the la of the place where it is made. U. S v. Garlinghouse (D. C. 1870) Fed. Ca No. 15,189.

§ 5646. (R. S. § 2962.) Deposit of merchandise at option of own ers.

Any merchandise subject to duty, with the exception of perish able articles, also gunpowder, and other explosive substances, ex cept fire-crackers, which shall have been duly entered and bonde for warehousing, in conformity with existing laws, may be depos ited, at the option of the owner, importer, consignee, or agent, a his expense and risk, in any public warehouse owned or leased b the United States, or in the private warehouse of the importer, th same being used exclusively for the storage of warehoused merchan dise of his own importation or to his consignment, or in a privat warehouse used by the owner, occupant, or lessee, as a general ware house for the storage of warehoused merchandise; such place o storage to be designated on the warehouse-entry at the time o entering such merchandise at the custom-house.

Act March 28, 1854, c. 30, § 1, 10 Stat. 270. Act June 30, 1864, c. 171, 19, 13 Stat. 216.

Notes of Decisions

Reimported goods.—Where domestic merchandise, exported in good faith, has been imported back again, and is subject to duty, it is entitled to be admitted to entry for storage in a bonded warehouse. (1886) 18 Op. Atty. Ge 381.

Opium.—Smoking opium may b brought into a port of the Unite States from a foreign country on on

essel and lawfully transferred to another vessel for immediate transportation to a foreign destination. (1909) 7 Op. Atty. Gen. 440.

Opium could not, under the laws xisting at the time of the passage of ie act of Feb. 9, 1909 (35 Stat. 614), e brought into a port of this country rom a foreign country and exported rom the same port on another vessel ithout being subject to duty. Id.

Since the act of Feb. 9, 1909, which rohibits absolutely the importation of pium in any form, smoking opium is ot subject to duty, and cannot under ny circumstances be entered and onded for warehousing; and the law hich made the bringing of opium nto a port an importation for such urposes is, as to smoking opium, rezaled. Id.

The entering of merchandise for imediate exportation and without any tent that it shall enter into the comerce of a country is not an imporation. Id.

Replevin of goods.—The state court as jurisdiction of a replevin suit to recover goods from the keeper of a bonded warehouse, a quasi federal official, where the United States itself does not claim them. McButt v. Murray (1860) 10 Abb. Prac. 196.

Care of warehouseman.—The provision that goods deposited in a private bonded warehouse authorized by that act shall be at the exclusive risk of the owner or importer was intended solely for the benefit of the government, and does not relieve the warehouse keeper from the duty of exercising ordinary care and prudence, nor from the liabilities of other warehousemen to their patrons. The failure of a bonded warehouseman to deliver upon demand goods deposited with him, on which the duties have been paid, casts upon him the burden of accounting for them. Schwerin v. McKie (1872) 51 N. Y. 181, 10 Am. Rep. 581, affirming (1868) 28 N. Y. Super. Ct. (5 Rob.) 404.

Cited without definite application, Saltonstall v. Russell (1894) 14 Sup. Ct. 733, 734, 152 U. S. 628, 38 L. Ed. 576.

5647. (R. S. § 2963.) Deposit for want of invoice.

When merchandise, imported into the United States, has not been ntered in pursuance of the provisions of any act regulating imports nd tonnage, the same shall be deposited in the public warehouse, nd shall there remain, at the expense and risk of the owner, until uch invoice is produced. Nothing herein contained shall be undertood to prohibit the sale of such quantities of merchandise so stored s may be necessary to discharge the duties thereon, and all interening charges, at the time or times when such duties shall become ue and payable.

Act March 1, 1823, c. 21, § 3, 3 Stat. 730.

Notes of Decisions

Storage charges.—Where merchandise entered by appraisement without inoice, and the entry is incomplete for ant of particulars, and is taken into e custody of the collector and conveyd to a warehouse, the charges for torage and labor are legal. Hemptead v. Cadwalader (C. C. 1890) 42 ed. 529.

See § 5621, ante, as to storing goods with incomplete manifests.

Cited without definite application, Ex parte Fassett (1892) 12 Sup. Ct. 295, 298, 142 U. S. 479, 35 L. Ed. 1087; One Pearl Chain v. U. S. (1903) 123 Fed. 371, 374, 59 C. C. A. 499.

5648. (R. S. § 2964.) Deposit upon nonpayment of duties.

In all cases of failure or neglect to pay the duties within the eriod allowed by law to the importer to make entry thereof, or henever the owner, importer, or consignee shall make entry for arehousing the same, in writing, in such form and supported by uch proof as shall be prescribed by the Secretary of the Treasury, he merchandise shall be taken possession of by the collector, and eposited in the public stores, or in other stores to be agreed on y the collector or chief revenue officer of the port, and the imorter, owner, or consignee, such stores to be secured under the joint ocks of the inspector and importer, there to be kept, with due and easonable care, at the charge and risk of the owner, importer, onsignee, or agent, and subject at all times to their order, upon ayment of the proper duties and expenses, to be ascertained on due ntry thereof for warehousing, and to be secured by a bond of the

owner, importer, or consignee, with surety to the satisfaction o the collector, in double the amount of the duties, and in such form as the Secretary of the Treasury shall prescribe.

Act Aug. 6, 1846, c. 84, § 1, 9 Stat. 53.

Notes of Decisions

Ordering goods to public store.—The right to deposit goods and draw them out on payment of duties was confined to a port of entry, unless extended by treasury regulations to port of delivery. Tremlett v. Adams (1851) 13 How. 295, 302, 14 L. Ed. 152.

R. S. § 970, ante, § 1611, providing for a certificate of probable cause of seizure when judgment is given for the claimant, is confined to cases in which the collector or other officer makes a seizure, followed by a suit or prosecution in the name of the United States for a penalty or forfeiture, and does not apply where a vessel is simply detained, under this section, for nonpayment of duties claimed. A certificate given in such a case does not protect the collector from a judgment for damages. The Conqueror (1897) 17 S. Ct. 510, 514, 166 U. S. 110, 41 L. Ed. 937, reversing decree (D. C. 1892) 49 Fed. 99.

No custom-house officer has authority to order goods to the public store after the duties have been paid and a permit to land given to the consignee. Rowland v. Miln (1858) 2 Hilt. 150.

Bonds in general.—Under the sixty-second section of the duty act of 1799, in the case of teas, the duties are "secured to be paid" by the single bond of the importer, with a deposit of the teas. U. S. v. Three Hundred and Fifty Chests of Tea (1827) 25 U. S. (12 Wheat.) 486, 6 L. Ed. 702.

An instrument not in the form of a bond with a penal sum and condition, but containing the requirements of the statute (Act 1854, c. 30), where the obligors were not prejudiced by the form, held a sufficient bond under the statute. U. S. v. Pingree (D. C. 1857) Fed. Cas. No. 16,050.

—— **Construction and operation.**—A bond to secure duties is not an extinguishment of the debt, but merely a collateral security therefor. U. S. v. Lyman (C. C. 1818) Fed. Cas. No. 15,647.

Warehouse bonds must be interpreted in reference to statutes and authorized regulations under the warehouse system, and to this extent they are regarded as parts of the contract of suretyship. U. S. v. De Visser (D. C. 1882) 10 Fed. 642.

—— **Liability.**—Where original importers have entered goods for warehouse, and given a bond to secure the duties, and have subsequently sold the goods in bond and authorized the vendees to withdraw them from warehouse on payment of duties, and the goods are withdrawn without payment of the proper duties in full, the original importers are liable on their bond, after the withdrawal of the goods, for the balance of duties unpaid, and which should have been paid on the last withdrawal. U. S. v. Minturn (C. C. 1872) Fed. Cas. No. 15,783, affirmed in (1882) 106 U. S. 437, 1 Sup. Ct. 402, 27 L. Ed. 208.

—— **Defenses to action.**—It is no defense to an action on a duty bond for goods deposited in a public storehouse in Savannah that the principal actually paid, under compulsion, the duties to the Confederate collector. U. S. v. Low (C. C. 1871) Fed. Cas. No. 15,634.

Nor is it a defense that there was no United States collector to whom payment could be made during the three years within which the duties were to be paid by the terms of the bond. Id.

—— **Rights and priorities of sureties.**—Sureties in warehouse bonds have the same rights and liabilities as ordinary sureties, except as modified by the special laws and regulations concerning the collection of revenue. U. S. v. De Visser (D. C. 1882) 10 Fed. 642, 647.

—— **Discharge of sureties.**—An importer entered sugars at the custom house, and gave bond with sureties for the "payment of the proper duties." He afterwards sold the sugars in bond, giving the purchaser, who agreed to pay the duties as part of the purchase price, a written authority on which the sugars were withdrawn; but the duties,—a less sum than that specified in the bond,—were not paid. Held, that the obligors on the bond did not become merely sureties, with the goods as primary security, and are not released because the officers of the government unlawfully parted with the goods without exacting payment of the duties. Minturn v. U. S. (1882) 106 U. S. 437, 1 Sup. Ct. 402, 27 L. Ed. 208.

A reliquidation of duties made after delivery of the goods and after the lapse of the period named in a warehouse bond held unenforceable against the surety. U. S. v. Campbell (D. C. 1882) 10 Fed. 816, 821.

The liquidation of duties fixes for the time being the amount of duties to which the goods are "subject by law." On a bond conditioned for withdrawal of the goods within one year, "on payment of the duties and charges to which they may be subject by law at the time of such withdrawal," held, that a payment of the duties as liquidated was a

arge of the bond, and that, upon osequent reliquidation, no recovery l be had against the surety, though mporter would be liable for the adnal amount. U. S. v. Georgi (D. 890) 44 Fed. 255, 256.

Cited without definite application, Ex parte Fassett (1892) 12 Sup. Ct. 295, 298, 142 U. S. 479, 35 L. Ed. 1087; American Cigar Co. v. U. S. (1906) 146 Fed. 484, 487, 77 C. C. A. 40.

549. (R. S. § 2965.) Unclaimed merchandise may be stored in bonded warehouses.

nclaimed merchandise required by existing laws to be taken session of by collectors of the customs may be stored in any lic warehouse owned or leased by the United States, or in any ate bonded warehouse authorized by this Title, and all charges storage, labor, and other expenses accruing on any such merndise, not to exceed in any case the regular rates for such obs at the port in question, must be paid before delivery of the ds on due entry thereof by the claimant or owner; or if sold nclaimed goods, to realize the import duties, the charges shall paid by the collector out of the proceeds of the sale thereof be paying such proceeds into the Treasury as required by exist laws.

Act March 28, 1854, c. 30, § 2, 10 Stat. 271.

Notes of Decisions

harges.—Where uninvoiced and unned goods of less than $100 in e are sent to a general order ehouse, and afterwards, on claim g made, are sent to the public e for examination and appraiset, the charges for cartage, and storage and labor at the pubtore, may be exacted from the imer. Kennedy v. Magone (1895) Sup. Ct. 814, 815, 158 U. S. 212, 39 Ed. 954.

Withdrawal of goods.—Goods imported before the act of August 27, 1894 (28 Stat. 509), and then deposited in store as "unclaimed merchandise," under this section, may be withdrawn for consumption at the new rates of duty at any time within three years from the date of original importation, as long as they remain unsold. If sold, however, the duties to be deducted from the proceeds of sale are those of the act of 1890. (1895) 21 Op. Atty. Gen. 116.

650. (Act March 1, 1879, c. 125, § 11.) Deposit of imported liquors in bonded warehouse.

ll distilled spirits, wines, and malt liquors, imported in pipes, sheads, tierces, barrels, casks, or other similar packages, shall first placed in public store or bonded warehouse, and shall not removed therefrom until the same shall have been inspected, rked, and branded by a United States customs-gauger, and a np affixed to each package, indicating the date and particulars of h inspection; and the Secretary of the Treasury is hereby aurized to prescribe the form of, and provide, the requisite stamps, to make all regulations which he may deem necessary and proper carrying the foregoing requirements into effect. Any pipe, hogsd, tierce, barrel, cask, or other package withdrawn from public e or bonded warehouse after the thirtieth day of June, eighteen dred and seventy-nine, purporting to contain imported liquor, nd without having thereon the stamp hereby required, shall be, its contents, forfeited to the United States; and whenever any or package of imported distilled spirits of not less than five wineons is filled for shipment, sale, or delivery on the premises of any lesale liquor-dealer, the same shall be stamped with a special stamp imported spirits, under such rules and regulations as the Commisner of Internal Revenue has prescribed, or may hereafter prescribe, he case of domestic distilled spirits. (20 Stat. 342.)

This section and the two sections next following were part of "An Act to amend the laws relating to internal revenue," cited above, appearing therein

under the heading "Imported-Liquor Stamps, &c." Other sections of act are incorporated in provisions set forth under Title XXXV, "Internal Re nue."

Notes of Decisions

Forfeiture.—Wine and spirits saved from a wreck and landed are not liable to forfeiture because unaccompanied by such marks and certificates as are required by law. Peisch v. Ware (1808) 8 U. S. (4 Cranch) 347, 2 Ed. 643.

Decisions under prior acts.—See U v. Halberstadt (D. C. 1832) Fed. C No. 15,276; King v. McEvoy (1862) Mass. (4 Allen) 110.

§ 5651. (Act March 1, 1879, c. 125, § 12, as amended, Act May 1880, c. 108, § 12.) Stamps and brands to be effaced on empt ing packages of imported liquors; penalty for failure.

Every person who empties or draws off, or causes to be empti or drawn off, the contents of any package of imported liquc stamped as above required, shall, at the time of such emptyin efface, obliterate, and destroy the stamp thereon, and also all ot er marks or brands which shall have been placed thereon accordance with the law or regulations concerning imported li uors; every cask or other package from which the stamp for in ported liquors required by this act to be placed thereon sha not be effaced, obliterated, or destroyed, on emptying such pac age, shall be forfeited, and the same may be seized by any offic of internal revenue wherever found; and all the provisions an penalties of section thirty-three hundred and twenty-four of th Revised Statutes of the United States, relating to empty casks c packages from which the marks, brands, or stamps have not bee effaced or obliterated, and relating to the removal of stamps fro packages, and to having in possession any stamps so removed, sha apply to the stamps for imported spirits herein provided for, an to the casks or other packages on which such stamps shall hav been used. (20 Stat. 342. 21 Stat. 148.)

This section was amended by striking out after the words "the law or regu lations concerning imported liquors" the words "and no cask or other packag such as is hereinbefore mentioned, in which distilled spirits, wines, or ma liquors have been imported, shall be used to contain domestic distilled spirit under penalty of the forfeiture of such reused cask or package and the co tents thereof," as set forth here, by Act May 28, 1880, c. 108, § 12, last cite above.

R. S. § 3324, mentioned in this section, making punishable, as a felony, fai ing to efface marks, brands, or stamps, required by law to be placed on casks o packages of distilled spirits, from such casks or packages at the time of empt ing them, is set forth post, § 6105.

Notes of Decisions

Obliterating marks and stamps.—See notes under § 6105, post, as to effacing stamps and brands from empty casks.

It is not an offense to have in possession an uncanceled stamp that has been used on a package of imported liquors, unless such stamp was removed therefrom by some person intentionally, without being defaced or destroyed. U. S. v. Spiegel (1886) 6 Sup. Ct. 587, 116 U. S. 270, 29 L. Ed. 664.

A person is not liable for the act of his clerk who purchased and removed to his store an empty cask, which had contained foreign distilled spirits, without removal of the marks thereon, where done without his knowledge or acquiescence. U. S. v. Halberstadt (D. C. 1832) Fed. Cas. No. 15,276.

Refilling container.—It is no cause of forfeiture that the casks marked and accompanied with the required certificates contain distilled spirits which have not been imported in the United State or a mixture of domestic with foreig spirits; it being the object of the act t secure the revenue without interferin with mercantile devices looking only t individual profit without defrauding th government. Sixty Pipes of Brand (1825) 10 Wheat. 421, 422, 6 L. Ed. 356

Effect of the change of the contents o a cask of imported spirits without fir obliterating the marks and surrenderin the certificate required by law. U. S v. Eighteen Pipes Distilled Spirits (D C. 1821) Fed. Cas. No. 15,033a.

Casks in which foreign distilled spir its have been imported cannot be use to contain domestic distilled spirit though the stamps thereon have bee effaced and destroyed. U. S. v. Hal Barrel, etc. (D. C. 1879) Fed. Cas. N 15,280.

It is unlawful to fill with domesti tax-paid spirits any casks in whic

oreign spirits have been imported, even here the brands, stamps, and marks equired by law have been removed. . S. v. One-Half Barrel Brandy (D. C. 879) Fed. Cas. No. 15,931.

Wrecked goods.—This section and the receding sections do not comprehend recked goods. Peisch v. Ware (1808) Cranch, 347, 360, 2 L. Ed. 643.

Indictment.—As the offense described R. S. § 3324, post, § 6105, as amend-d by this section, is committed by the emoval, without destroying, of stamps om a cask containing distilled spirits, whether such spirits be foreign or domestic, it is not necessary in the indictment to describe the spirits as domestic in order to charge an offense. U. S. v. Bayaud (C. C. 1883) 16 Fed. 376.

Decision under prior act.—See U. S. v. Austin (C. C. 1864) Fed. Cas. No. 14,-480; U. S. v. Halberstadt (D. C. 1832) Fed. Cas. No. 15,276.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

5652. (Act March 1, 1879, c. 125, § 13, as amended, Act May 28, 1880, c. 108, § 13.) Dealing in or using empty casks or packages used to contain imported liquors, with stamps, etc., thereon; penalty.

If any person shall purchase or sell, with the imported-liquor tamp herein required remaining thereon, or any of the marks or rands which shall have been placed thereon in accordance with he laws or regulations concerning imported liquors remaining there-n, any cask or other package, after the same has been once used o contain imported liquors and has been emptied; or if any person hall use or have in possession such cask or package, with any imita-ion of such marks or brands, for the purpose of placing domestic istilled spirits therein for sale; every such cask or package, with its ontents, if any, shall be forfeited to the United States. And ev-ry such person who shall violate any of the provisions of this sec-ion shall be liable to a penalty of two hundred dollars for every uch cask or package so purchased, sold, used, or had in possession. 20 Stat. 343. 21 Stat. 148.)

This section was amended by striking out after the words "for the purpose of placing domestic distilled spirits therein for sale," the words "or shall, for such purpose, manufacture, use, or have in possession any cask or package made in imitation of, or intended to be in similitude of, such imported casks or packages, with any imitation of such marks or brands thereon," and by striking out after the words "package so purchased, sold," in the last sentence of the section, the word "manufactured," to make the section read as set forth here, by Act May 28, 1880, c. 108, § 13, last cited above.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

5653. (R. S. § 2966, as amended, Act June 26, 1884, c. 121, § 24.) Importations in vessels.

When merchandise shall be imported into any port of the Unit-d States from any foreign country in vessels, and it shall appear y the bills of lading that the merchandise so imported is to be lelivered immediately after the entry of the vessel, the collector f such port may take possession of such merchandise and deposit he same in bonded warehouse; and when it does not appear by he bills of lading that the merchandise so imported is to be imme-liately delivered, the collector of the customs may take possession f the same and deposit it in the bonded warehouse, at the request f the owner, master, or consignee of the vessel, on three days' notice to such collector after the entry of the vessel.

Act Aug. 3, 1854, c. 196, 10 Stat. 344. Act June 26, 1884, c. 121, § 24, 23 Stat. 58.

This section, as enacted in the Revised Statutes, was amended by striking out after the words "from any foreign country in vessels" the words "propelled in whole or in part by steam," as set forth here, by Act June 26, 1884, c. 121, § 24, cited above.

Notes of Decisions

Decisions under former statute.—There is no statutory provision regard-ng the time for removal, but as the weighing, gauging, numbering, identifying, etc., of the goods can best be performed while they are on the dock, and

as the interests of all concerned are promoted by allowing some interval of time before removal, the collector in the absence of any regulations from his superior officer may be considered as having a lawful discretion within reasonable limits in regard to the moment of removal. The Egypt (D. C. 1885) 25 Fed. 320, 332.

Regulations No. 3230, 3259, 3278 of the Secretary of the Treasury, regarding the interval to be allowed between the landing of goods and their removal, are a proper exercise of discretion as to such time. Id.

Section 2966, Rev. St., in saying that the goods should be kept at the risk and expense of the consignees, evidently means as between the collector and the consignees, without reference to wh the parties may have agreed upon in bill of lading. Id.

The word "delivery," in this secti does not mean delivery to the consign it means delivery in the sense of unl ing or discharging from the ship. Id.

This section is designed for the b efit of the government, and not to empt the ship from any responsibili The Egypt (D. C. 1885) 25 Fed. 3 332, 333; The Surrey (D. C. 1886) Fed. 791, 797, reversed (C. C. 1889) Fed. 90.

Cited without definite applicati Constable v. National S. S. Co. (18 14 Sup. Ct. 1062, 1071, 154 U. S. 51, L. Ed. 903.

(R. S. § 2967. Superseded.)

This section provided that merchandise imported into the port of Louisvi and destined for Jeffersonville, might be landed and warehoused at Jeffers ville, under the custody and control of the surveyor of the port of Louisvil

It was superseded by the Plan of Reorganization of the Customs Service p suant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

§ 5654. (R. S. § 2968.) For Albany.

The Secretary of the Treasury may extend the privileges of t provisions relating to warehouses, and the regulations of the Trea ury Department relating thereto, to the port of Albany.

Act March 2, 1867, c. 178, § 3, 14 Stat. 542.

Albany was made a port of entry by the Plan of Reorganization of the C toms Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, an § 5327.

Immediate transportation of imported merchandise to certain inland ports, bond, without appraisement, was allowed by Act June 10, 1880, c. 190, a later provisions set forth post, under chapter 7A of this Title, "Immedi Transportation in Bond to Inland Ports."

The ports at which bonded warehouses were established were named in t following list published in the Treasury Department's Circular of July 1913:

"List of ports at which bonded warehouses are established:

Albany, N. Y.	Gloucester, Mass.	Plattsburg, N. Y.
Baltimore, Md.	Grand Rapids, Mich.	Port Huron, Mich.
Bangor, Me.	Green Bay, Wis.	Portal, N. D.
Bath, Me.	Hartford, Conn.	Portland, Me.
Belfast, Me.	Honolulu, Hawaii.	Portland, Or.
Boston, Mass.	Houston, Tex.	Portsmouth, N. H.
Bridgeport, Conn.	Indianapolis, Ind.	Port Townsend, Wash.
Brownsville, Tex.	Kansas City, Mo.	Providence, R. I.
Brunswick, Ga.	Key West, Fla.	Richmond, Va.
Buffalo, N. Y.	Laredo, Tex.	Rochester, N. Y.
Burlington, Vt.	Lincoln, Neb.	St. Joseph, Mo.
Cape Vincent, N. Y	Los Angeles, Cal.	St. Louis, Mo.
Castine, Me.	Louisville, Ky.	St. Michael, Alaska.
Chattanooga, Tenn.	Memphis, Tenn.	St. Paul, Minn.
Chicago, Ill.	Minneapolis, Minn.	Salem, Mass.
Cincinnati, Ohio	Milwaukee, Wis.	San Diego, Cal.
Columbus, Ohio.	New Haven, Conn.	San Francisco, Cal.
Corry, Pa.	New London, Conn.	San Juan, P. R.
Dayton, Ohio.	New Orleans, La.	Sault Ste. Marie, Mich
Denver, Colo.	Newport News, Va.	Savannah, Ga.
Detroit, Mich.	Newark, N. J.	Seattle, Wash.
Duluth, Minn.	New York, N. Y.	Spokane, Wash.
Eagle Pass, Tex.	Niagara Falls, N. Y.	Springfield, Mass.
Eastport, Me.	Ogdensburg, N. Y.	Superior, Wis.
El Paso, Tex.	Omaha, Neb.	Syracuse, N. Y.
Evansville, Ind.	Oswego, N. Y.	Tacoma, Wash.
Everett, Wash.	Pensacola, Fla.	Tampa, Fla.
Fall River, Mass.	Perth Amboy, N. J.	Toledo, Ohio.
Fernandina, Fla.	Petersburg, Va.	Utica, N. Y.
Galveston, Tex.	Philadelphia, Pa.	Wilmington, Del.
Gladstone, Mich.	Pittsburgh, Pa.	Wilmington, N. C."

The "ports where no bonded warehouse of class 3 is established, but where the customhouse premises are used for storage of bonded merchandise," were named in the following list published in the Treasury Department's Circular of July 1, 1913:

Aguadilla, P. R.
Arecibo, P. R.
Arroyo, P. R.
Birmingham, Ala.
Charleston, S. C.
Fajardo, P. R.
Humacao, P. R.
Jacksonville, Fla.
Knoxville, Tenn.
Marquette, Mich.
Mayaguez, P. R.
Nashville, Tenn.
Norfolk, Va.
Peoria, Ill.
Ponce, P. R.
St. Augustine, Fla.
Sandusky, Ohio.
Washington, D. C. (Georgetown).
Worcester, Mass.

655. (R. S. § 2969.) Custody of goods not unladen in time.

ll merchandise of which the collector shall take possession un- the provisions relating to the time for the discharge of a ves- s cargo shall be kept with due and reasonable care at the charge l risk of the owner.

Act March 2, 1799, c. 22, § 56, 1 Stat. 669.

Notes of Decisions

jject of section.—This section is de- ed for the benefit of the government, not to exempt the ship from any re- sibility. The Egypt (D. C. 1885) Fed. 320, 333; The Surrey (D. C.) 26 Fed. 791, 797, reversed (C. 889) 40 Fed. 90.

demnity.—As a condition of grant- a definite interval for the goods to remain on the dock, the collector may demand of the ship indemnity for the obligation which the law imposes upon him during such interval. The Egypt (D. C. 1885) 25 Fed. 320, 333.

Cited without definite application, Constable v. National S. S. Co. (1894) 14 Sup. Ct. 1062, 1071, 154 U. S. 51, 38 L. Ed. 903.

(R. S. § 2970. Superseded.)

This section authorized the withdrawal of merchandise, deposited in bond, for consumption within one year from the date of the original importation on payment of duties and charges to which it might be subject by law at the time of the withdrawal, and provided that merchandise might be withdrawn for consumption after the expiration of such one year and until the expiration of three years on payment of the duties assessed on the original entry and charges, and an additional duty of 10 per cent. of the amount of such duties and charges. It was superseded by the Customs Administrative Act of June 10, 1890, c. 407, § 20, 26 Stat. 140, as amended by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 54, 26 Stat. 624, which, as further amended, was superseded by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, S, post, § 5656.

656. (Act Oct. 3, 1913, c. 16, § III, S.) Withdrawal for consumption; perishable or explosive articles.

S. Any merchandise deposited in any public or private bonded warehouse may be withdrawn for consumption within three years from date of original importation, on payment of the duties and charges which it may be subject by law at the time of such withdrawal: ovided, That nothing herein shall affect or impair existing provisions law in regard to the disposal of perishable or explosive articles. Stat. 189.)

This was a subdivision of section III of the Underwood Tariff Act, cited above.

See notes to subdivision B of said section, ante, § 5519.

This provision was originally enacted in the same language by the Customs Administrative Act of June 10, 1890, c. 407, § 20, 26 Stat. 140. That section was amended by inserting, after the words "Any merchandise" the words "in bond," by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 54, 26 Stat. 624. A further amendment of the section by inserting therein, before the proviso set forth here, another proviso "that same rate of duty shall be collected thereon as may be imposed by law upon like articles of merchandise imported at the time of withdrawal," was made by Act Dec. 15, 1902, c. 1, 32 Stat. 753. The words "in bond" and the proviso so inserted were not included in the section as re-enacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 101, which was re-enacted in the same language by this act.

The disposal of perishable and explosive articles was provided for by R. § 2975, post, § 5661.

The provisions of the Customs Administrative Act of which this provision w a part, as amended by Act July 24, 1897, c. 11, were made applicable to articles coming into the United States from the Philippine Islands, by A March 8, 1902, c. 140, § 8, ante, § 5534.

Notes of Decisions

Withdrawal in general.—Merchandise on which the duties have been paid, and for the removal of which permits have been issued, which have been delivered to the storekeeper, is withdrawn from bonded warehouses for consumption, within the meaning of this section. Franklin Sugar Refining Co. v. U. S. (1906) 26 Sup. Ct. 720, 721, 202 U. S. 580, 50 L. Ed. 1153.

Imported merchandise remaining in bond intended for sale and consumption held not entitled to be placed in other packages for preservation. W. H. Thomas & Sons Co. v. Barnett (1906) 144 Fed. 338, 75 C. C. A. 300; Id. (C. C. 1905) 135 Fed. 172.

An importer procured permits for the delivery of merchandise in a bonded warehouse, and filed them with the storekeeper, but did not actually withdraw the merchandise until some time later. Held, that the former action constituted a constructive withdrawal, and that the merchandise became subjected to the duties applicable at the time of the constructive withdrawal rather than of the actual withdrawal. Franklin Sugar Refining Co. v. U. S. (C. C. 1906) 144 Fed. 563.

No officer of the government has power to extend for one year the time for the withdrawal of certain reimported whisky now in a bonded warehouse. (1893) 20 Op. Atty. Gen. 642.

—— Liquidation of duties.—It is the legal duty of the collector to ascertain and liquidate the duties. U. S. v. Campbell (D. C. 1882) 10 Fed. 816.

Liquidation by the government is a condition precedent to the payment and withdrawal; and, in the absence of fraud, reliquidation should not be enforced against the surety after a delivery and payment of duties as once liquidated. Id.

—— Payment of duties and charges.—Imported merchandise is subjected to the rate of duty in force at the time of its withdrawal from a bonded warehouse for consumption, and not to the rate of duty in force at the time of the liquidation. Franklin Sugar Refining Co. v. U. S. (1906) 26 Sup. Ct. 720, 202 U. S. 580, 50 L. Ed. 1153.

Where parts of a consignment which were warehoused under bond are fraudulently withdrawn without payment of duties, the collector may hold the remainder until duties on the entire consignment are paid. Hendricks v. Schmidt (1895) 68 Fed. 425, 15 C. C. A. 504.

The provision that merchandise in bonded warehouses may be withdrawn for consumption "on payment of t duties and charges to which it may subject by law at the time of sa withdrawal," means such payment the merchandise would be subject to imported at the time of withdraw Mosle v. Bidwell (1904) 130 Fed. 33 65 C. C. A. 533, reversing judgme (C. C. 1902) 119 Fed. 480.

The duty on tobacco entered f warehouse should be based on i weight at the time of withdrawal a not of entry. American Cigar Co. U. S. (1906) 146 Fed. 484, 77 C. A. 40, reversing judgment Falk v. S. (C. C. 1904) 145 Fed. 574, a judgment reversed U. S. v. G. Falk Bro. (1907) 27 Sup. Ct. 191, 204 U. 143, 51 L. Ed. 411.

When goods are withdrawn from warehouse, the collector may exact t proper rate of duty, where they ha been entered at too low a rate. Re mer v. Schell (C. C. 1859) Fed. Ca No. 11,676.

Imported goods, so long as they r main in a warehouse, are subject new revenue legislation, as well in r lation to duties as to alteration warehouse laws. U. S. v. Benzon (C C. 1865) Fed. Cas. No. 14,577; U. v. G. Amsinck & Co. (C. C. 1905) 14 Fed. 96.

By Act Oct. 1, 1890, it was provide that the duty on lumber importe should be reduced from $2 to $1 pe 1,000, but that, if any country shoul impose an export duty on logs for thi country, the duty on lumber should re main as before. The export duty o logs from Canada was removed Octo ber 13th. The lumber in question wa imported September 27th, and deposit ed in bond. It was not withdrawn un til October 16th. Held, that under th provision of section 54, that merchan dise deposited in bond may be with drawn within three years from th date of the original importation upo the payment of the duties and charge to which it may be subject by law a the time of its withdrawal, it shoul have been assessed only $1 per 1,000 In re Mathews (C. C. 1891) 45 Fed 850.

Certain goods were imported i 1893, and the duties were liquidate and paid. One case of goods of th same invoice went to a bonded ware house, and was withdrawn for con sumption, under the act of 1894, an the duties on that case were reassess ed at a reduced rate, under the latte act. The duties of the whole invoic were then added anew, without othe changes, and the entry was stamped a

iquidated at that date. Held, that s action was not subject to protest, a new assessment and reliquidation. ot v. U. S. (C. C. 1897) 84 Fed. 9.

n the absence of a statute releasing m, the duties payable at the time withdrawal were such as accrued at time of importation, and hence the t that after importation from Porto co, but before withdrawal from the nded warehouse, Porto Rico had be- ne United States territory, would relieve the importer from liability customs duties. Mosle v. Bidwell . C. 1902) 119 Fed. 480, judgment ersed (1904) 130 Fed. 334, 65 C. A. 533.

The section refers exclusively to rate duty rather than weight of the mer- andise. Falk v. U. S. (C. C. 1904) 5 Fed. 574, judgment reversed nerican Cigar Co. v. U. S. (1906) 3 Fed. 484, 77 C. C. A. 40, which is versed U. S. v. G. Falk & Bros. 907) 27 Sup. Ct. 191, 204 U. S. 143, L. Ed. 411.

The liquidation of duties fixes for time being the amount of duties to ich the goods are "subject by law." a bond conditioned for withdrawal the goods within one year, "on pay- nt of the duties and charges to ich they may be subject by law at time of such withdrawal," held, t a payment of the duties as liqui- ed was a discharge of the bond, and t, upon a subsequent reliquidation, recovery could be had against the ety, though the importer would be ble for the additional amount. U. v. George (D. C. 1890) 44 Fed. 255, 3. When goods are entered or with- wn for consumption, all duties then rged against them, including penal ties, must be paid before the goods are released from government custody. (1896) 21 Op. Atty. Gen. 418.

—— Date of original importation.—When goods are imported at New York and thence shipped in bond, without appraisement or liquidation, to Chicago, under the customs administrative act, the date of their arrival at New York must be considered the "date of original importation," within the meaning of the statute. Seeberger v. Schweyer (1894) 14 Sup. Ct. 881, 153 U. S. 609, 38 L. Ed. 839.

As to goods which have been transported from an exterior port on first arrival to an interior port, the words "date of original importation" mean the date of arrival of the goods at the interior port of destination. Farwell v. Spalding (C. C. 1885) 24 Fed. 18.

Decisions under prior statutes.—See Fabbri v. Murphy (1877) 95 U. S. 191, 24 L. Ed. 468; Hartranft v. Oliver (1888) 125 U. S. 525, 8 Sup. Ct. 958, 31 L. Ed. 813; Sherman v. Robertson (1889) 136 U. S. 570, 10 Sup. Ct. 1063, 34 L. Ed. 540; Merritt v. Cameron (1890) 11 Sup. Ct. 174, 177, 137 U. S. 542, 34 L. Ed. 772; Anglo-California Bank v. Secretary of Treasury (1896) 76 Fed. 742, 22 C. C. A. 527 (appeal dismissed [1899] 20 Sup. Ct. 19, 175 U. S. 37, 44 L. Ed. 64); Mosle v. Bidwell (1904) 130 Fed. 334, 65 C. C. A. 533 (reversing judgment [C. C. 1902] 119 Fed. 480); In re Schmid (C. C. 1893) 54 Fed. 145; Schmid v. U. S. (C. C. 1895) 66 Fed. 744; U. S. v. McGrath (D. C. 1892) 50 Fed. 404; (1890) 19 Op. Atty. Gen. 668.

Cited without definite application, Saltonstall v. Russell (1894) 14 Sup. Ct. 733, 734, 152 U. S. 628, 38 L. Ed. 576; U. S. v. Burr (1895) 15 Sup. Ct. 1002, 1004, 159 U. S. 78, 40 L. Ed. 82.

5657. (R. S. § 2971.) Withdrawal for exportation; sale of abandoned goods after custody for three years.

All merchandise which may be deposited in public store or bond- warehouse may be withdrawn by the owner for exportation to reign countries; or may be transshipped to any port of the Pa- ic or western coast of the United States at any time before the piration of three years from the date of original importation; ch goods on arrival at a Pacific or western port to be sub- ct to the same rules and regulations as if originally imported ere. Any goods remaining in public store or bonded warehouse yond three years shall be regarded as abandoned to the Gov- nment, and sold under such regulations as the Secretary of the easury may prescribe, and the proceeds paid into the Treasury. computing this period of three years, if such exportation or ansshipment of any merchandise shall, either for the whole or y part of the term of three years, have been prevented by reason any order of the President, the time during which such expor- tion or transshipment of such merchandise shall have been so evented shall be excluded from the computation. Merchandise thdrawn for exportation shall be subject only to the payment of ch storage and charges as may be due thereon.

Act July 14, 1862, c. 163, § 21, 12 Stat. 559. Act March 28, 1854, c. 30, § 4, 10 Stat. 271. Act Dec. 22, 1864, c. 9, 13 Stat. 420.

The limitation as to the period during which merchandise for exports to Mexico may remain in bonded warehouse was extended by Res. Sep 1916, No. 441, post, § 5657a.

Notes of Decisions

Repeal of section—Charges and duties.—This section was not repealed by the customs administrative act, the McKinley act, or the Wilson act; and where goods remained in warehouse beyond that time, prior to the date of the McKinley act, they could not be withdrawn from bond except by paying the duties in force at the time of their importation. Anglo-California Bank v. Secretary of Treasury (1896) 76 Fed. 742, 22 C. C. A. 527, affirming judgment In re Secretary of Treasury (C. C. 1895) 71 Fed. 505, certiorari denied Anglo-Californian Bank v. Secretary of Treasury (1897) 17 Sup. Ct. 991, 166 U. S. 722, 41 L. Ed. 1188, appeal dismissed Anglo-Californian Bank v. U. S. (1899) 20 Sup. Ct. 19, 175 U. S. 37, 44 L. Ed. 64.

Act July 14, 1862, c. 163, § 21, repeals so much of the preceding laws as entitled the owners of goods remaining in bonded warehouses beyond three years from the date of their importation to claim the surplus of the proceeds of sale of such goods. (1866) 11 Op. Atty. Gen. 516.

Withdrawal for exportation, in general.—When imported goods have remained in bond beyond three years, and are thereupon deemed abandoned to the government by virtue of this section, the rights and liabilities of the parties become fixed at once, and the government is entitled to retain from the proceeds of their sale or to collect upon the bond the amount of duties according to the then existing law, though a different rate of duty goes into effect before sale. Buxbaum v. U. S. (1897) 80 Fed. 885, 26 C. C. A. 216.

Goods removed from a bonded warehouse and carried without the jurisdiction of the United States, and returned, are subject to duty, though not actually landed at a foreign port. McGlinchy v. U. S. (C. C. 1875) Fed. Cas. No. 8,803; Perkins v. Same (C. C. 1875) Id. 10,990.

Goods which were imported under the tariff law of 1883, placed in a bonded warehouse, and remained therein more than three years prior to the enactment of the McKinley law (Act Oct. 1, 1890), could not be withdrawn for consumption upon payment of duties and charges at the rates prescribed in the McKinley law; nor, after the passage of the Wilson act (Aug. 28, 1894), could they be withdrawn at the rates prescribed thereby; for R. S. § 2970, and sections 2971–2973 (this compilation, §§ 5657–5659), which limit the time for leaving goods in bond to three years, and provide that thereafter the government may cause the same to be sold to enforce payment of the duties, were not repealed, either pressly or by implication, by the Kinley law or the Wilson law, and right of the government to enf payment of the duties and charges scribed by the act of 1883 was, u such circumstances, "a right accr so as to be within the saving claus section 54 of the McKinley law, the liability of the goods was "a li ity under a prior law," within the ing clause of the Wilson law. In Secretary of Treasury (C. C. 1895) Fed. 505, distinguishing In re Sch (C. C. 1893) 54 Fed. 145, and di proving U. S. v. Abbott (1885) 20 Cl. 281, and judgment affirmed An California Bank v. Secretary of Tr ury (1896) 76 Fed. 742, 22 C. C. 527.

Foreign goods once lawfully imp ed lose the character imparted to t by such admission on their re-expo tion, and cannot again be impo without a permit. Ten Cases of um (D. C. 1864) Fed. Cas. No. 13,

The provision that warehoused g not withdrawn within three y "shall be deemed abandoned to government and sold," was desig for the security of the governm and to recover its duties, and als secure the prompt payment of the ties. The sale by the governmen an incident of the abandonment, and inseparable part of the proceeding. S. v. De Visser (D. C. 1882) 10 642.

If goods remain in public store bonded warehouse beyond three ye the government acquires a right to them for the collection of charges the clearance of the warehouse. the goods are not forfeited, and be redeemed at any time before vertisement of sale. Abbot & Co. U. S. (1885) 20 Ct. Cl. 280.

Under this section the owner of m chandise in public store or bon warehouse has the right to withd it for exportation to a foreign coun whatever may be his object in d so, or whatever may be the disposi he designs to make of the merchan after it reaches its foreign destinat (1875) 14 Op. Atty. Gen. 575.

The provision requiring merchan to be sold, is applicable to goods maining in public store or bon warehouse beyond three years, as where the duties thereon have b paid as where they have not been p At the end of that period they are be regarded as abandoned to the G ernment and sold. (1884) 17 Op. A Gen. 650.

The object and requirement of t provision are, however, sufficiently by the practice of the departme

hereby, in lieu of a formal sale of e goods, the owner, consignee, or ent is permitted to pay the duties, arges, etc., that have accrued there- and take them away. Id.

This section places a limitation upon e privilege of exportation with re- nd of duties, and requires that it all be exercised within three years om the date of importation; other- ise the privilege is lost. Id.

Goods imported and warehoused for arly three years, then withdrawn and xported, and finally reshipped to the nited States by a different merchant, ere being no evidence that the trans- tion was a colorable one to evade e tariff laws, may be entered for arehousing as an "original importa- on" under this section. (1894) 21 Op. tty. Gen. 23.

The new rates of duty imposed by the riff act of August 27, 1894 (28 Stat. 9), do not apply to any goods there- fore entered for warehouse, unless e goods are withdrawn for consump- on within three years from the date original importation. (1895) 21 Op. tty. Gen. 116.

Smoking opium may be brought into port of the United States from a reign country on one vessel and law- lly transferred to another vessel for mediate transportation to a foreign stination. (1909) 27 Op. Atty. Gen. 0.

Opium could not, under the laws ex- ing at the time of the passage of the t of February 9, 1909 (35 Stat. 614), brought into a port of this country om a foreign country and exported om the same port on another vessel thout being subject to duty. Id.

Since the act of February 9, 1909, hich prohibits absolutely the impor- tion of opium in any form, smoking ium is not subject to duty, and can- t under any circumstances be enter- and bonded for warehousing; and e law which made the bringing of ium into a port an importation for ch purposes is, as to smoking opium, pealed. Id.

The entering of merchandise for im- ediate exportation and without any tent that it shall enter into the com- erce of a country is not an importa- n. Id.

— Liability on bond.—The provisions at goods in government warehouse t withdrawn within three years shall deemed abandoned to the govern- ent and sold are a part of the contract the surety on the warehouse bond, they determine the duration of his sk. U. S. v. De Visser (D. C. 1882) Fed. 642.

The importer, being liable as prin- pal on the bond, is not discharged by postponement of the sale of aban- ned goods. Id.

Where goods not withdrawn from a vernment warehouse within three ars are deemed abandoned, and a sale directed according to the regulations of the treasury department, and the secretary of the treasury, at the request of the purchaser of the goods in bond, intervenes by order, and directs a postponement of the sale until further orders, without the consent of the surety on the warehouse bond, it discharges the latter. Id.

The statute directing a sale, the regulations for quarterly sales, and the sale of abandoned goods at the next sale, after three years, are all material parts of surety's contract, as they determine the duration of his risk. Id.

The proceeding by abandonment and sale is a substitute for the ordinary remedy upon the bond after the lapse of three years. The common-law remedy is suspended until after the sale of the goods. Id.

A surety's ordinary right to pay the debt and take possession of the goods, at the end of three years, is cut off by statute, and his right to pay any deficit, and to proceed for indemnity against his principal, is suspended till after the sale of the goods. Id.

A withdrawal and payment, according to the liquidation, is a fulfillment of the terms of the bond for the time being, and the surety cannot be held except upon the bond. U. S. v. Campbell (D. C. 1882) 10 Fed. 816.

The necessary continuance of a surety's risk does not exceed the three years named in the bond, or the additional period until sale of the goods not withdrawn. A reliquidation after the lapse of this period is not legal as to him, and would therefore involve an alteration in his contract. Id.

Under the provisions that warehouse goods not withdrawn within three years shall be deemed abandoned to the government and sold, the continuance of the risk of a surety on the warehouse bond does not exceed the three years named in the bond and the additional period until sale of the goods not withdrawn. Id.

Until after the sale of the goods by the customs officials the surety has no right of payment, subrogation, or suit for indemnity. His risk necessarily continues till that time. Id.

It is the duty of the collector, not of the surety, to ascertain and liquidate the duties, and such liquidation is final and conclusive upon all persons interested, unless appealed from. Id.

When the surety became liable for the withdrawal of the goods within three years, upon payment of the duties, and a reliquidation after seven years was made showing a deficiency, the surety was not liable for such deficiency. Id.

Cited without definite application, Hartranft v. Oliver (1888) 8 Sup. Ct. 958, 960, 125 U. S. 525, 31 L. Ed. 813; Seeberger v. Schweyer (1894) 14 Sup. Ct. 881, 882, 153 U. S. 609, 38 L. Ed. 839.

§ 5657a. (Res. Sept. 5, 1916, c. 441.) Extension of time duri which merchandise for exportation to Mexico may remain bonded warehouse.

The limitation of section twenty-nine hundred and seventy-o of the Revised Statutes of the United States as to the period du ing which merchandise may remain in bonded warehouse witho the payment of duty for exportation to Mexico be, and the sa hereby is, extended to all merchandise which was in bonded wa house on August first, nineteen hundred and sixteen, and intend for exportation to Mexico, until such time as in the opinion of t Secretary of the Treasury conditions in Mexico are such as to ma it commercially practicable to export the merchandise to that cou try. (39 Stat.)

This was a joint resolution approved September 5, 1916.

§ 5658. (R. S. § 2972.) Distribution of proceeds.

The Secretary of the Treasury, in case of any sale of any me chandise remaining in public store or bonded warehouse beyo three years, may pay to the owner, consignee, or agent of su merchandise, the proceeds thereof, after deducting duties, charge and expenses, in conformity with the provision relating to the sa of merchandise remaining in a warehouse for more than one yea

Act July 28, 1866, c. 298, § 10, 14 Stat. 330.

Notes of Decisions

Repeal of section.—This section was not repealed by the customs administrative act, the McKinley act, or the Wilson act; and where goods remained in warehouse beyond that time, prior to the date of the McKinley act, they could not be withdrawn from bond except by paying the duties in force at the time of their importation. Anglo-California Bank v. Secretary of Treasury (1896) 76 Fed. 742, 747, 22 C. C. A. 527, appeal dismissed (1899) 20 Sup. Ct. 19, 175 U. S. 37, 44 L. Ed. 64.

Sale of goods.—The Secretary of t Treasury has no power to act up proceeds of sale as in case of a fi penalty, or forfeiture incurred und act of July 14, 1862. (1866) 11 C Atty. Gen. 516.

Cited without definite applicatio Buxbaum v. U. S. (1897) 80 Fed. 88 26 C. C. A. 216; U. S. v. De Viss (D. C. 1882) 10 Fed. 642, 645; Abb & Co. v. U. S. (1885) 20 Ct. Cl. 280.

§ 5659. (R. S. § 2973.) Sale after one year.

If any merchandise shall remain in public store beyond one yea without payment of the duties and charges thereon, except a hereinbefore provided, then such merchandise shall be appraise by the appraisers, if there be any at such port, and if none, the by two merchants to be designated and sworn by the collector fo that purpose, and sold by the collector at public auction, on du public notice thereof being first given, in the manner and for th time to be prescribed by a general regulation of the Treasury De partment. At such public sale, distinct printed catalogues descrip tive of such merchandise, with the appraised value affixed thereto shall be distributed among the persons present at such sale. A reasonable opportunity shall be given before such sale, to person desirous of purchasing, to inspect the quality of such merchandise The proceeds of such sales, after deducting the usual rate of stor age at the port in question, with all other charges and expenses including duties, shall be paid over to the owner, importer, con signee, or agent, and proper receipts taken for the same.

Act Aug. 6, 1846, c. 84, § 1, 9 Stat. 53.

Notes of Decisions

Repeal of section.—This section was not repealed by the customs administrative act, the McKinley act, or the Wilson act; and where goods remained in warehouse beyond that time, prior to the date of the McKinley act, the could not be withdrawn from bond ex cept by paying the duties in force a the time of their importation. Anglo California Bank v. Secretary of Treas

r (1896) 76 Fed. 742, 744, 22 C. C. 527, appeal dismissed (1899) 20 p. Ct. 19, 175 U. S. 37, 44 L. Ed.

Scope of act.—It is the intention and aning of the warehouse acts that the vernment should receive the same ties on goods abandoned and sold to isfy duties that it would have reved if the same goods had been withdrawn for consumption. U. S. v. Unger (C. C. 1873) Fed. Cas. No. 16,595.

Cited without definite application, Ex parte Fassett (1892) 12 Sup. Ct. 295, 298, 142 U. S. 479, 35 L. Ed. 1087; The Conqueror (1897) 17 Sup. Ct. 510, 515, 166 U. S. 110, 41 L. Ed. 937; U. S. v. De Visser (D. C. 1882) 10 Fed. 642, 645.

5660. (R. S. § 2974.) Distribution of proceeds.

The overplus, if any there be, of the proceeds of such sales, after e payment of storage, charges, expenses, and duties, remaining claimed for the space of ten days after such sales, shall be paid the collector into the Treasury of the United States; and the llector shall transmit to the Treasury Department, with the overus, a copy of the inventory, appraisement, and account of sales, ecifying the marks, numbers, and descriptions of the packages ld, their contents, and appraised value, the name of the vessel d master in which, and of the port whence, it was imported, and e time when, and the name of the person to whom such merandise was consigned in the manifest, and the duties and charges which the several consignments were respectively subject; and e receipt or certificate of the collector shall exonerate the master any vessel in which such merchandise was imported, from all aim of the owner thereof, who shall, nevertheless, on due proof his interest, be entitled to receive from the Treasury the amount any overplus paid into the same under the provisions of this Title.

Act Aug. 6, 1846, c. 84, § 1, 9 Stat. 53.

5661. (R. S. § 2975.) Sale of perishable articles.

All merchandise of a perishable nature, and all gunpowder and plosive substances, except fire-crackers, deposited in any public private bonded warehouse, shall be sold forthwith.

Act Aug. 6, 1846, c. 84, § 1, 9 Stat. 53. Act June 30, 1864, c. 171, § 19. 13 Stat. 216.

Notes of Decisions

Notice of sale.—Shortness of public tice of sale of warehoused goods rted perishable held not per se suffient evidence of fraud to warrant judgment against the collector. Gould v. Hammond (C. C. 1857) Fed. Cas. No. 5,638.

5662. (R. S. § 2976.) Sale upon depreciation.

Any collector of the customs is authorized, under such directions d regulations as may be prescribed by the Secretary of the Treasy, to sell, upon due notice, at public auction, any unclaimed merandise deposited in public warehouse whenever the same may om depreciation in value, damage, leakage, or other cause, in the inion of such collector, be likely to prove insufficient, on a sale ereof, to pay the duties, storage, and other charges if suffered to main in public store for the period allowed by law in the case of claimed merchandise.

Act March 28, 1854, c. 30, § 2, 10 Stat. 271.

Notes of Decisions

Negligence of collector.—A collector customs who sells unclaimed goods the belief that they are deteriorat; in value, is not liable in trover, or an action on the case for negligence, en though it appears that there was substantial deterioration, if he act in good faith, and was not personally ilty of negligence. Rubens v. Robtson (C. C. 1889) 38 Fed. 86.

The collector cannot be charged with negligence in delegating to the appraiser the duty of examining merchandise, and reporting whether it is deteriorating in value. Id.

The collector cannot be held liable for his clerk's negligence in failing to give notice of sale in the absence of proof of negligence on his part in the selection of the particular individual who was assigned to that duty. Id.

§ 5663. (R. S. § 2977.) Return of duties upon exportation fro warehouse.

Merchandise upon which duties have been paid may remain warehouse in custody of the officers of the customs at the expen and risk of the owners of such merchandise, and if exported dire ly from such custody to a foreign country within three years, sh be entitled to return duties. But proper evidence of such mercha dise having been landed abroad shall be furnished to the collect by the importer, and one per centum of the duties shall be retain by the Government.

Act July 14, 1862, c. 163, § 21, 12 Stat. 560.

Notes of Decisions

Operation and scope of section.—This section is part of the plan for the payment of drawbacks. Franklin Sugar Refining Co. v. U. S. (1906) 26 Sup. Ct. 720, 722, 202 U. S. 580, 50 L. Ed. 1153.

This section places a limitation on the privilege of exportation with refund of duties, and requires that it shall be exercised within three years from t date of the importation. (1884) 17 C Atty. Gen. 650.

Cited without definite applicati Franklin Sugar Refining Co. v. U. (C. C. 1906) 144 Fed. 563, 565; Sw & Finch Co. v. U. S. (1901) 37 C Cl. 101; (1908) 26 Op. Atty. Gen. 53

§ 5664. (R. S. § 2978, as amended, Act Feb. 27, 1877, c. 69, § 1 Restriction upon exportation for drawback.

No merchandise subject to duty shall be entered for drawbac or exported for drawback, after it is withdrawn from the custody the officers of the customs except as provided in section three tho sand and twenty-five.

Act March 3, 1849, c. 110, § 5, 9 Stat. 399. Act Sept. 28, 1850, c. 79, § 1 9 Stat. 512. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 247.

This section, as enacted in the Revised Statutes, was amended by adding the end of the section the words, "except as provided in section three thousa and twenty-five," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited abo

R. S. § 3025, post, § 5729, mentioned in this amendment, prohibited a dra back on the exportation of merchandise removed from the custody and contr of the Government, except in the cases provided in other sections specified.

Provisions authorizing the transportation of merchandise, the duties on whi have been paid or secured, from the district into which it was imported to a port of entry, and the exportation from such port with the benefit of drawba were made by R. S. § 3036, post, § 5739.

Cited without definite application, Franklin Sugar Refining Co. v. U. S. (1906) 26 Sup. Ct. 720, 722, 202 U. S. 580, 50 L. Ed. 1153; (1908) 26 O Atty. Gen. 531.

§ 5665. (R. S. § 2979.) Permit for exportation.

If the owner, importer, consignee, or agent of any merchandi on which the duties have not been paid, shall give to the collect satisfactory security that the merchandise shall be landed out the jurisdiction of the United States, in the manner required by th laws relating to exportations for the benefit of drawback, the co lector and naval officer, if any, on an entry to re-export the sam shall, upon payment of the appropriate expenses, permit the me chandise, under the inspection of the proper officers, to be shippe without the payment of any duties thereon.

Act Aug. 6, 1846, c. 84, § 1, 9 Stat. 53.

Notes of Decisions

Bonds.—Under this section, requiring an importer to give to the collector "satisfactory security" that the merchandise shall be landed out of the United States, and treasury department regulations (article 587) providing that, in cases of withdrawal for export, the exporter shall give bond "with satisfactory security in a penal sum equal to double the amount of the estimat duty on the goods," an export bo given in the sum of $1,000, witho containing any reference to the amou of estimated duties on the goods wit drawn, was valid, and the governme was entitled, on breach of the cond tion, to recover the whole amount the bond, and was not limited to

gment for double the amount of du- s as subsequently estimated. The S. eri (1894) 67 Fed. 146, 14 C. C. A. 1.

Opium in transit held not liable to ies; the owner having offered to e the security prescribed by statute. Lean v. Hager (C. C. 1887) 31 Fed. 2, 605.

The duty of the collector to permit rchandise to be withdrawn and ship- l without payment of duties becomes perative when the requirements of statute as to giving security and ying appropriate expenses are com- ed with by the owner, whatever may his purpose in withdrawing the mer- ndise, or whatever he may intend do with it after its arrival abroad. 875) 14 Op. Atty. Gen. 575.

After merchandise withdrawn and pped has been landed out of the ju- diction of the United States the bond the owner is discharged, and the rchandise itself acquires a new char- er relatively to our revenue laws; l if subsequently reimported it nds on the footing of an original im- tation. Id.

Inspection.—The Treasury Depart- nt has construed the words "under inspection of proper officers" to an that the goods are to be under constant surveillance of such offi- s from the time they leave the ware- use until they reach the ship, and h construction should be regarded weight by a federal court. U. S. v. rgott (C. C. 1910) 182 Fed. 267, 272.

Reimportations.—Where goods enter- in bond for re-exportation have been ported, passed through a foreign cus- nhouse, and are subject to retail de, they are mixed with the common rchandise of the country, and may again imported into this country. S. v. Whidden (D. C. 1861) Fed. s. No. 16,670.

Should goods of the same class or scription as those withdrawn, and sequently reimported happen then be exempt from duty, such reim- rted merchandise would be equally itled to exemption therefrom. 875) 14 Op. Atty. Gen. 575.

Where a quantity of wool was im- rted at Boston from Liverpool, and o days later was withdrawn for ex- rtation to St. John, New Brunswick, ence (having been carried thither) was immediately brought back to ston, held that, if the purpose of the ove withdrawal, etc., was to create a cond port of importation with the ob- t of reducing the duty, the transac- n was fictitious, and that Liverpool nains the last port or place of ex- rtation within the meaning of the tute. (1883) 17 Op. Atty. Gen. 528.

n February and March, 1886, certain uors (which had been manufactured the United States, in a bonded man- icturing warehouse established un- the provisions of section 3433, R. S., section 6339, post, out of both domestic and imported spirits that were removed to such warehouse without payment of either the internal revenue or customs duties, and which liquors had been exported therefrom) were imported into New York and assessed with the duty prescribed by the statute (Schedule H) as foreign liquors. Advised that—the liquors being of the manufacture of the United States and once exported—section 2500, R. S., affords the rule under which to levy duties thereon. (1889) 19 Op. Atty. Gen. 243.

The entering of merchandise for immediate exportation and without any intent that it shall enter into the commerce of a country is not an importation. (1909) 27 Op. Atty. Gen. 440.

Indictment.—Since this section contemplates, not only that the goods be deposited on ship within the time limited after their removal, but also requires that the shipment shall be under the continued inspection of the customs officers, and section 5524, ante, makes it a crime for any owner or importer to make or attempt to make any entry of goods without payment of duty, and one contemplates a crime who means to deposit, conceal, or withdraw goods removed from a warehouse for exportation and to introduce them unconditionally into the country effecting a surreptitious entry by which the duties would become due instanter, an indictment charging a conspiracy to effect such result sufficiently charged a crime. U. S. v. Ehrgott (C. C. 1910) 182 Fed. 267.

Section 5524, ante, provides that, if any importer or owner shall make or attempt to make any entry of imported merchandise by means of any fraudulent or false invoice, affidavit, letter, or other means, or shall be guilty of any willful act or omission by means whereof the United States shall be deprived of duty or any portion thereof, he shall be fined, etc. Held, in view of this section, that where the defendant was charged with having withdrawn certain imported beans from the warehouse for exportation upon bond and permit, all on January 15, 1902, and the indictment then alleged that the goods were not exported "then and there," but were withheld and concealed with the knowledge of the defendants, the goods would be regarded as "entered," and the duties therefrom due when the owners or the truckmen to whom the custody was intrusted disregarded the limitations put on them and introduced the goods into the unrestricted commerce of the country, though the time within which the goods might be properly exported had not arrived; hence the indictment was not objectionable because it did not allege that defendants concealed or withheld the goods, not only at the time of their removal, but for all the period which was allowed to export them. Id.

§ 5666. (R. S. § 2980.) Manner of withdrawal.

No merchandise shall be withdrawn from any warehouse in which it may be deposited, in a less quantity than in an entire package, bale, cask, or box, unless in bulk; nor shall merchandise so imported in bulk be delivered, except in the whole quantity of each parcel, or in a quantity not less than one ton weight, unless by special authority of the Secretary of the Treasury.

Act Aug. 6, 1846, c. 84, § 1, 9 Stat. 53.

§ 5667. (R. S. § 2981, as amended, Act June 10, 1880, c. 190, § 10, and Act May 21, 1896, c. 217.) Lien for freight.

That whenever the collector of the port of entry of the vessel, or other proper officer of the customs, shall be duly notified in writing of the existence of a lien for freight, charges, or contribution in general average upon imported goods, wares, or merchandise in his custody, he shall, before delivering such goods, wares, or merchandise to the importer, owner, or consignee thereof for consumption, or to any vessel or vehicle for transportation or exportation, give seasonable notice to the party or parties claiming the lien; and the possession by the officers of customs shall not affect the discharge of such lien, under such regulations as the Secretary of the Treasury may prescribe; and such officer shall refuse the delivery of such merchandise from any public or bonded warehouse or other place in which the same shall be deposited until proof to his satisfaction shall be produced that the freight, charges, or contribution in general average thereon has been paid or secured; but the rights of the United States shall not be prejudiced thereby, nor shall the United States or its officers be in any manner liable for losses consequent upon such refusal to deliver. If merchandise so subject to a lien, regarding which notice has been filed, shall be forfeited to the United States and sold, the freight, charges, or contribution in general average due thereon shall be paid from the proceeds of such sale in the same manner as other charges and expenses authorized by law to be paid therefrom are paid.

Act March 2, 1867, c. 188, § 3, 14 Stat. 547. Act June 10, 1880, c. 190, § 10, 21 Stat. 175. Act May 21, 1896, c. 217, 29 Stat. 129.

This section, as enacted in the Revised Statutes, was as follows:

"Whenever the collector or other chief officer of the customs of any port shall be notified in writing by the owner or consignee of any vessel or vehicle, arriving from any foreign port, of a lien for freight on any merchandise imported in such vessel or vehicle, and remaining in his custody, such officer may refuse the delivery of such merchandise from any public or bonded warehouse, or other place in which the same shall be deposited, until proof to his satisfaction shall be produced that the freight due thereon has been paid or secured; but the rights of the United States shall not be prejudiced thereby, nor shall the United States or its officers be in any manner liable for losses consequent upon such refusal to deliver. If merchandise so subject to a lien, regarding which notice has been filed, shall be forfeited to the United States and sold, the freight due thereon shall be paid from the proceeds of such sale in the same manner as other charges and expenses authorized by law to be paid therefrom, are paid."

It was amended by substituting for the words, "whenever the collector or other chief officer of the customs of any port shall be notified in writing by the owner or consignee of any vessel or vehicle, arriving from any foreign port, of a lien for freight on any merchandise imported in such vessel or vehicle and remaining in his custody," the following words: "That whenever the proper officer of the customs shall be duly notified in writing of the existence of a lien for freight upon imported goods, wares or merchandise in his custody, he shall, before delivering such goods, wares or merchandise to the importer, owner, or consignee thereof, give seasonable notice to the party or parties claiming the lien; and the possession by the officers of customs shall not affect the discharge of such lien, under such regulations as the Secretary of the Treasury may prescribe," by Act June 10, 1880, c. 190, § 10, cited above.

The section, as so amended, was further amended to read as set forth here, by Act May 21, 1896, c. 217, last cited above.

Notes of Decisions

Lien in general.—The terminal carrier, which, under its tariff agreements, has paid the duties exacted under the laws of the United States on bonded

ds at the port of entry that the ini- carrier was forced to pay in order regain possession and forward the ds, has a lien on such goods for the unt of such duties. Wabash R. Co. Pearce (1904) 24 Sup. Ct. 231, 234, U. S. 179, 48 L. Ed. 397, revers- judgment Pearce v. Wabash R. Co. 01) 89 Mo. App. 437.

he right of a terminal carrier to a for the amount paid by it to satis- the duties exacted under the laws the United States on bonded goods the port of entry is not defeated be- se the initial carrier wrongfully nged their bonded destination, to owner's damage, where the con- ct of shipment stipulated that each rier should be liable only for loss or nage accruing upon its own road, that such carriers should not be ntly liable, nor either for any loss or nage accruing upon the road of the er. Wabash R. Co. v. Pearce (1904) Sup. Ct. 231, 192 U. S. 179, 48 L. 397.

he section does not require customs cers to recognize the lien of inland riers upon goods transported in d. (1878) 16 Op. Atty. Gen. 74.

he owner or consignee of a vessel iving from a foreign port is entitled er this section to a lien for freight merchandise imported on such ves- even though the merchandise is in- ded for exportation. (1894) 21 Op. y. Gen. 38.

— Possession of goods by customs er.—In an action to recover prop- y held by a customs officer under this tion, the petition should show all steps taken to secure a release of property, including the tender of ght, the tender of the bond, and proof of these facts before the col- or. Wyman v. Lancaster (C. C. 7) 32 Fed. 720, 721.

n order to recover property held by ustoms' officer under this section, consignee should first tender the unt of freight he admits to be due, if declined he should tender to the rier a sufficient bond conditioned to all freight that may be found to due. Should this be declined, proof hese tenders should be made to the ector; who if he find the bond ade- te should release the goods on the osit with him, for the use of the rier of the bond tendered. Id.

he collector's custody and posses- , though they cannot be interfered n, are not so absolute as to exclude assertion of "control, with a pres- power and intent to exercise it," the part of the owner who stands ly, subject to the rights of the government, to retake the goods for the enforcement of his lien. Two Hundred and Fifty Tons of Salt (D. C. 1880) 5 Fed. 216, 218.

— Treasury regulations.—The Secretary of the Treasury has no authority, under section 2993, R. S. (see section 5697, post), to protect the lien by a treasury regulation. (1878) 16 Op. Atty. Gen. 74.

Article 309 of the Customs Regulations of 1892, providing, "* * * Nor can liens be recognized for freight on merchandise intended for export," is inconsistent with this section. (1894) 21 Op. Atty. Gen. 38.

— Notice of delivery of goods.—Payment of freight to the collector's deputy without notice to the carrier, under a long-standing custom of the office, of which custom the collector was ignorant, and which payment the collector gave his deputy no express authority to receive, was not payment to the collector, so as to render him liable in an action to recover the charges paid, brought by the carrier, though the rule would be different if the action had been brought for damages for failure to give the statutory notice. Cleveland, C., C. & I. R. Co. v. McClung (1886) 119 U. S. 454, 7 Sup. Ct. 262, 30 L. Ed. 465, affirming (C. C. 1883) 15 Fed. 905.

In an action against a collector, the carrier alleging a failure to give the statutory notice, and that the collector had received the charges for freight from the consignees, and failed to pay it over, held, that the case made out was an action for the charges collected, and not an action of damages for failure to give the statutory notice, and that, inasmuch as the carrier failed to aver that its charges were unpaid, and as it ratified their payment by suing the collector for receiving them, the collector was not liable for not giving the notice. Id.

Collector receiving freight.—It is not the official duty of a collector of customs to receive the freights due to carriers for transportation of merchandise in bond; but if the collector agrees to receive such freight in lieu of giving notice to the carrier, as required by the statute, before delivering the goods to consignees, he would be liable for any amount so received for the use of the carrier. Cleveland, C. C. & I. Ry. Co. v. McClung (C. C. 1883) 15 Fed. 905.

Cited without definite application, Six Hundred Tons of Iron Ore (D. C. 1881) 9 Fed. 595, 598.

(R. S. § 2982. Superseded.)

This section, as enacted in the Revised Statutes, provided that:

"The privilege of purchasing supplies from the public warehouses duty free, shall be extended under such regulations as the Secretary of the Treasury shall prescribe, to the vessels of war of any nation in ports of the United States

which may reciprocate such privilege toward the vessels of war of the United States in its ports."

An amendment thereof, consisting of the insertion, after the words "The privilege of purchasing supplies," instead of the words "from the public warehouses duty free," of the words "from public warehouses, free of duty, and from bonded manufacturing warehouses, free of duty or of internal revenue tax, as the case may be," was made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 21, 36 Stat. 88, and the section as so amended was re-enacted in the same language by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, K, post, § 5668.

§ 5668. (Act Oct. 3, 1913, c. 16, § IV, K.) Supplies to vessels of war.

K. The privilege of purchasing supplies from public warehouses, free of duty, and from bonded manufacturing warehouses, free of duty or of internal-revenue tax, as the case may be, shall be extended, under such regulations as the Secretary of the Treasury shall prescribe, to the vessels of war of any nation in ports of the United States which may reciprocate such privileges toward the vessels of war of the United States in its ports. (38 Stat. 197.)

This was a subdivision of section IV of the Underwood Tariff Act, cited above.

See notes to subdivision A of said section, ante, § 5292.

This provision superseded a like provision made by an amendment of R. S. § 2982, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 21, 36 Stat. 88, which was re-enacted in the same language by this act.

Notes of Decisions

Decision under prior act.—(1901) 23 Op. Atty. Gen. 418.

§ 5669. (Act June 26, 1884, c. 121, § 16, as amended, Act July 24, 1897, c. 11, § 14.) Supplies for vessels in foreign trade or in trade between Atlantic and Pacific ports.

All articles of foreign or domestic production needed and actually withdrawn from bonded warehouses and bonded manufacturing warehouses for supplies (not including equipment) of vessels of the United States engaged in foreign trade, or in trade between the Atlantic and Pacific ports of the United States, may be so withdrawn from said bonded warehouses, free of duty or of internal-revenue tax, as the case may be, under such regulations as the Secretary of the Treasury may prescribe; but no such article shall be landed at any port of the United States. (23 Stat. 57. 30 Stat. 207.)

This section, as originally enacted, provided that all articles of foreign production needed, and actually withdrawn from bonded warehouses, for supplies, not including equipment, of vessels of the United States engaged in the foreign trade, including the trade between the Atlantic and Pacific ports of the United States, may be withdrawn free of duty under the regulations prescribed by the Secretary of the Treasury. It was amended to read as set forth here by Act July 24, 1897, c. 11, § 14, last cited above.

The provisions of this section were made applicable to the construction, etc., and supplies of vessels employed in the fisheries or in whaling, by Act June 19, 1886, c. 421, § 15, set forth post, § 5670.

Notes of Decisions

"Supplies."—The term "supplies" includes coal. (1890) 19 Op. Atty. Gen. 687.

"Pacific port."—Honolulu is a Pacific port of the United States within the Act 1897, and coal imported into the United States, which is afterwards used for fuel on board a vessel propelled by steam plying between the ports of New York and Honolulu and registered under the laws of the United States, is entitled to drawback under paragraph 415 of that act. (1902) 24 Op. Atty. Gen. 6.

Decision of application to withdraw.—The decision of an application to withdraw warehoused goods or supplies for vessels is confided in the Secretary of the Treasury. (1894) 21 Op. Atty. Gen. 92.

Cited without definite application. The Katie (D. C. 1889) 40 Fed. 480, 485, 7 L. R. A. 55.

670. (Act June 19, 1886, c. 421, § 15.) Materials for construction, etc., and supplies for vessels employed in fisheries or in whaling.

'he provisions of sections twenty-five hundred and ten and twen-ive hundred and eleven of the Revised Statutes, as the sec-ıs of Title thirty three are numbered in "An act to reduce in-ıal revenue taxation and for other purposes," approved March d, eighteen hundred and eighty-three, and the provisions of sec-ı sixteen of "An act to remove certain burdens on the American rchant marine and encourage the American foreign carrying-trade, for other purposes," approved June twenty-sixth, eighteen hun-d and eighty-four, shall apply to the construction, equipment, airs, and supplies of vessels of the United States employed in the eries or in the whaling business, in the same manner as to ves-of the United States engaged in the foreign trade. (24 Stat. 82.)

The provisions of the Morrison Tariff Act of March 3, 1883, c. 121, § 6, 22 Stat. 523, mentioned in this section, were substitutes for R. S. §§ 2513, 2514. They were superseded by the provisions of the McKinley Tariff Act of Oct. 1, 1890, c. 1244, §§ 8, 9, 26 Stat. 613, 614, and these were superseded by the provisions of the Wilson Tariff Act of Aug. 27, 1894, c. 349, §§ 7, 8, 28 Stat. 548, which in turn were superseded by the Dingley Tariff Act of July 24, 1897, c. 11, §§ 12, 13, 30 Stat. 207, and were superseded by those of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, §§ 19, 20, 36 Stat. 88, which were superseded by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, J, subsecs. 5, 6, ante, §§ 5309, 5310.

Act June 26, 1884, § 16, also mentioned in this section, was amended by Act July 24, 1897, c. 11, § 14, and, as so amended, is set forth ante, § 5669.

Provisions for the importation in bond of materials for the construction and repair of vessels for the foreign trade were made by the previous tariff acts.

671. (Act March 24, 1874, c. 65.) Bonded warehouses for storage and cleansing of imported rice.

'rom and after the passage of this act importers' bonded ware-ıses, to be used for the storage and cleansing of imported rice in-ded for exportation to foreign countries, may be established at port of entry in the United States, under such rules and regula-ıs as the Secretary of the Treasury may prescribe. (18 Stat. 24.)

Notes of Decisions

y-products of rice.—The act of rch 24, 1874 is still in force. (1897) Op. Atty. Gen. 474.

'arehousemen of importers' bonded ehouses for the storage and cleans-of imported rice intended for ex-tation to foreign countries may with-w for consumption, certain by-prod-s resulting from the manufacture, viz., rice meal and broken rice, instead of exporting them. Id.

The duty on these by-products should be assessed upon the proportion of uncleaned rice represented by the by-products, rather than on the latter themselves, regarded as an independent importation. Id.

5671a. (Act June 28, 1916, c. 180.) Bonded warehouses for storage and cleansing of imported garbanzo; withdrawals for domestic consumption; compensation of customs officers and storekeepers.

Under such regulations and conditions as may be prescribed by Secretary of the Treasury, bonded warehouses may be estab-hed in which imported Mexican peas, commonly called garbanzo ıy be stored, cleaned, repacked or otherwise changed in condi-n, but not manufactured, and withdrawn for exportation without payment of duty thereon: Provided, That the whole or any part such imported garbanzo, and the waste material and by-products ident to cleaning or otherwise treating said imported garbanzo, ıy be withdrawn for domestic consumption upon the payment on quantity so withdrawn of the duty imposed by law on such rbanzo in their condition as imported: And provided further,

That the compensation of customs officers and storekeepers for all services in the supervision of such warehouses shall be paid from moneys advanced by the warehouse proprietor to the collector of customs and be carried in a special account and disbursed for such purposes, and all expenses incurred shall be paid by the warehouse proprietor. (39 Stat.)

This was an act entitled "An act to provide for the storing and cleansing of imported Mexican peas commonly called garbanzo," cited above.

§ 5672. (Act Oct. 3, 1913, c. 16, § IV, M.) Bonded manufacturing warehouses.

M. All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: Provided, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: Provided further, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

No articles or materials received into such bonded manufacturing warehouse shall be withdrawn or removed therefrom except for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the collector of the port, who shall certify to such shipment and exportation, or ladening for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: Provided, That the waste material or by-products incident to the processes of manufacture, including waste derived from cleaning rice in bonded warehouses under Act of March twenty-fourth, eighteen hundred and seventy-four, in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected, by law, if such waste or by-products were imported from a foreign country. All labor performed and services rendered under these provisions shall be under the supervision of a

ıly designated officer of the customs and at the expense of the man-
facturer.

A careful account shall be kept by the collector of all merchandise
elivered by him to any bonded manufacturing warehouse, and a
vorn monthly return, verified by the customs officers in charge, shall
e made by the manufacturers containing a detailed statement of all
nported merchandise used by him in the manufacture of exported
ticles.

Before commencing business the proprietor of any manufacturing
arehouse shall file with the Secretary of the Treasury a list of all
e articles intended to be manufactured in such warehouse, and
ate the formula of manufacture and the names and quantities of
e ingredients to be used therein.

Articles manufactured under these provisions may be withdrawn
nder such regulations as the Secretary of the Treasury may pre-
ribe for transportation and delivery into any bonded warehouse at
ı exterior port for the sole purpose of immediate export therefrom:
rovided, That cigars manufactured in whole of tobacco imported
om any one country, made and manufactured in such bonded man-
facturing warehouses, may be withdrawn for home consumption
pon the payment of the duties on such tobacco in its condition as
nported under such regulations as the Secretary of the Treasury
ay prescribe, and the payment of the internal-revenue tax accruing
ı such cigars in their condition as withdrawn, and the boxes or
ackages containing such cigars shall be stamped to indicate their
haracter, origin of tobacco from which made, and place of manufac-
ıre.

The provisions of Revised Statutes thirty-four hundred and thirty-
ıree shall, so far as may be practicable, apply to any bonded manu-
acturing warehouse established under this Act and to the merchan-
ise conveyed therein. (38 Stat. 197.)

This was a subdivision of section IV of the Underwood Tariff Act, cited above.

See notes to subdivision A of said section, ante, § 5292.

These provisions superseded previous similar provisions of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 23, 36 Stat. 88, which superseded those of the Dingley Tariff Act of July 24, 1897, c. 11, § 15, 30 Stat. 207.

Provisions similar to those of the Dingley Tariff Act were made by the preceding tariff act, the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 9, 28 Stat. 548.

R. S. § 3433, mentioned in this section, is set forth post, § 6339.

Act March 24, 1874, c. 65, also mentioned in this section, is set forth ante, § 5671.

Articles manufactured in bonded manufacturing warehouses, in whole or in part of imported materials or of materials subject to internal revenue tax, may be shipped to the Philippine Islands, exempt from internal revenue tax, and drawback may be allowed of the internal revenue taxes or the duties paid on articles so shipped, by Act March 8, 1902, c. 140, § 6, set forth post, § 5674; and by section 7 of the same act, also set forth post, § 5675, duties paid on merchandise in bonded warehouses, etc., are to be returned on shipment thereof to the Philippine Islands, and merchandise on which duties have not been paid may be shipped to the Philippine Islands without payment of duty.

Notes of Decisions

Relief from duty on waste.—Articles f merchandise imported into the Unit-d States and held in a bonded ware-ıouse for use in the manufacture of ar-ticles for exportation in accordance vith section 15 of the tariff act of July 24, 1897, may be removed from such varehouse and destroyed in the pres-ence of an officer designated by the collector of the port and accounted for as waste, and the manufacturer relieved from the payment of duty thereon. (1902) 24 Op. Atty. Gen. 58.

See, also, § 5676, post, forbidding allowance for injury, loss, or leakage sustained by merchandise in bonded warehouses, and § 5677, as to abatement in case of casualties.

§ 5673. (Act Oct. 3, 1913, c. 16, § IV, N, subsec. 1.) Smelting works as bonded warehouse.

N. Subsection 1. The works of manufacturers engaged in smelting or refining, or both, of ores and crude metals, may upon the giving of satisfactory bonds be designated as bonded smelting warehouses. Ores or crude metals may be removed from the vessel or other vehicle in which imported, or from a bonded warehouse, into a bonded smelting warehouse without the payment of duties thereon and there smelted or refined, or both, together with ores or crude metals of home or foreign production: Provided, That the bonds shall be charged with the amount of duties payable upon such ores and crude metals at the time of their importation, and the several charges against such bonds may be canceled upon the exportation or delivery to a bonded manufacturing warehouse established under paragraph M of this section of an amount of the same kind of metal equal to the actual amount of dutiable metal producible from the smelting or refining, or both, of such ores or crude metals as determined from time to time by the Secretary of the Treasury: And provided further, That the said metals so producible, or any portion thereof, may be withdrawn for domestic consumption, or transferred to a bonded customs warehouse, and withdrawn therefrom, and the several charges against the bonds canceled upon the payment of the duties chargeable against an equivalent amount of ores or crude metals from which said metal would be producible in their condition as imported: And provided further, That on the arrival of the ores and crude metals at such establishments they shall be sampled and assayed according to commercial methods under the supervision of Government officers, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer: Provided further, That antimonial lead produced in said establishments may be withdrawn for consumption upon the payment of the duties chargeable against it as type metal under existing law and the charges against the bonds canceled in a similar sum: Provided further, That all labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury, and at the expense of the manufacturer: Provided further, That all regulations for the carrying out of this section shall be prescribed by the Secretary of the Treasury. (38 Stat. 198.)

This was part of subdivision N of section IV of the Underwood Tariff Act, cited above. See notes to subdivision A of said section, ante, § 5292.

These provisions superseded similar provisions of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 24, 36 Stat. 89, which superseded those of the Dingley Tariff Act of July 24, 1897, c. 11, § 29, 30 Stat. 210.

Provisions more or less similar to those of the Dingley Tariff Act were made by the preceding tariff acts, the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 24, 26 Stat. 617, and the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 21, 28 Stat. 551.

Provisions for manufacture of goods in bonded warehouses for export were made by section IV, M, of this act, ante, § 5672.

Provisions for the transportation under bond of lead-bearing ores were made by section I, par. 152, of this act, ante, § 5291, par. 152.

Previous provisions for sampling lead ores were made by Act March 2, 1895, c. 189, § 1, ante, § 5616.

Notes of Decisions

See, also, § 5291, par. 152, ante.

Decisions under prior acts.—See In re Guggenheim Smelting Co. (1903) 126 Fed. 728, 61 C. C. A. 646 (reversing order [C. C. 1903] 121 Fed. 153); (1898) 22 Op. Atty. Gen. 119; (1898) 22 Op. Atty. Gen. 285; (1900) 23 Op. Atty. Gen. 46; (1900) 23 Op. Atty. Gen. 134; (1902) 24 Op. Atty. Gen. 45; (1903) 24 Op. Atty. Gen. 569.

§ 5674. (Act March 8, 1902, c. 140, § 6.) Articles shipped to Philippines entitled to drawback.

All articles manufactured in bonded manufacturing warehouses

whole or in part of imported materials, or of materials subject nternal-revenue tax and intended for shipment from the United tes to the Philippine Islands, shall, when so shipped, under h regulations as the Secretary of the Treasury may prescribe, be mpt from internal-revenue tax, and shall not be charged with duty ept the duty levied under this Act upon imports into the Philippine nds.

* * * * * * * *

Where materials on which duties have been paid are used in manufacture of articles manufactured or produced in the United tes, there shall be allowed on the shipment of said articles to the lippine Archipelago a drawback equal in amount to the duties d on the materials used, less one per centum of such duties, un- such rules and regulations as the Secretary of the Treasury may scribe. (32 Stat. 55.)

This section, including provisions omitted here, and the section next following, were part of an act temporarily to provide revenue for the Philippine Islands, and for other purposes, cited above.

The provisions relating to bonded manufacturing warehouses, mentioned in this section, contained in the Dingley Tariff Act of July 24, 1897, c. 11, § 15, 30 Stat. 207, in force at the time of the passage of this act, were superseded by those of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 23, 36 Stat. 88, which were superseded by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, M, ante, § 5672.

Provisions for free admission of articles of commerce between the Philippine Islands and the United States, were made by section IV, C, of the Underwood Tariff Act, ante, § 5294.

Provisions of this section, omitted here, related to shipment to the Philippine Islands of articles subject to internal revenue taxes and benefit of drawback. They are set forth post, § 6338. A further provision for refunding taxes paid is omitted as temporary merely, and executed.

5675. (Act March 8, 1902, c. 140, § 7.) Drawback on articles re-exported to Philippines.

Merchandise in bonded warehouse or otherwise in the custody l control of the officers of the customs upon which duties ve been paid, shall be entitled, on shipment to the Philippine ands within three years from the date of the original arrival, to a urn of the duties paid less one per centum, and merchandise upon ich duties have not been paid may be shipped without the payint of duties to the Philippine Islands within said period, under such es and regulations as may be prescribed by the Secretary of the easury. (32 Stat. 55.)

See notes to preceding section of this act, ante, § 5674.

5676. (R. S. § 2983.) No allowance for leakage, etc.

In no case shall there be any abatement of the duties or allowce made for any injury, damage, deterioration, loss, or leakage stained by any merchandise, while deposited in any public or vate bonded warehouse.

Act March 28, 1854, c. 30, § 4, 10 Stat. 272.

Duties based upon weight of merchandise deposited in any public or private bonded warehouse were required to be levied and collected upon the weight of such merchandise at the time of its entry, by a proviso of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, Q, ante, § 5314, which superseded a similar provision made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 29, 36 Stat. 108, which superseded a similar provision of Act March 8, 1902, c. 140, § 5, 32 Stat. 54.

Notes of Decisions

epeal of section.—This section was repealed by section 5656, ante, prong that merchandise withdrawn m warehouse shall be subjected to duties applicable at the time of hdrawal. Falk v. U. S. (C. C. 1904) Fed. 574, judgment reversed American Cigar Co. v. U. S. (1906) 146 Fed. 484, 77 C. C. A. 40, which is reversed U. S. v. G. Falk & Bros. (1907) 27 Sup. Ct. 191, 204 U. S. 143, 51 L. Ed. 411.

Loss of weight in warehouse.—Under this section merchandise dutiable by

weight should be assessed with duty without allowance for weight lost while in warehouse. Falk v. U. S. (C. C. 1904) 145 Fed. 574, judgment reversed American Cigar Co. v. U. S. (1906) 146 Fed. 484, 77 C. C. A. 40, which is reversed U. S. v. G. Falk & Bros. (1907) 27 Sup. Ct. 191, 204 U. S. 143, 51 L. Ed. 411.

Evaporation.—This section does not include a case of shrinkage in weight through evaporation of moisture. The loss provided for relates to actual reduction in the value or quantity of the merchandise. American Cigar Co. v. U. S. (1906) 146 Fed. 484, 77 C. C. A. 40, reversing judgment Falk v. U. S. (C. C. 1904) 145 Fed. 574, and judgment reversed U. S. v. G. Falk & Bro. (1907) 27 Sup. Ct. 191, 204 U. S. 143, 51 L. Ed. 411.

The second proviso in section 50 of the tariff act of October 1, 1890, providing that, when duties are based upon the weight of merchandise deposited in any public or bonded warehouse, said duties shall be levied and collected upon the weight of said merchandise at the time of its withdrawal, applies to importations under the act generally upon which duties are levied by law, and not merely to importations made prior to the taking effect of the act. (1891) 20 Op. Atty. Gen. 80.

See §§ 5588, 5602, 5619, ante.

§ 5677. (R. S. § 2984, as amended, Act Feb. 27, 1877, c. 69, § 1.) Abatement and refund in case of injury by casualties.

The Secretary of the Treasury is hereby authorized, upon production of satisfactory proof to him of the actual injury or destruction, in whole or in part, of any merchandise, by accidental fire, or other casualty, while the same remained in the custody of the officers of the customs in any public or private warehouse under bond, or in the appraisers' stores undergoing appraisal, in pursuance of law or regulations of the Treasury Department, or while in transportation under bond from the port of entry to any other port in the United States, or while in the custody of the officers of the customs and not in bond, or while within the limits of any port of entry, and before the same have been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, out of any moneys in the Treasury not otherwise appropriated, the amount of impost duties paid or accruing thereupon; and likewise to cancel any warehouse bond or bonds, or enter satisfaction thereon in whole or in part as the case may be.

Act March 28, 1854, c. 30, § 8, 10 Stat. 273. Act March 3, 1865, c. 80, § 13, 13 Stat. 495. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 247.

This section, as enacted in the Revised Statutes, was amended by striking out after the words "proof to him of the actual" the word "industry," and by inserting in the place thereof the word "injury," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

A permanent appropriation for refunding duties paid on goods, etc., injured or destroyed by accidental fire or other casualty, while in the custody of the officers of the customs, in any public or private warehouse, etc., is made by R. S. § 3689, post, § 6799.

Notes of Decisions

Refund in general.—This section does not authorize the refunding of duties on merchandise destroyed after it has been delivered into the manual possession of the importer, on his giving redelivery bond. D. M. Ferry & Co. v. U. S. (1898) 85 Fed. 550, 553, 29 C. C. A. 345, followed in Cornell Steamboat Co. v. U. S. (D. C. 1904) 130 Fed. 480, 482, affirmed (1905) 137 Fed. 455, 69 C. C. A. 603.

This section makes the secretary the final tribunal to decide on the validity of any such claim, and his decision is not subject to review by the court of claims or any other tribunal. Id.

A suit to recover from the United States for the salvage of duties collected and paid over to the government on a cargo of sugar afterwards saved from loss by fire while on board a lighter, in the harbor of New York, and in the possession and control of the customs officers, does not arise under the revenue laws, so as to be excluded from the jurisdiction of the District Court under the Tucker act, because the liability of the United States, as having a direct pecuniary interest in the property saved, is founded on the assumption that the Secretary of the Treasury, acting under the authority of this section, and post, § 6799, would have refunded the duties if the property had been destroyed by the fire. U. S. v. Cornell Steamboat Co. (1906) 26 S. Ct. 648, 202 U. S. 184, 50 L. Ed. 987, affirming decrees (1905) 137 Fed. 455, 69 C. C. A. 603, and Cornell Steamboat Co. v. 1,883 Bags of Sugar (D. C. 1901) 108 Fed. 277.

The Secretary may not refuse to al-

w the refund arbitrarily or capricious-
Where all the facts enumerated in e section are presented to him undis-ted, it will be assumed that that uld satisfy him that the case is with-the terms of the section. U. S. v. rnell Steamboat Co. (1905) 137 Fed. 5, 69 C. C. A. 603, affirming judg-ent Cornell Steamboat Co. v. U. S. . C. 1904) 130 Fed. 480, and decree irmed (1906) 26 Sup. Ct. 648, 202 S. 184, 50 L. Ed. 987.

In an action against the United States recover salvage on duties collected reason of the salving of merchandise ile in the custody of the customs of-ers, the court will not make findings law defining the powers of the Secre-ry of the Treasury in respect to re-nding the duties under this section as rmerly enacted, had the merchandise en destroyed. Cornell Steamboat Co. U. S. (D. C. 1904) 130 Fed. 480, dgment affirmed U. S. v. Cornell eamboat Co. (1905) 137 Fed. 455, C. C. A. 603, which is affirmed (1906) 26 Sup. Ct. 648, 202 U. S. 184, 50 L. Ed. 987.

The words "under bond" have exclusive reference to, and are descriptive of, the goods, wares, and merchandise, and not the warehouse. (1868) 12 Op. Atty. Gen. 430.

The section extends to loss caused by freezing. (1887) 18 Op. Atty. Gen. 519.

Refund of duties is not allowable on merchandise which, pending further examination and appraisement, and upon proper bond being given, has been delivered to the importer, who stored it in his warehouse, where it was destroyed by fire. The section contemplates merchandise which at the time of its destruction is in the custody of the officers of the customs. (1887) 18 Op. Atty. Gen. 578.

Cited without definite application, Constable v. National S. S. Co. (1894) 14 Sup. Ct. 1062, 1072, 154 U. S. 51, 38 L. Ed. 903; Lawder v. Stone (1902) 23 Sup. Ct. 79, 84, 187 U. S. 281, 47 L. Ed. 178.

5678. (R. S. § 2985.) Penalty for obliterating marks.

Any person convicted of altering, defacing, or obliterating any ark which has been placed by any officer of the revenue on any ckage of warehoused merchandise shall be liable to a penalty of e hundred dollars for every such offense.

Act Aug. 6, 1846, c. 84, § 3, 9 Stat. 54.

5679. (R. S. § 2986.) Penalty for unlawfully opening warehouse.

If any importer or proprietor of any warehoused merchandise, any person in his employ, shall, by any contrivance, fraudulently en the warehouse, or shall gain access to the merchandise, except the presence of the proper officer of the customs, acting in the ecution of his duty, such importer or proprietor shall be liable to a nalty of one thousand dollars for every such offense.

Act Aug. 6, 1846, c. 84, § 3, 9 Stat. 55.

Provisions prescribing the punishment for breaking or entering a car, vessel, warehouse, etc., containing merchandise delivered for transportation, with intent to remove such merchandise, were made by R. S. § 2998, post, § 5701.

5680. (R. S. § 2987.) Penalty for fraudulent removal, etc.

If any warehoused merchandise shall be fraudulently concealed or removed from any public or private warehouse, the same all be forfeited to the United States; and all persons convicted fraudulently concealing or removing such merchandise, or of aid-g or abetting such concealment or removal, shall be liable to the me penalties as are imposed for the fraudulent introduction of erchandise into the United States.

Act Aug. 6, 1846, c. 84, § 3, 9 Stat. 55.

Fraudulent introduction of merchandise was punishable by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, G, ante, § 5524.

Notes of Decisions

Offense complete, when.—The offense eated by this section was complete the removal of goods subject to ty on which duty had not been paid m the warehouse, and subsequent ncealment outside a warehouse after moval, while admissible in proof of e fraudulent intent in the removal, did not constitute a substantive offense, nor add anything to the removal which had preceded it. U. S. v. Ehrgott (C. C. 1910) 182 Fed. 267.

"Fraudulently" construed.—The word "fraudulently" means that the acts must be done with an intent to evade

the law; the intent being fully alleged. U. S. v. Ehrgott (C. C. 1910) 182 Fed. 267.

Truck as warehouse.—Where dutiable goods are removed from a warehouse without payment of duty and subsequently concealed, the truck on which the goods are removed cannot be considered to be a warehouse. U. S. v. Ehrgott (C. C. 1910) 182 Fed. 267.

Indictment.—Where an indictment alleged that the goods had been deposited in Brooklyn in a warehouse under bond, and then alleged that on a given day the importer withdrew them under a false pretense that they were to be exported, the term "false pretense" should be construed to mean at least that the defendant did not mean to export the goods when he removed them. U. S. v. Ehrgott (C. C. 1910) 182 Fed. 267.

An indictment alleging that certain beans subject to duty had been deposited in a warehouse in Brooklyn, and that on a given day defendant withdrew them under bond on the false pretense that they were to be exported, and that he removed the goods from the warehouse and concealed them in Manhattan, did not charge a crime committed in the Southern District of New York, and was therefore demurrable. Id.

§ 5681. (R. S. § 2988, as amended, Act Feb. 27, 1877, c. 69, § 1.) Report of merchandise in warehouse.

The collectors of the several ports of the United States shall make quarterly reports to the Secretary of the Treasury, according to such general instructions as the Secretary may give, of all merchandise remaining in the warehouses of their respective ports, specifying the quantity and description of the same.

Act Aug. 6, 1846, c. 84, § 4, 9 Stat. 55. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 247.

This section, as enacted in the Revised Statutes, was amended by striking out after the words "specifying the quantity and description of the same" the words "which returns, or tables formed thereon, the Secretary of the Treasury shall forthwith cause to be published in the principal papers of the city of Washington," by Act Feb. 27, 1877, c. 69, § 1, cited above.

Provisions requiring the Secretary of the Treasury to publish quarterly statements of receipts and expenditures in the customs service were made by R. S. § 266, ante, § 399.

An account of all merchandise delivered by the collector to any bonded manufacturing warehouse was required to be kept by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, M, ante, § 5594.

§ 5682. (R. S. § 2989, as amended, Act Feb. 27, 1877, c. 69, § 1.) Warehouse regulations.

The Secretary of the Treasury may from time to time establish such rules and regulations, not inconsistent with law, for the due execution of the provisions of this chapter, and to secure a just accountability under the same, as he may deem to be expedient and necessary.

Act March 28, 1854, c. 30, § 9, 10 Stat. 273. Act Aug. 6, 1846, c. 84, § 5, 9 Stat. 55. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 247.

This section, as enacted in the Revised Statutes, was amended by striking out after the words "of the provisions" the words "relating to warehouses," and by inserting in place thereof the words "of this chapter," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

Provisions authorizing the Secretary of the Treasury to make regulations for the management of bonded warehouses and other depositories of imported merchandise were made by Act June 22, 1874, c. 391, § 24, post, § 5683.

The Secretary of the Treasury was authorized to make regulations for smelting works as bonded warehouses by a proviso of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, N, subsec. 1, ante, § 5673.

Notes of Decisions

Treasury regulations in general.—A form prescribed for the carrying out of the regulations authorized by this section, by which the shipowner agrees to indemnify the consignee to an extent not required by the statute or by the regulations is not binding upon the owner. Constable v. National S. S. Co. (1894) 14 Sup. Ct. 1062, 1072, 154 U. S. 51, 38 L. Ed. 903.

The customs regulation which requires that, where a shipment of goods is without an invoice, all the packages shall be sent to the public store for examination and appraisement, is a valid exercise of the authority of the treasury department. Kennedy v. Magone (1895) 158 U. S. 212, 15 Sup. Ct. 814, 39 L. Ed. 954.

Treasury regulations have the force

law. U. S. v. Ehrgott (C. C. 1910) 2 Fed. 267, 272.

Where Congress by statute makes nal the violation of any regulation the Secretary of the Treasury, such gulation may form the basis of a minal prosecution, though not so if e penal provisions can only be found the regulation itself. Id.

Decisions under former acts.—See Constable v. National S. S. Co. (1894) 14 Sup. Ct. 1062, 1072, 154 U. S. 51, 38 L. Ed. 903; (1876) 15 Op. Atty. Gen. 128.

Cited without definite application, U. S. v. 25 Packages of Panama Hats (1913) 34 Sup. Ct. 63, 64, 231 U. S. 358, 58 L. Ed. 267.

5683. (Act June 22, 1874, c. 391, § 24.) Regulations for bonded warehouses, general order stores, etc.; customs officers not to have interest.

The Secretary of the Treasury shall, from time to time, make ch regulations as he may deem necessary for the conduct and anagement of the bonded warehouses, general order stores, and her depositories of the imported merchandise throughout the nited States; all regulations or orders issued by collectors of customs regard thereto shall be subject to revision, alteration, or revocaon by him; and no warehouse shall be bonded and no general-order ore established without his authority and approval. And it shall the duty of the Secretary of the Treasury, in granting permits establish general-order warehouses, to require such warehouse or arehouses to be located contiguous, or as near as may be, to the nding places of steamers and vessels from foreign ports; and that officer of the customs shall have any personal ownership of, or terest in, any bonded warehouse or general-order store. (18 Stat. 1.)

This and the next following section were part of the Anti-Moiety Act, cited above, other sections of which are set forth post, §§ 5796–5804.

The provisions authorizing the Secretary of the Treasury to establish rules and regulations relating to bonded warehouses contained in R. S. § 2989, ante, § 5682, may be regarded as superseded by this section.

Notes of Decisions

Erection of warehouses, etc.—The cretary of the Treasury is not auorized to employ any part of the propriation for collecting the revue from customs in the erection of temporary structure at a collection rt for the purposes of the customs service. (1890) 19 Op. Atty. Gen. 607.

No building, even of a temporary character, to be used for storage purposes, can be erected at the public expense without special authority from Congress. Id.

5684. (Act June 22, 1874, c. 391, § 25.) Public cartage to be let to lowest bidder; regulations.

Public cartage of merchandise in the custody of the Government all be let after not less than thirty days' notice of such letting to e lowest responsible bidder giving sufficient security, and shall be bject to regulations approved by the Secretary of the Treasury. 8 Stat. 191.)

See notes to preceding section of this act, ante, § 5683.

Notes of Decisions

Contract for cartage.—Petitioners ntracted with the United States to all the cartage of merchandise in stody of the government, imported at ew York, from the vessel, and from e general order store and warehouse to the public store, for two ears, at 18 cents per package, exceptg "sample packages," which were to e carted at 1 cent each. Held, that sample packages" was not limited to ample packages containing nondutiale goods, but included all sample packges, whether dutiable or not. U. S. v. Utz (1897) 80 Fed. 848, 26 C. C. A. 184, reversing judgment Utz v. U. S. (C. C. 1896) 75 Fed. 648.

Drayage charges.—The importer here was compelled to pay drayage charges on his merchandise (matches) of 18 cents per case. The proof goes to show the regular rate for the haul was 6 cents per case. The law is that the rate "shall not exceed in any case the regular rates for such objects at the port in question." U. S. v. Masson (1913) 4 Ct. Cust. App. 363.

(R. S. §§ 2990–2997. Repealed.)

R. S. § 2990, provided that when any merchandise, except wine, distilled spirits, and perishable or explosive articles, or articles in bulk, imported at the ports of New York, Philadelphia, Boston, Baltimore, Portland, Me., Port Huron, Detroit, New Orleans, Toledo, and San Francisco should appear by the invoice or bill of lading and by the manifest to be consigned to and destined for any of the ports mentioned in section 2997, the collector at the port of arrival should permit the owner, agent, or consignee to make entry thereof for warehouse or immediate transportation, in triplicate, setting forth the particulars in such entry, and the route by which such merchandise was to be forwarded, and, the entry having been compared with the invoice, and duly sworn to, and the merchandise having been examined by the customs officers, so that they were satisfied that the same corresponded with the manifest and invoice, and the duties estimated on the value and quantity of the invoice, and on the execution of a bond as afterwards provided, the collector was authorized to deliver the same to be immediately transported to the port of destination at the sole cost and risk of the owner, agent, or consignee.

The privileges of R. S. §§ 2990–2997, were extended to Genesee by Act March 14, 1876, c. 23, 19 Stat. 7, and also extended to St. Paul by Act Aug. 14, 1876, c. 270, 19 Stat. 139.

R. S. § 2991, required the collector of the port of first arrival to give priority in time to the examination of merchandise destined for transportation to the ports designated in section 2997. It provided that the merchandise entered for immediate transportation should not be subject to appraisement and liquidation of duties at the port of first arrival but should there undergo such examination as the Secretary of the Treasury should deem proper to verify the invoice and entry, and the same examination and appraisement were required at the port of destination as would have been required at the port of first arrival, if such merchandise had been entered for consumption or warehouse at such port.

R. S. § 2992, provided that the bond for transportation should be in a penal sum of at least double the invoice value of the merchandise, and the duties, added, in such form, and with such sureties, not less than two, as should be prescribed by the Secretary of the Treasury, and the sureties were required to justify in an amount at least double the penalty of the bond. The collector was required to certify to the sufficiency of the bond. It permitted the execution of such bond at the port of destination, and its transmission to the collector at the port of first arrival.

R. S. § 2993, required that merchandise entered for transportation should be delivered to and transported by common carriers designated by the Secretary of the Treasury, and such carriers were made responsible to the United States as common carriers for the safe delivery of such merchandise to the collector at the port of destination. Such carriers were required to give bonds in such form and amount, and with conditions not inconsistent with law, and such security as the said Secretary should require.

R. S. § 2994, required that cars or vehicles transporting merchandise under this Title should be securely fastened under the exclusive control of the customs officers, and required the stationing of inspectors at proper points along the designated routes, or upon any car, etc., at the discretion of the Secretary, and at the expense of the companies, respectively. It prohibited the unloading or transshipping between ports of first arrival and final destination, unless authorized by the regulations of the Secretary of the Treasury in cases which might arise from a difference in the gauge of railroads, or from accidents, or from legal intervention, or from low water, ice, or other unavoidable obstruction to navigation. It prohibited the breaking of the original packages.

R. S. § 2995, provided that merchandise destined for immediate transportation, except packages designated for examination, should be transferred under proper supervision directly from the importing vessel to the car, vessel, or vehicle in which the same was to be transported to its final destination; and if transferred from the importing vessel to any bonded or other warehouse, or to any other place than such car, vessel, or vehicle, it should be taken possession of by the collector as unclaimed, and deposited in public store, not to be removed without entry and appraisement as in ordinary cases.

R. S. § 2996, authorized the Secretary of the Treasury to establish bonded warehouses especially and exclusively designed for the reception of such merchandise in cases where its immediate transportation to the transporting car, vessel, or vehicle should be impracticable. It provided that merchandise remaining in such warehouse more than ten days should be deprived of the privileges of transportation in bond conferred by this Title, and should be taken possession of by the collector as unclaimed, and held until regularly entered and appraised.

R. S. § 2997, extended the privileges of transportation in bond to the ports of New York and Buffalo, in New York; Boston, in Massachusetts; Provi-

dence, in Rhode Island; Philadelphia and Pittsburg, in Pennsylvania; Baltimore, in Maryland; Norfolk, in Virginia; Charleston, in South Carolina; Savannah, in Georgia; New Orleans, in Louisiana; Portland, in Maine; Chicago, in Illinois; Cincinnati, Cleveland, and Toledo, in Ohio; St. Louis, in Missouri; Evansville, in Indiana; Milwaukee, in Wisconsin; Louisville, in Kentucky; San Francisco, in California; Portland, in Oregon; Memphis in Tennessee; Mobile, in Alabama; and to importations from or to Europe, and from or to Asia, or the islands adjacent thereto, by way of the United States. It was amended by Act Feb. 18, 1875, c. 80, 18 Stat. 319, by extending such privileges to Detroit, in Michigan.

All these sections were repealed by the Immediate Transportation Act of June 10, 1880, c. 190, § 8, 21 Stat. 175, other sections of which act, making provisions for such transportation of merchandise in bond, with subsequent provisions relating thereto are set forth post, under chapter 7A of this Title, "Immediate Transportation in Bond to Inland Ports."

(R. S. §§ 2998, 2999. Transferred to Chapter 7A.)

R. S. § 2998, made opening, breaking, or entering any car, vessel, vehicle, warehouse or package containing merchandise so delivered for transportation, etc., with intent to remove unlawfully or to injure or defraud the United States, a felony, and prescribed the punishment thereof.

R. S. § 2999, authorized the appointment of special agents for the purpose of guarding against frauds upon the revenue on foreign merchandise transported between the ports of the Atlantic and those of the Pacific overland through foreign territory.

Both these sections are placed, with other provisions relating to transportation of merchandise in bond, post, under chapter 7A of this Title, "Immediate Transportation in Bond to Inland Ports."

5685. (R. S. § 3000.) Withdrawal for rewarehousing in another district.

Any merchandise, duly entered for warehousing, may be withdrawn under bond, without payment of the duties, from a bonded warehouse in any collection-district, and be transported to a bonded warehouse in any other collection-district, and rewarehoused thereat; and any such merchandise may be so transported to its destination wholly by land, or wholly by water, or partially by land and partially by water, over such routes as the Secretary of the Treasury may prescribe, and may likewise be conveyed over any foreign territory, the government of which may have, or shall by treaty stipulations grant, a free right of way over such territory.

Act March 28, 1854, c. 30, § 5, 10 Stat. 272.

Notes of Decisions

Rewarehousing in general.—As to liability on transportation bonds, see U. S. v. Coppell (D. C. 1891) 48 Fed. 367, 370.

This section does not authorize repeated rewarehousing. (1892) 20 Op. Atty. Gen. 309.

Where merchandise has been rewarehoused in conformity with the regulations and practice of the Department, the action of the Department can not be declared unauthorized. Id.

Cited without definite application, Saltonstall v. Russell (1894) 14 Sup. Ct. 733, 734, 152 U. S. 628, 38 L. Ed. 576.

§ 5686. (R. S. § 3001, as amended, Act Feb. 27, 1877, c. 69, § 1.) Penalty for failure to transport.

The Secretary of the Treasury shall prescribe the form of the bond to be given for the transportation of merchandise from a port in one collection district to a port in another collection district as provided in the preceding section; also the time for such delivery; and for a failure to transport and deliver within the time limited any such bonded merchandise to the collector at the designated port, a duty of double the amount to which such merchandise would be liable shall be collected, which duty shall be secured by such bond, or the merchandise may be seized and forfeited for such failure, and any steam or other vessel, or vehicle, transporting such bonded merchandise, the master, owner, or conductor of which shall fail to deliver the same to the collector at the designated port, shall be liable to seizure and forfeiture. And the Secretary of the Treasury is

hereby authorized to remit, in whole or in part, on such conditions, and under such regulations, not inconsistent with law, as he may prescribe, the additional duty secured by the bond given for the transportation of merchandise from a port in one collection district to a port in another collection district prescribed by the preceding section: Provided, That it shall be proved to the satisfaction of the Secretary of the Treasury that the failure to transport and deliver the merchandise aforesaid according to the conditions of the bonds occurred without wilful negligence or fraudulent intent on the part of the obligors.

Act March 28, 1854, c. 30, § 6, 10 Stat. 272. Act July 14, 1862, c. 163, § 20, 12 Stat. 559. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 247.

This section as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the provisions beginning with the words, "and the Secretary of the Treasury is hereby authorized to remit," etc., to the end of the section, as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

Public cartage was required to be let to the lowest bidder by Act June 22, 1874, c. 391, § 25, ante, § 5684.

Notes of Decisions

Transportation bond.—As to liability on transportation bonds, see U. S. v. Coppell (D. C. 1891) 48 Fed. 367, 370.

Remission of penalties.—Remission of penalties no invasion of president's power of pardon. The Laura (1885) 5 Sup. Ct. 881, 883, 114 U. S. 411, 29 L. Ed. 147.

Cited without definite application, Saltonstall v. Russell (1894) 14 Sup. Ct. 733, 734, 152 U. S. 628, 38 L. Ed. 576; U. S. v. Pingree (D. C. 1857) Fed. Cas. No. 16,050.

§ 5687. (R. S. § 3002, as amended, Act Feb. 27, 1877, c. 69, § 1.) Withdrawal for exportation to Mexico.

Any imported merchandise in the original packages which shall have been duly entered and bonded, in pursuance of the provisions relating to warehouses, may be withdrawn from warehouse for immediate exportation, without payment of duties, to Chihuahua, in Mexico, by the route of the Arkansas River, through Van Buren, or by the route of the Red River, through Fulton, or by the route of the Missouri River, through Independence, or by such other routes as may be designated by the Secretary of the Treasury. Any imported merchandise duly entered and bonded at Brownsville, in the district of Brazos de Santiago, or imported and bonded at any other port of the United States, and transported thence in bond, and duly rewarehoused at Brownsville, may be withdrawn from warehouse for immediate exportation, without payment of duties, to ports and places in Mexico, by land or water, or partly by land and partly by water, or by such routes as may be designated by the Secretary of the Treasury.

Act Aug. 30, 1852, c. 96, § 1, 10 Stat. 37. Act March 3, 1845, c. 70, § 1, 5 Stat. 750. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 247.

This section, as enacted in the Revised Statutes, was amended by striking out after the words "duly entered and bonded at" the words "Point Isabel," and by inserting in place thereof the word "Brownsville," and by striking out after the words "duly rewarehoused at" the words "Point Isabel," and by inserting in place thereof the word "Brownsville," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

Brownsville was made a port of entry in the district of Laredo, one of the collection districts established in lieu of the district of Brazos de Santiago, and other districts, in Texas, by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

§ 5688. (R. S. § 3003, as amended, Act Feb. 27, 1877, c. 69, § 1.) Through port of Lavaca.

Any imported merchandise duly entered and bonded in any port of the United States may be withdrawn from warehouse without payment of duties, for immediate exportation for San Fernando, Paso del Norte, and Chihuahua, in Mexico, through the port of

vaca, in the collection-district of Saluria, in the State of Texas, l be transshipped inland, thence to San Antonio, in that State, l from the latter place to the destinations in Mexico, either by way Eagle Pass, the Presidio del Norte, or San Elizario, all on the o Grande; and the Secretary of the Treasury is hereby authorized prescribe such regulations, not inconsistent with law, as he may em proper and necessary, respecting the packing, marking, inspec-n, proof of due delivery at their foreign destinations of the im-rts authorized by this and the foregoing section to be exported m warehouse to ports and places in Mexico, and for the due pro-tion in other respects of the public revenue.

Act Aug. 30, 1852, c. 96, § 2, 10 Stat. 37. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 247.

This section, as enacted in the Revised Statutes, was amended by striking out after the words "the Presidio del Norte" the word "and," and by inserting in place thereof the word "or," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

Port Lavaca was made a port of entry in the district of Galveston, one of the collection districts established in lieu of the district of Saluria and other districts, in Texas, by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

5689. (R. S. § 3004, as amended, Act Sept. 25, 1890, c. 917, § 2.) By Eagle Pass.

Imported merchandise duly entered and bonded at a port of the ited States, and withdrawn from warehouse in accordance with sting law, for exportation for San Fernando, Paso del Norte, and ihuahua, in Mexico, may pass through Eagle Pass, the port of ry for the district of Saluria, in Texas, under such regulations as Secretary of the Treasury shall prescribe, as well as through the rt of Lavaca.

Act April 30, 1872, c. 129, 17 Stat. 58. Act Sept. 25, 1890, c. 917, § 2, 26 Stat. 470.

This section, as enacted in the Revised Statutes, was amended by striking out after the words "may pass through" the word "Indianola," and by inserting in the place thereof the words "Eagle Pass," as set forth here, by Act Sept. 25, 1890, c. 917, § 2, cited above.

Eagle Pass was made a port of entry in the district of Eagle Pass, one of the districts established in lieu of the district of Saluria and other districts, in Texas, by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

5690. (R. S. § 3005, as amended, Act Feb. 27, 1877, c. 69, § 1, and Act May 21, 1900, c. 487, § 1.) Transportation in bond to foreign countries.

All merchandise arriving at any port of the United States destined any foreign country may be entered at the custom-house, and nveyed, in transit, through the territory of the United States, with-t the payment of duties, under such regulations as to examination d transportation as the Secretary of the Treasury may prescribe.

Act July 28, 1866, c. 298, § 5, 14 Stat. 328. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 247. Act May 21, 1900, c. 487, § 1, 31 Stat. 181.

This section, as enacted in the Revised Statutes, was as follows:

"All merchandise arriving at the ports of New York, Boston, Portland in Maine, or any other port specially designated by the Secretary of the Treasury, and destined for places in the adjacent British provinces, or arriving at the port of Point Isabel in Texas, or any other port specially designated by the Secretary of the Treasury, and destined for places in the republic of Mexico, may be entered at the custom-house, and conveyed, in transit, through the territory of the United States, without the payment of duties, under such regulations as the Secretary of the Treasury may prescribe."

It was amended by striking out the words "Point Isabel," and inserting in the place thereof the word "Brownsville," by Act Feb. 27, 1877, c. 69, § 1, cited above. It was further amended to read as set forth here by Act May 21, 1900, c. 487, cited above.

Provisions directing the Secretary of the Treasury to suspend the operation of this section in so far as it permits the transportation of merchandise in bond through the United States into the free zone of Mexico so long as the Mexican

free-zone law exists were made by Res. March 1, 1895, No. 23, 28 Stat. 973. This resolution was repealed by Act May 21, 1900, c. 487, § 2, 31 Stat. 181.

This section and other existing laws concerning the transit of merchandise through the United States was made applicable to merchandise arriving at any port of the United States destined for any of its possessions, or destined from any of them to foreign countries, by a provision of Act July 1, 1902, c. 1369, § 84, ante, § 3205.

Notes of Decisions

Criminal prosecution.—As this section prescribes no penalties, no criminal prosecution can be founded upon it for breaking open a car in transit. U. S. v. Durwood (D. C. 1892) 49 Fed. 446, 447.

Opium. — Smoking opium may be brought into a port of the United States from a foreign country on one vessel and lawfully transferred to another vessel for immediate transportation to a foreign destination. (1909) 27 Op. Atty. Gen. 440.

Opium could not, under the laws existing at the time of the passage of the act of Feb. 9, 1909 (35 Stat. 614), be brought into a port of this country from a foreign country and exported from the same port on another vessel without being subject to duty. Id.

Since the act of February 9, 1909, which prohibits absolutely the importation of opium in any form, smoking opium is not subject to duty, and cannot under any circumstances be entered and bonded for warehousing; and the law which made the bringing of opium into a port an importation for such purposes is, as to smoking opium, repealed. Id.

The entering of merchandise for immediate exportation and without any intent that it shall enter into the commerce of a country is not an importation. Id.

§ 5691. (R. S. § 3006.) Transportation over foreign territory.

Imported merchandise in bond, or duty paid, and products or manufactures of the United States, may, with the consent of the proper authorities of the British provinces or republic of Mexico, be transported from one port in the United States to another port therein, over the territory of such provinces or republic, by such routes, and under such rules, regulations, and conditions as the Secretary of the Treasury may prescribe; and the merchandise so transported shall, upon arrival in the United States from such provinces or republic, be treated in regard to the liability to or exemption from duty, or tax, as if the transportation had taken place entirely within the limits of the United States.

Act July 28, 1866, c. 298, § 6, 14 Stat. 329.

Notes of Decisions

Collectors' certificates.—The issuance by collectors of customs of certificates showing that merchandise of domestic production shipped at ports on the Great Lakes to other ports in the United States, by routes through Canadian territory, is merchandise of domestic production, is not authorized by law. (1885) 18 Op. Atty. Gen. 261.

§ 5692. (R. S. § 3007.) Exemption from fees.

Railroad-cars or other vehicles laden with merchandise, sealed by a customs officer, passing, under the provisions of the preceding section and the regulations of the Secretary of the Treasury, from one port in the United States to another therein, through foreign contiguous territory, shall be exempt from the payment of any fees for receiving or certifying manifests thereof.

Act June 4, 1872, c. 280, § 2, 17 Stat. 215.

§ 5693. (R. S. § 3008.) Forfeiture for relanding exported merchandise.

No merchandise exported to Mexico or the British North American Provinces shall be voluntarily landed or brought into the United States; and any so landed or brought into the United States shall be forfeited; and the same proceeding shall be had for its condemnation, and the distribution of the proceeds of the sales, as in other cases of forfeiture of merchandise illegally imported. Every person concerned in the voluntary landing or bringing such merchandise into the United States shall be liable to a penalty of four hundred dollars.

Act March 3, 1845, c. 70, § 9, 5 Stat. 752. Act Aug. 30, 1852, c. 96, § 4, 10 Stat. 38.

594. (Act May 14, 1898, c. 299, § 14.) Bonded privileges for exportations to British Columbia or Northwest Territory.

Inder rules and regulations to be prescribed by the Secretary he Treasury, the privilege of entering goods, wares, and merndise in bond or of placing them in bonded warehouses at any he ports in the District of Alaska, and of withdrawing the same exportation to any place in British Columbia or the Northwest ritory without payment of duty, is hereby granted to the Govment of the Dominion of Canada and its citizens or citizens of United States and to persons who have declared their intention become such whenever and so long as it shall appear to the satision of the President of the United States, who shall ascertain declare the fact by proclamation, that corresponding privileges e been and are being granted by the Government of the Dominion Canada in respect of goods, wares and merchandise passing ough the territory of the Dominion of Canada to any point in District of Alaska from any point in said District. (30 Stat. 415.)

This was the last section of an act extending the homestead laws and providing for rights of way for railroads in Alaska, cited above.

The preceding sections of the act are set forth ante, §§ 4517, 5045, 5049, 5083–5092.

CHAPTER SEVEN A

mmediate Transportation in Bond to Inland Ports

This chapter, inserted here as additional to the chapters of this Title of the Revised Statutes, includes the provisions of the Immediate Transportation Act of June 10, 1880, c. 190, 21 Stat. 173, which repealed R. S. §§ 2990–2997, and also provisions of the Revised Statutes and of subsequent acts relating to the immediate transportation of dutiable merchandise in bond.

Sec.
5. Ports at which entry may be made for transportation in bond.
6. Examination of merchandise for transportation at port of first arrival; appraisal at port of destination.
7. Carriers; bond.
8. Transportation of merchandise in bond.
9. Cording and sealing packages in unlocked cars.
0. Transfer of merchandise directly from vessel to car or other vehicle.
1. Penalty for breaking, entering, etc.
2. Ports to which goods may be transported in bond.
5703. Merchandise liable to specific rates of duty.
5704. Transportation of merchandise landed ten days, prohibited.
5705. Special delivery and appraisement of imported articles of limited value and weight.
5706. Carriers to be responsible; return of unclaimed packages.
5707. Merchandise to be corded and sealed; record.
5708. Consignment to carrier; invoice; delivery; increased duty on reliquidation; change of destination.
5709. Special agents in foreign territory.

695. (Act June 10, 1880, c. 190, § 1, as amended, Act June 14, 1880, c. 214, and Act June 20, 1884, c. 103.) Ports at which entry may be made for transportation in bond.

When any merchandise, other than explosive articles, and articles bulk not provided for in section five of this act, imported at the ts of New York, Philadelphia, Boston, Baltimore, Portland and th, in Maine, Chicago, Port Huron, Detroit, New Orleans, Norfolk, wport News, Charleston, Savannah, Mobile, Galveston, Pensacola, rida, Cleveland, Toledo, and San Francisco, shall appear by the oice or bill of lading and manifest of the importing vessel to be signed to and destined for either of the ports specified in the sevh section of this act, the collector at the port of arrival shall al the said merchandise to be shipped immediately after the entry

prescribed in section two of this act has been made. (21 Stat. 173. 21 Stat. 198. 23 Stat. 48.)

This was the first section of the Immediate Transportation Act of 1880, cited above.

Sections 2, 3, 5–7, and 9 of the act are set forth post, §§ 5696–5698, 5700, 5702, 5704.

Section 4 of the act amending R. S. § 2855, is set forth ante, § 5542.

Section 8 of the act repealed R. S. §§ 2990–2997.

Section 10 of the act amended R. S. § 2981, and is incorporated in that section as set forth ante, § 5667.

Section 11 of the act provided that it should take effect July 1, 1880.

This section was amended by striking out after the words "provided for in section" the word "four," and inserting in place thereof the word "five," by Act June 14, 1880, c. 214, cited above.

It was further amended by inserting after the word "Norfolk" the words "Newport News," as set forth here, by Act June 20, 1884, c. 103, cited above.

The privileges of this section were extended to additional ports, which were continued and made ports of entry with the privileges of the Immediate Transportation Act, as "heretofore existing," by articles I–III of the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327. The additional ports and the acts extending said privileges to each, were as follows:

Alburg, Vt. Act Feb. 24, 1908, c. 36, 35 Stat. 35.
Ashtabula, Ohio. Act May 27, 1912, c. 131, 37 Stat. 116.
Astoria, Or. Act June 5, 1900, c. 714, 31 Stat. 266.
Bangor, Me. Act July 21, 1892, c. 215, 27 Stat. 254.
Bay City, Mich. Act June 15, 1912, c. 169, 37 Stat. 133.
Beecher Falls, Vt. R. S. § 2526, as amended, Act June 4, 1897, c. 2, § 1, 30 Stat. 30.
Blaine, Wash. Act Feb. 23, 1909, c. 171, § 1, 35 Stat. 643.
Brownsville, Tex. Act Aug. 17, 1911, c. 23, 37 Stat. 22.
Brunswick, Ga. Act Feb. 6, 1907, c. 470, 34 Stat. 880.
Buffalo, N. Y. Act May 3, 1906, c. 2078, 34 Stat. 168.
Burlington, Vt. R. S. § 2526, as amended, Act June 4, 1897, c. 2, § 1, 30 Stat. 30.
Calais, Me. Act June 4, 1900, c. 623, 31 Stat. 266.
Chopaka, Wash. Act July 8, 1916, c. 234, 39 Stat.
Duluth, Minn. Act Dec. 22, 1892, c. 11, 27 Stat. 408.
Eagle Pass, Tex. Act April 12, 1900, c. 188, 31 Stat. 75.
Eastport, Idaho. Act June 13, 1910, c. 289, 36 Stat. 467.
Eastport, Me. Act June 4, 1900, c. 623, 31 Stat. 266.
El Paso, Tex. Act April 12, 1900, c. 188, 31 Stat. 75.
Everett, Wash. Act March 3, 1901, c. 857, 31 Stat. 1437.
Fernandina, Fla. Act July 14, 1892, c. 168, 27 Stat. 14.
Fort Covington, N. Y. Act Aug. 22, 1912, c. 332, 37 Stat. 326.
Gladstone, Mich. Act June 29, 1898, c. 536, 30 Stat. 522.
Honolulu, Hawaii. Act Feb. 15, 1901, c. 373, 31 Stat. 791.
Island Pond, Vt. R. S. § 2526, as amended, Act June 4, 1897, c. 2, § 1, 30 Stat. 30.
Jacksonville, Fla. Act June 16, 1916, c. 154, 39 Stat.
Key West, Fla. Res. May 1, 1886, No. 12, 24 Stat. 342.
Laredo, Tex. Act April 12, 1900, c. 188, 31 Stat. 75.
Laurier, Wash. Act July 8, 1916, c. 234, 39 Stat.
Los Angeles, Cal. Act March 31, 1892, c. 29, § 3, 27 Stat. 12.
Lowelltown (or Holeb), Me. Act May 10, 1912, c. 118, § 1, 37 Stat. 110.
Malone, N. Y. Act Feb. 17, 1905, c. 580, 33 Stat. 718.
Marquette, Mich. Act April 13, 1892, c. 44, 27 Stat. 16.
Miami, Fla. Act Feb. 21, 1899, c. 172, 30 Stat. 839.
Milwaukee, Wis. Act Feb. 20, 1901, c. 385, 31 Stat. 799.
Neche, N. D. Act June 7, 1912, c. 159, § 2, 37 Stat. 129, section 3 of which authorized the Secretary of the Treasury to withdraw the privileges.
New London, Conn. Act June 25, 1910, c. 398, 36 Stat. 828.
Newport, Vt. R. S. § 2526, as amended, Act June 4, 1897, c. 2, § 1, 30 Stat. 30.
Niagara Falls, N. Y. Act March 2, 1903, c. 982, 32 Stat. 955.
Nogales, Ariz. Act April 12, 1900, c. 188, 31 Stat. 75.
Northport, Wash. Act July 8, 1916, c. 234, 39 Stat.
Noyes, Minn. Act Aug. 7, 1916, c. 270, 39 Stat.
Nyando, N. Y. Act Feb. 24, 1915, c. 55, 38 Stat. 812.
Ogdenburg, N. Y. Act April 13, 1892, c. 43, 27 Stat. 16.
Pembina, N. D. Act Feb. 23, 1915, c. 44, 38 Stat. 811.
Portal, N. D. Act Jan. 22, 1903, c. 197, 32 Stat. 780.
Port Arthur, Tex. Act May 23, 1908, c. 187, § 4, 35 Stat. 245.

Portland, Or. Act May 1, 1886, c. 69, 24 Stat. 16.
Port Townsend, Wash. Act May 1, 1886, c. 69, 24 Stat. 16.
Providence, R. I. Act July 1, 1914, c. 134, 38 Stat. 453.
Ranier, Minn. Act Feb. 27, 1909, c. 226, 35 Stat. 659.
Richford, Vt. R. S. § 2526, as amended, Act June 4, 1897, c. 2, § 1, 30 Stat. 30.
Rouses Point, N. Y. Act Feb. 17, 1905, c. 580, 33 Stat. 718.
Saint Albans, Vt. R. S. § 2526, as amended, Act June 4, 1897, c. 2, § 1, 30 Stat. 30.
Saint John, N. D. Act June 7, 1912, c. 159, § 2, 37 Stat. 129, section 3 of which authorized the Secretary of the Treasury to withdraw the privileges.
Saint Vincent, Minn. Act May 23, 1908, c. 187, § 7, 35 Stat. 245.
San Diego, Cal. Act April 26, 1890, c. 159, 26 Stat. 66.
Sault Ste. Marie, Mich. Act Feb. 13, 1889, c. 149, 25 Stat. 667.
Seattle, Wash. Act March 1, 1889, c. 310, 25 Stat. 750, Act Aug. 28, 1890, c. 814, § 2, 26 Stat. 363, Act July 1, 1902, c. 1359, 32 Stat. 636.
Sioux City, Iowa. Act Sept. 25, 1890, c. 909, § 1, 26 Stat. 466.
Sumas, Wash. Act Feb. 23, 1909, c. 171, § 1, 35 Stat. 643.
Tacoma, Wash. Act March 1, 1889, c. 310, 25 Stat. 750, Act Aug. 28, 1890, c. 814, § 2, 26 Stat. 363, Act July 1, 1902, c. 1359, 32 Stat. 636.
Tampa, Fla. Act April 3, 1890, c. 62, 26 Stat. 34.
Texas City, Tex. Act Feb. 17, 1905, c. 582, 33 Stat. 719.
Vanceboro, Me. Act July 21, 1892, c. 215, 27 Stat. 254.
Van Buren, Me. Act March 4, 1915, c. 187, 38 Stat. 1219.
Walhalla, N. D. Act June 7, 1912, c. 159, § 2, 37 Stat. 129, section 3 of which authorized the Secretary of the Treasury to withdraw the privileges.
Wilmington, N. C. Act Dec. 23, 1902, c. 11, 32 Stat. 760.
The ports entitled to the privileges of this section were named in the Treasury Department's circular of July 1, 1913, as follows:
"Ports at which merchandise may be entered for transportation to other ports without appraisement under the Act of June 10, 1880.

Alburg, Vt.
Ashtabula, Ohio.
Astoria, Or.
Baltimore, Md.
Bangor, Me.
Bath, Me.
Bay City, Mich.
Beecher Falls, Vt.
Blaine, Wash.
Boston, Mass.
Brunswick, Ga.
Buffalo, N. Y.
Burlington, Vt.
Calais, Me.
Charleston, S. C.
Chicago, Ill.
Cleveland, Ohio.
Detroit, Mich.
Duluth, Minn.
Eagle Pass, Tex.
Eastport, Idaho.
Eastport, Me.
El Paso, Tex.
Everett, Wash.
Fernandina, Fla.
Fort Covington, N. Y.
Galveston, Tex.
Gladstone, Mich.
Honolulu, Hawaii.
Island Pond, Vt.
Key West, Fla.
Laredo, Tex.
Los Angeles, Cal.
Lowelltown (or Holeb), Me.
Malone, N. Y.
Marquette, Mich.
Miami, Fla.
Milwaukee, Wis.
Mobile, Ala.
Neche, N. D.
New London, Conn.
New Orleans, La.
Newport, Vt.
Newport News, Va.
New York, N. Y.
Niagara Falls, N. Y.
Nogales, Ariz.
Norfolk, Va.
Ogdensburg, N. Y.
Pensacola, Fla.
Philadelphia, Pa.
Port Huron, Mich.
Portal, N. D.
Port Arthur, Tex.
Portland, Me.
Portland, Or.
Port Townsend, Wash.
Ranier, Minn.
Richford, Vt.
Rochester, N. Y.
Rouses Point, N. Y.
St. Albans, Vt.
St. John, N. D.
St. Vincent (Noyes), Minn.
San Diego, Cal.
San Francisco, Cal.
Sault Ste. Marie, Mich.
Savannah, Ga.
Seattle, Wash.
Sioux City, Iowa.
Sumas, Wash.
Tacoma, Wash.
Tampa, Fla.
Texas City, Tex.
Toledo, Ohio.
Vanceboro, Me.
Walhalla, N. D.
Wilmington, N. C."

Notes of Decisions

Damage to goods.—Damages received during the voyage between the foreign port and the port of arrival, by merchandise entered at the latter port for

"immediate transportation" to an interior port of destination should be ascertained at the port of destination. (1875) 15 Op. Atty. Gen. 7.

Port of Mobile, Ala.—Under R. S. §§ 2990, 2997, permitting duties on imports at New Orleans to be paid at Mobile when it "appears by the invoice or bill of lading and by the manifest" that the goods are "consigned to and destined for" Mobile, goods consigned to a person by name in New Orleans are not relieved from paying duties there by the words "For transportation to Mobile," or "For transshipment to Mobile." Guesnard v. Louisville & N. R. Co. (1884) 76 Ala. 453.

§ 5696. (Act June 10, 1880, c. 190, § 2.) Examination of merchandise for transportation at port of first arrival; appraisal at port of destination.

The collector at the port of first arrival shall retain in his office a permanent record of such merchandise so to be forwarded to the port of destination, and such record shall consist of a copy of the invoice and an entry whereon the duties shall be estimated as closely as possible on the merchandise so shipped, but no oaths shall be required on the said entry. Such merchandise shall not be subject to appraisement and liquidation of duties at the port of first arrival, but shall undergo such examination as the Secretary of the Treasury shall deem necessary to verify the invoice; and the same examination and appraisement thereof shall be required and had at the port of destination as would have been required at the port of first arrival if such merchandise had been entered for consumption or warehouse at such port. (21 Stat. 173.)

See notes to section 1 of this act, ante, § 5695.

§ 5697. (Act June 10, 1880, c. 190, § 3.) Carriers; bond.

Such merchandise shall be delivered to and transported by common carriers, to be designated for this purpose by the Secretary of the Treasury, and to and by none others; and such carriers shall be responsible to the United States as common carriers for the safe delivery of such merchandise to the collector at the port of its destination; and before any such carriers shall be permitted to receive and transport any such merchandise, they shall become bound to the United States in bonds of such form and amount, and with such conditions, not inconsistent with law, and such security as the Secretary of the Treasury shall require. (21 Stat. 173.)

See notes to section 1 of this act, ante, § 5695.

Notes of Decisions

Treasury regulations.—The Secretary of the Treasury is authorized by this section to modify the form of the contract made with common carriers so as to permit them to remove goods from a vessel and place them in a warehouse or other secure place, provided care be taken to stipulate that their liability as common carriers shall continue until custody and possession of the merchandise has been delivered to and accepted by the collector. (1893) 20 Op. Atty. Gen. 674.

Payment of duties by carrier.—The laws of the United States do not contemplate that the carrier shall pay the import duties at all, at any time or place, but that they shall be paid at the port of entry by the consignee, and that no right of subrogation to the right or lien of the United States is conferred either expressly or impliedly by the laws of the United States upon a carrier or upon any one else. State ex rel. Wabash R. Co. v. Bland (1902) 168 Mo. 1, 67 S. W. 580.

Bonds of carriers.—The Secretary of the Treasury may require common carriers desiring to avail themselves of its privileges to file bonds to accept and transport within a definite fixed period of time all merchandise offered under the act. (1896) 21 Op. Atty. Gen. 369.

Lien of terminal carrier.—The terminal carrier, which, under its tariff agreements, has paid the duties exacted under the laws of the United States on bonded goods at the port of entry that the initial carrier was forced to pay in order to regain possession and forward the goods, has a lien on such goods for the amount of such duties. Judgment, Pearce v. Wabash R. Co. (1901) 89 Mo. App. 437, reversed. Wabash R. Co. v. Pearce (1904) 24 Sup. Ct. 231, 192 U. S. 179, 48 L. Ed. 397, reversing judgment Pearce v. Wabash R. Co. (1901) 89 Mo. App. 437.

The right of a terminal carrier to a lien for the amount paid by it to satisfy the duties exacted under the laws

e United States on bonded goods at port of entry is not defeated be- e the initial carrier wrongfully ged their bonded destination, to the er's damage, where the contract hipment stipulated that each carrier should be liable only for loss or damage accruing upon its own road, and that such carriers should not be jointly liable, nor either for any loss or damage accruing upon the road of the other. Id.

698. (Act June 10, 1880, c. 190, § 5, as amended, Act July 2, 1884, c. 142, and Act Feb. 23, 1887, c. 215.) Transportation of merchandise in bond.

Merchandise transported under the provisions of this act shall be veyed in cars, vessels, or vehicles securely fastened with locks seals, under the exclusive control of the officers of the cus- ns; and merchandise may also be transported under the pro- ons of this act by express companies on passenger-trains, in es, "pouches," and trunks, which shall be of such size, character, l description and secured in such manner as shall be from time time prescribed by the Secretary; and in cases where merchandise ll be imported in boxes or packages too large to be included with- the safes, trunks, or "pouches" as prescribed, such merchandise y be transported under the provisions of this act by such express npanies, "corded and sealed," in such manner as shall from time time be prescribed by the Secretary of the Treasury; and 'pas- ngers' baggage and effects arriving at any of the ports specified section one of this act, which shall appear by the manifest of the porting vessel, or other satisfactory evidence, to be destined to y of the ports specified in the seventh section, may also be trans- rted by express companies under the provisions of this act to any the ports specified in the seventh section thereof, in such manner d under such rules and regulations as the Secretary of the Treas- y may prescribe"; and merchandise such as pig-iron, spiegle-iron, rap-iron, iron-ore, railroad-iron, and similar articles commonly nsported upon platform or flat cars may be transported under the ovisions of this act upon such platform or flat cars; and the weight such merchandise so transported shall be ascertained in all cases fore shipment, and ordinary railroad seals may be used for such rposes; and inspectors shall be stationed at proper points along e designated routes, or upon any car, vessel, vehicle, or train, at e discretion of the Secretary of the Treasury, and at the expense the companies, respectively. Such merchandise shall not be un- len or transshipped between the ports of first arrival and final stination, unless authorized by the regulations of the Secretary the Treasury in cases which may arise from a difference in the uge of railroads, or "where the route is bonded for both land and ter carriage," or from accidents, or from legal intervention, or nen, by reason of the length of the route, the cars, after due inspec- on by customs officers, shall be considered unsafe or unsuitable proceed further, or from low water, ice, or other unavoidable ob- ruction to navigation; and in no case shall there be permitted y breaking of the original packages of such merchandise. (21 Stat. 4. 23 Stat. 63. 24 Stat. 411.)

See notes to section 1 of this act, ante, § 5695.

This section, as originally enacted, required that merchandise transported under the provisions of this act should be conveyed in vehicles securely fastened with locks or seals under the exclusive control of the customs officers, and authorized the transportation of merchandise by express companies on passenger trains in safes and trunks of the size, character, and description and secured in the manner prescribed by the Secretary of the Treasury; and it authorized express companies to transport in a separate compartment of the car merchandise imported in boxes or packages too large to be included in safes or trunks, and when so transported, secured in the manner prescribed by the Secretary of the Treasury; and merchandise such as pig iron, railroad iron, and the like, commonly transported upon flat cars, was authorized to be transported upon such cars, upon the ascertainment of the weight of the article

before shipment. It also provided for the stationing of inspectors at points along the designated routes, or upon any car, vessel, vehicle, or train, at the discretion of the said Secretary, and at the expense of the respective companies. It prohibited the unloading or transshipping between ports of first arrival and final destination, unless authorized by the regulations of the said Secretary, or arising from accidents or legal intervention, or by reason of the length of the route the cars, after due inspection by customs officers, should be considered unsafe to proceed further, or from low water, ice, or other unavoidable obstruction to navigation; and it absolutely prohibited the breaking of the original packages.

This section as amended by Act July 2, 1884, c. 142, cited above, was further amended to read as set forth here by Act Feb. 23, 1887, c. 215, cited above. It was further amended so as to allow the shipment in certain cases in cars not secured by the prescribed customs fastenings, by Act Feb. 2, 1899, c. 84, set forth post, § 5699.

Notes of Decisions

Transportation of appraised goods.—Section 2994, R. S., has no application to the transportation of appraised merchandise. The word "merchandise," at the commencement thereof, is limited in its signification to such merchandise as may, under the four next preceding sections (2990 to 2993, inclusive), be entered for immediate transportation to the port of final destination, without appraisement and liquidation of duties at the port of original importation. (1876) 15 Op. Atty. Gen. 128.

Jurisdiction of state courts.—Property introduced from without the United States and in the possession of a carrier for transportation in bond, is beyond the jurisdiction of the state courts. Galveston, H. & S. A. Ry. Co. v. Terrazas (Tex. Civ. App. 1914) 171 S. W. 303.

§ 5699. (Act Feb. 2, 1899, c. 84.) Cording and sealing packages in unlocked cars.

Section five of the Act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable goods without appraisement, be, and the same is hereby, so amended as to allow common carriers bonded under the provisions of said Act, in instances where a sufficient quantity of such merchandise is not offered at the port of first arrival to fill an entire car, or compartment thereof, to forward such merchandise in cars not secured by the prescribed customs fastenings if the packages are corded and sealed, under regulations to be prescribed by the Secretary of the Treasury; in all other respects the provisions of the Act referred to to remain in full force. (30 Stat. 814.)

Section 5 of the Immediate Transportation Act, mentioned in and amended by this section, is set forth ante, § 5698.

§ 5700. (Act June 10, 1880, c. 190, § 6, as amended, Act July 2, 1884, c. 142.) Transfer of merchandise directly from vessel to car or other vehicle.

Merchandise so destined for immediate transportation shall be transferred, under proper supervision, directly from the importing vessel to the car, vessel, or vehicle specified in the entry provided for in section two of this act. (21 Stat. 174. 23 Stat. 63.)

See notes to section 1 of this act, ante, § 5695.

This section, as originally enacted, provided that merchandise destined for immediate transportation should be transferred under proper supervision directly from the importing vessel to the car or vehicle in which the same should be transported to its final destination. It was amended to read as set forth here by Act July 2, 1884, c. 142, cited above.

§ 5701. (R. S. § 2998.) Penalty for breaking, entering, etc.

Any person maliciously opening, breaking, or entering, by any means whatever, any car, vessel, vehicle, warehouse, or package containing any such merchandise so delivered for transportation, or removing, injuring, breaking, or defacing any lock or seal placed upon such car, vessel, vehicle, warehouse, or package, or aiding, abetting, or encouraging any other person or persons so to remove, break, injure, or deface such locks or seals, or to open, break, or enter such car, vessel, or vehicle, with intent to remove or cause

be removed unlawfully any merchandise therein, or in any manner injure or defraud the United States; and any person receiving y merchandise unlawfully removed from any such car, vessel, or hicle, knowing it to have been so unlawfully removed, shall be ilty of felony, and in addition to any penalties heretofore pre-ribed shall be punishable by imprisonment for not less than six onths nor more than two years.

Act July 14, 1870, c. 255, § 37, 16 Stat. 271.

The words of this section, "such merchandise so delivered for transportation," refer to provisions of R. S. §§ 2990–2997, repealed by the Immediate Transportation Act of June 10, 1880, c. 190, § 8, 21 Stat. 175, other sections of which act, making provisions of like nature, are set forth ante, §§ 5695–5698, 5700, and post, §§ 5702, 5704.

Notes of Decisions

Breaking bonded freight car. — One ıo breaks into a bonded freight car, ntaining merchandise in transit rough the United States between two aces in the British provinces, is not nishable under this section. It is applicable only to cars en route between certain named ports of entry in the United States and certain other places in the United States. U. S. v. Durwood (D. C. 1892) 49 Fed. 446, 447.

5702. (Act June 10, 1880, c. 190, § 7, as amended, Act June 20, 1884, c. 103, Act Feb. 9, 1887, c. 123, and Act June 30, 1892, c. 137.) Ports to which goods may be transported in bond.

The privilege of immediate transportation shall extend to the orts of New York and Buffalo, in New York; Burlington, in ermont; Boston, in Massachusetts; Providence and Newport in hode Island; New Haven, Middletown, Bridgeport, and Hartord in Connecticut; Philadelphia and Pittsburg, in Pennsylvaia; Baltimore, Crisfield and Annapolis, in Maryland; Wilmington, nd Seaford, in Delaware; Salem, Massachusetts; Georgetown in ıe District of Columbia; Norfolk, Newport News, Richmond and etersburgh, in Virginia; Wilmington and Newberne, in North Carlina; Charleston and Port Royal, in South Carolina; Savannah and runswick, in Georgia; New Orleans, in Louisiana; Portland and ath, in Maine; Portsmouth, in New Hampshire; Chicago, Cairo, lton, and Quincy, in Illinois; Detroit, Port Huron, and Grand Haven in Michigan; Saint Louis, Kansas City, and Saint Joseph in Missouri; Saint Paul, in Minnesota; Cincinnati, Cleveland, and Toedo, in Ohio; Milwaukee, and La Crosse, in Wisconsin; Louisville, n Kentucky; San Francisco, San Diego and Wilmington in Calfornia; Portland, in Oregon; Memphis, Nashville and Knoxville, n Tennessee; Mobile, in Alabama; and Evansville, in Indiana; and Galveston, Houston, Brownsville, Corpus Christi, and Indianola, in Texas; Omaha, in Nebraska; Dubuque, Burlington and Keokuk, in owa; Leavenworth, in Kansas; Tampa Bay, Fernandina, Jacksonville, Cedar Keys, Key West, Saint Augustine, and Apalachicola, in Florida: Provided, That the privilege of transportation herein conerred shall not extend to any place at which there are not the necessary officers for the appraisement of merchandise and the collection of duties. (21 Stat. 174. 23 Stat. 48. 24 Stat. 392. 27 Stat. 61.)

See notes to section 1 of this act, ante, § 5695.

This section was amended by inserting after the word "Norfolk" the words "Newport News," by Act June 20, 1884, c. 103, cited above, and was further amended by inserting after the word "Middletown" the word "Bridgeport," by Act Feb. 9, 1887, c. 123, cited above, and was further amended by inserting after the words "Key West" the words "Saint Augustine," as set forth here, by Act June 30, 1892, c. 137, cited above.

This act was amended so as to allow merchandise liable to specific rates of duty only to be entered for immediate transportation without appraisement to the ports mentioned in section 7, by Act Feb. 23, 1887, c. 218, post, § 5703.

The privileges of this section were extended to additional ports which were made ports of entry, with the privileges of the Immediate Transportation Act, as "heretofore existing," by articles I–III of the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327, and afterward the privileges were extended to other ports.

The ports to which said privileges were extended and the acts providing therefor were as follows:

Albany, N. Y. Act Feb. 19, 1890, c. 14, 26 Stat. 8.
Astoria, Or. Act June 5, 1900, c. 714, 31 Stat. 266.
Atlanta, Ga. Act Feb. 28, 1881, c. 92, 21 Stat. 373.
Bangor, Me. Act July 21, 1892, c. 215, 27 Stat. 254.
Bay City, Mich. Act March 4, 1915, c. 157, 38 Stat. 1186.
Bellingham, Wash. Act Jan. 25, 1907, c. 399, 34 Stat. 864.
Birmingham, Ala. Act March 3, 1911, c. 228, 36 Stat. 1086.
Calais, Me. Act June 4, 1900, c. 623, 31 Stat. 266.
Chattanooga, Tenn. Act Feb. 11, 1908, c. 20, 35 Stat. 7.
Columbus, Ohio. Act Feb. 9, 1889, c. 121, 25 Stat. 658.
Corry, Pa. Act March 3, 1909, c. 261, 35 Stat. 780.
Dallas, Tex. Act Sept. 18, 1913, c. 13, 38 Stat. 112.
Dayton, Ohio. Act April 12, 1904, c. 1246, 33 Stat. 171.
Denver, Colo. Act March 6, 1882, c. 25, 22 Stat. 13.
Des Moines, Iowa. Act April 7, 1892, c. 37, § 1, 27 Stat. 14.
Duluth, Minn. R. S. § 2595, as amended, Act May 2, 1888, c. 227, 25 Stat. 134.
Dunkirk, N. Y. Act July 27, 1892, c. 264, 27 Stat. 273.
Eagle Pass, Tex. Act April 12, 1900, c. 188, 31 Stat. 75.
Eastport, Me. Act June 4, 1900, c. 623, 31 Stat. 266.
El Paso, Tex. Act April 12, 1900, c. 188, 31 Stat. 75.
Erie, Pa. Act June 11, 1896, c. 418, 29 Stat. 393.
Everett, Wash. Act March 3, 1901, c. 857, 31 Stat. 1437.
Fall River, Mass. Act March 3, 1901, c. 837, 31 Stat. 1087.
Gladstone, Mich. Act June 29, 1898, c. 536, 30 Stat. 522.
Gloucester, Mass. Act March 1, 1905, c. 1300, 33 Stat. 822.
Grand Rapids, Mich. Act June 4, 1888, c. 341, 25 Stat. 166.
Green Bay, Wis. Act April 18, 1900, c. 246, 31 Stat. 137.
Greenwich, Conn. Act Feb. 24, 1908, c. 35, 35 Stat. 35.
Honolulu, Hawaii. Act Feb. 15, 1901, c. 373, 31 Stat. 791.
Indianapolis, Ind. Act March 3, 1881, c. 156, 21 Stat. 512.
Kansas City, Mo. Act Aug. 3, 1882, c. 377, 22 Stat. 215.
Key West, Fla. Res. May 1. 1886, No. 12, 24 Stat. 342.
Knoxville, Tenn. Act April 21, 1898, c. 186, 30 Stat. 361.
Laredo, Tex. Act April 12, 1900, c. 188, 31 Stat. 75.
Lincoln, Neb. Act Oct. 19, 1888, c. 1209, 25 Stat. 565.
Los Angeles, Cal. Act March 31, 1892, c. 29, § 3, 27 Stat. 12.
Marquette, Mich. Act April 13, 1892, c. 44, 27 Stat. 16.
Minneapolis, Minn. Act March 8, 1890, c. 29, § 1, 26 Stat. 17.
Nashville, Tenn. Act Feb. 21, 1891, c. 251, 26 Stat. 766.
Newark, N. J. Act March 8, 1892, c. 11, 27 Stat. 5.
New Bedford, Mass. Act Feb. 20, 1901, c. 383, 31 Stat. 798.
Niagara Falls, N. Y. Act March 2, 1903, c. 982, 32 Stat. 955.
Nogales, Ariz. Act April 12, 1900, c. 188, 31 Stat. 75.
Norwalk, Conn. Act Feb. 24, 1908, c. 35, 35 Stat. 35.
Noyes, Minn. Act Aug. 7, 1916, c. 270, 39 Stat.
Oakland, Cal. Act Aug. 11, 1894, c. 256, 28 Stat. 277.
Ogdensburg, N. Y. Act April 13, 1892, c. 43, 27 Stat. 16.
Oswego, N. Y. Act May 23, 1906, c. 2553, 34 Stat. 199.
Peoria, Ill. Act April 27, 1904, c. 1627, 33 Stat. 362.
Perth Amboy, N. J. Act Oct. 3, 1913, c. 20, 38 Stat. 204.
Petoskey, Mich. Act May 23, 1908, c. 187, § 6, 35 Stat. 245.
Port Arthur, Tex. Act April 6, 1908, c. 135, 35 Stat. 58.
Port Townsend, Wash. Act May 1, 1886, c. 69, 24 Stat. 16.
Sabine, Tex. Act June 19, 1906, c. 3436, § 3, 34 Stat. 303.
Saginaw, Mich. Act Feb. 11, 1901, c. 351, 31 Stat. 766.
Saint Joseph, Mo. Act Aug. 3, 1882, c. 377, 22 Stat. 215.
Salt Lake City, Utah. Act March 18, 1904, c. 715, § 1, 33 Stat. 85.
San Antonio, Tex. Act April 19, 1890, c. 101, 26 Stat. 58.
Sandusky, Ohio. Act Feb. 26, 1892, c. 10, 27 Stat. 4.
Sault Ste. Marie, Mich. Act Feb. 13, 1889, c. 149, 25 Stat. 667.
Seattle, Wash. Act March 1, 1889, c. 310, 25 Stat. 750. Act Aug. 28, 1890, c. 814, § 2, 26 Stat. 363. Act July 1, 1902, c. 1359, 32 Stat. 636.
Sioux City, Iowa. Act Sept. 25, 1890, c. 909, 26 Stat. 466.
South Manchester, Conn. Act March 23, 1900, c. 89, 31 Stat. 50.
Spokane, Wash. Act May 3, 1906, c. 2079, 34 Stat. 168.
Springfield, Mass. Act Sept. 25, 1890, c. 912, 26 Stat. 467.
Stamford, Conn. Act Feb. 24, 1908, c. 35, 35 Stat. 35.
Superior, Wis. Act June 29, 1906, c. 3625, 34 Stat. 631.
Syracuse, N. Y. Act May 18, 1896, c. 191, 29 Stat. 121.
Tacoma, Wash. Act March 1, 1889, c. 310, 25 Stat. 750. Act Aug. 28, 1890, c. 814, § 2, 26 Stat. 363. Act July 1, 1902, c. 1359, 32 Stat. 636.

Tampa, Fla. Res. May 1, 1886, No. 12, 24 Stat. 342.
Utica, N. Y. Act March 24, 1904, c. 815, 33 Stat. 145.
Van Buren, Me. Act March 4, 1915, c. 187, 38 Stat. 1219.
Vanceboro, Me. Act July 21, 1892, c. 215, 27 Stat. 254.
Winston-Salem, N. C. Act June 16, 1916, c. 157, 39 Stat.
Worcester, Mass. Act June 6, 1900, c. 818, 31 Stat. 682.

Georgetown, in the District of Columbia, mentioned in this section, was incorporated in and made a part of the city of Washington. Eagle Pass was made a port of entry in place of Indianola, mentioned in this section, by Act Sept. 25, 1890, c. 917, § 2, 26 Stat. 470. The port of Wilmington, Cal., mentioned in this section, was abolished by Act March 31, 1892, c. 29, § 4, 27 Stat. 12, and the ports of Seaford, Port Royal, Alton, Quincy, La Crosse, Burlington, Keokuk, and Leavenworth were abolished by the Plan of Reorganization of the Custom Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

The ports entitled to the privileges of this section were named in the Treasury Department's Circular of July 1, 1913, as follows:

"Ports to which merchandise may be transported without appraisement under the Act of June 10, 1880.

Albany, N. Y.
Astoria, Or.
Atlanta, Ga.
Baltimore, Md.
Bangor, Me.
Bath, Me.
Bellingham, Wash.
Birmingham, Ala.
Boston, Mass.
Bridgeport, Conn.
Brunswick, Ga.
Buffalo, N. Y.
Burlington, Vt.
Calais, Me.
Charleston, S. C.
Chattanooga, Tenn.
Chicago, Ill.
Cincinnati, Ohio.
Cleveland, Ohio.
Columbus, Ohio.
Corry, Pa.[1]
Council Bluffs, Iowa.[2]
Dayton, Ohio.
Denver, Colo.
Des Moines, Iowa.
Detroit, Mich.
Dubuque, Iowa.
Duluth, Minn.
Dunkirk, N. Y.
Durham, N. C.[3]
Eagle Pass, Tex.
Eastport, Me.
El Paso, Tex.
Erie, Pa.
Evansville, Ind.
Everett, Wash.
Fall River, Mass.
Fernandina, Fla.
Galveston, Tex.
Gladstone, Mich.
Gloucester, Mass.
Grand Haven, Mich.
Grand Rapids, Mich.
Greenbay, Wis.
Greenwich, Conn.
Hartford, Conn.
Honolulu, Hawaii.
Houston, Tex.
Indianapolis, Ind.
Jacksonville, Fla.
Kansas City, Mo.
Key West, Fla.
Knoxville, Tenn.
Laredo, Tex.
Lincoln, Neb.
Los Angeles, Cal.
Louisville, Ky.
Marquette, Mich.
Memphis, Tenn.
Middletown, Conn.[4]
Milwaukee, Wis.
Minneapolis, Minn.
Mobile, Ala.
Nashville, Tenn.
Newark, N. J.
New Bedford, Mass.
New Haven, Conn.
New Orleans, La.
Newport, R. I.
Newport News, Va.
New York, N. Y.
Niagara Falls, N. Y.
Nogales, Ariz.
Norfolk, Va.
Norwalk, Conn.[3]
Oakland, Cal.
Ogdensburg, N. Y.
Omaha, Neb.
Oswego, N. Y.
Peoria, Ill.
Petersburg, Va.
Philadelphia, Pa.
Pittsburgh, Pa.
Port Arthur, Tex.
Port Huron, Mich.
Portland, Me.
Portland, Or.
Portsmouth, N. H.
Port Townsend, Wash.
Providence, R. I.
Richmond, Va.
Rochester, N. Y.
St. Augustine, Fla.
St. Joseph, Mo.
St. Louis, Mo.
St. Paul, Minn.
Sabine Pass, Tex.
Saginaw, Mich.
Salt Lake City, Utah.
San Antonio, Tex.
San Diego, Cal.
Sandusky, Ohio.
San Francisco, Cal.
Sault Ste. Marie, Mich.
Savannah, Ga.
Seattle, Wash.
Sioux City, Iowa.
South Manchester, Conn.[4]
Spokane, Wash.
Springfield, Mass.
Stamford, Conn.[3]
Superior, Wis.
Syracuse, N. Y.
Tacoma, Wash.
Tampa, Fla.
Toledo, Ohio.
Utica, N. Y.
Vanceboro, Me.
Washington, D. C.
Wilmington, Del.
Wilmington, N. C.
Worcester, Mass.

Notes of Decisions

Decisions under former statutes.—See (1880) 16 Op. Atty. Gen. 548; (1885) 18 Op. Atty. Gen. 120.

[1] Merchandise should be consigned on I. T. entry and manifests delivered to deputy collector of customs at Erie, who will permit delivery under article IX of reorganization.

[2] Merchandise should be consigned on I. T. entry and manifests delivered to collector of customs at Omaha, Neb., who will permit delivery under article IX of reorganization.

[3] Merchandise should be consigned on I. T. entry and manifests delivered to collector of customs at headquarters port, who will permit delivery under article IX of reorganization.

[4] Merchandise should be consigned on I. T. entry and manifests delivered to deputy collector of customs at Hartford, who will permit delivery under article IX of reorganization."

§ 5703. (Act Feb. 23, 1887, c. 218.) Merchandise liable to speci rates of duty.

The provisions of the act entitled "An act to amend the st utes in relation to the immediate transportation of dutiable goo and for other purposes," approved June tenth eighteen hundr and eighty, be, and the same are hereby, so amended as to low merchandise liable to specific rates of duty only to be e tered for immediate transportation without appraisement to a of the ports mentioned in the seventh section of said act, althou the same may not appear by the invoice, bill of lading, or manif of the importing vessel to be consigned to or destined for either said ports, when the consignee at the port of first arrival shall ma written application therefor to the collector, giving the name of t person at the port or destination to whom he desires the mercha dise to be consigned; and whenever such application and entry sh be made, the original invoice presented by the consignee at the po of first arrival shall be forwarded, with a copy of the transportati entry, to the collector at the port of destination; and a copy of su invoice shall be retained on file at the port of first arrival. T original invoice so forwarded shall be treated as the only invoi of the merchandise upon which entry shall be made at the port destination, and the person making such entry shall be held respo sible for the statements contained therein in the same manner as the merchandise had been originally consigned to him: Provide however, That the privileges herein conferred shall not extend any merchandise the duties upon which, or any portion thereof, d pend upon the value of such merchandise: And provided furth That such privilege shall be granted only in cases where no part the merchandise shall have been landed prior to entry for immedia transportation as aforesaid. (24 Stat. 414.)

The provisions of the Immediate Transportation Act, mentioned in a amended by this section, are set forth ante, §§ 5695–5698, 5700, 5702.

§ 5704. (Act June 10, 1880, c. 190, § 9.) Transportation of me chandise landed ten days, prohibited.

No merchandise shall be shipped under the provisions of th act after such merchandise shall have been landed ten days fro the importing vessel, and merchandise not entered within such tin shall be sent to a bonded warehouse by the collector as unclaime and held until regularly entered and appraised. (21 Stat. 175.)

See notes to section 1 of this act, ante, § 5695.

§ 5705. (Act June 8, 1896, c. 371, § 1.) Special delivery and a praisement of imported articles of limited value and weight.

Articles, not merchandise intended for sale, not exceeding fi hundred dollars in value, imported in packages not exceeding o hundred pounds in weight, in vessels of the United States, may l specially delivered to and appraised at the public stores, and the e try thereof liquidated by the collector under such regulations as t Secretary of the Treasury may prescribe, and after such apprais ment and liquidation may be delivered, upon payment of the liqu dated duties under the bond provided for in this Act, to expre companies or other duly incorporated inland carriers bonded for t transportation of appraised or unappraised merchandise between t several ports in the United States: Provided, That not more tha one such consignment to one ultimate consignee from the same co signor shall be imported in any one vessel: And provided, That t original appraisement of and liquidation of duties on such importa tions shall be final against the owner, importer, agent, or consigne except in the case of manifest clerical errors, as provided for in se tion twenty-four of the Act of June tenth, eighteen hundred an

nety: Provided, That nothing contained in this Act shall apply explosives, or any article the importation of which is prohibited by w. (29 Stat. 263.)

This and the three sections next following were an act to expedite the delivery of imported parcels and packages not exceeding five hundred dollars in value, cited above.

The Customs Administrative Act of June 10, 1890, c. 407, § 24, 26 Stat. 140, mentioned in this section, was superseded by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 103, which was superseded by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, G, post, § 5718.

5706. (Act June 8, 1896, c. 371, § 2.) Carriers to be responsible; return of unclaimed packages.

Such express companies or other inland carriers shall be reonsible to the United States under bond for the safe delivery such articles to the ultimate consignee: Provided, That if any ackage shall not be delivered to the ultimate consignee by the xpress company or other inland carrier, and shall be returned the collector of the port where such articles are entered under e provisions of this Act within ninety days from the date of imortation intact, the collector shall take charge of such package and spose of it as unclaimed merchandise, and the duties, including lditional duties, if any, under section seven of the Act of June tenth, ghteen hundred and ninety, paid shall be refunded by the Secrery of the Treasury out of any moneys in the Treasury not otherise appropriated; and the express company or other inland carers shall be relieved of any liability therefor under its bond; and efore any express company or other inland carrier shall be peritted to receive and transport any such articles they shall become ound to the United States in such bonds, in such form and amount, nd with such conditions not inconsistent with law as the Secretary f the Treasury may require. (29 Stat. 263.)

The Customs Administrative Act of June 10, 1890, c. 407, § 7, 26 Stat. 134, mentioned in this section, was amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 95, which was amended and superseded by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, I, ante, § 5527.

5707. (Act June 8, 1896, c. 371, § 3.) Merchandise to be corded and sealed; record.

Articles transported under the provisions of this Act shall be corded nd sealed in such manner as shall from time to time be prescribed y the Secretary of the Treasury; and the collector of the port of rst arrival shall retain in his office a permanent record of such merhandise so forwarded. (29 Stat. 263.)

5708. (Act June 8, 1896, c. 371, § 4.) Consignment to carrier; invoice; delivery; increased duty on reliquidation; change of destination.

Such packages may be consigned to and entered by the agents f the express company or other inland carrier or steamship comany, who shall at the time of entry state the ultimate consignee, nd in all cases where a certified or other invoice is now reuired by law such invoice may be attached to or inclosed in the ackage, under such regulations as the Secretary of the Treasury ay prescribe; and the delivery of such articles to the express comany or other inland carrier shall not be delayed because of the onarrival of the triplicate invoice, but the ultimate consignee shall e liable for any increased duty found due on reliquidation, if any, fter receipt of said merchandise from the express company or other nland carrier or steamship company making entry under this Act; nd the provisions of section twenty-eight hundred and fifty-seven,

Revised Statutes, shall not apply to importations under this Act. Stat. 263.)

R. S. § 2857, mentioned in this section and set forth ante, § 5543, relate the entry of merchandise, where, from a change of destination after pro tion of the invoice thereof to the consul or other officer, the triplicate trans ted to the collector of the port to which such merchandise was originally tined is not received at the port where it actually arrives.

§ 5709. (R. S. § 2999.) Special agents in foreign territory.

For the purpose of better guarding against frauds upon the r enue on foreign merchandise transported between the ports of Atlantic and those of the Pacific overland through any foreign te tory, the Secretary of the Treasury may appoint special sworn age as inspectors of the customs, to reside in such foreign territory wh such merchandise may be landed or embarked, with power to sup intend the landing or shipping of all merchandise, passing coastw between the ports of the United States on the Pacific and the Atlan It shall be their duty, under such regulations and instructions as Secretary of the Treasury may prescribe, to guard against the p petration of frauds upon the revenue. The compensation paid such inspectors shall not in the aggregate exceed five thousand d lars per annum.

Act March 28, 1854, c. 30, § 5, 10 Stat. 272.

CHAPTER EIGHT

Payment

Sec.
5710. Duties, how payable.
5711. Certified checks receivable for duties and internal taxes.
5712. Certified checks receivable for all public dues.
5713. Disposal of moneys paid under protest.
5714. Settlements conclusive after one year.
5715. Refunding duties paid; rest tions.
5716. Regulations.
5717. Reports to Congress; appeals Supreme Court.
5718. Refunding overpayments of ties; correction of errors; port to Congress.
5719. Judgments, how payable.

§ 5710. (R. S. § 3009, as amended, Act Feb. 27, 1877, c. 69, § 1 Duties, how payable.

All duties upon imports shall be collected in ready money, a shall be paid in coin or coin certificates or in United States note payable on demand, authorized to be issued prior to the twenty-fif day of February, one thousand eight hundred and sixty-two, and l law receivable in payment of public dues.

Act March 2, 1833, c. 55, § 3, 4 Stat. 630. Act Aug. 6, 1846, c. 84, § 1, Stat. 53. Act Feb. 25, 1862, c. 33, § 5, 12 Stat. 346. Act Feb. 27, 1877, 69, § 1, 19 Stat. 247.

This section, as enacted in the Revised Statutes, was amended by inserti after the words "paid in coin" the words "or coin certificates," as set fo here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

Provisions prescribing what currency shall be used in the payment of dut and other debts to the United States were made by R. S. § 3473, post, § 63

The application of the coin paid for duties was prescribed by R. S. § 36 post, § 6810.

Gold certificates issued on deposit of gold coin, authorized by the Curren Act of March 14, 1900, c. 41, were made receivable for customs, taxes, a all public dues, by section 6 of that act, post, § 6567.

Certificates issued on deposit of silver dollars, authorized by the Bland- lison Coinage of Silver Act of Feb. 28, 1878, c. 20, were made receivable customs, taxes, and all public dues, by section 3 of that act, post, § 6454.

Treasury notes issued in payment for purchases of silver under the Sherm

Purchase of Silver Act of July 14, 1890, c. 708, were made receivable for customs, taxes, and all public dues, by section 2 of that act, post, § 6475.

Certified checks were made receivable for duties, etc., by Act March 2, 1911, c. 191, § 1, post, § 5711.

Notes of Decisions

Accrual of duties.
Medium of payment.
What constitutes payment.
Obligation to pay duties.
Lien for duties.
Nature of action to enforce payment.
—— Evidence and trial.
Powers of collector.
Disposal of payments.
Bonds for duties.
—— Decisions under former acts.

. **Accrual of duties.**—The duties ae at the time of the arrival of the ods at their proper port of entry, and t at the time of the subsequent en- at the custom house. Meredith v. S. (1839) 13 Pet. 486, 493, 10 L. . 258; U. S. v. Lindsey (C. C. 1812) d. Cas. No. 15,603; Same v. Lyman . C. 1818) Fed. Cas. No. 15,647; U. v. Cobb (C. C. 1892) 11 Fed. 76; S. v. Dodge (D. C. 1865) Fed. Cas. . 14,973.

Duties accrue when the goods are imrted, though brought in as prize. ince v. U. S. (C. C. 1814) Fed. Cas. . 11,425.

2. **Medium of payment.**—A collector of stoms must take genuine money or tes, and he must keep a register of treasury notes received and from om received, and if any prove to be unterfeit, he has a remedy in his n name or the name of the governnt for the amount against the person o paid them in, and a collector reving treasury notes in payment for ties, which were canceled by him and terwards stolen or lost and altered, l then received by him again in paynt for other duties, is responsible to e government for the amount thereof. S. v. Morgan (1850) 11 How. 154, 9, 13 L. Ed. 643.

3. **What constitutes payment.**—Paynt of duties into the state treasury or the Confederate government, on ods imported at a place entirely in ntrol of the Rebel forces during the r of the Rebellion, will not discharge e duties. U. S. v. Pensacola & G. R. . (C. C. 1870) Fed. Cas. No. 16,028; me v. Seventeen Packages, etc. (D. C. 68) Fed. Cas. No. 16,256. CONTRA, e Snodgrass v. Adams (1874) 26 La. n. 235.

4. **Obligation to pay duties.**—Duties e on goods imported constitute a rsonal debt due the United States m the importer, although there exs a lien on the goods and a bond the payment of the duties. Meredh v. U. S. (1839) 38 U. S. (13 Pet.) 6, 10 L. Ed. 258; U. S. v. Cobb (C. 1882) 11 Fed. 76.

The forfeiture and sale by the United ates of imported goods for underluation under the provisions of section 5527, ante, does not relieve the importer from liability for the duty thereon, so as to entitle him to a return of the duty paid. The obligation to pay the duty is incurred by the act of importation, and the importer is not relieved from such obligation by the violation of a different provision of the customs law, although he thereby incurs as a penalty a forfeiture of the entire importation. U. S. v. One Case Paintings, Engravings, and Manufactures of Metal (1900) 99 Fed. 426, 39 C. C. A. 586.

Duties are due, although the goods, for any reason, had never come into the hands of the customs officers, or the statute proceedings had never been instituted, or through accident, mistake, or fraud no duties or short duties have been paid, and the importer is not discharged from his debt by the delivery to him of the goods without payment. U. S. v. Cobb (C. C. 1882) 11 Fed. 76.

The fact that dutiable goods were allowed by the customs officers to pass through the custom house without payment of duties will not relieve the importer from liability to action for such duties. U. S. v. Koblitz (C. C. 1882) 15 Fed. 900.

The United States may maintain an action to recover the duties unpaid upon merchandise, which was subject to the payment of duties, but upon which none were paid by the importers, who procured it to be entered and delivered to them by means of false and fraudulent representations to the secretary of the treasury that the merchandise was imported for the use of the United States, which induced that officer to issue a permit for entry free of duty. U. S. v. Boyd (C. C. 1885) 24 Fed. 690, judgment reversed Boyd v. U. S. (1886) 6 Sup. Ct. 524, 116 U. S. 616, 29 L. Ed. 746.

There is no authority for the practice of the Treasury Department to exact duties when forfeiture prevails only in those cases which arise under section 5527, ante, and not in other customs revenue cases involving forfeiture. (1902) 24 Op. Atty. Gen. 1.

Regular duties may be exacted on an importation of foreign goods, notwithstanding the goods have been seized and forfeited for a violation of section 5526, ante, and the whole of the proceeds from their sale applied to the use of the United States. Id.

As to interest on duties, see note under § 5595, ante.

5. **Lien for duties.**—See § 5760, post, as to transfers of goods.

The lien on imported goods for duties is relinquished by the taking of a

bond and security therefor. Conard v. Pacific Ins. Co. (1832) 31 U. S. (6 Pet.) 262, 8 L. Ed. 392; U. S. v. Murdoch (C. C. 1824) Fed. Cas. No. 15,-836; Dias v. Bouchaud (N. Y. 1843) 10 Paige, 445.

The lien for duties on imported goods cannot be enforced by libel in the admiralty, as the revenue jurisdiction of the district courts, proceeding in rem, is confined to seizures for forfeitures under the laws of impost, etc. U. S. v. Three Hundred and Fifty Chests of Tea (1827) 25 U. S. (12 Wheat.) 487, 6 L. Ed. 702.

The United States having a lien on goods imported for the payment of the duties, and being entitled to a virtual custody of them, from the time of their arrival in port, until the duties are paid or secured, any attachment by a state officer is an interference with such lien and right of custody, and, being repugnant to the laws of the United States, is void. Harris v. Dennie (1830) 3 Pet. 292, 304, 7 L. Ed. 683.

The lien of the United States for duties is restricted to the specific goods on which the duties have accrued. The government has no general lien on merchandise, the property of the importer, for duties due by him on other importations. Harris v. Dennie (1830) 28 U. S. (3 Pet.) 292, 7 L. Ed. 683; Howland v. Harris (C. C. 1827) Fed. Cas. No. 6,794; Hodges v. Harris (1828) 23 Mass. (6 Pick.) 360; Dennie v. Same (1830) 26 Mass. (9 Pick.) 364.

No creditor can, by attachment, take goods out of the possession of the United States until the duties are paid or secured. Conard v. Pacific Ins. Co. (1832) 6 Pet. 262, 280, 8 L. Ed. 392.

Imported goods may pass by sale, though duties are due thereon. They are not liable for other duties due from the consignee, but only for the duties due on such goods. Howland v. Harris (C. C. 1827) Fed. Cas. No. 6,794.

The United States is not deprived of its lien for duties unpaid by an adverse decision on an information in rem on a seizure for an alleged violation of law. U. S. v. Five Hundred Boxes of Pipes (D. C. 1870) Fed. Cas. No. 15,116.

6. Nature of action to enforce payment.—Bill by United States to recover for fraud difference between duties paid and those which should have been paid must conform to general rule of pleading where recovery is sought for fraud. U. S. v. Sherman & Sons Co. (1915) 35 Sup. Ct. 520, 237 U. S. 146, 59 L. Ed. 883.

The United States may maintain assumpsit for duties not bonded. U. S. v. Lyman (C. C. 1818) Fed. Cas. No. 15,647; Same v. Howland (C. C. 1824) Fed. Cas. No. 15,406.

Debt lies against the importer for duties on smuggled goods; also where short duties only have been paid. U. S. v. Lyman (C. C. 1818) Fed. C No. 15,647.

In such cases an information of d or an information in the nature o bill of discovery and account, is a pr er remedy. Id.

Duties are a personal debt aga the importer which may be collec by civil action. U. S. v. George (C 1869) Fed. Cas. No. 15,198.

An importer who offers for goods entered free of duty as sea sto is liable to an action of debt for duties. In re An Ullage Box of Su (D. C. 1836) Fed. Cas. No. 14,324

7. —— Evidence and trial.—The ceipt of a collector acknowledging p ment is only prima facie evider Johnson v. U. S. (C. C. 1830) F Cas. No. 7,419.

In an action to recover duties, burden of proof is on the governm to show that defendant imported articles without payment of the du and also to show the quantity so ported by him, and this must be d by a fair preponderance of evider U. S. v. Koblitz (C. C. 1882) 15 F 900.

The provision in Customs Admi trative Act (section 5595, ante) t the decision of the collector of c toms as to duties "shall be final conclusive," unless the duties are p under protest, and proceedings brou for their recovery before the bo of general appraisers, does not quire that on an action by the g ernment for unpaid duties the impor should be limited to the proceedi prescribed in said section. He may fend on the ground that the asse ment in question was illegal. U. v. Tiffany (C. C. 1905) 137 F 971, judgment reversed Same v. T fany & Co. (1906) 151 Fed. 473, C. C. A. 11.

In an action against an importer unpaid duties, the Circuit Court ample power to suspend the trial til the importer, by payment of the ties assessed, may put himself in po tion to try the question as to class cation of the goods before the Bo of General Appraisers. U. S. v. T fany & Co. (1907) 153 Fed. 969, C. C. A. 81; Id. (1907) 154 Fed. 7

8. Powers of collector.—The collec cannot bind the government by acts beyond or contrary to the auth ity given him by law. Johnson v. S. (C. C. 1830) Fed. Cas. No. 7,419

9. Disposal of payments.—All dut paid to a collector must be placed the credit of the Treasurer of United States. (1896) 21 Op. At Gen. 345.

10. Bonds for duties.—As to inter on bonds for duties, see § 1601, an

Act March 2, 1799, § 65 (1 St 627), in relation to granting judgme on motion in suits on bonds to t United States for duties, was pass

r the purpose of interdicting a party om proceeding for the purpose of ere delay, but such act does not prent a party from setting up any good fense to the suit founded upon real d substantial merits. Ex parte Danport (1832) 31 U. S. (6 Pet.) 661, L. Ed. 537.

Under Duty Act 1799, § 65, where a nd has been given for duties, and rors in the calculation thereof are eged in affidavits, at the first term which suit has been brought on the nd, a delay of one term is allowed r examination and corrections, and, here there is a real defense to the im on the bond, an opportunity to tain evidence by a continuance must given. Ex parte U. S. (1834) 33 S. (8 Pet.) 700, 8 L. Ed. 1094.

A bond was given for duties, at the ne of importation, conditioned that a importer should pay $425—that ng the estimated duty based on the voice—or the amount which should subsequently ascertained to be due, that he should within three years thdraw and export them, or transrt them to a Pacific port. The esnated duty was paid on the withwal of the goods, but it proved to less than the duty which was afterrds regularly liquidated. In a suit ainst the surety for the balance, d, that the payment of the estimatduty was one of the alternative conions of the bond, and that its permance discharged the surety, but t the importer's liability for the du was not affected. Dumont v. U. S. 378) 98 U. S. 142, 25 L. Ed. 65.

Sureties of an insolvent debtor, in a nd for duties to the United States, e not entitled to judgment against eir principal at the first term. Johns Brodhag (C. C. 1804) Fed. Cas. No. 62.

Where goods are shipped in the imrter's vessel, consigned to a person o gave bonds for the duties, the inice showing the goods to be the operty of the importer, the sureties the consignee cannot recover from e importer the amount paid by them. ilds v. Shoemaker (C. C. 1806) Fed. s. No. 2,681.

In a several action against one of e obligors in a joint and several nd given for duties, it is no objection t a co-obligor has been taken in exution on a judgment on the same nd, and discharged under Act June 1798, c. 66. Hunt v. U. S. (C. C. 12) Fed. Cas. No. 6,900.

A bond for duties in the alternative y be discharged by payment of the m named in the condition, though s than the duties. U. S. v. Thompn (C. C. 1813) Fed. Cas. No. 16,486.

Only the owner or consignee, or his ent or factor, can enter and bond ods at the customhouse. A subpuraser, after importation, has no such ght; and the collector has no author to receive the bond of any person except those legally entitled to enter the goods. U. S. v. Lyman (C. C. 1818) Fed. Cas. No. 15,647.

A surety on a customhouse bond, after paying it, has the same priority as the United States against the estate of his principal in the hands of an assignee. U. S. v. Hunter (C. C. 1828) Fed. Cas. No. 15,426; Dias v. Bouchaud (N. Y. 1841) 3 Edw. Ch. 485.

Where a consignee gives bond for duties under the act of 1799, and fails to pay them, the United States has no remedy against the owner for whom the consignee acts as agent or trustee. Knox v. Devens (C. C. 1829) Fed. Cas. No. 7,905.

Unless the owner requested him to sign the bond, remedy is against consignee only. Id.

The cancellation of a bond for duties without receiving payment in connivance with the debtor, is void. Johnson v. U. S. (C. C. 1830) Fed. Cas. No. 7,419.

It is no defense to a bond for customs duties that it was given by the obligors, without knowledge of an alleged defense, arising from delay in demanding payment. U. S. v. McKewan (C. C. 1859) Fed. Cas. No. 15,692.

The bond given by the importers, in which they expressly stipulate to pay the amount which might be found due upon the final liquidation of the entry over and above the amount of the estimated duties already paid, is a distinct notice to them that a further adjustment of the duties on the entry was to be made, and that they might be called upon for a further payment. U. S. v. Cobb (C. C. 1882) 11 Fed. 76.

Mere delay by the officers of the government in selling as directed would not discharge the surety; but where, upon goods advertised for sale at a regular quarter day, the secretary of the treasury, at the request of a purchaser, directed a postponement of the sale, without the surety's consent, the latter was discharged. U. S. v. De Visser (D. C. 1882) 10 Fed. 642.

Where a surety in a bond for the payment of duties to the United States on goods imported, a third person being the real owner, pays the bond, he may maintain assumpsit against his co-obligor. Sluby v. Champlin (N. Y. 1809) 4 Johns. 461.

Under the act to establish the judicial courts of the United States (Act Sept. 24, 1789, c. 20, §§ 9, 11), providing that the courts of the several states shall have jurisdiction concurrent with the United States courts of all suits at common law, in which the United States is plaintiff, the supreme court of this state has jurisdiction of an action of debt by the United States, on a bond given to the collector of customs, conditioned for the payment of duties on certain imports. U. S. v. Dodge (N. Y. 1817) 14 Johns. 95.

The release of one surety in a cus-

tom-house bond by the secretary of the treasury, pursuant to an act of congress, with the consent of the other surety, is inoperative unless it be shown that all the requirements of the act of congress have been complied with; recital of the facts in the release is not evidence of such compliance. Bouchaud v. Dias (N. Y. 1846) 3 Denio, 238.

The surety on a custom-house bond, if he pay the same, has no preference where his principal absconds, unless the principal has made an assignment or has been attached or declared bankrupt. Gallagher v. Davis (Pa. 1800) 2 Yeates, 548.

The surety on a custom-house bond who has paid his principal's debt to the United States cannot bring an action against his principal after his discharge under the United States bankrupt law of April 4, 1800, but he is entitled to preference out of the estate of the bankrupt. Reed v. Emory (Pa. 1815) 1 Serg. & R. 339.

A surety on a customhouse bond who has paid it is not entitled to be subrogated to the rights of the United States as against his cosurety, so as to give his demand for contribution a pr erence over other creditors of the surety. Bank of South Carolina Adger (S. C. 1835) 2 Hill, Eq. 262.

Where A. gives his bond for dut on goods imported into the Uni States for B., the importer, and B. not bound in the bond, if A. discharg the bond, it seems that he cannot placed in the condition of the Uni States, as to priority, in a claim agai A., under the law of Congress. End v. Brune (Va. 1826) 4 Rand. 438.

11. —— Decisions under former a —See Olney v. Arnold (1796) 3 U. (3 Dall.) 308, 1 L. Ed. 614; Me dith v. U. S. (1839) 38 U. S. (13 Pe 486, 10 L. Ed. 258; U. S. v. Pres (C. C. 1824) Fed. Cas. No. 16,0 Same v. Howell (C. C. 1826) Fed. C No. 15,405; Johnson v. U. S. (C. 1830) Fed. Cas. No. 7,419; U. S. Williams (D. C. 1830) Fed. Cas. 16,724; Same v. Linn (D. C. 18 Fed. Cas. No. 15,605; (1837) 3 Atty. Gen. 279; Jones v. Moore Y. 1833) 1 Edw. Ch. 632; Morton Ludlow (N. Y. 1835) 5 Paige, 519, firming (N. Y. 1833) 1 Edw. Ch. 6

§ 5711. (Act March 2, 1911, c. 191, § 1.) Certified checks receiv ble for duties and internal taxes.

It shall be lawful for collectors of customs and of internal re enue to receive for duties on imports and internal taxes cer fied checks drawn on national and State banks, and trust co panies during such time and under such regulations as the Sec tary of the Treasury may prescribe. No person, however, who m be indebted to the United States on account of duties on imports internal taxes who shall have tendered a certified check or checks provisional payment for such duties or taxes, in accordance with t terms of this Act, shall be released from the obligation to make ul mate payment thereof until such certified check so received has be duly paid; and if any such check so received is not duly paid by t bank on which it is drawn and so certifying, the United States sha in addition to its right to exact payment from the party originally i debted therefor, have a lien for the amount of such check upon the assets of such bank; and such amount shall be paid out of assets in preference to any or all other claims whatsoever against sa bank, except the necessary costs and expenses of administration a the reimbursement of the United States for the amount expended the redemption of the circulating notes of such bank. (36 Stat. 96

This was an act to authorize the receipt of certified checks for duties on i ports and internal taxes, etc. It was amended by Act March 3, 1913, c. 11 post, § 5712.

Section 2 of this act provided that it should be effective on and after Ju 1, 1911.

§ 5712. (Act March 3, 1913, c. 119.) Certified checks receivab for all public dues.

It shall be lawful for collecting officers to receive certified chec drawn on national and State banks and trust companies, during su time and under such regulations as the Secretary of the Treasur may prescribe, in payment for duties on imports, internal taxes, an all public dues, including special customs deposits; and the Act o March second, nineteen hundred and eleven, entitled "An Act to a

orize the receipt of certified checks for duties on imports and in-nal taxes," is hereby amended accordingly. (37 Stat. 733.)

This was an act to extend the authority to receive certified checks.

Act March 2, 1911, c. 191, mentioned in this act, is set forth ante, § 5711.

5713. (R. S. § 3010.) Disposal of moneys paid under protest.

All money paid to any collector of the customs, or to any person ting as such, for unascertained duties or for duties paid under otest against the rate or amount of duties charged, shall be placed the credit of the Treasurer of the United States, and shall not held by the collector, or person acting as such, to await any as-rtainment of duties, or the result of any litigation in relation to e rate or amount of duty legally chargeable and collectible in any se where money is so paid.

Act March 3, 1839, c. 82, § 2, 5 Stat. 348.

(R. S. §§ 3011–3013. Repealed.)

R. S. § 3011, provided that any person having made payment, under protest, in order to obtain possession of merchandise imported for him to any collector, of any money as duties, when such amount of duties was not wholly authorized by law, might maintain an action, in the nature of an action at law, which should be triable by jury, to ascertain the validity of the payment of duties and to recover back any excess so paid; but that no recovery should be allowed in such action unless a protest in writing, signed by the claimant or his agent, was made and delivered at or before the payment, setting forth distinctly and specifically the grounds of objection to the amount claimed. It was amended by striking out the provision relating to the making and delivery of the written protest, and by inserting a provision that an appeal should be taken as prescribed in section 2931, by Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 247.

R. S. § 3012, provided that no suit should be maintained for the recovery of duties alleged to have been erroneously or illegally exacted by collectors, unless plaintiff, within 30 days after notice of appearance of defendant, served a bill of particulars of plaintiff's demand, giving prescribed particulars; and it directed that, if the bill of particulars should not be served, judgment should be rendered against plaintiff.

R. S. § 3012½, provided that when it should be shown to the satisfaction of the Secretary of the Treasury that in case of unascertained duties, or duties or other moneys paid under protest, and appeal, as before provided, more money had been paid to the collector than the law required, the said Secretary should draw his warrant upon the Treasurer in favor of the person entitled to the overpayment, directing the Treasurer to refund the same out of any money not otherwise appropriated.

R. S. § 3013, provided that when it should be shown to the satisfaction of the Secretary of the Treasury that more money had been paid to the collector than the law required, and the party had failed to comply with the requirement relating to appeals to the Secretary, and the Secretary should be satisfied that such non-compliance was owing to circumstances beyond the control of the importer, consignee, or agent making such payment, he might draw his warrant upon the Treasurer in favor of the person entitled to the overpayment, directing the Treasurer to refund the same out of any money not otherwise appropriated.

All these sections were repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141.

Notes of Decisions

Disposal of moneys.—All moneys id to collectors of customs for unas-rtained duties, must be placed to the edit of the Treasurer of the United ates. (1896) 21 Op. Atty. Gen. 345.

Action for return of duties paid.—e § 5530, ante, as to abolition of ac-n against collector.

Since the passage of this act, an ac-n of assumpsit for money had and ceived will not lie against the collec-r for the return of such duties. Cary Curtis (1845) 44 U. S. (3 How.) 235, L. Ed. 576; Curtis v. Fiedler (1863) U. S. (2 Black) 461, 17 L. Ed. 273; Richardson v. Curtis (C. C. 1855) Fed. Cas. No. 11,781; Knoedler v. Schell (C. C. 1861) Fed. Cas. No. 7,889.

Cited without definite application, Hager v. Swayne (1893) 13 Sup. Ct. 841, 842, 149 U. S. 242, 37 L. Ed. 719; Schoenfeld v. Hendricks (1894) 14 Sup. Ct. 754, 755, 152 U. S. 691, 38 L. Ed. 601; Saltonstall v. Birtwell (1895) 66 Fed. 969, 971, 14 C. C. A. 205 (affirmed [1896] 17 Sup. Ct. 19, 164 U. S. 54, 41 L. Ed. 348); White v. Arthur (C. C. 1882) 10 Fed. 80, 85; De Celis's Adm'r v. U. S. (1877) 13 Ct. Cl. 117.

§ 5714. (Act June 22, 1874, c. 391, § 21.) Settlements conclu after one year.

Whenever any goods, wares, and merchandise shall have b entered and passed free of duty, and whenever duties upon any ported goods, wares, and merchandise shall have been liquidated paid, and such goods, wares, and merchandise shall have been livered to the owner, importer, agent, or consignee, such entry passage free of duty and such settlement of duties shall, after expiration of one year from the time of entry, in the absence fraud and in the absence of protest by the owner, importer, ag or consignee, be final and conclusive upon all parties. (18 Stat. 1

This section was part of the Anti-Moiety Act, cited above.

Provisions making the decision of the appraiser final and conclusive as to dutiable value of the merchandise appraised, unless appealed from withi time prescribed, and making the decision of the collector final and con sive as to the rate and amount of duties chargeable upon such merchan unless appealed from within a time prescribed were made by the Cust Administrative Act of June 10, 1890, c. 407, §§ 13, 14, 26 Stat. 136, which provisions were amended by the Payne-Aldrich Tariff Act of Aug 1909, c. 6, § 28, 36 Stat. 99, 100, and further amended and superseded by Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, M, N, ante, §§ 5594, 5

Notes of Decisions

Nature and operation of section in general.—See § 5718, post.

If articles were purchased by defendant after they had been imported and passed the custom house, without the payment of duty by others, he is not liable for the duty, unless he connived at and is shown to be privy to the importation. U. S. v. Koblitz (C. C. 1882) 15 Fed. 900.

Where an oil painting that would have been entitled to be passed free as an "antiquity," under the act of March 3, 1883 (clause 669, Heyl, part 2, p. 38), if regularly entered as free, has been brought in by the owner without such entry, or payment of duty, but with full opportunity to the customhouse officials for examination and demand of duty, and with no intent on the part of the owner to defraud, and in the actual belief that it was not subject to duty, a proceeding to forfeit it will be barred by this section if not brought within one year from the time of its importation. U. S. v. One Oil Painting (C. C. 1887) 31 Fed. 881.

This section applies to actions to recover from the government alleged excessive or illegal duties. Gulbenkian v. U. S. (C. C. 1909) 175 Fed. 860, judgment affirmed (1911) 186 Fed. 133, 108 C. C. A. 245.

The statute limiting the time for liquidation is designed to apply to past liquidations; and a reliquidation cannot, in the absence of fraud, be made more than one year after settlement. U. S. v. Campbell (D. C. 1882) 10 Fed. 816.

This section is in the nature of a statute of limitations, as respects the government's right to reliquidate duties, and limits this right, if the duties have been paid, to one year after entry, in the absence of fraud or protest, and any such reliquidation after that period is void; but, if such reli dation be lawfully made within year, the statute is not a limita upon a suit to collect the duties cordingly, and such suit may be bro at any time afterwards. U. S Leng (D. C. 1883) 18 Fed. 15.

There is no limitation fixed by section except a limitation which ar only in the absence of fraud and in absence of protest. So far as the tion contains implied authority reliquidation, it imports the right reliquidate in case of fraud and in of protest after the lapse of one equally with the right so to reliqui within the period of a year. U. S Vitelli & Son (1914) 5 Ct. Cust. A 151.

This section is intended to limit time within which errors in the li dation and payment of duties may corrected. It has no application claims under the provisions of sec 20 of said act of June 30, 1864, refund of additional duties exacted paid upon importations made on 29th and 30th of April, 1864. (18 15 Op. Atty. Gen. 122.

Repeal of section.—Section 57 post, does not repeal or modify section; and a reliquidation m more than a year after entry is v though within a year after the p ment of duty. U. S. v. F. B. Van grift & Co. (C. C. 1908) 166 F 1017, judgment affirmed (1909) Fed. 772, 99 C. C. A. 598.

Conclusiveness of settlement in g eral.—A reliquidation of duties bas not on a reappraisement of the va of the merchandise by the local praiser, but on a change in the ra and by a disallowance of a discou and made more than one year af settlement without protest, will sustain a demand by the governm

r additional duties, such settlement ing final. Beard v. Porter (1888) 4 U. S. 437, 8 Sup. Ct. 556, 31 L. l. 490, 492, affirming (C. C. 1883) 15 ed. 380, 382.

Importer held not concluded by a reuidation for fraud a year after reval of goods, but under this section, d Tariff Act Aug. 5, 1909, § 28, subc. 14, he may, when sued for amount e under reliquidation, set up his dense as in other cases. U. S. v. Sherin & Sons Co. (1915) 35 Sup. Ct. 0, 237 U. S. 146, 59 L. Ed. 883.

This section does not give rise to y presumption that the collector ade a liquidation within one year ter entry, nor require a liquidation be made within one year, but only events a reliquidation after a year s elapsed from the entry. Gandolfi United States (C. C. A.) 74 Fed. 9, 20 C. C. A. 652.

This section does not operate to prent the liquidation of duties on an ticle at any time after its entry in nd upon or after its withdrawal r consumption when there had been previous liquidation. Abner Doble . v. United States (1902) 119 Fed. 2, 56 C. C. A. 40.

By virtue of this section, within one ar after entry, the duties may be liquidated at a higher rate, though ey may have been paid and the merandise have been withdrawn for conmption. Louisville Pillow Co. v. U. (1906) 144 Fed. 386, 75 C. C. A. 4; U. S. v. Mexican International Co. (1907) 151 Fed. 545, 81 C. C. 61.

Under this section a collector of stoms may liquidate duties before after one year from entry of imrts, but, after once liquidating, he nnot, in the absence of fraud or prost, reliquidate after a year from date entry. Pacific Creosoting Co. v. nited States (1912) 196 Fed. 35, 116 C. A. 50.

In a proceeding by a collector to reuidate duties, where an importer hose goods have been appraised and rrendered on payment of the duty cited for examination under section 96, ante, the collector has no power, der this section, to examine into the estion of valuation; the appraisal ing final and conclusive. Bornn Hat o. v. U. S. (1914) 215 Fed. 709, 132 C. A. 87, affirming judgment U. S. Calhoun (D. C. 1911) 184 Fed. 499.

A promise, without consideration, of collector of customs not to plead e statute of limitations is enforcea- e neither in law nor equity. Andrae Redfield (C. C. 1872) Fed. Cas. No. 8; Id. (C. C. 1875) Fed. Cas. No. 7.

Within a year from the entry a colctor may make a reliquidation, notithstanding a previous liquidation and yment of the duties, which will be nding upon the importer in the absence of an appeal. U. S. v. Phelps (C. C. 1879) Fed. Cas. No. 16,039.

Where the secretary of the treasury instructed the collector of customs to continue to classify jute rejections as jute butts, under the provisions of the Revised Statutes (section 2499) known as the "similitude clause," after jute butts had ceased to be dutiable and could no longer be a standard of comparison under that clause, and the collector delivered the jute rejections free of duty under said similitude clause, and the secretary of the treasury, having subsequently discovered his error, in a second instruction to the collector directed him to collect the prescribed duty on the jute rejections, held, that the secretary had an undoubted right to change his first erroneous ruling. U. S. v. Cobb (C. C. 1882) 11 Fed. 76.

A reweighing of goods made by the collector and the regular weighers, at which a difference from the original weights in favor of the government was found, but of which no notice or order was given, and no record made, was not a reliquidation of the duties on said goods. U. S. v. Seidenberg (C. C. 1883) 17 Fed. 227.

Certain merchandise was imported, assessed for duty, passed into the possession of the owners, and was sold, and protests against the assessment were made by the importers. Subsequently, but within one year after the original liquidation of the entry, and while the protests were still pending before the Board of General Appraisers, the collector of customs reliquidated the entry, and collected duty at an increased rate. Held, that this action of the collector was lawful, under the provision in this section. Neresheimer v. U. S. (C. C. 1903) 131 Fed. 977, judgment reversed Neresheimer & Co. v. Same (1904) 136 Fed. 86, 68 C. C. A. 654.

After the duties have been liquidated and paid, and the goods delivered, the collector cannot make a reliquidation upon the subsequent report of an appraiser who never saw the goods. U. S. v. Frazer (D. C. 1879) Fed. Cas. No. 15,161.

The liquidation is final on all parties interested, unless appealed from. U. S. v. Campbell (D. C. 1882) 10 Fed. 816.

Where, in January, February, and April, 1880, three entries on importations were made, and the estimated duties paid at the time of entry, but the duties were liquidated at a larger sum, which, on appeal to the secretary, was set aside, and the importer's classification sustained, and the duties paid accordingly, and afterwards the secretary gave a contrary order to the collector, who again, in April, 1881, reliquidated the duties according to his first liquidation, and the government thereupon sued for the excess, held, that the payment of the duties

upon the first two entries had become a binding settlement by the lapse of a year before the last liquidation, under the act but not as to the third entry. Held, also, as respects the third entry, that the decision on appeal in favor of the importer, under R. S. § 2931 (see section 5595, ante), was binding and conclusive upon the government, and that the subsequent order of the secretary and the last liquidation were invalid and void. U. S. v. Leng (D. C. 1883) 18 Fed. 15.

Collector is entitled within year to institute reliquidation proceedings, in which the importer may be cited for examination, though there can be no reappraisement by him. U. S. v. Calhoun (D. C. 1911) 184 Fed. 499.

"Entry."—"Entry" is the original entry provided for, regulated, and defined by sections 2785–2790, R. S., sections 5481–5487, ante. U. S. v. Seidenberg (C. C. 1883) 17 Fed. 227.

"Entry" does not mean the entire transaction leading up to the liquidation, but the act of the importer in presenting to the collector the document known as an "entry." Cassel v. U. S. (C. C. 1906) 146 Fed. 146.

Protest.—The filing of a protest suspends the running of the statute until the protest is decided. Klumpp v. Thomas (1908) 162 Fed. 853, 89 C. C. A. 543, writ of certiorari denied (1908) 29 Sup. Ct. 688, 212 U. S. 579, 53 L. Ed. 659.

One who entered at the custom house as imported merchandise a cargo brought from a Porto Rican port after the treaty with Spain of April 11, 1899, and before the passage of the Foraker act, and paid the duties assessed thereon without objection or protest, either written or verbal, or notice of an intention to sue for their recovery, is precluded by such voluntary payment from recovering the money paid from the collector after he has paid the same into the treasury in the usual course of his duty. Dewell v. Mix (C. C. 1902) 116 Fed. 664.

The presence of a protest relating to a portion of an importation does not give the collector the right to reliquidate as to another portion to which the protest does not relate. Cassel v. U. S. (C. C. 1906) 146 Fed. 146.

The provision of finality "in the absence of * * * protest" does not apply where a protest has been filed, even though it has been sustained, and is no longer pending. Gulbenkian v. Stranahan (C. C. 1907) 158 Fed. 836.

Where a protest that had been filed by an importer had been sustained by the collector of customs and was no longer pending, and more than one year after entry of the importat in dispute the collector reliquida the entry pursuant to instructions the Secretary of the Treasury. H that, as a protest had been filed, t action was not in conflict with t section. Kendall v. Lyman (C. 1908) 161 Fed. 652.

Where, with no protest other th an oral complaint, importers acquie ed in customs ruling that involved increase in the duties on their goo there was no "protest" within this se tion. Gulbenkian v. U. S. (C. C. 190 175 Fed. 860, judgment affirmed (191 186 Fed. 133, 108 C. C. A. 245.

"Absence of protest" means the a sence of any existing protest pendi and in force at the time of the reliq dation. U. S. v. Leng (D. C. 188 18 Fed. 15.

Fraud.—Where less than a year a er settlement of duties without prote the collector had the goods reappra ed, and more than a year after settl ment reliquidated the duties, but t reliquidation was not based on t second appraisal, the first settleme was conclusive in the absence of frau Beard v. Porter (1888) 8 Sup. C 556, 558, 124 U. S. 437, 31 L. Ed. 49

It was not fraud by the governmen where subordinate customs office without notice to importers or instru tions from their superior officer made a change in the method of a sessing duties, after years of unifor practice. Gulbenkian v. U. S. (C. 1909) 175 Fed. 860, judgment affirm (1911) 186 Fed. 133, 108 C. C. 245.

Where duties on raw sugar had bee liquidated and paid, the findings of collector, who succeeded in office t one regularly liquidating the dutie that such liquidation was fraudule in that the sugar had been underweig ed, was not conclusive of the questio of fraud in an action by the Unite States against the importer to reco er additional duties under a reliquida tion occurring more than a year afte the entry. U. S. v. Federal Sugar R fining Co. (D. C. 1913) 211 Fed. 101

Computation of time.—Where dutie on imported goods have been liquida ed and paid, and the payment wa made before the passage of this se tion, the one year begins to run fro the time the act took effect. U. S. Campbell (D. C. 1882) 10 Fed. 816.

The year within which the collecto can reliquidate the duty runs from th time of the presentation to the co lector of the entry by the importe and not from the time of the firs liquidation of the duty. U. S. v. Fra zer (D. C. 1879) Fed. Cas. No. 15 161.

§ 5715. (Act March 3, 1875, c. 136, § 1.) Refunding duties paid restrictions.

No moneys collected as duties on imports, in accordance wit any decision, ruling, or direction previously made or given b

ıe Secretary of the Treasury, shall, except as hereinafter pro-
ded, be refunded or repaid, unless in accordance with the judg-
ent of a circuit or district court of the United States giving
onstruction to the law, and from which the Attorney-General shall
ertify that no appeal or writ of error will be taken by the United
tates; or unless in pursuance of a special appropriation for the par-
cular refund or repayment to be made: Provided, That whenever
e Secretary shall be of opinion that such duties have been assessed
ıd collected under an erroneous view of the facts in the case, he may
ıthorize a re-examination and reliquidation in such case, and make
ıch refund in accordance with existing laws as the facts so ascer-
ined shall, in his opinion, justify; but no such reliquidation shall
allowed unless protest and appeal shall have been made as required
law: Provided further, That the restrictive provisions of this act
all not apply to such personal and household effects and other arti-
es, not merchandise, as are by law exempt from duty: And pro-
ded also, That this act shall not affect the refund of excess of de-
osits based on estimated duties nor prevent the correction of errors
liquidation, whether for or against the Government, arising solely
on errors of fact discovered within one year from the date of
yment, and, when in favor of the Government, brought to the no-
e of the collector within ten days from the date of discovery. (18
at. 469.)

This was the first section of an act restricting the refunding of customs duties, cited above.

Section 2 of this act, which restricted the reversal or modification, adversely to the United States, of a ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, is set forth ante, § 383.

Provisions creating the Court of Customs Appeals, with exclusive jurisdiction in customs cases, and forbidding appeals to other courts, were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 91, 105, and were incorporated in and superseded by chapter 8 of the Judicial Code of March 3, 1911, c. 231, §§ 188–199, ante, §§ 1179–1190.

Provisions for the appraisement of merchandise and for appeals from the decisions of the appraisers and collectors were made by the Customs Administrative Act of June 10, 1890, c. 407, §§ 13, 14, 26 Stat. 136, 137, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 99, 100, and by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, M, N, ante, §§ 5594, 5595.

Provisions defining the power of the Secretary of the Treasury to refund overpayments of estimated duties or payments made on appeal were made by the Customs Administrative Act of June 10, 1890, c. 407, § 24, 26 Stat. 140, re-enacted in the same language, but designated as section 23, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 103, which were re-enacted by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, Y, post § 5718.

Notes of Decisions

Refund of duties in general.—See
tes under § 5718, post.

This section, instead of conferring
w powers upon the Secretary of
e Treasury in regard to the refund-
; of customs duties, restricts those
eady possessed by him under sec-
ns 3012½ and 3013, R. S. But
ses in which the Secretary has made
ruling or decision are not within
operation. (1876) 15 Op. Atty.
n. 126.

The Secretary of the Treasury is
t restricted to an application of a
cision of the Supreme Court to such
ticles only as are specifically em-
aced in this section, but may properly
tend his official action to all articles
thin the principle of the decision.
878) 16 Op. Atty. Gen. 20.

—— Decisions under prior acts.—See (1875) 14 Op. Atty. Gen. 560; (1891) 20 Op. Atty. Gen. 194; (1884) 17 Op. Atty. Gen. 650.

Protest.—Decision under prior act, see (1891) 20 Op. Atty. Gen. 183.

The decision of an application to withdraw warehoused goods or supplies for vessels under section 16 of the act of June 26, 1884 (ante, § 5669), is confided by law in the Secretary of the Treasury; hence the protest required by this section is not required where duties were paid by mutual mistake of law on coal withdrawn as above. (1894) 21 Op. Atty. Gen. 92.

The cases in which the Secretary of the Treasury is authorized to make refunds, in the absence of a proper

protest, are the following: First, when the duties, as provisionally fixed and paid upon entry of the goods, called "unascertained duties," are reduced upon the final liquidation (section 5718, post); second, for mere clerical error; third, for errors of fact. (1895) 21 Op. Atty. Gen. 225.

A mistake on the part of the Treasury Department in estimating the equivalent of the Spanish pound, or libra, in the absence of due protest by the importers, is not sufficient to warrant a refund of the excess of duties paid under such erroneous estimate. (1896) 21 Op. Atty. Gen. 454.

—— **Mistake of fact or law.**—In an invoice of reimported grain bags of American manufacture, a mistake in naming the vessel may be corrected by filing a new invoice, and the duties may then be remitted. U. S. v. Brewer (C. C. 1897) 84 Fed. 147.

The collector is authorized, notwithstanding the payment of duties on a regular liquidation and the delivery of goods to the importer, to make a reliquidation, although the error is one of law only. U. S. v. Comarota (D. C. 1880) 2 Fed. 145, 146.

Importers, before being concluded, are entitled to a ruling of the Secretary, if they have taken the proper steps to obtain it; which ruling, after it is made, can only be declared erroneous in law as to duties actually paid under it, by the judgment of a court. (1876) 15 Op. Atty. Gen. 126.

The Secretary of the Treasury has no authority to refund duties erroneously collected, but without formal protest, on certain warehoused coal; but he is authorized to make such refund on coal withdrawn for use on ocean steamers, where the duties were paid by mutual mistake of law. (1894) 21 Op. Atty. Gen. 92.

The Secretary of the Treasury is authorized to order a reliquidation of the assessment of duties in the interest of the importer and to direct a return of the papers by the board of general appraisers to the collector where the duties were assessed and collected upon errors of fact, discovered within one year from the date of payment, protest and appeal having been duly made. (1895) 21 Op. Atty. Gen. 152.

For a mutual mistake of law the importer has no remedy. (1895) 21 Op. Atty. Gen. 225.

The "errors of fact" referred to are mistakes of fact within the meaning of the common law—that is, mutual mistakes of facts. (1895) 21 Op. Atty. Gen. 226.

The Secretary of the Treasury is authorized to make a refund of duties where there was an error due to a mutual mistake of fact. (1896) Op. Atty. Gen. 454.

The authority of the Secretary the Treasury to refund duties erro ously collected, on the ground of m take, is to be restricted to mistake fact. (1906) 24 Op. Atty. Gen. 34.

The question whether another co try pays a bounty on the exportat of sugar can not properly be calle pure question of fact. It is a quest of mixed fact and law. Id.

A mistake in such a question d not arise upon an error of fact wit the meaning of the concluding prov to this section, to be a common-mistake of fact. Id.

Custom house duties paid by mist on property not belonging to the pla tiff may be recovered back. Derby Pierce (Mass. 1792) 1 Dane Avr. 1

Reliquidation of duties.—Both bef and since the passage of the custo administrative act, the collector mi reliquidate at any time within one y from the entry, irrespective of whet or not the duties had been paid and goods withdrawn for consumpti Louisville Pillow Co. v. U. S. (190 144 Fed. 386, 387, 75 C. C. A. 324.

The act of March 3, 1875, does authorize a reliquidation against importer, in the absence of any pe ing protest and appeal, except for rors arising solely on matters of fa and not for an erroneous constructi of the tariff law or classification goods. U. S. v. Leng (D. C. 1883) Fed. 15.

The fact that duties paid under pr test have been refunded upon a recla sification will not prevent the gove ment from recovering under a seco reliquidation, whereby the original d ties were restored, if the suit brought before the expiration of o year from the entry of the goods. S. v. Fox (D. C. 1893) 53 Fed. 531

The collector is entitled within ye to institute reliquidation proceedin in which the importer may be cit for examination, though there can no reappraisement by him. U. S. Calhoun (D. C. 1911) 184 Fed. 499.

Section 14 of the act of June 1 1890, did not in any way limit t power of the collector of customs reliquidate duties in the interest the government within one year aft entry. (1896) 21 Op. Atty. Gen. 33

Where, notwithstanding the instru tion of the Secretary of the Treasu that collectors of customs should d lay final liquidation of duties on certa merchandise until further orders, d ties were nevertheless liquidated a subsequently reliquidated, held su original liquidation was complete a subsisting until changed by reliquid tion. (1902) 24 Op. Atty. Gen. 34.

5716. (Act March 3, 1875, c. 136, § 3.) Regulations.

The Secretary of the Treasury shall have power to make such egulations, not inconsistent with law, as may be necessary to car- y this act into effect. (18 Stat. 469.)

See notes to section 1 of this act, ante, § 5715.

5717. (Act March 3, 1875, c. 136, § 4.) Reports to Congress; appeals to Supreme Court.

The Secretary of the Treasury shall, in his annual report to Congress, give a detailed statement of the various sums of money efunded under the provisions of this act or of any other act of Congress relating to the revenue, together with copies of the rulings nder which repayments were made: Provided, That in all cases vhere the Secretary of the Treasury shall so request the Attorney-General shall take an appeal to the Supreme Court. (18 Stat. 469.)

The provisions of this section requiring the Secretary of the Treasury to give, in his annual report to Congress, a detailed statement of the sums refunded, together with copies of the rulings under which the payments were made, were superseded by the similar provisions of the Customs Administrative Act of June 10, 1890, c. 407, § 24, 26 Stat. 140, re-enacted, but designated as section 23, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 103, which were re-enacted by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, Y, post, § 5718.

See notes to section 1 of this act, ante, § 5715, as to appeal to courts.

5718. (Act Oct. 3, 1913, c. 16, § III, Y.) Refunding overpayments of duties; correction of errors; report to Congress.

Y. Whenever it shall be shown to the satisfaction of the Secre- ary of the Treasury that, in any case of unascertained or esti- nated duties, or payments made upon appeal, more money has been aid to or deposited with a collector of customs than, as has been ascertained by final liquidation thereof, the law required to be paid r deposited, the Secretary of the Treasury shall direct the Treasurer o refund and pay the same out of any money in the Treasury not otherwise appropriated. The necessary moneys therefor are hereby appropriated, and this appropriation shall be deemed a permanent in- lefinite appropriation; and the Secretary of the Treasury is hereby uthorized to correct manifest clerical errors in any entry or liquida- ion for or against the United States, at any time within one year of he date of such entry, but not afterwards: Provided, That the Sec- etary of the Treasury shall, in his annual report to Congress, give a letailed statement of the various sums of money refunded under the provisions of this Act or of any other Act of Congress relating to the revenue, together with copies of the rulings under which repayments were made. (38 Stat. 191.)

This was a subdivision of section III of the Underwood Tariff Act, cited above.

See notes to subdivision B of this section, ante, § 5519.

The provision was originally enacted in the Customs Administrative Act of June 10, 1890, c. 407, § 24, 26 Stat. 140, re-enacted in the same language, but designated section 23, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, 36 Stat. 103, which was re-enacted without change by this act.

Provisions requiring the refunding of duties improperly paid, in case of unascertained or estimated duties or payments under protest, were made by R. S. § 3012½, which was repealed by section 29 of the Customs Administrative Act.

Provisions requiring the Secretary of the Treasury to give, in his annual report to Congress, a detailed statement of the sums refunded under any law relating to the revenue, together with copies of rulings under which payments were made, were also made by Act March 3, 1875, c. 136, § 4, ante, § 5717.

Permanent appropriations to repay the excess of deposits for unascertained duties, or duties, etc., paid under protest, and to refund duties to parties otherwise entitled thereto, were made by R. S. § 3689, post, § 6799.

Provisions for abatement and refund of duties in case of injury to g while in the custody of the officers of the customs in any public or pri warehouse under bond, were made by R. S. § 2984, ante, § 5677.

Notes of Decisions

Refund of duties in general.—See notes under § 5715, ante.

Where the government repaid duties which had been improperly exacted by its agent, a collector of customs, this did not constitute a payment by a stranger which could not inure to the benefit of the collector. Bidwell v. Preston (1908) 160 Fed. 653, 88 C. C. A. 19.

On the refund of duties that had been improperly exacted, interest was withheld on the ground that there was no appropriation for payment of interest; so that the sum repaid was the exact equivalent of the principal. Held, that the acceptance of this sum by the importer was tantamount to a waiver of the claim of interest, and could not be considered as a general payment on account, which the payee was entitled to apply, first, to the extinguishment of the interest and, next, to part payment of the principal. Id.

The refunding of moneys in compliance with decisions of the board of general appraisers and the Circuit Court is a function of the Treasury Department, and a suit does not lie to restrain the collector of customs from disposing of such moneys. Joannidis v. Loeb (C. C. 1911) 191 Fed. 93.

Where there was no compliance with customs regulations governing goods in transit, and the goods were taken out of the customs custody by the importer or his agent and into his own possession while in the United States, no refund of duties could be had. U. S. v. Cornett (1914) 5 Ct. Cust. App. 334.

The Secretary of the Treasury has power to refund excess of duties erroneously exacted, upon the dismissal of the suits brought to recover such excess. (1884) 17 Op. Atty. Gen. 657.

Refund due an importer in case of judgment against the United States for illegal assessment of duties does not include costs. (1891) 20 Op. Atty. Gen. 273.

The Secretary of the Treasury has no power to remit any part of duties strictly so called, however erroneously they may have been assessed, but he may remit the "additional duties" provided for by section 5527, ante, as they are penalties and not duties. (1893) 20 Op. Atty. Gen. 660.

The cases in which the Secretary of the Treasury is authorized to make refunds, in the absence of a proper protest, are the following: First, when the duties, as provisionally fixed and paid upon entry of the goods, called "unascertained duties," are reduced upon the final liquidation; second, for mere clerical error; third, for errors of fact (section 5715, ante). (1895) 21 Op. Atty. Gen. 225.

The Secretary of the Treasury no power to refund penal duties w have been paid into the Treasury the ground that they were incu without willful negligence or an in tion of fraud on the part of the porter. (1896) 21 Op. Atty. Gen.

—— **Manifest clerical error.**— also, notes on "Manifest clerical er under § 5527, ante.

A manifest clerical error in a li dation made within one year a original entry cannot be corrected n that one year after such entry, cause not within the provision aut izing the Secretary of the Treasur correct such errors "within one y from the date of such entry," as term "entry," as there used, refer the document filed by the importer entry. U. S. v. F. B. Vandegrift & (C. C. 1908) 166 Fed. 1017, judgm affirmed (1909) 175 Fed. 772, 99 C. A. 598.

Where, in liquidation, the clerk n calculated the number of square ya in an imported fabric, this constitu a "manifest clerical error," within act. Id.

Inasmuch as this act, relating to correction of "manifest clerical rors," is the latest deliverance on t subject and relates most specifica thereto, it controls over section 57 ante, relative to the "settlement duties," and section 5715, ante, re tive to the "correction of errors liquidation." Id.

The entrants at the time of en had before them the shippers' invoic upon which two prices were indicat one purporting to be the unit co price and the other the unit mark value, and intentionally entered t merchandise at a value correspondi to such cost price. Held not to ma a case of manifest clerical error. S. v. Kuppenheimer & Co. (1915) 6 C Cust. App. 389.

Where a customs entry was made June, 1900, and the additional duti levied and collected thereon were r mitted by the Secretary of the Trea ury on the ground of a manifest cle ical error, but at the time of the r mission such duty had been paid in the Treasury, held, that the Secreta of the Treasury has authority to r fund out of an appropriation for th purpose the additional duties which a crued by reason of a manifest cleric error upon an entry within a yea from the time of their payment. Th authority to refund in such case is necessary consequence of the authorit to remit. (1901) 23 Op. Atty. Ge 442.

—— **Decisions under prior statute** —See Cantzler v. Gordon (1834) 6 L

58; Post v. U. S. (1913) 49 Ct. Cl. 05; (1840) 3 Op. Atty. Gen. 583; 1841) 3 Op. Atty. Gen. 613; (1882) 7 Op. Atty. Gen. 336; (1884) 17 Op. tty. Gen. 642; (1890) 19 Op. Atty. en. 646; (1895) 21 Op. Atty. Gen. 251.

Cited without definite application, Hager v. Swayne (1893) 13 Sup. Ct. 841, 842, 149 U. S. 242, 37 L. Ed. 719; Schoenfeld v. Hendricks (1894) 14 Sup. Ct. 754, 755, 152 U. S. 691, 38 L. Ed. 601.

5719. (R. S. § 3014.) Judgments, how payable.

In all proceedings brought by the United States in any court for ue recovery as well of duties upon imports alone as of penalties for he non-payment thereof, the judgment shall recite that the same s rendered for duties, and such judgment, interest, and costs shall e payable in the coin by law receivable for duties, and the execu- ion issued on such judgment shall set forth that the recovery is or duties, and shall require the marshal to satisfy the same in the oin by law receivable for duties; and in case of levy upon and ale of the property of the judgment debtor, the marshal shall re- use payment from any purchaser at such sale in any other money han that specified in the execution.

Act March 3, 1865, c. 80, § 12, 13 Stat. 494.

Provisions similar to those of this section were made by R. S. § 962, ante, § 1600.

See note to R. S. § 3009, ante, § 5710, as to what is receivable for duties.

CHAPTER NINE

Drawback

Sec.
5720. Allowance of drawback.
5721. Restrictions upon allowance.
5722. Limitation of time for exportation.
5723. Exportation of drugs.
5724. Articles made wholly or in part from imported materials; medicinal or toilet preparations; vessels.
5725. Railroad-iron.
5726. Salt for curing fish.
5727. Duty on gaugeable merchandise.
5728. Duty upon weighable articles.
5729. No drawback after removal from custody.
5730. No drawback allowed on discriminating duties.
5731. Exportation in same package.
5732. Change from casks.
5733. Change of package.
5734. Notice of change.
5735. Deposit of invoice.
5736. Comparison with invoice.
5737. Appraisement when duty ad valorem.
5738. Inspection and lading.
5739. Transportation to another district for exportation.
5740. Extension of time for entry.
5741. Debentures, to whom payable.
5742. Suit on refusal of payment.
5743. Debentures assignable.
5744. Exportation from another district.
5745. Refusal of debenture.
5746. Bond for delivery of merchandise at a foreign port.
5747. Discharge of bond.
5748. Consul's certificate.
5749. Consul's fee.
5750. Other proof.
5751. Permanent appropriation for payment of debentures.
5752. Penalty for relanding goods entered for drawback.
5753. Penalty for false entry.
5754. No forfeiture for accident or mistake.
5755. Exportation and transportation of bonded goods not prevented.
5756. Importations from British North America.
5757. Transportation to ports in British North America.
5758. Exportation to British North America.
5759. Drawback regulations.

§ 5720. (R. S. § 3015.) Allowance of drawback.

A drawback of duties, as prescribed by law, shall be allowed and paid on all merchandise imported into the United States, in respect to all such merchandise as shall be exported to any foreign port other than the dominions of any foreign state immediately adjoining to the United States, either from the district of original importation, or from certain other districts; and all duties, drawbacks, and allowances which shall be payable, or allowable, on any specific

quantity of merchandise, shall be deemed to apply in proportion to any greater or less quantity, except as herein otherwise provided.

Act March 2, 1799, c. 22, § 75, 1 Stat. 680.

Provisions requiring the return of duties on exportation of merchandise from warehouses in the custody of customs officers were made by R. S. § 2977 ante, § 5663.

Provisions prohibiting the entering or exporting for drawback of merchandise withdrawn from the custody of customs officers, except as provided in R. S. § 3025, were made by R. S. § 2978, ante, § 5664.

Provisions authorizing the transportation of merchandise, the duties on which have been paid or secured, from the district into which it was imported to any port of entry, and the exportation from such port with the benefit of drawback, were made by R. S. § 3036, post, § 5739.

Notes of Decisions

Drawback moneys.—Drawback moneys are duties repaid to the importer or the person to whom he has transferred his rights. (1895) 21 Op. Atty. Gen. 255.

Imposing duty in repayment of drawback.—Grain bags manufactured in this country from imported materials were exported full of California wheat. The exporter demanded and received according to law, out of the public treasury, the drawback due him on account of the duty formerly collected upon the materials of which the bags were made. Upon the return of the grain bags, held, that they were entitled to pass free of duty. The power of the secretary to prescribe rules and regulations does not authorize him to impose a duty, not provided for by congress, in repayment of the drawback. Balfour v. Sullivan (C. C. 1884) 19 Fed. 578.

Cited without definite application, Downs v. U. S. (1903) 23 Sup. Ct. 222, 224, 187 U. S. 496, 47 L. Ed. 275; Thomas & Son Co. v. Barnett (1906) 144 Fed. 338, 339, 75 C. C. A. 300; I (C. C. 1905) 135 Fed. 172; Swan Finch Co. v. U. S. (1901) 37 Ct. Cl. 10

§ 5721. (R. S. § 3016.) Restrictions upon allowance.

No merchandise imported shall be entitled to a drawback of the duties paid, unless the duties so paid shall amount to fifty dollars at least; nor unless they shall be exported in the original casks, cases, chests, boxes, trunks, or other packages, in which they were imported, without diminution or change of the articles which were therein contained, at the time of importation, in quantity, quality or value, necessary or unavoidable wastage or damage only excepted.

Act March 2, 1799, c. 22, § 75, 1 Stat. 681.

Drawback of duties paid on materials used in manufactures was provided for by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, O, post § 5724.

Cited without definite application, Downs v. U. S. (1903) 23 Sup. Ct. 222, 224, 187 U. S. 496, 47 L. Ed. 275; Thomas & Son Co. v. Barnett (190 144 Fed. 338, 339, 75 C. C. A. 300.

§ 5722. (R. S. § 3017.) Limitation of time for exportation.

No drawback of the duties shall be allowed on merchandise entitled to debenture under existing laws, unless such merchandise shall be exported from the United States within three years from the date of the importation of the same. One per centum on the amount of all drawbacks allowed shall be retained for the use of the United States by the collectors paying such drawbacks, respectively.

Act Aug. 30, 1842, c. 270, § 15, 5 Stat. 563. Act March 3, 1845, c. 7 § 10, 5 Stat. 752. Act July 14, 1862, c. 163, § 21, 12 Stat. 560.

Provisions authorizing the withdrawal of merchandise in bond for consumption were made by the Customs Administrative Act of June 10, 189 c. 407, § 20, 26 Stat. 140, which, as amended by Act Oct. 1, 1890, c. 1244, 54, 26 Stat. 624, and Act Dec. 15, 1902, c. 1, 32 Stat. 753, were furthe amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, Stat. 101, and were re-enacted by the Underwood Tariff Act of Oct. 3, 191 c. 16, § III, S, ante, § 5656.

Provisions authorizing the withdrawal of merchandise in bond for exportation were made by R. S. § 2971, ante, § 5657.

Cited without definite application, Downs v. U. S. (1903) 23 Sup. Ct. 222, 224, 187 U. S. 496, 47 L. Ed. 275; Thomas & Son Co. v. Barnett (1906) 144 Fed. 338, 339, 75 C. C. A. 30 Wheeler v. U. S. (D. C. 1896) 75 Fe 654, 655; (1843) 4 Op. Atty. Gen. 19

§ 5723. (R. S. § 3018.) Exportation of drugs.

All drugs, medicines, and chemical preparations entered for exportation and deposited in warehouse or public store, may be exported by the owner thereof in the original package, or otherwise, subject to such regulations as shall be prescribed by the Secretary of the Treasury.

Act July 14, 1862, c. 163, § 21, 12 Stat. 559.

Cited without definite application,
Downs v. U. S. (1903) 23 Sup. Ct. 222, 224, 187 U. S. 496, 47 L. Ed. 275.

(R. S. §§ 3019, 3020. Superseded.)

R. S. § 3019, was as follows:

"There shall be allowed on all articles wholly manufactured of materials imported, on which duties have been paid when exported, a drawback equal in amount to the duty paid on such materials, and no more, to be ascertained under such regulations as shall be prescribed by the Secretary of the Treasury. Ten per centum on the amount of all drawbacks so allowed shall, however, be retained for the use of the United States by the collectors paying such drawbacks respectively."

R. S. § 3020, as originally enacted, was as follows:

"Where fire-arms, scales, balances, shovels, spades, axes, hatchets, hammers, plows, cultivators, mowing-machines, and reapers, manufactured with stocks or handles made of wood grown in the United States, are exported for benefit of drawback under the preceding section, such articles shall be entitled to such drawback in all cases when the imported material exceeds one-half of the value of the material used."

The words "And where cans manufactured in whole or in part of imported material, filled with products grown or produced in the United States, are exported for benefit of such drawback, the same shall, in all cases, be entitled to the drawback provided for in the preceding section where the imported material used in the manufacture of such cans shall equal seventy per centum of the value of all the material used in the manufacture thereof," were added thereto by amendment by Act March 10, 1880, c. 37, 21 Stat. 67.

These sections and the amendatory act were superseded by provisions of the same nature made by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, O, post, § 5724.

§ 5724. (Act Oct. 3, 1913, c. 16, § IV, O.) Articles made wholly or in part from imported materials; medicinal or toilet preparations; vessels.

O. Upon the exportation of articles manufactured or produced in the United States by the use of imported merchandise or materials upon which customs duties have been paid, the full amount of such duties paid upon the quantity of materials used in the manufacture or production of the exported product shall be refunded as drawback, less 1 per centum of such duties: Provided, That where a principal product and a by-product result from the manipulation of imported material and only the by-product is exported, the proportion of the drawback distributed to such by-product shall not exceed the duty assessable under this Act on a similar by-product of foreign origin if imported into the United States. Where no duty is assessable upon the importation of a corresponding by-product, no drawback shall be payable on such by-product produced from the imported material; if, however, the principal product is exported, then on the exportation thereof there shall be refunded as drawback the whole of the duty paid on the imported material used in the production of both the principal and the by-product, less 1 per cent, as hereinbefore provided: Provided further, That when the articles exported are manufactured in part from domestic materials, the imported materials or the parts of the articles manufactured from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: And provided further, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when ex-

ported shall, in all cases where drawback of duties paid on such m terials is claimed, be identified, the quantity of such materials us and the amount of duties paid thereon shall be ascertained, the fac of the manufacture or production of such articles in the United Stat and their exportation therefrom shall be determined, and the dra back due thereon shall be paid to the manufacturer, producer, or e porter, to the agent of either or to the person to whom such man facturer, producer, exporter, or agent shall in writing order su drawback paid, under such regulations as the Secretary of the Trea ury shall prescribe.

On the exportation of flavoring extracts, medicinal or toilet pre arations (including perfumery) hereafter manufactured or produc in the United States in part from domestic alcohol on which an i ternal-revenue tax has been paid, there shall be allowed a drawba equal in amount to the tax found to have been paid on the alcohol used: Provided, That no other than domestic tax-paid alcohol sh have been used in the manufacture or production of such preparatio Such drawback shall be determined and paid under such rules a regulations, and upon the filing of such notices, bonds, bills of ladin and other evidence of payment of tax and exportation, as the Secr tary of the Treasury shall prescribe.

The provisions of this section shall apply to materials used in t construction and equipment of vessels built for foreign account a ownership, or for the government of any foreign country, notwit standing that such vessels may not within the strict meaning of t term be articles exported. (38 Stat. 200.)

This was a subdivision of section IV of the Underwood Tariff Act, cit above.

See notes to subdivision A of this section, ante, § 5292.

Provisions similar to those of this subdivision were made by the precedi tariff acts, the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 25, 36 Sta 90, the Dingley Tariff Act of July 24, 1897, c. 11, § 30, 30 Stat. 211, t Wilson Tariff Act of Aug. 27, 1894, c. 349, § 22, 28 Stat. 551, and the M Kinley Tariff Act of Oct. 1, 1890, c. 1244, § 25, 26 Stat. 617.

These provisions superseded provisions of similar nature made by R. S. 3019, 3020, 3026.

The provision that this section shall apply to materials used in the co struction and equipment of vessels built for foreign account, superseded similar provision of Act June 26, 1884, c. 121, § 17, 23 Stat. 57.

Provisions for the importation in bond of materials for the constructio and repair of vessels for foreign trade were made by subdivision J, subsec 5, 6, of this section, ante, §§ 5309, 5310. Similar provisions were made b the preceding tariff acts.

The re-importation of any article on which an allowance of drawback h been made was prohibited except on the payment of duties equal to suc drawback, by a proviso annexed to paragraph 404 of section I of this ac set forth ante, § 5291, par. 404. Similar provisions were made by precedi tariff acts.

Drawback of duties paid on materials used in the manufacture of article manufactured or produced in the United States, on the shipment of said a ticles to the Philippine Archipelago, and of duties paid on merchandise i bonded warehouse or otherwise in the custody and control of the officers the customs, on shipment to the Philippine Islands within three years fro the date of the original arrival, was provided for by Act March 8, 1902, 140, §§ 6, 7, ante, §§ 5674, 5675.

Notes of Decisions

1. Purpose of act.
2. Goods consumed on voyage—Prior statutes.
3. Jurisdiction of Secretary of the Treasury.
4. Identity of imported material and ascertainment of quantity and measure —In general.
5. —— "Appear."
6. —— "Ascertained."
7. —— Flour.
8. —— Lead.
9. —— Oil cake.
10. —— Sugar in canned fruit.
11. Leased bags.
12. "Manufacture" and materials used i manufacture—In general.
13. —— Automobile used in constructio of express wagon.
14. —— Blended flour.
15. —— Borax used as preservative fo meat.

6. —— Bottles, corks, etc.
7. —— Boxes made from imported shooks.
8. —— Burlap used for covering cotton.
9. —— Camels hair noils.
10. —— Equipment of railroad cars.
11. —— Syrup manufactured from raw sugar.
12. Persons entitled to drawback—What constitutes exportation and importation.
13. Authority to collect drawbacks.
14. —— Decisions under prior acts.

1. Purpose of act.—The general purpose of the section was to provide that, whenever materials are brought into the United States under such circumstances that they are subject to the payment of duty and used here in the manufacture of finished articles, upon the subsequent exportation of such manufactured articles to a foreign country a drawback shall be allowed upon the material on which duty has been paid. (1907) 26 Op. Atty. Gen. 355.

2. Goods consumed on voyage—Prior statutes.—See U. S. v. Allen (1896) 163 U. S. 499, 16 Sup. Ct. 1071, 41 L. Ed. 242, reversing (D. C. 1892) 52 Fed. 575, and (1893) 58 Fed. 864, 7 C. C. A. 547, 15 U. S. App. 252; (1902) 24 Op. Atty. Gen. 6.

3. Jurisdiction of Secretary of the Treasury.—The jurisdiction to allow or refuse drawbacks is vested in the Secretary of the Treasury, and it would seem incongruous to vest in another tribunal the decision of questions relating to the charges connected with the exportation of drawback goods, which in effect result in a reduction of the allowance of drawback. Atlantic Transport Co. v. U. S. (1914) 5 Ct. Cust. App. 373.

4. Identity of imported material and ascertainment of quantity and measure—In general.—Of a claim for drawback on exported articles under Act Aug. 5, 1861, § 4 (12 Stat. 292), which provides that the drawback shall be "ascertained under such regulations as shall be prescribed by the Secretary of the Treasury," the Court of Claims has not jurisdiction; there being no fixed right to any specific sum of money until the amount of the drawback is ascertained under the regulations prescribed. Campbell v. U. S. (1876) 12 Ct. Cl. 470.

Drawback is allowable under section 25, Act 1890, only in cases where the article manufactured or produced can be so separated chemically or mechanically into its component materials that the relative portions of each material may be ascertained without reference to past books of account. (1894) 21 Op. Atty. Gen. 110.

The provision of section 25, Act 1890, allowing a drawback on articles exported which are made in part from imported and in part from domestic materials, deals only with the ascertainment of the quantity or measure of the imported material existing in the completed article, and has nothing to do with the identification of such materials. The proviso does not prescribe how the imported materials shall appear, except that they shall so appear that the quantity and measure thereof may be ascertained. Ascertainment of quantity and measure is an act of the mind, and the required appearance is therefore not a visual, but a mental, presentation. The meaning of the proviso is that where the article exported is made in part from domestic materials, the imported materials shall so appear in the completed article—that is, be shown to the satisfaction of the customs officers to exist in the completed article—that the quantity or measure thereof may be ascertained. (1898) 22 Op. Atty. Gen. 111.

Where upon the exportation of a product manufactured in the United States from a combination of domestic material and foreign material which has paid duty, the quantity or measure of the foreign material actually present in the completed article can be identified to the satisfaction of the customs officials by the evidence of books of account, or otherwise, the exporter is entitled under section 30, Act 1897, to drawback of the duties paid upon the imported material thus ascertained to be actually present in the completed article. (1905) 25 Op. Atty. Gen. 344.

5. —— "Appear."—The word "appear" does not require that the imported materials should appear in the sense of being seen in the completed articles, but only in the sense of being proven to be present in the completed article. (1905) 25 Op. Atty. Gen. 344.

6. —— "Ascertained." — The word "ascertained" is obviously used to describe knowledge which is obtained from evidence, and not merely that which is obtained from the exercise of the senses. (1905) 25 Op. Atty. Gen. 344.

7. —— Flour.—In computing the drawback on the export of flour made from imported wheat, the relative values of the flour and other products at the time and place of manufacture should be used as the basis of calculation. And where only a part of the products from imported wheat is exported, the proportionate value of the same for drawback purposes should be determined without allowing anything for the increased price such part would bring in domestic markets because of the privilege of drawback. (1905) 25 Op. Atty. Gen. 374.

8. —— Lead.—In a mass of lead, of which 90 per cent. is foreign in origin and 10 per cent. domestic, the domestic lead can be regarded neither as a mere incident to the other nor as small enough in amount to be disregarded and is not entitled to drawback. (1894) 21 Op. Atty. Gen. 110.

Satisfactory proof having been pre-

sented to the customs officers to establish the identity of certain imported lead ore used in the manufacture of pig lead, to ascertain the quantity thereof, and to compute the duties paid thereon, and it being satisfactorily shown that the imported lead so appears in the exported product that the quantity or measure thereof may be ascertained, a drawback is allowable. (1898) 22 Op. Atty. Gen. 111.

White lead made in this country from a mixture of domestic and imported pig lead, obtained from foreign and domestic lead ores, held not entitled upon exportation to drawback under Act 1890, because that part of the lead which came from the imported ore does not so appear in the completed product that its quantity or measure can be ascertained in the manner contemplated by that act. (1895) 21 Op. Atty. Gen. 229.

A drawback may be allowed of the duties paid on imported lead, refined, in a bonded warehouse, subsequently withdrawn therefrom on payment of duties, for domestic consumption, as provided in section 29, Act 1897 (see ante, § 5673), upon the exportation of articles manufactured wholly from such lead under the provision of section 30. (1898) 22 Op. Atty. Gen. 119.

The drawback to be allowed under section 30, Act 1897, on refined lead withdrawn from bond, manufactured and exported, the same being originally part of a quantity of base bullion that had been imported and upon which regular duties had been paid under paragraph 182 of the same act, should be based on the quantity of refined lead thus used, plus 2 per cent. for waste (that is, an amount equal to the duties paid on the materials actually used), less the statutory 1 per cent. of such duties. (1900) 23 Op. Atty. Gen. 131.

9. —— **Oil cake.**—Where linseed, on which a duty of 20 cents per bushel had been paid, was manufactured into oil and oil cake, and the oil cake exported, the drawback, under section 22 of the act of August 27, 1894, should be computed in proportion to the value which the oil cake bears to the oil, and not in proportion to the weight which the exported oil cake bears to the weight of the imported linseed. U. S. v. Dean Linseed Oil Co. (1898) 87 Fed. 453, 31 C. C. A. 51, reversing Dean Linseed Oil Co. v. U. S. (C. C. 1897) 78 Fed. 467, and certiorari denied Id. (1898) 19 Sup. Ct. 884, 172 U. S. 647, 43 L. Ed. 1181.

Oil cake made from imported flaxseed is not waste, but a manufactured article entitled to drawback. U. S. v. Dean Linseed Oil Co. (1898) 87 Fed. 453, 454, 31 C. C. A. 51 (writ of certiorari denied [1898] 19 Sup. Ct. 884, 172 U. S. 647, 43 L. Ed. 1181); Dean Linseed Oil Co. v. U. S. (C. C. 1897) 78 Fed. 467.

A drawback is allowable on oil cake made from imported linseed. (189 21 Op. Atty. Gen. 109. See, a (1901) 23 Op. Atty. Gen. 395, a (1904) 25 Op. Atty. Gen. 115.

10. —— **Sugar in canned fruit.**—It ing possible to ascertain the quantity imported sugar present in fruit can for export, drawback on such su should be allowed. (1898) 22 Op. At Gen. 127.

11. **Leased bags.**—No right of dra back arises under R. S. § 3019, wh bags made of imported materials leased to steamers for foreign voya with the understanding that they to be brought back again to the Uni States. Kennedy v. U. S. (1899) Fed. 127, 37 C. C. A. 25, affirming ju ment (C. C. 1897) 79 Fed. 893.

12. **"Manufacture" and materials us in manufacture—in general.**—To enti an importer to a refund of duties und those statutes it is necessary that t ultimate completed article shall wholly manufactured in this count and the mere combination of a compl ed motor with or its construction in a vehicle does not constitute a new a distinct manufacture within the mea ing of the drawback laws. (1902) Op. Atty. Gen. 625.

The drawback law contemplates t manufacture of a separate and co plete article which is not merely t finished material of a further stag (1902) 24 Op. Atty. Gen. 53.

13. —— **Automobile used in constru tion of express wagon.**—An import held not entitled to a refund of duti paid upon an automobile imported f use in the construction of an expre wagon upon the reexportation of t completed wagon, such wagon not bei a manufacture. (1902) 23 Op. Att Gen. 625.

14. —— **Blended flour.**—Blended flo is a "manufacture" within the a (1908) 27 Op. Atty. Gen. 68.

15. —— **Borax used as preservati for meat.**—Borax used as a preserv tive of hams and bacon during shipme to foreign destination and then wash out held not a part of the product, a no drawback was allowable under A 1897. Nor could the drawback be a lowed in such case on the theory th the borax exported is itself a man facture because it was imported lumps, and ground or powdered befo being applied to the meat; since it not exported in the form of powder borax, but is absorbed into the surfa of the meat. Anglo-American Provisi Co. v. U. S. (1902) 116 Fed. 248, C. C. A. 28, writ of certiorari deni (1903) 23 Sup. 854, 190 U. S. 558, L. Ed. 1184.

16. —— **Bottles, corks, etc.**—Impor ed bottles and corks, re-exported fill with beer made in this country, are n "materials * * * used in the man facture of articles manufactured or pr

uced in the United States." Joseph Schlitz Brewing Co. v. U. S. (1901) 21 Sup. Ct. 740, 741, 181 U. S. 584, 45 L. Ed. 1013; Anheuser-Busch Brewing Ass'n v. U. S. (1908) 28 Sup. Ct. 204, 205, 207 U. S. 556, 52 L. Ed. 336 affirming judgment [1906] 41 Ct. Cl. 389); Wheeler v. U. S. (D. C. 1896) 75 Fed. 654; Beadleston v. U. S. (1899) 104 Fed. 295; Joseph Schlitz Brewing Co. v. U. S. (1900) 35 Ct. Cl. 110; Anheuser-Busch Brewing Co. v. U. S. (1906) 41 Ct. Cl. 389.

17. —— **Boxes made from imported shooks.**—Boxes put together in this country from imported shooks, and with nails made here from imported rods, are not "wholly manufactured" in this country, so as to be entitled to a drawback, under Rev. St. § 3019; and, while the nails may be considered as wholly manufactured here, they lost their identity in the box, so that no separate drawback can be allowed on them. Tidewater Oil Co. v. U. S. (1898) 18 Sup. Ct. 837, 171 U. S. 210, 43 L. Ed. 139.

Boxes made of shooks manufactured in Canada held not a domestic manufacture within the statute. Tidewater Oil Co. v. U. S. (1896) 31 Ct. Cl. 90.

18. —— **Burlaps used for covering cotton.**—Imported burlaps, on which duty has been paid, when used as coverings on the so-called "roundlap" bales of cotton, held not entitled to drawback, for the reason that the bale is not an article manufactured or produced within this section. (1903) 24 Op. Atty. Gen. 175.

19. —— **Camel's hair noils.**—Camel's hair noils, resulting from the separation of imported camel's hair and noils, were not entitled to drawback as a manufactured article. (1895) 21 Op. Atty. Gen. 159.

20. —— **Equipment of railroad cars.**—Certain car brakes, springs, and lighting apparatus were imported into the United States for the purpose of being used as parts of the equipment of certain railroad cars to be manufactured in this country for export. They were not installed in the cars, but were present for inspection and were shipped in their original packages, or were repacked and shipped, with the parts of the cars to which they were subsequently to be attached. Held, that such articles were not used "in the manufacture of articles manufactured or produced within the United States." (1904) 25 Op. Atty. Gen. 125.

21. —— **Syrup manufactured from raw sugar.**—Drawback should be allowed upon the exportation to Europe of syrup manufactured from raw sugar which was brought into the United States from the Philippine Islands and upon which duties were paid under the Philippine revenue act of March 8, 1902. (1907) 26 Op. Atty. Gen. 355.

22. **Persons entitled to drawback—What constitutes exportation and importation.**—The shipment of manufactured articles upon a foreign-going vessel for use and consumption upon the voyage is not "exportation." In all drawback statutes foreign destination is intended. Swan & Finch Co. v. U. S. (1901) 37 Ct. Cl. 101, judgment affirmed (1903) 23 Sup. Ct. 702, 190 U. S. 143, 47 L. Ed. 984.

The drawback provided "on the exportation" of articles manufactured from imported materials on which duties had been paid will not be allowed on goods placed on board a vessel bound for a foreign port, to be used and consumed on board the vessel during its voyage, and in fact so used and consumed. Swan & Finch Co. v. U. S. (1903) 23 Sup. Ct. 702, 703, 190 U. S. 143, 47 L. Ed. 984, affirming judgment (1901) 37 Ct. Cl. 101.

The terms "export" and "exportation" defined. Swan & Finch Co. v. U. S. (1901) 37 Ct. Cl. 101.

Imported articles of domestic origin were to be regarded as "imported materials" when their prior importation was not merely colorable. If, however, the exportation was genuine, and with intent to dispose of the alcohol abroad, so that upon its arrival there it is to be regarded as absorbed in the general mass of foreign commodities, the subsequent importation of the goods in such cases is proper. The exportation of alcohol with the intention of its reimportation, in order to take advantage of the drawback privilege, is to be regarded as colorable only. The alcohol is forfeitable, the persons engaged in the transaction are punishable and there is no right to drawback. (1897) 21 Op. Atty. Gen. 501.

Although most of the definitions of the words "import" and "export" refer to the taking of goods from one country to another, they being ordinarily the only cases in which import or export duties are imposed, these words may be also used in reference to the taking of goods from one part of a country to another or from one state to another. (1907) 26 Op. Atty. Gen. 355.

The word "imported" does not necessarily imply that the materials in which drawback is to be allowed must have come from a foreign country in a technical sense. Id.

Materials brought into the United States from the Philippine Islands on which duty has been paid under the Philippine revenue act of March 8, 1902 (32 Stat. 54), are to be regarded as "imported materials," although not brought in from a foreign country. Id.

23. **Authority to collect drawbacks.**—Nonresidents, generally, may perform by agents the acts necessary to the benefit of drawback. (1829) 2 Op. Atty. Gen. 260.

The authority to collect drawback may be delegated by a manufacturer to

a general selling agent or to some attorney at law, but such a person must conduct his business through a licensed broker unless he obtains himself a license. (1895) 21 Op. Atty. Gen. 255, 258.

24. —— **Decisions under prior acts.** See U. S. v. Five Casks of Files (D. C. 1840) Fed. Cas. No. 15.112; (1876) 15 Op. Atty. Gen. 147; (1890) 19 Op. Atty. Gen. 638; (1909) 27 Op. Atty. Gen. 228.

§ 5725. (R. S. § 3021.) Railroad-iron.

Railroad-iron, partially or wholly worn, may be imported into the United States without payment of duty, under bond to be withdrawn and exported after such railroad-iron shall have been repaired or remanufactured. The Secretary of the Treasury is hereby authorized and directed to prescribe such rules and regulations as may be necessary to protect the revenue against fraud, and secure the identity, character, and weight of all such importations when again withdrawn and exported, restricting and limiting the export and withdrawal to the same port of entry where imported, and also limiting all bonds to a period of time of not more than six months from the date of the importation.

Act March 2, 1861, c. 68, § 27, 12 Stat. 197.

Cited without definite application, Downs v. U. S. (1903) 23 Sup. Ct. 222, 224, 187 U. S. 496, 47 L. Ed. 275.

§ 5726. (R. S. § 3022.) Salt for curing fish.

Imported salt in bond may be used in curing fish, taken by vessels licensed to engage in the fisheries, under such regulations as the Secretary of the Treasury shall prescribe; and upon proof that the salt has been used in curing fish, the duties on the same shall be remitted.

Act June 6, 1872, c. 315, § 11, 17 Stat. 238.

Salt was included in the Free List of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § I, par. 593, ante, § 5291, par. 593.

Cited without definite application. Downs v. U. S. (1903) 23 Sup. Ct. 222, 224, 187 U. S. 496, 47 L. Ed. 275; U. S. v. Fifty-Nine Demijohns of Aguadiente and Four Barrels of Cigarettes (D. C. 1889) 39 Fed. 401, 402.

§ 5727. (R. S. § 3023.) Duty on gaugeable merchandise.

Upon all merchandise gaugeable by law, hereafter exported, upon which drawback or return duty is allowed, and upon all merchandise gaugeable by law, withdrawn from bonded warehouses for export, there shall be collected by the collectors of the several ports ten cents per cask.

Act March 2, 1867, c. 168, § 3, 14 Stat. 470.

Notes of Decisions

Abrogation of section.—The charges here provided held fees, and as such abrogated by the Customs Administrative Act June 10, 1890, § 22. (See section 5327 IV, ante, and note under section 5393, ante.) U. S. v. Jahn (1895) 65 Fed. 792, 13 C. C. A. 134.

The board of general appraisers sustained the action of a collector in exacting a charge of 10 cents per cask for gauging molasses withdrawn by importers from warehouse, and exported for the benefit of the drawback, to the payment of which the importers objected, on the ground that such charge was abolished by Customs Administrative Act. Held, that the circuit court of the United States, on appeal from such decision, had jurisdiction to hear and determine the questions of law and fact involved therein. U. S. v. Jahn (1894) 15 Sup. Ct. 39, 41, 155 U. S. 109, 39 L. Ed. 87, following Same v. Klingenberg (1894) 14 Sup. Ct. 790, 153 U. S. 93, 38 L. Ed. 647.

Cited without definite application, Downs v. U. S. (1903) 23 Sup. Ct. 222, 224, 187 U. S. 496, 47 L. Ed. 275.

§ 5728. (R. S. § 3024.) Duty upon weighable articles.

Upon all weighable articles hereafter exported, upon which a drawback or return duty is allowed, and upon all weighable merchandise withdrawn from bonded warehouses for export, there shall

e collected by the collectors of the several ports three cents per undred pounds, to be determined by the returns of the weighers.

Act July 26, 1866, c. 269, § 1, 14 Stat. 289.

Notes of Decisions

Abrogation of section.—The charges ere provided held fees, and as such orogated by Customs Administrative ct June 10, 1890, § 22. (See section 327 IV, ante, and note under section 5393, ante.) U. S. v. Jahn (1895) 65 Fed. 792, 13 C. C. A. 134.

Cited without definite application, Downs v. U. S. (1903) 23 Sup. Ct. 222, 224, 187 U. S. 496, 47 L. Ed. 275.

5729. (R. S. § 3025.) No drawback after removal from custody.

No return of the duties shall be allowed on the export of any nerchandise after it has been removed from the custody and control of the Government, except in the cases provided in sections hree thousand and nineteen, three thousand and twenty, three thousand and twenty-two, and three thousand and twenty-six.

Act July 14, 1862, c. 163, § 21, 12 Stat. 560.

Provisions authorizing the transportation of merchandise, the duties on which have been paid or secured, from the district into which it was imported to any port of entry, and the exportation from such port, with the benefit of drawback, were made by R. S. § 3036, post, § 5739.

Notes of Decisions

Equipment used in cars to be manufactured.—Car brakes, springs, and ighting apparatus for use in railroad ars to be manufactured held within he inhibition of this section. (1904) 5 Op. Atty. Gen. 125.

—— Decisions under prior acts.—(1849) 5 Op. Atty. Gen. 81; (1894) 21 Op. Atty. Gen. 36; (1908) 26 Op. Atty. Gen. 531.

Cited without definite application, Downs v. U. S. (1903) 23 Sup. Ct. 222, 224, 187 U. S. 496, 47 L. Ed. 275.

(R. S. § 3026. Superseded.)

This section provided for a drawback on foreign saltpeter, manufactured into gunpowder. It was superseded by provisions for drawback on articles made wholly or in part from imported materials, made by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, O, ante, § 5724.

§ 5730. (R. S. § 3027.) No drawback allowed on discriminating duties.

No part of the additional or discriminating duty imposed by law on merchandise on account of its importation in foreign vessels shall be allowed to be drawback, but the whole shall be retained.

Act May 13, 1800, c. 64, § 2, 2 Stat. 83. Act Aug. 30, 1842, c. 270, § 15, 5 Stat. 563.

Provisions authorizing a discriminating duty on goods imported in foreign vessels were made by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, T, subsec. 1, ante, § 5305, which superseded similar provisions of preceding tariff acts.

Cited without definite application, Downs v. U. S. (1903) 23 Sup. Ct. 222, 224, 187 U. S. 496, 47 L. Ed. 275.

§ 5731. (R. S. § 3028.) Exportation in same package.

Where articles are imported in bulk they shall be exported in the packages, if any, in which they were landed; for which purpose the officer delivering the same shall return the packages they may be put into, if any, with their marks and numbers, and they shall not be entitled to drawback, unless exported in such packages, which shall be deemed the packages of original importation, nor unless they fully agree with the return made by the officer.

Act March 2, 1799, c. 22, § 75, 1 Stat. 681.

§ 5732. (R. S. § 3029.) Change from casks.

It shall be lawful for the exporter of any liquors in casks, or any unrefined sugars, to fill up the casks or packages out of other casks or packages included in the same original importation, or into new casks or packages corresponding therewith, to be marked and num-

bered as the original casks or packages, in case the original casks or packages shall, in the opinion of the officer appointed to examine the same, be so injured as to be rendered unfit for exportation, and in no other case. The filling up or change of package must, however, be done under the inspection of a proper officer, appointed for that purpose by the collector and naval officer, where any, of the port from which such liquors or unrefined sugars are intended to be exported; and the drawback on articles so filled up, or of which the packages have been changed, shall not be allowed without such inspection.

Act March 2, 1799, c. 22, § 75, 1 Stat. 681.

Cited without definite application,
Thomas & Son Co. v. Barnett (1906)
144 Fed. 338, 341, 75 C. C. A. 300.

§ 5733. (R. S. § 3030.) Change of package.

When the owner, importer, consignee, or agent, of any merchandise entitled to debenture, may wish to transfer the same into packages, other than those in which the merchandise was originally imported, the collector of the port where the same may be shall permit the transfer to be made, if necessary for the safety or preservation thereof.

Act March 1, 1823, c. 21, § 32, 3 Stat. 738.

Notes of Decisions

Change of package for preservation.—Imported merchandise remaining in bond and intended for sale and consumption here is not "merchandise entitled to debenture," within the meaning of this section, and such section does not authorize its transfer into new packages for its preservation. The importer's only remedy is to remove the merchandise into his own possession. Thomas & Son Co. v. Barnett (1906) 144 Fed. 338, 339, 75 C. C. A. 300; Thomas & Son v. Same (C. C. 1905) 135 Fed. 172, 173.

§ 5734. (R. S. § 3031.) Notice of change.

Due notice of the wish to make such transfer, in writing, setting forth sufficient cause for the transfer, shall be given to the collector, who shall appoint an inspector of the revenue to ascertain if the allegation be true, and, if found correct, to superintend the transfer, and to cause the marks and numbers upon the original packages to be inscribed upon the packages into which the merchandise shall be transferred.

Act March 1, 1823, c. 21, § 32, 3 Stat. 738.

§ 5735. (R. S. § 3032.) Deposit of invoice.

Every importer, owner, consignee, agent, or exporter, who shall enter merchandise for importation, or for exportation, or transportation from one port to another, with the right of drawback, shall deposit with the collector the original invoice of such merchandise, if not before deposited with the collector, and in that case an authenticated copy thereof, to be filed and preserved by him in the archives of the custom-house, which shall be signed by such importer, owner, consignee, agent, or exporter, and the oath to be made on the entry of such merchandise shall be annexed thereto.

Act May 28, 1830, c. 147, § 5, 4 Stat. 410.

§ 5736. (R. S. § 3033.) Comparison with invoice.

It shall be the duty of the collector to cause all merchandise entered for re-exportation, with the right of drawback, to be inspected, and the articles thereof compared with their respective invoices, before a permit shall be given for lading the same; and where the merchandise so entered shall be found not to agree with the entry it shall be forfeited.

Act May 28, 1830, c. 147, § 5, 4 Stat. 410.

5737. (R. S. § 3034.) Appraisement when duty ad valorem.

All merchandise, subject to ad-valorem duty, and intended for exportation, with benefit of drawback, which shall be transported from ne district to another, shall be accompanied by a copy from the voice, of the cost thereof, certified by the collector of the district om which it may have been last reshipped, which certified copy all be produced to the collector of the district from which such erchandise is intended to be exported; and such merchandise, as ell as all such merchandise subject to ad-valorem duty, as shall e exported from the district into which it may have been originally nported, shall be inspected by the appraisers at the time of exportaon, in the same manner as on the importation of such merchandise; nd if the same is found not to correspond with the original invoice, e merchandise shall be subject to forfeiture.

Act March 1, 1823, c. 21, § 29, 3 Stat. 738.

5738. (R. S. § 3035.) Inspection and lading.

The collector shall direct the surveyor, where any, to inspect, or use to be inspected, the merchandise notified for exportation, and it is found to correspond fully with the notice and proof concerning e same, the collector, together with the naval officer, if any, shall rant a permit for lading the same on board of the vessel named such notice and entry. Such lading shall be performed under the perintendence of the officer by whom the same has been so inspectd; and the exporter shall make oath that the merchandise, so noced for exportation, and laden on board such vessel, previous to e clearance thereof, or within ten days after such clearance, is uly intended to be exported to the place whereof notice has been iven, and is not intended to be relanded within the United States; therwise the merchandise shall not be entitled to the benefit of rawback.

Act March 2, 1799, c. 22, § 76, 1 Stat. 682.

5739. (R. S. § 3036.) Transportation to another district for exportation.

All merchandise imported into the United States, the duties on hich have been paid, or secured to be paid, may be transported by nd, or partly by land and partly by water, or coastwise, from the istrict into which it was imported to any port of entry and exported om such port of entry with the benefit of drawback.

Act March 1, 1823, c. 21, § 28, 3 Stat. 737. Act Feb. 12, 1831, c. 24, 4 Stat. 442.

Provisions prohibiting the entering or exporting for drawback of merchandise withdrawn from the custody of customs officers, except as provided in R. S. § 3025, were made by R. S. § 2978, ante, § 5664.

Provisions authorizing the withdrawal of merchandise entered for warehousing for rewarehousing in another district were made by R. S. § 3000, ante, § 5685.

5740. (R. S. § 3037.) Extension of time for entry.

Whenever the exporter entering any merchandise, for the benefit f drawback, shall not have completed such entry, by taking the oath r giving the bond required by the existing laws, within the period rescribed by law, but shall offer to complete the entry after the exiration of the period, the Secretary of the Treasury may, upon aplication to him made, by the exporter, setting forth the cause of his mission, under oath, and accompanied by a statement of the colector of all the circumstances attending the transaction within the nowledge of such collector, if he shall be satisfied that the failure o complete the entry was accidental, without any intention to evade he law or defraud the revenue, direct the entry to be completed, nd the certificates or debentures, as the case may be, to issue in

the same manner, as if such entry had been completed within the period described by the existing laws of the United States.

Act March 3, 1825, c. 45, 4 Stat. 95.

Notes of Decisions

Application by attorney in fact.—The application authorized by the act may be made by the attorney in fact of the exporter, who may, under proper circumstances, make the oath and give the bond. (1829) 2 Op. Atty. Gen. 260.

Cited without definite application, (1825) 1 Op. Atty. Gen. 707.

§ 5741. (R. S. § 3038.) Debentures, to whom payable.

All debentures shall be issued and made payable to the original importer of the merchandise, entered for exportation, whenever the same shall be requested, in writing, by the exporter, and not otherwise. In respect to any merchandise, on which the duties shall have been paid prior to an entry for exportation, the debenture for the amount of the drawback of such duties shall be made payable in fifteen days, to be computed from the time of signing the bond, to be given as hereinafter directed.

Act March 2, 1799, c. 22, § 80, 1 Stat. 687.

Notes of Decisions

Debentures.—A "debenture," as the term is used in these sections, means a certificate given in pursuance of law by the collector of a port of entry for a certain sum due by the United States, payable at a time therein mentioned, to an importer for drawback of duties on merchandise imported and exported by him, provided the duties on the said merchandise shall have been discharged prior to the time aforesaid. W. H. Thomas & Son Co. v. Barnett (C. C. 1905) 135 Fed. 172, affirmed (1906) 144 Fed. 338, 75 C. C. A. 300.

§ 5742. (R. S. § 3039.) Suit on refusal of payment.

Whenever payment of any debenture is refused by the collector of the district where it was granted, for a longer time than three days, after the same shall have become payable, such refusal to be proved in the same manner as the non-payment of a bill of exchange, the possessor or assignee of such debenture may bring suit thereupon against the person to whom it was originally granted or against any indorser thereof.

Act March 2, 1799, c. 22, § 80, 1 Stat. 689.

Jurisdiction of the district courts in suits on debentures was conferred by R. S. § 563, subsec. 10, superseded by chapter 2 of the Judicial Code of March 3, 1911, c. 231, § 24, subsec. 10, ante, § 991 (10).

Provisions for taking judgment at the return term in suits for the recovery of money upon debentures issued by the collectors of customs under any act for the collection of duties were made by R. S. § 959, ante, § 1597.

Interest was to be allowed in such suits at 6 per cent. per annum from the time when such debenture became due, by R. S. § 965, ante, § 1603.

Notes of Decisions

Persons entitled to sue.—The plaintiff exported certain cans of oil purchased of the defendants, who acted as his agents in shipping it, doing so in their own name, and entering the goods for drawback in their own name. The certificate issued by the collector, showing the right to the drawback, was delivered by the plaintiff to the defendants, and the latter thereby obtained the debentures given under the treasury regulations for the drawback. Held, that the plaintiff could maintain an action to recover the amount of the drawback received by the defendants. Lake v. Devoe Mfg. Co. (N. Y. 1877) 7 Daly, 161.

Cited without definite application, Thomas & Son Co. v. Barnett (1906) 144 Fed. 338, 340, 75 C. C. A. 300.

§ 5743. (R. S. § 3040.) Debentures assignable.

Debentures shall be assignable by delivery and indorsement of the parties who may receive the same.

Act March 2, 1799, c. 22, § 80, 1 Stat. 688.

Cited without definite application, Thomas & Son Co. v. Barnett (1906) 144 Fed. 338, 340, 75 C. C. A. 300.

§ 5744. (R. S. § 3041.) Exportation from another district.

Where any merchandise is exported from any other district than the one into which it was originally imported, the collector of such district, together with the naval officer thereof, where there is one, shall grant to the exporter a certificate, expressing that such merchandise was exported from such district, with the marks, numbers, and descriptions of the packages and their contents, the names of the master and vessel in which and the port to which it was exported, and by whom, and the names of the vessel and master in which it was brought, and by whom shipped at the district from whence it came, and the amount of the drawback to which it is entitled. Such certificate shall entitle the possessor thereof to receive from the collector of the district with whom the duties on the merchandise were paid, a debenture or debentures, for the amount of the drawback expressed in the certificate, payable at the same time, and in like manner as is herein directed for debentures on merchandise exported from the port of original importation.

Act March 2, 1799, c. 22, § 80, 1 Stat. 687.

Cited without definite application,
Thomas & Son Co. v. Barnett (1906)
144 Fed. 338, 341, 75 C. C. A. 300.

§ 5745. (R. S. § 3042.) Refusal of debenture.

The collector may refuse to grant such debenture, in case it shall appear to him that any error has arisen, or any fraud has been committed; and in case of such refusal, if the debenture claimed shall exceed one hundred dollars, it shall be the duty of the collector to represent the case to the Secretary of the Treasury, who shall determine whether such debenture shall be granted or not. In no case, moreover, of an exportation of goods shall a drawback be paid, until the duties on the importation thereof shall have been first received.

Act March 2, 1799, c. 22, § 80, 1 Stat. 687.

§ 5746. (R. S. § 3043.) Bond for delivery of merchandise at a foreign port.

Before the receipt of any debenture, in case of exportation from the district of original importation, and in case of exportation from any other district before the receipt of any such certificate, as is hereinbefore required to be granted, the person applying for such debenture or certificate shall, previous to such receipt, and before the clearance of the vessel in which the merchandise was laden for exportation, give bond, with one or more sureties, to the satisfaction of the collector, who is to grant such debenture or certificate, as the case may be, in a sum equal to double the amount of the sum for which such debenture or certificate is granted, conditioned that such merchandise, or any part thereof, shall not be relanded in any port within the limits of the United States, and that the exporter shall produce, within the time herein limited, the proofs and certificates required of such merchandise having been delivered without such limits.

Act March 2, 1799, c. 22, § 81, 1 Stat. 689.

Notes of Decisions

"Relanding."—Where the goods are fraudulently relanded, and the marks changed, so as to show a greater amount than that actually put on board, the transaction is a relanding, within the meaning of the bond. U. S. v. Heckscher (C. C. 1840) Fed. Cas. No. 15,338.

Surety on bond.—The surety on a bond given on the entry for exportation of goods entitled to a drawback is estopped to deny that the quantity specified therein was in fact laden upon the vessel. U. S. v. Heckscher (C. C. 1840) Fed. Cas. No. 15,338.

Cited without definite application,
The S. Oteri (1894) 67 Fed. 146, 149, 14 C. C. A. 344.

§ 5747. (R. S. § 3044.) Discharge of bond.

All bonds which may be given for any merchandise exported from the United States, and on which any drawback of duties or allowance shall be payable, in virtue of such exportation, shall and may be discharged, and not otherwise, by producing within one year from the date thereof, if the exportation be made to any port of Europe or America, or within two years, if made to any part of Asia or Africa, a certificate under the hand of the consignee at the foreign port to whom the merchandise shall have been addressed, therein particularly setting forth and describing the articles so exported, their marks, numbers, description of packages, the number thereof, and their actual contents, and declaring that the same have been received by them from on board the vessel, specifying the names of the master and vessel from which they were so received; and where such merchandise is not consigned or addressed to any particular person at the foreign port to which the vessel is destined, or may arrive, but where the master, or other person on board such vessel may be the consignee of such merchandise, a certificate from the person to whom such merchandise may be sold or delivered, by such master or other person, shall be produced to the same effect as that required if the person receiving the same were originally intended to be the consignee thereof.

Act March 2, 1799, c. 22, § 81, 1 Stat. 690.

§ 5748. (R. S. § 3045.) Consul's certificate.

In addition to such certificate, it shall be necessary to produce a certificate under the hand and seal of the consul or agent of the United States, residing at the place, declaring either that the facts stated in the certificate of such consignee, or other person, are to his knowledge true, or that such certificate is deserving of full faith and credit; which certificates of the consignee, or other person, and consul or agent, shall, in all cases, as respects the landing or delivery of the merchandise, be confirmed by the oath of the master and mate, if living, or, in case of their death, by the oath of the two principal surviving officers of the vessel in which the exportation shall be made. Where there is no consul or agent of the United States residing at the place of delivery, the certificate of the consignee, or other person hereinbefore required, shall be confirmed by the certificate of two reputable American merchants residing at the place, or if there are no such American merchants, then by the certificate of two reputable foreign merchants, testifying that the several facts stated in such consignee or other person's certificate, are, to their knowledge, just and true, or that such certificate is, in their opinion, worthy of full faith and credit; and such certificate shall also be supported by the oath of the master and mate, or other principal officers of the vessel, in manner as before prescribed. The oath of the master and mate, or other principal officers, shall, in all cases, when taken at a foreign port, be taken and subscribed before the consul or agent of the United States residing at such foreign port, if any such consul or agent reside thereat.

Act March 2, 1799, c. 22, § 81, 1 Stat. 690.

§ 5749. (R. S. § 3046.) Consul's fee.

It shall be lawful for the consuls or agents of the United States, residing at the foreign ports, to demand twenty-five cents for administering each oath and one dollar for granting each certificate required by the preceding section, and if any consul or agent shall demand other or greater fees than are thus allowed, his bond shall be forfeited.

Act March 2, 1799, c. 22, § 81, 1 Stat. 692.

Consular officers were required to account for fees by Act April 5, 1906, c. 1366, § 8, ante, § 3186.

§ 5750. (R. S. § 3047.) Other proof.

In cases of loss by sea, or by capture or other unavoidable accident, or when, from the nature of the trade, the proofs and certificates before required are not, and cannot be, procured, the exporter shall be allowed to adduce to the collector of the port of exportation such other proofs as they may have, and as the nature of the case will admit; which proofs shall, with a statement of all the circumstances attending the transaction within the knowledge of such collector, be transmitted to the Secretary of the Treasury, who shall have power to allow a further reasonable time for obtaining such proofs; or if he be satisfied with the truth and validity of the proofs adduced, to direct the bond of such exporter to be canceled. If the amount of such bond shall not exceed the penal sum of two hundred dollars, the collector, with the naval officer, when there is one, and alone, where there is none, may, pursuant to such rules as shall be prescribed by the Secretary of the Treasury, admit such proof as may be adduced; and if they deem the same satisfactory, cancel such bond accordingly.

Act March 2, 1799, c. 22, § 81, 1 Stat. 690.

§ 5751. (R. S. § 3048.) Permanent appropriation for payment of debentures.

So much money as may be necessary for the payment of debentures or drawbacks and allowances which may be authorized and payable, is hereby appropriated for that purpose out of any money in the Treasury, to be expended under the direction of the Secretary of that Department, according to the laws authorizing debentures or drawbacks and allowances. The collectors of the customs shall be the disbursing agents to pay such debentures, drawbacks, and allowances. All debenture certificates issued according to law shall be received in payment of duties at the custom-house where the same have been issued, the laws regulating drawbacks having been complied with.

Act March 3, 1849, c. 110, § 2, 9 Stat. 398.

Permanent appropriations to pay debentures and other charges arising from duties, drawbacks, bounties, and allowances were made by R. S. § 3689, post, § 6799.

§ 5752. (R. S. § 3049.) Penalty for relanding goods entered for drawback.

If any merchandise entered for exportation, with intent to drawback the duties, or to obtain any allowance given by law on the exportation thereof, shall be landed within any port within the limits of the United States, all such merchandise shall be subject to seizure and forfeiture, together with the vessel from which such merchandise shall be landed, and the vessels or boats used in landing the same; and all persons concerned therein shall, upon indictment and conviction thereof, suffer imprisonment for a term not exceeding six months. For discovery of frauds and seizure of merchandise relanded contrary to law, the several officers established by this Title shall have the same powers, and, in case of seizure, the same proceedings shall be had, as in the case of merchandise imported contrary to law.

Act March 2, 1799, c. 22, § 82, 1 Stat. 692.

Provisions that no vessel used as a common carrier should be liable to seizure or forfeiture, unless it should appear that the owner or master of such vessel at the time of the illegal act was a consenting party or privy thereto, were made by Act Feb. 8, 1881, c. 34, post, § 5766.

The reimportation of articles on which drawback has been allowed on exportation was prohibited, except upon payment of duties equal to the draw-

backs allowed, by a proviso annexed to paragraph 404 of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § 1, ante, § 5291, par. 404, which superseded similar provisions of preceding tariff acts.

Notes of Decisions

Forfeiture.—Goods on board a ship, which have been entered for exportation, are forfeited by being put on board a lighter alongside the ship, though no bond has been given or debenture issued. Act March 2, 1799. Two Thousand Tin Cans (D. C. 1873) Fed. Cas. No. 14,303.

It is no defense that claimant caused the goods to be relanded simply to correct a mistake in entering the wrong quality of goods for export. Id.

§ 5753. (R. S. § 3050.) Penalty for false entry.

If any merchandise, of which entry shall have been made in the office of a collector, for the benefit of drawback or bounty upon exportation, shall be entered by a false denomination, or erroneously as to the time when and the vessel in which it was imported, or shall be found to disagree with the packages, quantities, or qualities, as they were at the time of original importation, except such disagreement as may have been occasioned by necessary or unavoidable wastage or damage only, and except also in cases where permission shall have been obtained according to law to alter or change the quantities or packages thereof, all such merchandise, or the value thereof to be recovered of the owner or person making such entry, shall be forfeited, and the person making such false entry shall also forfeit a sum equal to the value of the articles mentioned or described in such entry.

Act March 2, 1799, c. 22, § 84, 1 Stat. 694. Act Feb. 20, 1819, c. 36, 3 Stat. 486.

Cited without definite application, Barlow v. U. S. (1833) 7 Pet. 404, 406, 8 L. Ed. 728.

§ 5754. (R. S. § 3051.) No forfeiture for accident or mistake.

No forfeiture shall be incurred under the preceding section if it shall be made to appear to the satisfaction of the collector and naval officer of the district, if there be a naval officer, and if there be no naval officer, to the satisfaction of the collector, or of the court in which a prosecution for the forfeiture shall be had, that such false denomination, error, or disagreement happened by mistake or accident, and not from any intention to defraud the revenue.

Act March 2, 1799, c. 22, § 84, 1 Stat. 694.

Notes of Decisions

Ignorance of law.—A party is not exempted from the penalties attached to the law of drawbacks by his ignorance. Barlow v. U. S. (1833) 32 U. S. (7 Pet.) 404, 8 L. Ed. 728.

Cited without definite application, U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 188.

§ 5755. (R. S. § 3052.) Exportation and transportation of bonded goods not prevented.

None of the provisions of this Title shall operate to prevent the exportation of bonded merchandise from warehouse within three years from the date of original importation, nor its transportation in bond from the port into which it was originally imported to any other port for the purpose of exportation.

Act March 14, 1866, c. 17, § 2, 14 Stat. 8.

Provisions authorizing the withdrawal of bonded merchandise for exportation were made by R. S. § 2971, ante, § 5657.

§ 5756. (R. S. § 3053.) Importations from British North America.

Any merchandise imported from the British North American provinces adjoining the United States, which shall have been duly entered and the duties thereon paid or secured according to law at either of the ports of entry in the collection-districts situated on the

northern, northeastern, and northwestern frontiers of the United States, may be transported by land or by water, or partly by land and partly by water, to any port or ports from which merchandise may be exported for benefit of drawback, and be thence exported with such privilege to any foreign country. The laws relating to the transportation of merchandise entitled to drawback, and the due exportation and proof of landing thereof, and all regulations which the Secretary of the Treasury may prescribe for the security of the revenue, must, however, be complied with.

Act Aug. 8, 1846, c. 102, 9 Stat. 77.

Cited without definite application, Swan & Finch Co. v. U. S. (1901) 37 Ct. Cl. 101.

§ 5757. (R. S. § 3054.) Transportation to ports in British North America.

Any imported merchandise, in the original packages, which shall have been duly entered and warehoused in pursuance of the provisions relating to warehouses, may be exported therefrom in conformity with law, and be transported, in the manner indicated, to ports in the adjoining British provinces, and become entitled to the benefits of those provisions.

Act Sept. 28, 1850, c. 79, § 18, 9 Stat. 512.

(R. S. § 3055. Superseded.)

This section was as follows:

"Merchandise imported into the United States and exported from the port of Lake Pontchartrain shall be entitled to the benefit of a drawback of the duties upon exportation to any foreign port, under the same provisions, regulations, restrictions, and limitations, as if such merchandise had been exported directly from New Orleans by way of the Mississippi river."

It was superseded by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

§ 5758. (R. S. § 3056.) Exportation to British North America.

Any imported merchandise which has been entered, and the duties paid or secured according to law, for drawback, may be exported to the British North American provinces adjoining the United States.

Act March 3, 1845, c. 70, § 7, 5 Stat. 751.

Cited without definite application, Swan & Finch Co. v. U. S. (1901) 37 Ct. Cl. 101.

§ 5759. (R. S. § 3057.) Drawback regulations.

The Secretary of the Treasury is hereby further authorized to prescribe such rules and regulations, not inconsistent with the laws of the United States, as he may deem necessary to carry into effect the provisions of the laws relating to drawbacks, and to prevent the illegal re-importation of any merchandise which shall have been exported as herein provided.

Act March 3, 1845, c. 70, § 11, 5 Stat. 752.

Provisions authorizing the Secretary of the Treasury to establish regulations relating to the bond and warehouse system were made by R. S. § 2989, and Act June 22, 1874, c. 391, § 24, ante, §§ 5682, 5683.

Cited without definite application, W. H. Thomas & Son Co. v. Barnett (1906) 144 Fed. 338, 339, 75 C. C. A. 300; Swan & Finch Co. v. U. S. (1901) 37 Ct. Cl. 101.

CHAPTER TEN

Enforcement of Duty-Laws and Punishment for Violations

Sec.
5760. Transfers; salvors recognized as owners.
5761. Who may make searches.
5762. Special appointments, how filed.
5763. Search of vehicles and persons.
5764. Forfeitures.
5765. Privity of owner.
5766. Forfeiture of vessels; privity of owner or master.
5767. Search of baggage.
5768. Entering buildings, etc.
5769. Warrant to search dwelling-house or other place.
5770. Authority to go on board vessels.
5771. Penalty for obstructing officers in going on board of vessels.
5772. Articles separate from the cargo.
5773. Locks and fastenings.
5774. Officers to make character known.
5775. Seizures.
5776. Persons making seizures may plead general issue and give special matter in evidence.
5777. Appraisement.
5778. Notice of seizure.
5779. Claim for property seized.
5780. Sale of property seized.
5781. Application for remission of forfeiture, etc.
5782. Distribution.
5783. Sale of perishable articles.
5784. Release on payment of appraised value.
5785. Concealing or buying, etc., goods liable to seizure.
5786. Notice to Solicitor of the Treasury.
5787. Collectors to report to district attorneys.
5788. Duty of district attorneys.
5789. Custody of goods.
5790. Institution of suits.
5791. Burden of proof on claimant of property, and on defendant in action.
5792. Lien on vessels for violations.
5793. Costs of prosecution in certain cases.
5794. Distribution of forfeitures.
5795. Fines, etc., fees, and other receipts to be covered into the Treasury.
5796. Moieties to informers and officers abolished.
5797. Compensation in lieu of moieties.
5798. Compensation to officers and others detecting smuggling.
5799. Compulsory production of books, etc., in civil suits.
5800. Compensation to informers.
5801. Officers prohibited from receiving informer's compensation; penalty.
5802. Officers, informers, and defendants may be witnesses.
5803. Reports of violations of customs laws; district attorneys to prosecute.
5804. Compromise of claims for fines, etc.
5805. Dismissal of proceedings.
5806. No exemption from taking other oaths.

§ 5760. (R. S. § 3058, as amended, Act Feb. 23, 1887, c. 221.) Transfers; salvors recognized as owners.

All merchandise imported into the United States shall, for the purpose of this title, be deemed and held to be the property of the person to whom the merchandise may be consigned; but the holder of any bill of lading consigned to order and properly indorsed shall be deemed the consignee thereof; and in case of the abandonment of any merchandise to the underwriters, the latter may be recognized as the consignee; and under such regulations as the Secretary of the Treasury may prescribe, merchandise saved from a vessel wrecked or abandoned at sea, or on or along the coasts of the United States, and promptly brought into a port of the United States by or in possession of the salvors of the same, can, for the purpose of its title, be regarded as the property of such salvors, and the valuation thereof and payment of duties thereon can be made accordingly and with due reference to the condition of the said merchandise as thus saved and the necessities of the case: Provided, however, That such bringing in by salvors shall be in good faith and without intent to evade the just payment of duty: And provided further, That nothing herein contained shall be so construed as to prejudice in any other respect the rights of property,

or of or through abandonment or allowance of the owner, or any other person interested in said merchandise.

Act March 2, 1799, c. 22, § 62, 1 Stat. 675. Act Feb. 23, 1887, c. 221, 24 Stat. 415.

This section, as enacted in the Revised Statutes, was as follows:

"All merchandise imported into the United States shall, for the purpose of this Title, be deemed and held to be the property of the person to whom the merchandise may be consigned, any sale, transfer, or assignment, prior to the entry and payment of the duties on such merchandise, and the payment of all bonds then due and unsatisfied by the consignee, to the contrary notwithstanding."

It was amended to read as set forth here by Act Feb. 23, 1887, c. 221, cited above.

The consignee was deemed the owner of imported merchandise, the holder of the bill of lading consigned to order and indorsed by the consignor was deemed the consignee, and the underwriters were recognized as consignees in case of the abandonment of merchandise to them, by the Customs Administrative Act of June 10, 1890, c. 407, § 1, 26 Stat. 131, for the purposes of said act, which section was re-enacted as a part of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, B, ante, § 5519.

The provisions of this section in respect to the abandonment of merchandise to underwriters, or the salvors of property, and the ascertainment of duties thereon, were not repealed by the Customs Administrative Act of June 10, 1890, c. 407, by a proviso annexed to section 29 of said act, which section was re-enacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 104.

Provisions for the entry free of duty of merchandise taken from abandoned or sunken vessels after two years were made by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, L, ante, § 5592.

Notes of Decisions

Ownership of goods in general.—See § 5710, ante, as to lien on goods.

See § 5519, ante.

No person but the owner or original consignee, or, in his absence, his agent, is entitled to enter goods at the custom house or give bond for the duties or to pay the duties. Harris v. Dennie (1830) 3 Pet. 292, 304, 7 L. Ed. 683.

The statute does not purport to create any lien upon goods for duties due upon other goods, but merely ascertains who shall be deemed the owner, for the purpose of entering the goods and securing the duties. Id.

Prize goods brought in by government war vessels are liable to the payment of duties, as to the moiety belonging to the officers and crew of the capturing ship. The Liverpool Hero (C. C. 1814) Fed. Cas. No. 8,405.

Where property that is dutiable imported contrary to law, it is liable to seizure, and it does not follow from the fact of ownership that the owner would be entitled to possession. Von Cotzhausen v. Nazro (C. C. 1879) 15 Fed. 891, 898.

Purchasers of goods who were fully informed by the seller of the making and forwarding of false invoices, and who acquiesced therein, and availed themselves thereof, are liable and are estopped to say that they did not themselves perpetrate the unlawful act. U. S. v. Merriam (D. C. 1871) Fed. Cas. No. 15,759.

Where such purchasers knew that the article would be invoiced to them as owners, and so presented for entry, and did not protest or inform the government officers, they are estopped to claim that they were not owners at the time of the entry. U. S. v. Merriam (D. C. 1871) Fed. Cas. No. 15,759.

Consignees as owners.—That the consignees of merchandise were indebted on duty bonds at the time of the importation of the merchandise, did not, under Act March 2, 1799, § 62, make the merchandise as to the United States, the property of the consignee, where it had been assigned to another. Harris v. De Wolf (1830) 4 Pet. 147, 151, 7 L. Ed. 811.

Importers become personally indebted to the United States for duties on goods. The consignee is for this purpose treated as the owner and importer. Meredith v. U. S. (1839) 13 Pet. 486, 493, 10 L. Ed. 258; U. S. v. Dodge (D. C. 1865) Fed. Cas. No. 14,973.

One cannot be made the consignee of goods without accepting the consignment; and the government acquires no rights against him, as virtual importer, for the duties, if he choose to renounce that character and refuses to have anything to do with the goods. Du Peirat v. Wolfe (1864) 29 N. Y. 436.

It is no defense to an action against the consignee for duties that the consignor or any other party, who at the request or with the consent of the consignee, procured the importation, failed to obey the latter's instructions or to comply with the terms of the contract between them. U. S. v. Bishop (1903) 125 Fed. 181, 182, 60 C. C. A. 123.

Salvaged goods.—An admiralty court held to have power, in distributing the proceeds of property salved from a

vessel wrecked or abandoned at sea, to give priority to the claim for salvage over that of the government for customs duties. The Lugano (1915) 222 Fed. 230, 138 C. C. A. 60, affirming decree Albury v. Cargo of The Lugano (D. C. 1913) 215 Fed. 963.

Goods brought into the United States by salvors who have salved them within the limits of the United States, are not imported goods, in the sense of the customs laws, so as to necessarily attach the right to duties. Lewis v. Sixty-Five Packages of Merchandise (C. C. 1887) 32 Fed. 111, affirming (D. C. 1886) 30 Fed. 195.

Where salved goods brought within the United States by the salvors, subsequently, by virtue of a sale, pass into consumption within the United States, an equitable right on the part of the government to be paid duties arises, not taking precedence, however, of the salvage claims. Id.

The United States has an equitable claim for customs duties on the proceeds of foreign goods brought into an American port by salvors from a wrecked vessel, and which on being sold in the salvage proceedings enter into the consumption of the country, but not with respect to such goods as on such sale are exported. Albury v. Cargo of The Lugano (D. C. 1913) 215 Fed. 963.

Cited without definite application, Fabbri v. Murphy (1877) 95 U. S. 191, 34 L. Ed. 468.

§ 5761. (R. S. § 3059.) Who may make searches.

It shall be lawful for any officer of the customs, including inspectors and occasional inspectors, or of a revenue-cutter, or authorized agent of the Treasury Department, or other persons specially appointed for the purpose in writing by a collector, naval officer, or surveyor, to go on board of any vessel, as well without as within his district, and to inspect, search, and examine the same, and any person, trunk, or envelope on board, and to this end to hail and stop such vessel if under way, and to use all necessary force to compel compliance; and if it shall appear that any breach or violation of the laws of the United States has been committed, whereby or in consequence of which such vessel, or the merchandise, or any part thereof, on board of or imported by such vessel, is liable to forfeiture, to make seizure of the same, or either or any part thereof, and to arrest, or in case of escape, or any attempt to escape, to pursue and arrest any person engaged in such breach or violation.

Act July 18, 1866, c. 201, § 2, 14 Stat. 178.

Provisions defining and punishing the offense of resisting revenue officers in the execution of their duties were made by R. S. § 5447, which was incorporated in the Criminal Code, in section 65 thereof, post, § 10233, and was repealed by section 341 thereof, post, § 10515.

The powers of inspectors were conferred on keepers of life-saving and lifeboat stations and houses of refuge by Act June 18, 1878, c. 265, § 4, post, § 8531.

The Secretary of the Treasury was authorized to expend, out of the appropriation for defraying the expenses of collecting the revenue from customs, such amount as he might deem necessary, not exceeding $100,000 per annum, for the detection and prevention of frauds upon the customs revenue, by a provision of Act March 3, 1879, c. 182, § 1, post, § 6796, which act, as amended by Act April 27, 1904, c. 1630, § 1, post, § 6797, was further amended so as to increase the amount to be so expended for the fiscal year 1914 to $200,000, by Act June 23, 1913, c. 3, § 1, 38 Stat. 23.

Notes of Decisions

Right to make searches and seizures.—A right of seizure on the high seas may exist independently of any right of search. U. S. v. The La Jeune Eugenie (C. C. 1822) Fed. Cas. No. 15,551.

The right of search is not allowable in times of peace, except against pirates or other offenders against the law of nations. The Tigris (D. C. 1841) Fed. Cas. No. 14,038.

The court will entertain the question of damages, as well as costs, at the same time with the principal question of the legality of the arrest of the vessel. The Malaga (D. C. 1849) Fed. Cas. No. 8,985.

Reasonable ground for a seizure is a defense to a libel for damages. Id.

Restitution and acceptance held a mutual release, barring a claim for damages for unlawful seizure. Id.

Customs inspectors are authorized to receive imported goods found concealed on a vessel, and a libel alleging a seizure by the collector may be amended to show the facts. U. S. v. Two Trunks (D. C. 1872) Fed. Cas. No. 16,591.

The agents of the Department of Commerce and Labor have power under Act March 3, 1899, c. 429, § 174, 30 Stat. 1280 (see post, § 8846), upon reasonable ground for suspecting that

a violation of the laws for the protection of the Alaska seal fisheries has occurred, to search any vessel within the three-mile limit, according to the practice of customs officers when acting under this section, and to seize such vessels and any property on board. They may also make arrests of persons on board such vessels reasonably believed to be guilty of a crime, and need not previously obtain a warrant. (1907) 26 Op. Atty. Gen. 243.

Cited without definite application, Gelston v. Hoyt (1818) 3 Wheat. 246, 310, 4 L. Ed. 381; U. S. v. A Lot of Jewelry, etc. (D. C. 1894) 59 Fed. 684, 686.

§ 5762. (R. S. § 3060.) Special appointments, how filed.

The original appointment in writing of any person specially appointed under the provisions of the previous section shall be filed in the custom-house where such appointment is made.

Act July 18, 1866, c. 201, § 2, 14 Stat. 178.

§ 5763. (R. S. § 3061.) Search of vehicles and persons.

Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial.

Act July 18, 1866, c. 201, § 3, 14 Stat. 178.

Provisions defining and punishing the offense of resisting revenue officers in the execution of their duties were made by R. S. § 5447, which was incorporated into the Criminal Code, in section 65 thereof, post, § 10233, and was repealed by section 341 thereof, post, § 10515.

Notes of Decisions

Goods imported in mails.—Under the international postal treaty of Berne of October 9, 1874 (19 Stat. 604, art. 25), dutiable goods cannot lawfully be imported in the foreign mail, but are liable to seizure in the hands of the person receiving them from the post office by the officers of customs; and it is immaterial that there was no intent on the part of the sender or receiver to defraud the government. Von Cotzhausen v. Nazro (1882) 107 U. S. 215, 2 Sup. Ct. 503, 27 L. Ed. 540, affirming (C. C. 1879) 15 Fed. 891.

Dutiable goods imported in the foreign mail are in the hands of the receiver of them from the post office, liable to seizure by the officers of customs, and the fact that there was no intent on the part of the sender or receiver to defraud the United States of the duty does not render the officer liable to an action for making the seizure. Von Cotzhausen v. Nazro (1883) 2 Sup. Ct. 503, 505, 107 U. S. 215, 27 L. Ed. 540.

Precious stones and other articles, where the same are liable to customs duty, are prohibited by the Universal Postal Union Convention of June 1, 1878, to be sent through the mail, and if imported by mail they become subject to seizure and forfeiture under this section. (1886) 18 Op. Atty. Gen. 457.

Seizure of vehicle.—The clear intention of Congress in adopting this section was to provide for the seizure of property which had been smuggled into the United States, whether by a person in charge of it or upon a vehicle, and it was clearly the intention of the Legislature that a vehicle which had been used, whether in importation or transportation of smuggled property, should be seized. U. S. v. One Black Horse (D. C. 1904) 129 Fed. 167.

There is no authority for the practice of the Treasury Department to exact duties, when forfeiture prevails, only in those cases which arise under section 5527, ante, and not in other customs revenue cases involving forfeiture. (1902) 24 Op. Atty. Gen. 1.

Bar to forfeiture proceedings.—An acquittal upon the charge of smuggling, under section 5548, ante, and of illegal importation under section 5785, post, is

not a bar to a proceeding in rem to forfeit the goods, the subject of the charge of smuggling and illegal importation, under this section. (1900) 23 Op. Atty. Gen. 63.

Cited without definite application, Von Cotzhausen v. Nazro (C. C. 1879) 15 Fed. 891, 894; U. S. v. A Lot of Jewelry, etc. (D. C. 1894) 59 Fed. 684, 686.

§ 5764. (R. S. § 3062.) Forfeitures.

Every such vehicle and beast, or either, together with teams or other motive-power used in conveying, drawing, or propelling such vehicle or merchandise, and all other appurtenances, including trunks, envelopes, covers, and all means of concealment, and all the equipage, trappings, and other appurtenances of such beast, team, or vehicle, shall be subject to seizure and forfeiture. If any person who may be driving or conducting, or in charge of any such carriage or vehicle or beast, or any person traveling, shall willfully refuse to stop and allow search and examination to be made as herein provided, when required so to do by any authorized person, he shall be punishable by a fine of not more than one thousand dollars, nor less than fifty dollars.

Act July 18, 1866, c. 201, § 3, 14 Stat. 178.

Notes of Decisions

Construction in general.—This statute should be construed to give full force to all its language, but the meaning of the words must be derived from a consideration of the entire section. U. S. v. One Black Horse (D. C. 1904) 129 Fed. 167.

Intent.—Under this section, section 5763, ante, and section 5765, post, a team used in the transportation of smuggled merchandise is forfeitable, regardless of the fact that its owner and its driver did not have knowledge of the purposes for which it was being used. Such knowledge is unnecessary, except in the case of common carriers. U. S. v. One Black Horse (D. C. 1906) 147 Fed. 770, Id. (D. C. 1904) 129 Fed. 167.

A proceeding in rem to forfeit under this section presents a civil liability rather than an offense, and does not require proof of criminal intent. (1900) 23 Op. Atty. Gen. 64.

Time of forfeiture.—Where property is forfeited, it does not vest in the government until after a seizure, which then relates back to the time of forfeiture. Clark v. Protection Ins. Co. (C. C. 1840) Fed. Cas. No. 2,832.

The forfeiture takes effect at the time when the offense is committed, if the denunciation is expressed in direct terms. U. S. v. The Reindeer (C. C. 1861) Fed. Cas. No. 16,144; Same v. Sixty-Four Barrels of Distilled Spirits (C. C. 1870) Fed. Cas. No. 16,306; Same v. Fifty-Six Barrels of Whisky (D. C. 1866) Fed. Cas. No. 15,095; Same v. Twenty-One Barrels of High Wines (D. C. 1867) Fed. Cas. No. 16,567; The Mary Celeste (D. C. 1874) Fed. Cas. No. 9,202; U. S. v. One Copper Still (D. C. 1878) Fed. Cas. No. 15,928.

The attempt to transport property, in violation of the customs laws, works the forfeiture of the property, and immediately vests the title in the United States. Bulkly v. Orms (Vt. 1815) Brayt. 124.

Vehicle forfeited.—A team let by a liveryman, and used wholly within the United States, for the transportation of liquor illegally brought across the Canadian border, held subject to forfeiture, though the liveryman had no knowledge of the purpose for which the team was to be used. U. S. v. One Black Horse (D. C. 1904) 129 Fed. 167.

Fines.—Where a fine imposed under this section was not paid, the court had common-law jurisdiction, according to local usage since the original judiciary act, to commit the defendant to jail until the fine was paid or he should be otherwise discharged according to law. Ex parte Barclay (C. C. 1907) 153 Fed. 669.

Cited without definite application, Scow No. 9 (D. C. 1907) 152 Fed. 548.

§ 5765. (R. S. § 3063.) Privity of owner.

No railway-car or engine or other vehicle, or team, used by any person or corporation, as common carriers, in the transaction of their business as such common carriers, shall be subject to forfeiture by force of the provisions of this Title unless it shall appear that the owner, superintendent, or agent of the owner in charge thereof at the time of such unlawful importation or transportation

thereon or thereby was a consenting party, or privy to such illegal importation or transportation.

Act July 18, 1866, c. 201, § 3, 14 Stat. 179.

Provisions similar to those of this section, relating to the seizure and forfeiture of vessels violating the provisions of this Title, were made by Act Feb. 8, 1881, c. 34, post, § 5766.

Cited without definite application, Heidritter v. Elizabeth Oil Cloth Co. (C. C. 1881) 6 Fed. 138, 141, (affirmed [1884] 5 Sup. Ct. 135, 112 U. S. 294, 28 L. Ed. 729); U. S. v. One Black Horse (D. C. 1906) 147 Fed. 770.

§ 5766. (Act Feb. 8, 1881, c. 34.) Forfeiture of vessels; privity of owner or master.

No vessel used by any person or corporation, as common carriers, in the transaction of their business as such common carriers, shall be subject to seizure or forfeiture by force of the provisions of title thirty-four of the Revised Statutes of the United States unless it shall appear that the owner or master of such vessel, at the time of the alleged illegal act, was a consenting party or privy thereto. (21 Stat. 322.)

This was a provision of the act to amend the law relative to the seizure and forfeiture of vessels for breach of the revenue laws, cited above.

Provisions for the seizure and forfeiture of vessels from which goods entered for drawback are relanded were made by R. S. § 3049, ante, § 5752.

Provisions for the seizure and forfeiture of foreign vessels carrying imports which are not the growth, production, or manufacture of the country to which such vessels belong, were made by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, J, subsec. 2, ante, § 5306, which superseded similar provisions of preceding tariff acts.

Notes of Decisions

"Seizure."—See § 5565, ante.

The word "seizure" embraces seizures by the marshal under legal process for the enforcement of a penalty pursuant to section 5792, post, as well as seizures by revenue officers for the purposes of forfeitures. The Saratoga (D. C. 1881) 9 Fed. 322, 323.

Refusal of clearance to vessel which did not include in its manifest merchandise brought into the United States is not a seizure, and this section is inapplicable. (1881) 17 Op. Atty. Gen. 82.

A seizure implies an actual caption of the thing seized; open, visible possession, taken and maintained. (1881) 17 Op. Atty. Gen. 82, 83.

Privity of owner or master.—In order to recover any penalty or forfeiture, the government must allege and prove that, at the time of the alleged illegal act charged, the master or owner was a consenting party or privy thereto. The Saratoga (C. C. 1883) 15 Fed. 382; The Snow Drop (C. C. 1887) 30 Fed. 79.

§ 5767. (R. S. § 3064.) Search of baggage.

The Secretary of the Treasury may from time to time prescribe regulations for the search of persons and baggage, and for the employment of female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government, under such regulations.

Act July 18, 1866, c. 201, § 3, 14 Stat. 178.

Provisions for the examination of wearing apparel and personal effects of residents of the United States returning from abroad were made by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § 1, par. 642, ante, § 5291, par. 642. Provisions similar to those of this paragraph were made by preceding tariff acts.

§ 5768. (R. S. § 3065.) Entering buildings, etc.

Any person authorized by this Title to make searches and seizures, or any person assisting him or acting under his directions, may, if deemed necessary by him or them, enter into or upon or pass through the lands, inclosures, and buildings, other than the dwelling-house of any person whomsoever, in the night or in the day time, in order to the more effectual discharge of his official duties.

Act July 18, 1866, c. 201, § 5, 14 Stat. 179.

§ 5769. (R. S. § 3066, as amended, Act April 25, 1882, c. 89.) Warrant to search dwelling-house or other place.

If any collector, naval officer, surveyor, or other person specially appointed by either of them, or inspector, shall have cause to suspect a concealment of any merchandise in any particular dwelling-house, store-building, or other place, they, or either of them, upon proper application on oath to any justice of the peace, or district judge of cities, police justice, or any judge of the circuit or district court of the United States, or any Commissioner of the United States circuit court, shall be entitled to a warrant to enter such house, store, or other place, in the day time only, and there to search for such merchandise; and if any shall be found, to seize and secure the same for trial. And all such merchandise, upon which the duties shall not have been paid, or secured to be paid, shall be forfeited.

Act March 2, 1799, c. 22, § 68, 1 Stat. 678. Act Feb. 28, 1865, c. 67, § 2, 13 Stat. 442. Act April 25, 1882, c. 89, 22 Stat. 49.

This section, as enacted in the Revised Statutes, was as follows:

"If any collector, naval officer, surveyor, or other person specially appointed by either of them, or inspector, shall have cause to suspect a concealment of any merchandise in any particular dwelling-house, store-building, or other place, they, or either of them, upon proper application on oath to any justice of the peace, shall be entitled to a warrant to enter such house, store, or other place, in the day-time only, and there to search for such merchandise; and if any shall be found, to seize and secure the same for trial; and all such merchandise, on which the duties shall not have been paid, or secured to be paid, shall be forfeited."

It was amended to read as set forth here by Act April 25, 1882, c. 89, cited above.

Provisions conferring on keepers of life-saving and life-boat stations and houses of refuge the powers of inspectors of customs were made by Act June 18, 1878, c. 265, § 4, post, § 8531.

Notes of Decisions

Scope of section.—The section reaches cases where, by a false and fraudulent undervaluation, less than the amount of duties required by law has been paid, as well as those where no duties at all have been paid. Taylor v. U. S. (1845) 3 How. 197, 211, 11 L. Ed. 559.

Concealment of merchandise.—The term "concealed" applies only to articles intended to be secreted and withdrawn from public view on account of the duties not having been paid, or secured to be paid, or from some other fraudulent motive. The forfeiture does not extend to a case where goods bonded and stored were fraudulently remove from the storehouse by some person other than the claimants, who were bona fide purchasers of the goods, and without their knowledge and consent, to another port, where the goods were found stowed on board the vessel in which they were transported, in the usual manner of stowing. U. S. v. Three Hundred and Fifty Chests of Tea (1827) 12 Wheat. 486, 492, 6 L. Ed. 702.

What constitutes a concealment of goods. U. S. v. Farnsworth (C. C. 1815) Fed. Cas. No. 15,072.

The concealment which works a forfeiture need not be with the concurrence, knowledge, or consent of the owner or consignee. U. S. v. Fifty-Eight Thousand Eight Hundred and Fifty Cigars (C. C. 1857) Fed. Cas. No. 15,092.

Property stolen from a friendly foreign sovereign, and smuggled into the United States, is not subject to forfeiture for illegal importation. In re Princess of Orange (D. C. 1831) Fed. Cas. No. 11,431.

In a suit for forfeiture the government must prove that the goods were "concealed," and the mere fact that they were not entered on the manifest is not sufficient. U. S. v. Twenty-Six Diamond Rings (D. C. 1855) Fed. Cas. No. 16,572.

The concealment in such case must be a concealment from the customs officers. Id.

Trunks containing dutiable goods, found in a stateroom after all the passengers and baggage had been landed, marked in the purser's name, without his authority, and not entered on the manifest, held subject to forfeiture as concealed. U. S. v. Two Trunks (D. C. 1872) Fed. Cas. No. 16,591.

Search warrant.—Warrant protection to officers from liability. Taylor v. U. S. (1845) 3 How. 197, 207, 11 L. Ed. 559.

A United States commissioner, in issuing search warrants to a customs inspector, does not act judicially, and the warrant is not issued under authority of a court. In re Chin K. Shue (D. C. 1912) 199 Fed. 282.

If an officer, in execution of a warrant from lawful authority to search for goods, break and enter a dwelling house and carry away goods, and the warrant, by reason of its irregularity, be insufficient to justify him, he will, nevertheless, be permitted to show, in mitigation of damages, that no goods were taken except those which were proper objects of the search, and that no violence or injury was done but what was necessary to obtain possession of the goods. Sandford v. Nichols (1816) 13 Mass. 286, 7 Am. Dec. 151.

A warrant for the seizure of smuggled goods merely describing the goods seized as "goods, wares, and merchandise," in a certain place, is insufficient, under Const. U. S. Amend. art. 6, requiring warrants to particularly describe the property to be seized. Id.

In the case of smuggled goods, it may be difficult to describe them with minuteness, nor can this be required; but it would be necessary to mention the kind of goods to be searched for, or at least to describe them as having been taken out of some certain vessel, so that the officer, who should undertake the search, might not conceive himself at liberty to rifle the house and disturb the arrangements of the family occupying it. Id.

A warrant authorizing customs inspectors to search for goods illegally imported held not to authorize the removal of letters, books, and papers from the premises. In re Chin K. Shue (D. C. 1912) 199 Fed. 282.

Forfeiture of goods.—See § 5526, ante, and § 5785, post.

Forfeiture may be enforced before the time has passed for the owner to enter the goods, and is unaffected by a subsequent offer, made as soon as the owner was aware of the arrival of the goods. U. S. v. Fifty-Eight Thousand Eight Hundred and Fifty Cigars (C. C. 1857) Fed. Cas. No. 15,092.

Title to forfeited goods.—The title of the government to the goods forfeited is not consummated until after condemnation, but the right to them relates back to the time the offense was committed, so as to avoid all intermediate sales of them between the commission of the offense and condemnation. Caldwell v. U. S. (1850) 8 How. 366, 381, 12 L. Ed. 1115.

Cited without definite application, U. S. v. A Lot of Jewelry, etc. (D. C. 1894) 59 Fed. 684, 687.

§ 5770. (R. S. § 3067.) Authority to go on board vessels.

It shall be lawful for all collectors, naval officers, surveyors, inspectors, and the officers of the revenue-cutters, to go on board of vessels in any port of the United States, or within four leagues of the coast thereof, if bound to the United States, whether in or out of their respective districts, for the purposes of demanding the manifests, and of examining and searching the vessels; and those officers respectively shall have free access to the cabin and every other part of a vessel.

Act March 2, 1799, c. 22, § 54, 1 Stat. 668.

Collectors were authorized to provide and employ small boats for the use of surveyors and inspectors in going on board vessels, by R. S. § 2763, ante, § 5451.

§ 5771. (R. S. § 3068.) Penalty for obstructing officers in going on board of vessels.

If any master of a vessel coming into or having arrived at any port within the United States shall obstruct or hinder, or shall intentionally cause any obstruction or hinderance to any officer in lawfully going on board such vessel, for the purpose of carrying into effect any of the revenue laws of the United States, he shall for every such offense be liable to a penalty of not more than five hundred dollars nor less than fifty dollars.

Act March 2, 1799, c. 22, § 71, 1 Stat. 678.

Notes of Decisions

What constitutes obstruction.—If the customs officer acts without probable cause in making a seizure, an indictment will not lie for resisting him. U. S. v. Gay (C. C. 1815) Fed. Cas. No. 15,193.

On an indictment for forcibly obstructing a customs officer in the discharge of his duties, it is no defense that the object was personal chastisement merely, if defendant knew the officer to be so engaged. U. S. v. Keen (C. C. 1830) Fed. Cas. No. 15,511.

A person is not liable for carrying away goods under seizure, unless a seizure has been lawfully made and possession taken and continued by the officer, and the goods are carried away forcibly, knowing them to be under seizure. U. S. v. Cook (D. C. 1853) Fed. Cas. No. 14,852.

A ship's failure to heed signals from

the revenue cutter held to constitute a hindrance and obstruction to the boarding officer. The Barraconta (D. C. 1890) 42 Fed. 160.

Officers obstructed.—An inspector is an officer of the customs, the obstruction of whom is an offense, under this section. U. S. v. Sears (C. C. 1812) Fed. Cas. No. 16,247.

Proof that an inspector was commissioned and sworn, and in the actual execution of the duties of the office, with the knowledge of the treasury department, is sufficient proof of his appointment to support an indictment for obstructing him in the performance of his duties. Id.

It is not necessary to produce the commission of appointment to prove such appointment. Id.

The office of an inspector ceases with that of the collector who appointed him, and an indictment for resisting such inspector after the resignation of the collector, and before his reappointment to office by the succeeding collector, cannot be sustained. U. S. v. Wood (C. C. 1815) Fed. Cas. No. 16,754.

Indictment.—Where an indictment for resisting a customs officer improperly describes the office, the variance is fatal. U. S. v. Phelps (C. C. 1810) Fed. Cas. No. 16,041.

Sufficiency of allegation of a forcible impeding. U. S. v. Bachelder (C. C. 1814) Fed. Cas. No. 14,490.

Cited without definite application, Ex parte Marquand (C. C. 1815) Fed. Cas. No. 9,100.

§ 5772. (R. S. § 3069.) Articles separate from the cargo.

If any box, trunk, chest, cask, or other package shall be found in the cabin, steerage, or forecastle of a vessel, or in any other place separate from the residue of the cargo, the officer of the customs shall take a particular account of such package, and of the marks and numbers thereof, if any, and a description thereof, and, if he judges proper, shall seal every such package; and such account and description shall be by him forwarded without delay to the collector of the district to which such vessel is bound. If upon her arrival at the port of her entry, the packages so described, or any of them, are missing, or if any seal put thereon has been broken, the master shall be liable to a penalty for every package missing, or on which any seal shall be broken, of two hundred dollars.

Act March 2, 1799, c. 22, § 54, 1 Stat. 668.

Notes of Decisions

"Arrival."—The word "arrival," in the section authorizing customhouse officers to board a vessel and put seals on boxes, and imposing a penalty if on the vessel's arrival the seals are found broken, means an arrival to enter for business. Harrison v. Vose (1850) 9 How. 372, 380, 13 L. Ed. 179.

Penalties.—The statement that the "master took all precaution in his power to prevent smuggling" held insufficient to prevent enforcement of the penalty against the vessel of the value of goods found concealed in the purser's room and the ship's storeroom. The Helvetia (D. C. 1872) Fed. Cas. No. 6,345.

Cited without definite application, U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 188.

§ 5773. (R. S. § 3070.) Locks and fastenings.

The inspector who may be put on board of any vessel shall secure, after sunset in each evening, or previous to his quitting the vessel, the hatches and other communications with the hold of such vessel, or any other part thereof he may judge necessary, with locks or other proper fastening, which locks or other fastenings shall not be opened, broken, or removed until the morning following, or after the rising of the sun, and in the presence of the inspector by whom the same were affixed, except by special license from the collector of the port, and the naval officer, if any, first obtained. If the locks or other fastenings, or any of them, are broken or removed contrary to this section, or if any merchandise or packages are clandestinely landed, notice thereof shall be immediately given by the inspector to the collector and naval officer, if any, of the port where the vessel may be; and

the master of such vessel shall, for each or every such offense, be liable to a penalty of five hundred dollars.

Act March 2, 1799, c. 22, § 54, 1 Stat. 668.

Provisions requiring the attendance of inspectors on the delivery of cargoes were made by R. S. § 2877, ante, § 5568.

Notes of Decisions

Operation of section.—This section applies to vessels in the coasting as well as foreign trade. U. S. v. Mantor (C. C. 1820) Fed. Cas. No. 15,719.

§ 5774. (R. S. § 3071.) Officers to make character known.

Every officer or other person authorized to make searches and seizures by this Title, shall, at the time of executing any of the powers conferred upon him, make known, upon being questioned, his character as an officer or agent of the customs or Government, and shall have authority to demand of any person within the distance of three miles to assist him in making any arrests, search, or seizure authorized by this Title, where such assistance may be necessary; and if such person shall, without reasonable excuse, neglect or refuse so to assist, upon proper demand, he shall be deemed guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars, nor less than five dollars.

Act July 18, 1866, c. 201, § 10, 14 Stat. 180.

Provisions defining and punishing the offense of falsely assuming to be a revenue officer were made by R. S. § 5448, which was incorporated into the Criminal Code, in section 66 thereof, post, § 10234, and was repealed by section 341 thereof, post, § 10515.

§ 5775. (R. S. § 3072.) Seizures.

It shall be the duty of the several officers of the customs to seize and secure any vessel or merchandise which shall become liable to seizure by virtue of any law respecting the revenue, as well without as within their respective districts.

Act March 2, 1799, c. 22, § 70, 1 Stat. 678.

Notes of Decisions

Jurisdiction.—It is the right of an officer of customs to seize goods which are suspected to have been introduced into the country in violation of the revenue laws, not only in his own district, but also in any other district than his own. Taylor v. U. S. (1845) 44 U. S. (3 How.) 197, 11 L. Ed. 559.

Jurisdiction of a proceeding for the forfeiture of smuggled goods exists only in the district of seizure, which is the district in which the goods, if on land, are found. A collector cannot, by carrying them into another district and there making the formal seizure, confer jurisdiction of the proceeding on the court in such district. U. S. v. Larkin (1907) 153 Fed. 113, 115, 82 C. C. A. 247.

See § 5789, post.

Exhibition of commission by collector.—The United States collector of a port is not required to exhibit his commission in court in order to justify his seizure of property under the revenue laws; but, if the seizure be made by his deputy, who is constituted such by private appointment of the collector, such deputy's commission must be shown. Jacques v. Griswold (Vt. 1803) 2 Tyler, 235.

In an action of trespass by an inspector, for taking goods by him seized in execution of his office, evidence is not necessary to show that the plaintiff was appointed by the approbation of the secretary of the treasury, or that he was sworn into office. Jones v. Gibson (1818) 1 N. H. 266.

Any unofficial person may seize property as forfeited to the United States, and the government, if it chooses, may adopt the seizure and make it the basis of legal proceedings. (1870) 13 Op. Atty. Gen. 253.

Probable cause for seizure.—The collector of revenue is justified in making any seizure where he has reasonable ground to suspect that a fraud on the revenue or a violation of the revenue laws is meditated, and on showing probable cause for the seizure the burden of proof is on the claimant. Sixty Pipes of Brandy (1825) 10 Wheat. 421, 426, 6 L. Ed. 356.

It is immaterial who makes the seizure, or whether it was irregularly made or not, or whether the cause assigned originally for the seizure be that for which the condemnation takes place, provided the adjudication is for a sufficient cause. Wood v. U. S. (1842) 16 Pet. 342, 358, 10 L. Ed. 987; Taylor v. U. S. (1845) 3 How. 197, 204, 11 L. Ed. 559.

It is the duty of a revenue officer of

the United States to make a seizure whenever he has probable cause to believe the property to be forfeited. McGuire v. Winslow (C. C. 1886) 26 Fed. 304.

Where a vessel was seized for violating the revenue laws, and the district judge before whom the case was brought decided in favor of the claimants, but refused the officers a certificate that there was reasonable cause for seizure, held, that the appeal from such decision should be prosecuted before the Supreme Court. (1852) 5 Op. Atty. Gen. 658.

The vessel of A. was seized by B., an officer of the customs, under the revenue laws of the United States, and was directed by the collector to be detained. During the detention, C., another officer of the customs, who was interested in the seizure and knew the facts, used the vessel, with the consent of B., for his own private purposes, and afterwards restored her to B. The vessel was afterwards acquitted in the district court, and a certificate of probable cause of seizure granted by the judge. In an action of trespass by A. against C., it was held that C., not being implicated in the first taking, either as an actor or standing in such a relation to B. as would make him a party in the act of seizure, could not be made a trespasser ab initio. Van Brunt v. Schenck (N. Y. 1814) 11 Johns. 377; (N. Y. 1816) Id., 13 Johns. 414.

Mistake in seizing goods.—Goods seized by mistake are liable to forfeiture, if a good cause of forfeiture existed at the time of the seizure, but without the knowledge of the seizing officer. Wood v. U. S. (1842) 41 U. S. (16 Pet.) 342, 10 L. Ed. 987.

Attachment of seized goods.—Goods held by a collector of customs to enforce the payment of duties due on such goods are not liable to be attached at the suit of a private creditor of the importer. Dennie v. Harris (1830) 26 Mass. (9 Pick.) 364.

Subrogation to rights of United States.—Where, upon the importation of brandy, a bond for the duties has been given, and such brandy is afterwards sold by the collector for the duties, a prior purchaser thereof is not thereby entitled to be subrogated to the rights and priorities of the United States in relation to the duties, though both principal and sureties in the bond had become insolvent, without having paid such duties. Dias v. Bouchaud (N. Y. 1843) 10 Paige, 445.

Goods liable to seizure.—Goods imported fraudulently and collusively under cover of Indians are liable to seizure. (1830) 2 Op. Atty. Gen. 340.

Under prior statutes.—Gelston v. Hoyt (1818) 16 U. S. (3 Wheat.) 246, 4 L. Ed. 381; McGuire v. Winslow (C. C. 1886) 26 Fed. 304; Sailly v. Smith (N. Y. 1814) 11 Johns. 500.

Cited without definite application, The Josefa Segunda (1825) 10 Wheat. 312, 327, 6 L. Ed. 329; U. S. v. Spraul & Co. (1911) 185 Fed. 405, 107 C. C. A. 569; U. S. v. A Lot of Jewelry, etc. (D. C. 1894) 59 Fed. 684, 686.

§ 5776. (R. S. § 3073.) Persons making seizures may plead general issue and give special matter in evidence.

If any officer, or other person, executing or aiding or assisting in the seizure of goods, under any act providing for or regulating the collection of duties on imports or tonnage, is sued for anything done in virtue of the powers given thereby, or by virtue of a warrant granted by any judge, or justice, pursuant to law, he may plead the general issue and give such act and the special matter in evidence.

Act March 2, 1799, c. 22, § 71, 1 Stat. 678.

Notes of Decisions

Defenses.—See § 5530, ante, as to liability of officers.

The owner of a ship and cargo seized for breach of the revenue laws and libeled in the court of vice admiralty compounded with the government officers by leave of that court by paying half the value of the property, and then sued the collector in trespass for seizure. The jury, against the express instructions of the superior court, returned a verdict for plaintiff, and the court gave judgment upon it. Erving v. Cradock (Mass. 1761) Quincy, 553.

In trespass de bonis asportatis against a collector of the customs, it is a good justification that defendant, suspecting the goods to have been imported contrary to the act, seized them, and that they were condemned in the district court. Sailly v. Smith (N. Y. 1814) 11 Johns. 500.

To trespass for entering and carrying away goods, plea of seizure by the defendant, as inspector of the customs, held good; and the description in the warrant, viz. "several bales of goods, calicoes, chintzes, etc.," held sufficiently particular. Steel v. Fisk (Vt. 1816) Brayt. 230.

§ 5777. (R. S. § 3074.) Appraisement.

In all cases of seizure of property subject to forfeiture for any of the causes named in any provision of law relating to the customs,

or for the registering, enrolling, or licensing of vessels, when, in the opinion of the collector or other principal officer of the revenue making such seizure, the value of the property seized does not exceed five hundred dollars, he shall cause a list and particular description of the property seized to be prepared in duplicate, and an appraisement of the same to be made by two sworn appraisers under the revenue laws, if there are such appraisers at or near the place of seizure; but if there are no such appraisers, then by two competent and disinterested citizens of the United States, to be selected by him for that purpose, residing at or near the place of seizure; which list and appraisement shall be properly attested by such collector or other officer and the persons making the appraisal. For such services of the appraisers they shall be allowed out of the revenue one dollar and fifty cents each, for every day necessarily employed in such service.

Act April 2, 1844, c. 8, § 1, 5 Stat. 653. Act Aug. 8, 1846, c. 110, 9 Stat. 82. Act Feb. 28, 1865, c. 67, § 4, 13 Stat. 442. Act July 18, 1866, c. 201, § 11, 14 Stat. 180. Act July 28, 1866, c. 293, § 6, 14 Stat. 309.

Notes of Decisions

Operation of section.—This section may properly be held to refer to such provisions as existed when the Revised Statutes took effect. (1901) 23 Op. Atty. Gen. 377.

Method of appraisement.—Merchandise seized for violation of section 5527, ante, should be appraised under section 5594, ante, and not under this section. Id.

The appraisement procedure in undervaluation cases which aims at the levy of additional duties is none the less civil because forfeiture may be insured as a possible ultimate result. (1901) 23 Op. Atty. Gen. 377.

When property subject to forfeiture for smuggling or cognate offenses is seized, the appraisement should be in accordance with this section, and not under section 5594, ante. (1903) 24 Op. Atty. Gen. 583.

Cited without definite application, Von Cotzhausen v. Nazro (C. C. 1879) 15 Fed. 891, 894; McGuire v. Winslow (C. C. 1886) 26 Fed. 304, 307.

§ 5778. (R. S. § 3075.) Notice of seizure.

If the amount of the appraisal of property so seized as forfeited shall not exceed the sum of five hundred dollars, the collector or other principal officer shall publish a notice once a week for three successive weeks in some newspaper of the county or place where such seizure shall have been made, if any newspaper shall be published in such county; but if no newspaper shall be published in such county, then such notice shall be published in some newspaper of the county in which the principal customs office of the district shall be situated; and if no newspaper shall be published in such county, then notices shall be posted in proper public places, which notices shall describe the articles seized, and state the time, cause, and place of seizure, and shall require any person claiming such articles to appear and file with such collector or other officer his claim to such articles within twenty days from the date of the first publication of such notice.

Act April 2, 1844, c. 8, § 1, 5 Stat. 653. Act Feb. 28, 1865, c. 67, § 4, 13 Stat. 442. Act July 18, 1866, c. 201, § 11, 14 Stat. 180.

Cited without definite application, McGuire v. Winslow (C. C. 1886) 26 Fed. 304, 307.

§ 5779. (R. S. § 3076.) Claim for property seized.

Any person claiming the property so seized may, at any time within twenty days from the date of such publication, file with the collector or other officer a claim, stating his interest in the articles seized, and, upon depositing with such collector or other officer a bond to the United States in the penal sum of two hundred and fifty dollars, with two sureties, to be approved by such collector or other officer, conditioned that, in case of the condemnation of the articles so claimed, the obligors shall pay all the costs and ex-

penses of the proceedings to obtain such condemnation. Such collector or other officer shall transmit the same, with the duplicate list and description of the articles seized and claimed, to the United States district attorney for the district, who shall proceed for a condemnation of the property in the ordinary mode prescribed by law.

Act April 2, 1844, c. 8, § 1, 5 Stat. 653. Act July 18, 1866, c. 201, § 12, 14 Stat. 181.

Notes of Decisions

Bond given by claimant.—See §§ 1564, 1566, ante, as to bailing of property seized under customs laws.

Where a bond is given upon the return of goods libeled as upon a seizure, and the libel is afterwards, by amendment, changed to an information, and the goods condemned, a compliance with the stipulations in the bond may be enforced by attachment against the obligors. U. S. v. Four Part Pieces of Woollen Cloth (C. C. 1825) Fed. Cas. No. 15,150.

Where the claimant is not a party to the bond, all the obligors are to be deemed principals. Id.

Condemnation of property.—An entry was made at the custom house of certain packages in behalf of the owner, who afterwards made a second entry of certain things in the packages, but not enumerated in the first entry. It was held, that although no seizure was made until after the second entry, the collector had a right to seize, under Collection Law March 2, 1799, § 67, for any variance between the contents of the packages and the first entry, and that such seizure would be valid, and must be followed by sentence of condemnation, unless such difference proceeded from accident or mistake, and not from any intention to defraud the revenue. U. S. v. Six Packages (1821) 19 U. S. (6 Wheat.) 521, 5 L. Ed. 321.

On an information for the condemnation of goods as fraudulently imported, the jury are not restricted, in the condemnation of the goods, to any entered goods which they found to be undervalued, but they may find either the whole package or the invoice forfeited, though containing other goods correctly valued, providing they find that such package or invoice had been made up with intent to defraud the revenue. Buckley v. U. S. (1846) 45 U. S. (4 How.) 251, 11 L. Ed. 961.

This section points out the way in which the party interested may proceed to arrest the sale of his property, and where the statutory things are done the summary proceeding is stopped, and the district attorney is authorized to proceed to condemn the property in the ordinary mode prescribed by law. Conway v. Stannard (1873) 17 Wall. 398, 404, 21 L. Ed. 649.

In a suit for condemnation of goods brought into the United States, and not entered for duty, a refusal to charge that, in the absence of fraudulent intent on the part of the owners in the importation of goods, the government could not recover, was proper. Four Packages v. U. S. (1878) 97 U. S. 404, 24 L. Ed. 1031.

In proceedings by the government to condemn opium claimed to have been smuggled into this country, a letter written by one whom the evidence tended to implicate to other parties in China, two months after the seizure, apparently referring to the transaction, and left by the writer with the claimant of the opium, who added a paragraph thereto also seemingly referring to the transaction, held admissible in evidence as an admission. Three Thousand Eight Hundred and Eighty-Eight Boxes of Opium v. U. S. (C. C. 1883) 23 Fed. 367.

Property returned on bond after seizure is subject to forfeiture for causes subsequently arising, but its liability to condemnation in the suit in which it was bonded is not affected by the fact of its condemnation for the subsequent forfeiture. U. S. v. Eighteen Bales of Blankets (D. C. 1868) Fed. Cas. No. 15,032.

Irregularity of seizure.—An irregularity in the seizure is not available to claimants in the suit for forfeiture for violation of the customs laws. U. S. v. Twenty-Five Cases of Cloths (D. C. 1840) Fed. Cas. No. 16,563.

Cited without definite application, McGuire v. Winslow (C. C. 1886) 26 Fed. 304, 307.

§ 5780. (R. S. § 3077.) Sale of property seized.

If no such claim shall be filed or bond given within the twenty days above specified, such collector or other officer shall give not less than fifteen days' notice of the sale of the property so seized, by publication in the manner before mentioned; and, at the time and place specified in such notice, he shall sell at public auction the property so seized, and shall deposit the proceeds, after deducting the actual expenses of such seizure, publication, and sale, in the Treasury of the United States, as shall be directed by the Secretary of

the Treasury. The collector, however, shall have power to adjourn such sale from time to time for a period not exceeding thirty days in all.

Act April 2, 1844, c. 8, § 1, 5 Stat. 653. Act July 18, 1866, c. 201, § 12, 14 Stat. 181.

Notes of Decisions

Operation and effect of sale.—See §§ 1564, 1565, 1566, ante, as to bailing and sale of property seized under customs laws.

A sale of seized property pursuant to the statutes is in legal effect and operation equivalent to a sale under a judicial decree of condemnation. McGuire v. Winslow (C. C. 1886) 26 Fed. 304, 307.

Purchase by owner.—There being no effort on the part of the owner of property sold for customs duties to defraud the government of its duties, nor any conspiracy entered into for that purpose, there is no law denying the owner the right to bid in the property at the sale. Ney v. Ladd (Tex. Civ. App. 1902) 68 S. W. 1014.

Patented goods.—Goods smuggled into the United States may be seized and sold by a collector of customs although protected by patents. (1894) 21 Op. Atty. Gen. 72.

—— Decisions under prior statutes.—Beers v. Botsford (Conn. 1808) 3 Day, 159; Blake v. Johnson (1817) 1 N. H. 91.

§ 5781. (R. S. § 3078.) Application for remission of forfeiture, etc.

Any person claiming to be interested in the property sold under the provisions of the preceding section may, within three months after such sale, apply to the Secretary of the Treasury for a remission of the forfeiture and a restoration of the proceeds of such sale, and the same may be granted by the Secretary upon satisfactory proof, to be furnished in such manner as he shall direct, that the applicant, at the time of the seizure and sale of the property in question, did not know of the seizure, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without willful negligence or any intention of fraud on the part of the owner of such property.

Act July 18, 1866, c. 201, § 13, 14 Stat. 181.

Provisions for the remission of fines, etc., were made by Act June 22, 1874, c. 391, §§ 17, 18, 20, post, §§ 10132–10134.

Notes of Decisions

Power to remit forfeitures. — The rights of seizing officers do not conflict with the power to remit fines, penalties, and forfeitures under the revenue laws, since, as against the United States, no such right is vested until after condemnation and the payment over to the collector of the proceeds of such fines, penalties, etc., for distribution. (1830) 2 Op. Atty. Gen. 330.

Pardoning power of president. — Remission of penalties no invasion of president's power of pardon. The Laura (1885) 5 Sup. Ct. 881, 883, 114 U. S. 411, 29 L. Ed. 147.

The case considered is one in which the exercise of the pardoning power is rendered proper from the entire absence of all criminal intent in the commission of the act from whence the forfeiture arises. (1830) 2 Op. Atty. Gen. 330.

Cited without definite application, U. S. v. Morris (1825) 23 U. S. (10 Wheat.) 246, 6 L. Ed. 314; McGuire v. Winslow (C. C. 1886) 26 Fed. 304, 307.

§ 5782. (R. S. § 3079.) Distribution.

If no application for such remission or restoration shall be made within three months after such sale, the Secretary of the Treasury shall then cause the proceeds of such sale to be distributed in the same manner as if such property had been condemned and sold in pursuance of a decree of a competent court.

Act April 2, 1844, c. 8, § 3, 5 Stat. 654. Act July 18, 1866, c. 201, § 14, 14 Stat. 181.

Notes of Decisions

Distribution.—See § 5794, post.

Freight charges.—Where freight is earned before the government makes its election whether to declare the merchandise, of which a false and fraudulent entry has been made, forfeited, or to recover its value by suit against the parties making the entry, and the former proceeding is finally chosen and the property is sold, held, that such freight

must be paid out of the proceeds of the sale; the owners of the vessel having no knowledge before it was earned of any offense committed or premeditated.

Six Hundred Tons of Iron Ore (D. C. 1881) 9 Fed. 595.

Cited without definite application. McGuire v. Winslow (C. C. 1886) 26 Fed. 304, 307.

§ 5783. (R. S. § 3080.) Sale of perishable articles.

Whenever seizure shall be made of any property which, in the opinion of the appraisers, is liable to perish or waste, or to be greatly reduced in value by keeping, or which cannot be kept without great disproportionate expense, whether such property consists of live animals or merchandise, and when the property thus seized shall not exceed five hundred dollars in value, and when no claim shall have been interposed therefor as is hereinbefore provided, the appraisers, if requested by the collector or principal officer making the seizure, at the time when such appraisal is made, shall certify on oath in their appraisal their belief that the property seized is liable to speedy deterioration, or that the expenses of its keeping will largely reduce the net proceeds of the sale; and in case the appraisers thus certify, such collector or other officer may proceed to advertise and sell the same at auction, by giving notice for such time as he may think reasonable, but not less than one week, of such seizure and intended sale, by advertisement as is hereinbefore provided; and the proceeds of such sale shall be deposited to the credit of the Treasurer of the United States, subject, nevertheless, to the payment of such claims as shall be presented within three months from the day of sale, and allowed by the Secretary of the Treasury.

Act July 18, 1866, c. 201, § 15, 14 Stat. 181, 182.

Notes of Decisions

Time of sale.—In the case of unclaimed perishable property, or property the expense of keeping which would reduce the proceeds of sale (as horses) of less value than $500, used in smuggling, the collector need not give the 20 days allowed by previous sections in the case of like property, nonperishable, for the claimant to prefer his claim to it, and allow 15 days' notice of sale, but may publicly advertise it for sale at once, on seizure, and proper certificate by appraisers of its value and character, and after not less than one week's notice may sell it. Conway v. Stannard (1873) 17 Wall. 398, 402, 21 L. Ed. 649.

§ 5784. (R. S. § 3081.) Release on payment of appraised value.

The collectors of the several districts of the United States, in all cases of seizure of any merchandise for violation of the revenue laws, the appraised value of which, in the district wherein such seizure shall be made, does not exceed one thousand dollars, are hereby authorized, subject to the approval of the Secretary of the Treasury, to release such merchandise on payment of the appraised value thereof.

Act March 3, 1863, c. 76, § 5, 12 Stat. 740.

Notes of Decisions

Operation of section.—This section applies to the revenue features of the law, and does not affect its criminal feature. U. S. v. Ortega (D. C. 1895) 66 Fed. 713, 714.

A knit woolen shawl sent as a present through the mail from Germany in a registered package, on which was indorsed the contents of the package and the words "Suspected liable to customs duty," was opened by the party to whom it was addressed, at the post office, in the presence of a deputy collector, who took it from her, had it appraised, and refused to deliver it until she had paid the appraised value or received permission from the secretary to pay the duty and to receive the package. In an action for wrongful conversion, held, that it was the duty of the proper officer, if he had reasonable cause to believe it was subject to duty, or had unlawfully been introduced into the United States, to sieze it, and, having done so, he was by law the custodian of the property; that the owner could only reclaim it by payment of the appraised value or appeal to the secretary of the treasury for relief; and that there was not a wrongful conversion of the property. Von

Cotzhausen v. Nazro (C. C. 1879) 15 Fed. 891.

Where property that is dutiable is imported contrary to law it is liable to seizure, and it does not follow from the fact of ownership that the owner would be entitled to possession. Id.

Payment of fine.—The Secretary of the Treasury may release cigars imported in violation of section 5500, ante, on payment of a fine equal to the duty, when in his opinion the importation does not involve fraud. (1903) 24 Op. Atty. Gen. 588.

"Home value."—The purpose of the law as to smuggled or unentered goods requires the exaction of the so-called "home value" as the condition of release on payment of the appraised value, but not as implying the assessment of duties on such goods. (1903) 24 Op. Atty. Gen. 583.

Recovery back of overcharge.—A payment of an overcharge of custom dues as a compromise whereby the parties obtained possession of their goods then under seizure cannot be recovered back. Shantz v. U. S. (1888) 23 Ct. Cl. 384.

§ 5785. (R. S. § 3082.) Concealing or buying, etc., goods liable to seizure.

If any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or be imprisoned for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods, such possession shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury.

Act March 2, 1799, c. 22, § 69, 1 Stat. 678. Act July 18, 1866, c. 201, § 4, 14 Stat. 179.

The entry or introduction of imported merchandise by means of false invoice, etc., or by means of any false or fraudulent practice, was punishable by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, G, H, ante, §§ 5524, 5526.

Provisions that in suits or informations, where any seizure has been made pursuant to any act relating to the collection of duties, a person claiming the property has the burden of proof, were made by the Customs Administrative Act of June 10, 1890, c. 407, § 21, 26 Stat. 140, which were amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, T, post, § 5791.

Notes of Decisions

1. Repeal of section.
2. —— Other sections by this section.
3. Operation of section.
4. Nature of offense.
5. "Contrary to law."
6. "Import or bring."
7. "Merchandise."
8. Concealment or possession of goods.
9. Dutiable articles in baggage.
10. Intent or knowledge.
11. Penalty or fine—Remedy.
12. —— Indictment.
13. Acquittal as a bar.
14. Forfeiture—In general.
15. —— Information for forfeiture.
16. —— Evidence.

1. Repeal of section.—This section authorizes a suit in rem for forfeiture, and has not been repealed. U. S. v. A Lot of Jewelry, etc. (D. C. 1894) 59 Fed. 684, 685.

The criminal features of this section were not repealed by the act of February 27, 1887, "to perfect the revision of the statutes." U. S. v. Ortega (D. C. 1895) 66 Fed. 713, 714.

2. —— Other sections by this section.—The punishment for smuggling, imposed by Act March 3, 1823 (3 Stat. 781), of a forfeiture of "a sum double the amount or value of the goods," etc., is not repealed by Act July 18, 1866 (14 Stat. 179), imposing a forfeiture of the goods smuggled, with fine and imprisonment. Stockwell v. U. S. (1871) 80 U. S. (13 Wall.) 531, 20 L. Ed. 491. CONTRA, see U. S. v. Claflin (1878) 97 U. S. 546, 24 L. Ed. 1082.

3. Operation of section.—The design of this act was to punish as a crime that which before had subjected its perpetrator to civil liability, or quasi civil liability. Stockwell v. U. S. (1871) 13 Wall. 531, 551, 20 L. Ed. 491.

This section does not authorize a civil action. U. S. v. Claflin (1878) 97 U. S. 546, 547, 24 L. Ed. 1082.

A carrier which transported smuggled goods has no lien on them for the freight, as against the government, though innocent of the fraud. U. S. v. Fifty-Three Bales of Rags (D. C. 1879) Fed. Cas. No. 15,097.

The criminal provisions of this section apply to cases of smuggling cigars in quantities less than 1,000, notwithstanding the provisions of sections 5784,

5500, 5392, ante, which relate only to the revenue features of the law, and do not affect its criminal features. U. S. v. Ortega (D. C. 1895) 66 Fed. 713, 714.

The proceedings contemplated by this section are criminal. U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778, 785.

Smuggled goods are to be associated with prohibited goods and are not liable to duty. The government should, therefore, limit its action to forfeiture of the goods and prosecution of the offender. (1903) 24 Op. Atty. Gen. 583.

4. Nature of offense.—The offense of receiving smuggled goods described in this section is not to be classed as a felony, so as to entitle defendant to ten peremptory challenges, although it is punishable by fine and two years' imprisonment, which may be inflicted in a state penitentiary, since the offense is subordinate to that of smuggling itself, which is expressly declared a misdemeanor. Reagan v. U. S. (1895) 15 Sup. Ct. 610, 157 U. S. 301, 39 L. Ed. 709.

A violation of sections 5496–5499, ante, imposing a penalty where there is found, in the baggage of a person arriving within the United States, any dutiable article not mentioned to the collector at the time of making entry for the baggage, becomes the misdemeanor denounced in this section when done fraudulently or knowingly. U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778.

5. "Contrary to law."—The phrase "contrary to law" relates to legal provisions not found in the section. Keck v. U. S. (1899) 19 Sup. Ct. 254, 172 U. S. 434, 43 L. Ed. 505; One Pearl Chain v. U. S. (1903) 123 Fed. 371, 373, 59 C. C. A. 499.

The words "contrary to law" relate to legal provisions other than those found in such section. Rogers v. U. S. (1910) 180 Fed. 54, 103 C. C. A. 408, 31 L. R. A. (N. S.) 264; U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778.

Cattle brought into the United States without complying with R. S. § 3100 (post, § 5812), as to inspection by customs officer, though not dutiable, held imported contrary to law, within this section. Estes v. U. S. (1915) 227 Fed. 818, 142 C. C. A. 342.

The offense of bringing merchandise into the United States "contrary to law" does not include frauds or illegalities concerning the invoicing of the same, or the payment of duties thereon. U. S. v. Kee Ho (D. C. 1887) 33 Fed. 333.

On proceedings for the forfeiture of merchandise, it may not be maintained in defense that the regulations have not been promulgated, and that therefore the importer was justified in importing the merchandise according to his own convenience, independently of the requirements of law. Such an importation would be "contrary to law," under said section. U. S. v. Fifty Waltham Watch Movements (D. C. 1905) 139 Fed. 291.

The seizure directed under this section relates to property imported contrary to law. U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778.

Violation of section 5499, ante, relating to importation of dutiable articles in baggage, held "contrary to law" within this section. Id.

6. "Import or bring."—When property afloat is feloniously taken from the possession of the owner, and is brought ashore in contravention of the revenue laws and then seized by the officers of customs, it will not be forfeited as against the true owner. U. S. v. Two Hundred and Eight Bags of Kainit (D. C. 1889) 37 Fed. 326.

The term "import or bring" held to include the whole act of bringing dutiable articles into the United States. U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778, 780.

7. "Merchandise."—This section comprehends any merchandise imported contrary to law, and is not limited to merchandise sent or received for sale. Von Cotzhausen v. Nazro (C. C. 1879) 15 Fed. 891, 898.

Where goods subject to duty are mixed with other goods upon which duties have been paid at an earlier port of entry with an intention to smuggle them, the latter are not subject to forfeiture, unless there was an intent to defraud by importing them. U. S. v. Two Thousand Four Hundred and Nineteen Sheepskins (D. C. 1880) Fed. Cas. No. 16,589a.

The term "merchandise" held not limited to general merchandise, as distinguished from baggage, especially in view of sections 5462, 5496, and 5499, ante. U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778, 780.

As to what is embraced within the term "merchandise." Id.

8. Concealment or possession of goods.—A resistance of the seizure of goods, whereby the same are removed from the custody of the officer, is not a concealment. U. S. v. Farnsworth (C. C. 1815) Fed. Cas. No. 15,072.

Possession of goods is not sufficient to authorize conviction until it is otherwise proved that they were imported contrary to law. U. S. v. Lot of Jewelry (C. C. 1875) Fed. Cas. No. 15,626.

Where a plan to smuggle is shown by the manner of packing and invoicing, imported merchandise is liable to forfeiture, though the invoice may have been corrected before entry. U. S. v. One Bag of Crushed Wheat (D. C. 1908) 166 Fed. 562, 563.

9. Dutiable articles in baggage.—Dutiable goods, imported as passenger's baggage, where no attempt was made to have them passed as such, and the owner, without knowledge of their sei-

sure, offered them with correct bills of lading and moneys for entry at the customhouse, held not forfeitable. U. S. v. Ninety-Five Boxes, etc. (D. C. 1874) Fed. Cas. No. 15,891.

This section applies to dutiable merchandise brought into the United States in the baggage of a passenger, and such goods, when discovered after their entry, are subject to forfeiture thereunder. U. S. v. Five Packages of Tapestry (D. C. 1902) 114 Fed. 496.

That section 5499, ante, imposes penalty for bringing in dutiable articles in baggage held not to indicate that the offense is not within this section, imposing a greater penalty. U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778, 780.

10. Intent or knowledge.—Dutiable goods imported in the foreign mail are in the hands of the receiver of them from the post office, liable to seizure by the officers of customs; and the fact that there was no intent on the part of the sender or receiver to defraud the United States of the duty does not render the officer liable to an action for making the seizure. Von Cotzhausen v. Nazro (1883) 2 Sup. Ct. 503, 505, 107 U. S. 215, 27 L. Ed. 540.

Goods brought in with intent to smuggle may not be seized while there remains opportunity for change of intent before the time for due entry has passed. U. S. v. One Pearl Chain (1905) 139 Fed. 513, 71 C. C. A. 500.

An actual intention to defraud is an essential question in a suit to enforce a forfeiture. Lewey v. U. S. (C. C. 1878) Fed. Cas. No. 8,309.

Guilty knowledge on the part of the impostor must be averred. U. S. v. Ninety Demijohns of Rum (C. C. 1880) 8 Fed. 485, 487.

The receipt or concealment of smuggled goods is not an offense, unless they are known to be smuggled. U. S. v. Sauer (D. C. 1896) 73 Fed. 671, 678.

Merchandise may be forfeited under this section, though the United States was not defrauded, and there was no intent to defraud. U. S. v. Fifty Waltham Watch Movements (D. C. 1905) 139 Fed. 291, 292.

Where an importer knowingly brought in merchandise in evasion of the customs laws, it became liable to forfeiture under this section, though, if duly imported, it would have been free of duty. U. S. v. Fifty Waltham Watch Movements (D. C. 1905) 139 Fed. 291, 292.

It is only when the act is done fraudulently or knowingly that the crime specified in this section is committed. U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778.

The offense described in a similar section of the Opium Act is committed whenever smoking opium is fraudulently and knowingly brought by the offender within the territorial limits of the United States, though it is not landed from the ship, or carried across the customs lines. U. S. v. Caminata (D. C. 1912) 194 Fed. 903, 905.

There must be sufficient evidence of a criminal intent. (1900) 23 Op. Atty. Gen. 63.

To support indictment under this section there must be sufficient evidence of a criminal intent. (1900) 23 Op. Atty. Gen. 64.

Act June 22, 1874, c. 391, par. 16, 18 Stat. 189, making it the duty of the court, in all actions, to declare the forfeiture of merchandise by reason of a violation of the revenue laws, to submit to the jury whether the acts were done with intent to defraud the government, is repealed by Act June 10, 1890, c. 407, § 29, and hence the intent of the person violating the revenue laws is immaterial. Six Parcels of Placer Gold v. U. S. (1904) 76 P. 473, 8 Ariz. 389.

11. Penalty or fine—Remedy.—The act provides for a criminal prosecution only, and an action of debt will not lie by the United States to recover the penalty. U. S. v. Claflin (1878) 97 U. S. 546, 24 L. Ed. 1082, affirming (C. C. 1876) Fed. Cas. No. 14,799.

Under prior statutes, see Stockwell v. U. S. (1871) 13 Wall. 531, 543, 20 L. Ed. 491; Walsh v. U. S. (C. C. 1847) Fed. Cas. No. 17,116.

12. —— Indictment.—An indictment, under section 5548, ante, making it an offense to smuggle into the country any "goods, wares, or merchandise subject to duty by law," and this section, sufficiently describes the article as "prepared opium, subject to duty by law, to wit, the duty of $12 per pound," where the only opium subject to a duty of $12 per pound is "opium containing less than nine per cent. of morphia, and opium prepared for smoking" (Act Oct. 1, 1890, § 1, par. 48); especially where no objection was made to the indictment till after verdict, and in view of section 1691, ante, providing that "no indictment * * * shall be deemed insufficient * * * by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant." Dunbar v. U. S. (1895) 156 U. S. 185, 15 Sup. Ct. 325, 39 L. Ed. 390.

Indictment held insufficient. Keck v. U. S. (1899) 19 Sup. Ct. 254, 172 U. S. 434, 43 L. Ed. 505.

Indictment for concealing and facilitating transportation and concealment of cattle imported without inspection, as required by regulations authorized by law, held to have properly charged importation contrary to law. Estes v. U. S. (1915) 227 Fed. 818, 142 C. C. A. 342.

A count for illegally receiving, concealing, or buying may be joined with

one for illegally importing. Stockwell v. U. S. (C. C. 1870) Fed. Cas. No. 13,466.

An indictment for smuggling, describing the goods as "six cases containing silk goods of the value of $30,000, a more particular description of which is to the jurors unknown," being dutiable goods introduced into the port of New York from France, held sufficient. U. S. v. Claflin (C. C. 1875) Fed. Cas. No. 14,798.

It is not a sufficient description of the illegality of the original importation to say merely that the goods had been imported and brought into the United States contrary to law. Id.

It is not sufficient to charge the defendant in the language of the statute, with importing merchandise into the United States "contrary to law," or with having received or bought the same, after being so imported, but the indictment must state, with reasonable certainty, in what the illegality of the importation consists. U. S. v. Kee Ho (D. C. 1887) 33 Fed. 333.

Indictment held sufficient. U. S. v. Chesbrough (D. C. 1910) 176 Fed. 778; Rogers v. U. S. (1910) 180 Fed. 54, 103 C. C. A. 408, 31 L. R. A. (N. S.) 264.

13. Acquittal as a bar.—Where a person charged to have fraudulently imported certain merchandise with intent to defraud the United States of duty legally payable thereon was tried and acquitted, such acquittal was a bar to a further proceeding to forfeit the merchandise as against him. U. S. v. A Lot of Precious Stones and Jewelry (1905) 134 Fed. 61, 68 C. C. A. 1.

An information having been filed to forfeit certain merchandise and money for fraudulent importation, with intent to defraud the United States of duty, indictments were found against the alleged importer and his wife; and on trial thereof the importer was acquitted, after which the indictment against the wife was nolled. Held, that such a nolle prosequi was not a judgment of acquittal, and was therefore no bar to the proceeding to forfeit as against the wife. Id.

Acquittal on charge of smuggling under section 5548, ante, and of illegal importation under this section, is not a bar to a proceeding in rem to forfeit the goods under sections 5499, 5763, ante. (1900) 23 Op. Atty. Gen. 63.

14. Forfeiture — In general. — Proceeding in rem does not lie under this section to forfeit money arising from the sale in this country of goods fraudulently imported. U. S. v. A Lot of Precious Stones and Jewelry (1905) 134 Fed. 61, 68 C. C. A. 1.

Where it was charged that certain precious stones and jewelry were imported with intent to defraud the United States of duty thereon, a proceeding in rem to forfeit the same was properly brought under this section. U. S. v. A Lot of Precious Stones and Jewelry (1905) 134 Fed. 61, 68 C. C. A. 1.

Jurisdiction of a proceeding for the forfeiture of smuggled goods exists only in the district of seizure, which is the district in which the goods, if on land, are found; a collector cannot, by carrying them into another district and there making the formal seizure, confer jurisdiction of the proceeding on the court in such district. U. S. v. Larkin (1907) 153 Fed. 113, 116, 82 C. C. A. 247.

A false entry does not subject the goods to forfeiture. U. S. v. Fifty-Three Boxes of Havana Sugar (D. C. 1870) Fed. Cas. No. 15,098.

15. —— Information of forfeiture.—An information of forfeiture is sufficient to support a verdict when it contains averments that certain persons named received the goods, knowing them to have been imported contrary to law; that they were seized by the collector within the district; that they were subject to duty, were brought from a foreign port into the port of New York, without being invoiced or entered at the custom house, and without payment of any duty; and that they were imported contrary to law, by persons named, fraudulently and knowingly. U. S. v. A Lot of Jewelry, (D. C. 1894) 59 Fed. 684.

An information of forfeiture will not be judged of, after verdict, with the strictness applicable to indictments. Id. 685.

16. —— Evidence.—See § 5791, post.

If the entry does not contain a part of the goods consigned by the same invoice and bill of lading, it is prima facie evidence that the duties have not been paid. U. S. v. Certain Hogsheads of Molasses (C. C. 1852) Fed. Cas. No. 14,766.

Statements made by one who for a time had possession of goods claimed as the property of another, in respect to certain alleged violations of the customs laws made after he had parted with the possession thereof, held incompetent evidence, as being merely narrative or historical, and in derogation of the title of the alleged owner. U. S. v. Lot of Jewelry (C. C. 1875) Fed. Cas. No. 15,626.

A letter written by a third party, whom the evidence tended to implicate, to other parties in China two months after the seizure, apparently referring to the transaction, and left by the writer with the claimant, who added a paragraph thereto, also seemingly referring to the transaction, and a letter written by a Chinaman to another Chinaman in China, supposed to refer to passages in the other letter, both letters being put in the same envelope, and directed and mailed to the party

in China, held admissible. Three Thousand Eight Hundred and Eighty Boxes of Opium v. U. S. (C. C. 1883) 23 Fed. 367.

Declarations of the steward of a ship, on which it is claimed certain opium was smuggled, made to the officers seizing such opium an hour after the seizure, but while the opium was in their possession near the place of seizure, waiting to be transported, held admissible, in an action to condemn such opium, as part of the res gestæ, though not made in the presence of, or by authority or with the knowledge of, the claimant. Id.

In a suit to condemn merchandise as forfeited, where the proofs show probable cause for the seizure, and the claimant makes no offer to explain damaging circumstances, such as that the goods were shipped under a false designation, and show when, where, how, or from whom he acquired the ownership he claims, such withholding of evidence is a circumstance sufficient to complete the case for the government, and casts the burden of proof upon the claimant. U. S. v. Seven Hundred and Forty Tins of Opium (D. C. 1891) 44 Fed. 798.

Evidence held insufficient to warrant a finding as a matter of law that a passenger had fraudulently attempted to import a pearl chain without declaring same, so as to authorize its forfeiture for nonpayment of duty. One Pearl Chain v. U. S. (1903) 123 Fed. 371, 373, 59 C. C. A. 499.

On a suit for forfeiture under this section, the burden of proof is not on the claimant of the articles seized, unless there was probable cause for seizing them. If at the close of the government's case there is not enough evidence to go to the jury, there is not such probable cause as to put the burden of proof upon the claimant. U. S. v. One Pearl Chain (D. C. 1904) 139 Fed. 510.

Cited without definite application, U. S. v. Sixty-Seven Packages of Dry Goods (1854) 17 How. 85, 91, 15 L. Ed. 54; Friedenstein v. U. S. (1888) 8 Sup. Ct. 838, 839, 125 U. S. 224, 31 L. Ed. 736; Amado v. Same (1904) 25 Sup. Ct. 13, 14, 195 U. S. 172, 49 L. Ed. 145; U. S. v. One Pearl Necklace (1901) 111 Fed. 164, 169, 49 C. C. A. 287, 56 L. R. A. 130; Same v. Ah Fook (1910) 183 Fed. 33, 105 C. C. A. 325; Tilley v. Savannah F. & W. R. Co. (C. C. 1881) 5 Fed. 641, 659; Boxes of Opium v. U. S. (C. C. 1883) 23 Fed. 366, 392; U. S. v. Mitchell (C. C. 1905) 141 Fed. 666; Same v. Curtis (D. C. 1883) 16 Fed. 184, 188; In re H. L. Evans & Co. (D. C. 1907) 158 Fed. 153, 161; U. S. v. Six Hundred and Forty-Six Half Boxes of Figs (D. C. 1908) 164 Fed. 778, 779.

§ 5786. (R. S. § 3083, as amended, Act Feb. 27, 1877, c. 69, § 1.) Notice to Solicitor of the Treasury.

Whenever any seizure shall be made for the purpose of enforcing any forfeiture, the collector or other person causing such seizure to be made shall immediately give information thereof to the Solicitor of the Treasury.

Act May 29, 1830, c. 153, § 4, 4 Stat. 415. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 247.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "information thereof to the" the word "Solioctir" and inserting in place thereof the word "Solicitor," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

§ 5787. (R. S. § 3084.) Collectors to report to district attorneys.

The several collectors of customs shall report within ten days to the district attorney of the district in which any fine, penalty, or forfeiture may be incurred for the violation of any law of the United States relating to the revenue, a statement of all the facts and circumstances of the case within their knowledge, or which may come to their knowledge from time to time, stating the names of the witnesses, and the provisions of the law believed to be violated, and on which a reliance may be had for condemnation or conviction. If any collector shall in any case fail to report to the proper district attorney, as prescribed in this section, such collector's right to any compensation, benefit, or allowance in such case shall be forfeited to the United States, and the same may, in the discretion of the Secretary of the Treasury, be awarded to such persons as may make complaint and prosecute the same to judgment or conviction.

Act July 18, 1866, c. 201, § 7, 14 Stat. 179. Act March 3, 1873, c. 244, 17 Stat. 580.

The duties of district attorneys in the prosecution of frauds on the revenue were prescribed by R. S. § 838, ante, § 1297.

Officers of customs detecting violations of the customs laws were required to report to the collectors, and the latter were required to report to the district attorneys, by Act June 22, 1874, c. 391, § 15, post, § 5803.

§ 5788. (R. S. § 3085.) Duty of district attorneys.

District attorneys, upon receiving the report of a collector, shall cause suit and prosecution to be commenced and prosecuted without delay for the fines and personal penalties by law in such case provided, unless upon inquiry and examination they shall decide that a conviction cannot probably be obtained, or that the ends of public justice do not require that a suit or prosecution should be instituted, in which case they shall report the facts to the Secretary of the Treasury for his direction. For expenses incurred and services rendered in prosecutions for such fines and personal penalties, they shall receive such allowance as the Secretary of the Treasury shall deem just and reasonable, upon the certificate of the judge before whom such prosecution was had.

Act July 18, 1866, c. 201, § 7, 14 Stat. 179. Act March 3, 1873, c. 244, 17 Stat. 581.

The duties of district attorneys in making returns of fees and expenses were prescribed by R. S. §§ 833, 834, ante, §§ 1394, 1395.

Limitations of suits for recovery of penalties and forfeitures under customs revenue laws were prescribed by Act June 22, 1874, c. 391, § 22, ante, § 1713.

Notes of Decisions

Services and expenses.—Payment for services is not intended, unless prosecutions have been commenced. Stanton v. U. S. (C. C. 1889) 37 Fed. 252, 262, modified (1895) 70 Fed. 890, 17 C. C. A. 475.

An action cannot be maintained by the district attorney for services and expenses until the secretary of the treasury has determined what sum is just and reasonable. Ruhm v. U. S. (C. C. 1895) 66 Fed. 531, 534.

Cited without definite application, Waters v. U. S. (1897) 32 Ct. Cl. 277.

§ 5789. (R. S. § 3086.) Custody of goods.

All merchandise or property of any kind seized under the provisions of any law of the United States relating to the customs, shall, unless otherwise provided for by law, be placed and remain in the custody of the collector or other principal officer of the customs of the district in which the seizure shall be made, to abide adjudication by the proper tribunal, or other disposition according to law.

Act July 18, 1866, c. 201, § 31, 14 Stat. 186.

Notes of Decisions

Right to custody in general.—It is no abandonment of vessel seized on the high seas to permit her master and crew to alone navigate her to port. The Abby (C. C. 1818) Fed. Cas. No. 14.

The government is not liable for the loss of the goods while in the public store awaiting the trial. Schmalz v. U. S. (1868) 4 Ct. Cl. 142.

If a revenue officer whose official duty it is to make seizures of property for violation of the revenue laws actually makes a seizure of merchandise while it is in his custody for the purpose of administering the customs laws, such officer is, nevertheless, to be regarded as the seizing officer. (1870) 13 Op. Atty. Gen. 253.

Collector's right to custody.—Goods of a maritime character seized under the collection act were at one time required to be put into the custody of the collector, and as to such goods the collector was the keeper and responsible for any loss sustained by his neglect. Averill v. Smith (1872) 17 Wall. 82, 92, 21 L. Ed. 613.

Where customs officers examined imported goods at the vessel's pier in Hoboken, and from there sent them to the seizure room of the custom house, in the city of New York, the seizure was made in New York, and not in Hoboken. Four Packages v. U. S. (1878) 97 U. S. 404, 411, 24 L. Ed. 1031.

Jurisdiction of a proceeding for the forfeiture of smuggled goods exists only in the district of seizure, which is the district in which the goods, if on land, are found. A collector cannot, by carrying them into another district and there making the formal seizure, confer jurisdiction of the proceeding on the court in such district. U. S. v. Larkin (1907) 153 Fed. 113, 116, 82 C. C. A. 247.

It is the court, and not the collector, who is to decide how property once libeled is to be disposed of—whether delivered to the claimant or sold—and the custody of the collector is terminated by

such decision. The G. G. King (D. C. 1883) 16 Fed. 921.

In legal contemplation, the goods are in the custody of the court as soon as the process is issued; and though the actual possession and care of them are committed to the collector, he holds them as the official keeper for the court, and is bound to obey its order and direction. (1831) 2 Op. Atty. Gen. 477.

Whenever the prosecution ceases the collector ceases to be the officer of the court; but as collector of the customs he holds the property by the same right which he exercised before the filing of the libel. (1832) 2 Op. Atty. Gen. 496.

Seizures by collectors are not made pursuant to or by virtue of any judicial authority; and courts have no control over the property seized until the same is libeled. When libeled the property seized is in the custody of the courts, and is held by the collector as their officer, and subject to their direction pendente lite. Id.

A vessel and her cargo were seized by a collector of customs, for a breach of the United States revenue laws. Upon the petition of the owner, a remittitur was granted by the secretary of the treasury, and an order for the restoration of the property was issued from the district court; but the secretary of the treasury, upon further consideration of the case, being satisfied that the claimant was not entitled to relief, wrote to the district attorney to return the certificate of remittitur, that it might be revoked, of which orders the collector was notified. Upon demand upon him for the property, by the deputy marshal, under the order for its restoration, the collector refused to deliver it on account of the proceedings of the secretary. Afterwards the remittitur was revoked, and subsequently the owner obtained possession of the property, under an order of the court, by giving a bond therefor, and brought trover against the collector, alleging as a conversion the refusal to deliver the property upon the demand of the marshal. Held, that the property in the hands of the collector was in the custody of the law, and that his refusal to deliver it was not a conversion. Barnes v. Taylor (1849) 29 Me. (16 Shep.) 514.

—— Under prior statutes.—In re Hoyt (1839) 13 Pet. 279, 290, 10 L. Ed. 161; U. S. v. One Case of Silk (D. C. 1871) Fed. Cas. No. 15,925; (1831) 2 Op. Atty. Gen. 477.

Military's right to custody.—This section is not to be considered as embraced in the proceedings contemplated in section 4117, ante, so as to permit the military employed in making seizures to retain the custody of the property to abide adjudication. (1887) 18 Op. Atty. Gen. 544.

Cited without definite application, Von Cotzhausen v. Nazro (C. C. 1879) 15 Fed. 891; In re Chin K. Shue (D. C. 1912) 199 Fed. 282.

§ 5790. (R. S. § 3087.) Institution of suits.

The collector within whose district any seizure shall be made or forfeiture incurred for any violation of the duty laws is hereby enjoined to cause suits for the same to be commenced without delay, and prosecuted to effect; and is, moreover, authorized to receive from the court within which such trial is had, or from the proper officer thereof, the sum recovered, after deducting all proper charges to be allowed by the court; and on receipt thereof he shall pay and distribute the same without delay, according to law.

Act March 2, 1799, c. 22, § 89, 1 Stat. 695.

Limitations of suits for recovery of penalties and forfeitures under customs revenue laws are prescribed by Act June 22, 1874, c. 391, § 22, ante, § 1713.

The proceeds of all fines, penalties, or forfeitures were required to be paid into the United States Treasury by Act June 22, 1874, c. 391, § 2, post, § 5796.

Notes of Decisions

What law governs.—The law which is in force at the time of entry and presentment of the invoice is that which must control the proceedings and forfeitures in consequence thereof. (1830) 2 Op. Atty. Gen. 358.

Nature of suit.—Informations in rem on the exchequer side of the court are not criminal proceedings. United States v. Three Hundred and Ninety-Six Barrels Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,503.

In trial of cases of the seizure of goods for violation of the custom laws, the proceeding is at common law. U. S. v. 150 Head of Cattle and 52 Calves (1889) 77 Pac. 489, 3 Ariz. 134.

Jurisdiction.—Jurisdiction of a proceeding for the forfeiture of smuggled goods exists only in the district of seizure, which is the district in which the goods, if on hand, are found; a collector cannot, by carrying them into another district and there making the formal seizure, confer jurisdiction of the proceeding on the court in such district. U. S. v. Larkin (1907) 153 Fed. 113, 82 C. C. A. 247.

Pleading.—The petition in a proceeding by the government for the forfeiture

of goods imported into the country contrary to law, which alleged that the goods were imported without being invoiced or entry made with any collector of customs, and without declaration to the proper revenue officer, and that some person fraudulently brought into the country from a foreign country goods which should have been invoiced, declared, and entered according to the law, with intent to defraud the government, sufficiently charged a violation of R. S., § 2851 et seq., providing that all merchandise imported into the country must be invoiced, which invoice shall be produced to the consul, and requiring that a declaration shall be filed with the collector of the port at the time of entry. Six Parcels of Placer Gold v. U. S. (1904) 76 Pac. 473, 8 Ariz. 389.

The information to induce a seizure need not be as full as the evidence in the case would authorize. It is sufficient if it induce the prosecution. Sawyer v. Steele (C. C. 1819) Fed. Cas. No. 12,406.

A libel in rem for a forfeiture under the customs laws must allege that the property has been seized by the collector. A plea of no forfeiture puts that allegation in issue. The Silver Spring (D. C. 1854) Fed. Cas. No. 12,858.

An information of forfeiture need not show that the case was not within the exemption of a proviso of the statute. This is a matter of defense. The Mary Merritt (C. C. 1870) Fed. Cas. No. 9,-222.

Cited without definite application, Stockwell v. U. S. (1871) 13 Wall. 531, 542, 20 L. Ed. 491.

§ 5791. (Act Oct. 3, 1913, c. 16, § III, T.) Burden of proof on claimant of property, and on defendant in action.

T. In all suits or informations brought, where any seizure has been made pursuant to any Act providing for or regulating the collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant, and in all actions or proceedings for the recovery of the value of merchandise imported contrary to any Act providing for or regulating the collection of duties on imports or tonnage, the burden of proof shall be upon the defendant: Provided, That probable cause is shown for such prosecution, to be judged of by the court. (38 Stat. 189.)

This was a subdivision of section III of the Underwood Tariff Act, cited above.

See notes to subdivision B of said section, ante, § 5519.

These provisions, originally enacted in the Customs Administrative Act of June 10, 1890, c. 407, § 21, 26 Stat. 140, were re-enacted in the same language by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 28, 36 Stat. 101, and were amended by inserting after the word "claimant" the words "and in all actions or proceedings for the recovery of the value of merchandise imported contrary to any act for or regulating the collection of duties on imports or tonnage, the burden of proof shall be upon the defendant," as set forth here, by this act.

In prosecutions for bringing goods into the United States contrary to law, or for receiving, buying, etc., such merchandise after importation, proof of defendant's possession of such goods was made sufficient to authorize a conviction, by R. S. § 3082, ante, § 5785.

Notes of Decisions

Fraudulent invoice.—Where goods imported are fraudulently invoiced, and are seized by the United States, the burden of proof is on the claimants. Wood v. U. S. (1842) 41 U. S. (16 Pet.) 342, 10 L. Ed. 987.

Method of importation and smuggling.—In an action to condemn a vessel for smuggling, the consignee of the goods testified that, in a foreign port, he suggested the enterprise to the shipowner, who neither declined nor accepted, but that later witness received word from a third person to send the goods to the port, and subsequently a letter from the shipowner stating that the goods were safely on board. Witness testified that he paid the shipowner for his services, which testimony was corroborated by an unimpeached witness. The shipowner denied receiving the money, but did not positively deny writing the letter, but said it might have referred to his seeing the goods on another ship. Impeaching evidence as to the consignee's veracity was conflicting. The consignee had made a statement before the trial to the owner's attorney that the goods had not been brought in the former's vessel, but this he said was made under the offer of a bribe. Held, that under Act March 2, 1799, putting the onus probandi in such cases on the claimant to the vessel, the case was sufficiently made out against the owner. The John Griffin (1872) 82 U. S. (15 Wall.) 29, 21 L. Ed. 80.

Where the claimant knew that his method of importation was contrary to law, the burden is upon him to show affirmatively that he did not adopt such method with intent to evade the pay-

ment of duties. U. S. v. Nine Trunks (C. C. 1878) Fed. Cas. No, 15,886.

Nonliability for duties.—It is the duty of an importer to make affirmative proof of a state of facts relieving his merchandise from duty to which it would otherwise be subject, and to segregate from the same class of goods such portions as are claimed to be free. He cannot require the officers to separate free from dutiable goods indiscriminately mingled, and in such case duty should be assessed on all. U. S. v. Brewer (1899) 92 Fed. 343, 34 C. C. A. 390.

Where a quantity of opium was seized by officers, the burden of proof is on the claimant to show that it was of domestic manufacture and not liable for customs duties, and if he fails to explain the difficulties of the case by the production of proofs within his power to produce condemnation follows; and where he has it in his power to produce the best and most satisfactory evidence to repel the presumption of law against him, and he omits to do so, the presumption is that such evidence would not be favorable to the defense. U. S. v. Three Thousand Eight Hundred and Eighty Boxes (D. C. 1882) 12 Fed. 402.

Prima facie case.—Where the burden of proof is thrown on the claimant in a revenue case by a prima facie case on the part of the prosecutor, and the claimant fails to explain the difficulties of the case by the production of papers and other evidence in his possession or under his control, condemnation follows. The Luminary (1823) 21 U. S. (8 Wheat.) 407, 5 L. Ed. 647.

The presumption of the correctness of the decisions of customs officers must be overcome by a fair preponderance of proof as to the commercial use of the term at the date of the act. Hutton v. Schell (C. C. 1879) Fed. Cas. No. 6,962.

Probable cause.—The collector of revenue is justified in making any seizure where he has reasonable ground to suspect that a fraud on the revenue or a violation of the revenue laws is meditated, and on showing probable cause for the seizure, the burden of proof is on the claimant. Sixty Pipes of Brandy (1825) 10 Wheat. 421, 426, 6 L. Ed. 356.

Where the claimant sets up mistake as an excuse for disagreement with the entries, the fact that probable cause of seizure has been made out does not impose upon him the necessity of making out an unusually clear case of mistake. U. S. v. Nine Packages of Linen (C. C. 1818) Fed. Cas. No. 15,884.

Where probable cause is shown for the forfeiture of goods, the burden of proof is upon claimants to show their innocence. U. S. v. Twenty-Five Cases of Cloths (D. C. 1840) Fed. Cas. No. 16,563; In re Twelve Hundred and Nine Quarter Casks, etc., of Wine (D. C. 1868) Fed. Cas. No. 14,279; In re Six Cases of Silk Ribbons (D. C. 1869) Fed. Cas. No. 12,914; U. S. v. Sixteen Cases of Silk Ribbons (D. C. 1870) Fed. Cas. No. 16,301; Same v. Six Hundred and Sixty-One Bales of Tobacco (D. C. 1878) Fed. Cas. No. 16, 297.

Where the seizure is under circumstances warranting suspicion, the collector is entitled to a certificate of probable cause. Act 1799, §§ 71, 89; Act 1807, § 1. U. S. v. Three Bales of Cloth (D. C. 1840) Fed. Cas. No. 16,495.

Burden of proof held not shifted to claimants on production of reports on file in the customhouse showing that a certain lot of goods seized were found on the vessel not entered on the manifest. The Missouri (D. C. 1870) Fed. Cas. No. 9,653.

In a suit to condemn merchandise as forfeited where the proofs show probable cause for the seizure, and the claimant makes no offer to explain damaging circumstances, such as that the goods were shipped under a false designation, and show when, where, how, or from whom he acquired the ownership he claims, such withholding of evidence is a circumstance sufficient to complete the case for the government and cast the burden of proof upon the claimant. U. S. v. Seven Hundred and Forty Tins of Opium (D. C. 1891) 44 Fed. 798; Same v. Ten Hundred and Sixty Tins of Opium, Id. 799.

Under Customs Administrative Act 1890, § 21, which casts the burden of proof, in cases of seizure, upon the person claiming the goods, provided probable cause for the prosecution be shown, the words "probable cause" import circumstances which create suspicion. U. S. v. A Lot of Jewelry (D. C. 1894) 59 Fed. 684, distinguishing Boyd v. U. S. (1886) 6 S. Ct. 524, 116 U. S. 616, 29 L. Ed. 746.

On a suit for forfeiture under section 5785, ante, the burden of proof is not on the claimant of the articles seized, unless there was probable cause for seizing them. If at the close of the government's case there is not enough evidence to go to the jury, there is not such probable cause as to put the burden of proof upon the claimant. U. S. v. One Pearl Chain (D. C. 1904) 139 Fed. 510.

Rate of duty imposed.—A collector who has compelled an importer to pay a higher rate of duty than that imposed by law on such articles as are named in the invoice has the burden of proof to show the authority under which such higher duty was exacted. Wilkinson v. Greely (C. C. 1853) Fed. Cas. No. 17,672.

§ 5792. (R. S. § 3088.) Lien on vessels for violations.

Whenever a vessel, or the owner or master of a vessel, has become subject to a penalty for a violation of the revenue laws of the United States, such vessel shall be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel to recover such penalty.

Act July 18, 1866, c. 201, § 8, 14 Stat. 180.

Provisions restricting the seizure and forfeiture of vessels used as common carriers, by force of the provisions of this Title, were made by Act Feb. 8, 1881, c. 34, ante, § 5766.

Notes of Decisions

Operation of section in general.—See § 5506, ante, for cases of enforcement against vessel of penalty under that section.

This section does not render the vessel liable for a penalty imposed on its mate under section 5555, ante, making the master and mate respectively liable for a penalty where the cargo is unladen without authority of the customs officer. The C. G. White (1894) 64 Fed. 579, 580, 12 C. C. A. 314.

A vessel receiving smuggled goods is not liable to forfeiture. Clark v. Protection Ins. Co. (C. C. 1840) Fed. Cas. No. 2,832.

Secret introduction of prohibited articles on board ship by hands, in defiance of regulations, no ground of forfeiture of vessel, as the owners of the vessel are not liable for the acts of persons employed by the master. The Governor Cushman (D. C. 1865) Fed. Cas. No. 5,646.

Revenue laws are those laws only whose principal object is the raising of revenue, and not those under which revenue may incidentally arise. The Nashville (D. C. 1868) Fed. Cas. No. 10,023.

Lien in general.—Where the vessel is not used as a common carrier, the government has by virtue of this section a lien on the vessel for the penalty thus incurred by the master, and may enforce that lien by libel and seizure; but where the vessel is used as a common carrier, and the owner or master thereof is not a consenting party to the illegal act, or privy thereto, the only remedy appears to be an action against the master. (1912) 29 Op. Atty. Gen. 364.

A vessel may be proceeded against in rem, in the admiralty, to enforce the lien for importing goods not included in her manifest. U. S. v. The Missouri (C. C. 1872) Fed. Cas. No. 15,785.

Whenever a vessel, or the owner or master of a vessel, has become subject to a penalty for a violation of the revenue laws of the United States, such vessel shall be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel to recover such penalty. The Saratoga (C. C. 1883) 15 Fed. 382.

Where a vessel employed as a common carrier was seized to enforce a lien for a penalty there being probable cause for the seizure, but no charge of wrongdoing against the owner, held that, in the absence of rebutting evidence, proof that packages supposed to contain the contraband goods were received, transported, and delivered as freight in due course of business, and that the master had no knowledge with reference thereto, makes a sufficient case for the claimant, and the vessel must be released. U. S. v. The Walla Walla (D. C. 1891) 44 Fed. 796.

Seizure of vessel.—The word "seizure," used in section 5766, ante, embraces seizures by the marshal under legal process for the enforcement of a penalty pursuant to this section, as well as seizures by revenue officers for the purposes of forfeitures. The Saratoga (D. C. 1881) 9 Fed. 322, 323.

Conditions precedent to enforcement of lien.—The lien may be enforced by libel of the vessel without judgment being first obtained against the master. The C. G. White v. U. S. (1894) 64 Fed. 579, 12 C. C. A. 314.

In an action against a vessel for smuggling foreign goods liable to customs duties, a judgment of condemnation entered. U. S. v. The Henrietta Esch (C. C. 1882) 12 Fed. 483.

A seizure before bringing suit is not necessary in order to give jurisdiction to the court. The Paolina (C. C. 1882) 11 Fed. 171.

As to whether previous seizure was necessary as a jurisdictional fact, quære. The Snow Drop (C. C. 1887) 30 Fed. 79, 80.

A libel against a vessel for the penalty for smuggling must show ownership of vessel and value of goods. The Antilles (D. C. 1875) Fed. Cas. No. 489.

Cited without definite application, The Strathairly (1888) 8 Sup. Ct. 609, 616, 124 U. S. 558, 31 L. Ed. 580.

§ 5793. (R. S. § 3089.) Costs of prosecution in certain cases.

Whenever a seizure, condemnation, and sale of merchandise takes place within the United States, and the value thereof is less than two hundred and fifty dollars, that part of the forfeiture which ac-

crues to the United States, or so much thereof as may be necessary, shall be applied to the payment of the cost of prosecution.

Act March 2, 1799, c. 22, § 91, 1 Stat. 697.

The proceeds of all fines, penalties, and forfeitures were required to be paid into the United States Treasury by Act June 22, 1874, c. 391, § 2, post, § 5796.

Notes of Decisions

Application of forfeited property to costs.—Where the value of the property forfeited is less than $250, the government's share is to be applied to the costs of the prosecution. In re One Large Water Tub (D. C. 1869) Fed. Cas. No. 10,532.

Cited without definite application, Francis v. U. S. (1866) 5 Wall. 338, 341, 18 L. Ed. 603.

§ 5794. (R. S. § 3090, as amended, Act Feb. 27, 1877, c. 69, § 1.) Distribution of forfeitures.

From the proceeds of fines, penalties, and forfeitures incurred under the provisions of the laws relating to the customs, there shall be deducted such charges and expenses as are by law in each case authorized to be deducted; and in addition, in case of the forfeiture of imported merchandise of a greater value than five hundred dollars on which duties have not been paid, or in case of a release thereof, upon payment of its appraised value, or of any fine or composition in money, there shall also be deducted an amount equivalent to the duties in coin upon such merchandise, including the additional duties, if any; which shall be credited in the accounts of the collector as duties received; and the residue of the proceeds shall be paid into the Treasury of the United States, and distributed, under the direction of the Secretary, in the manner following, to wit: One-half to the United States; one-fourth to the person giving the information which has led to the seizure, or to the recovery of the fine or penalty, and if there be no informer other than the collector, naval officer, or surveyor, then to the officer making the seizure; and the remaining one-fourth to be equally divided between the collector, naval officer, and surveyor, or such of them as are appointed for the district in which the seizure has been made, or the fine or penalty incurred, or if there be only a collector, then to such collector. But where any fine, penalty, or forfeiture, incurred by virtue of the laws relating to customs, shall be recovered in consequence of any information given by an officer of a revenue-cutter, the proceeds thereof shall, after the legal deductions, including the deductions herein authorized, have been made, be disposed of as follows: One-fourth to the United States; one-fourth to the officers of the customs, as hereinbefore provided; and the remainder to the officers of such revenue-cutter, to be divided among them in proportion to their pay.

Act March 2, 1799, c. 22, § 91, 1 Stat. 697. Act March 2, 1867, c. 188, § 1, 14 Stat. 546. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248.

This section, as enacted in the Revised Statutes, was amended by striking out after the words "there shall be" the word "dedcted," and inserting in lieu thereof the word "deducted," and by striking out after the words "legal deductions," the word "ncluding," and inserting in lieu thereof the word "including," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

The provisions of this section for the distribution of fines, penalties, or forfeitures to informers, custom officers, or other officers of the United States, were repealed by Act June 22, 1874, c. 391, § 2, post, § 5796.

Notes of Decisions

Distribution in general.—See § 5782, ante.

The claimant is entitled to have the penalty illegally exacted returned upon the distribution of the proceeds of the property on condemnation. U. S. v. Linens (D. C. 1859) Fed. Cas. No. 15,604; Same v. Segars (D. C. 1859) Fed. Cas. No. 16,249.

The marshal's commissions for the sale of property, and collecting and paying over the proceeds, form part of the expenses to be deducted before paying the proceeds into court. U. S. v. Fifty-One Dozen Pieces of Merchandise (D. C. 1864) Fed. Cas. No. 15,094.

Act July 18, 1866, § 24, post, § 7775,

is not an act relating to the customs, within the meaning of this section. The Monte Christo (D. C. 1873) Fed. Cas. No. 9,720.

The power of the secretary of the treasury to distribute the proceeds of fines, penalties, and forfeitures, under this section, which provides that they shall be "distributed under the direction of the secretary," examined. Bradley v. U. S. (1876) 12 Ct. Cl. 578.

Decisions prior to anti-moiety act.—See Jones v. Shore (1816) 14 U. S. (1 Wheat.) 462, 4 L. Ed. 136; Van Ness v. Buel (1819) 17 U. S. (4 Wheat.) 74, 4 L. Ed. 516; Buel v. Van Ness (1823) 21 U. S. (8 Wheat.) 312, 5 L. Ed. 624; U. S. v. Morris (1825) 10 Wheat. 246, 290, 6 L. Ed. 314; McLane v. U. S. (1832) 6 Pet. 404, 426, 8 L. Ed. 443; Hoyt v. Same (1850) 51 U. S. (10 How.) 109, 13 L. Ed. 348; Ring v. Maxwell (1854) 58 U. S. (17 How.) 147, 15 L. Ed. 25; Hahn v. U. S. (1888) 107 U. S. 402, 2 Sup. Ct. 494, 27 L. Ed. 527; Sawyer v. Steele (C. C. 1819) Fed. Cas. No. 12,406; Westcot v. Bradford (C. C. 1824) Fed. Cas. No. 17,429; Brewster v. Gelston (C. C. 1825) Fed. Cas. No. 1,853; Robinson v. Hook (C. C. 1826) Fed. Cas. No. 11,956; U. S. v. Collier (C. C. 1855) Fed. Cas. No. 14,833; Same v. Tilden (C. C. 1859) Fed. Cas. No. 16,523; Same v. Fanjul (C. C. 1866) Fed. Cas. No. 15,069; Same v. George (C. C. 1868) Fed. Cas. No. 15,197; Id. Fed. Cas. No. 15,198; U. S. v. Chassell (C. C. 1869) Fed. Cas. No. 14,789; Same v. George (C. C. 1869) Fed. Cas. No. 15,198; In re Webster (C. C. 1869) Fed. Cas. No. 17,332; Anonymous (D. C.) Fed. Cas. No. 455; Hooper v. Fifty-One Casks of Brandy (D. C. 1848) Fed. Cas. No. 6,674; U. S. v. The Planter (D. C. 1852) Fed. Cas. No. 16,054; In re Fifty Thousand Cigars (D. C. 1865) Fed. Cas. No. 4,782; U. S. v. One Hundred Barrels of Distilled Spirits (D. C. 1868) Fed. Cas. No. 15,946; Same v. Stockwell (D. C. 1872) Fed. Cas. No. 16,406; The Monte Christo (D. C. 1873) Fed. Cas. No. 9,720; Bradley v. U. S. (1876) 12 Ct. Cl. 578; Kellogg v. Same (1879) 15 Ct. Cl. 372; (1819) 1 Op. Atty. Gen. 259; (1819) 5 Op. Atty. Gen. 721; (1867) 12 Op. Atty. Gen. 291; (1870) 13 Op. Atty. Gen. 253; (1873) 14 Op. Atty. Gen. 336; (1874) 14 Op. Atty. Gen. 377; (1877) 15 Op. Atty. Gen. 387; Lapham v. Almy (1866) 95 Mass. (13 Allen) 301; Steele v. Bennet (Pa. 1817) 3 Serg. & R. 553; Buel v. Van Ness (Vt. 1815) Brayt. 59; Same v. Enos (Vt. 1820) Brayt. 56.

Cited without definite application. U. S. v. 1960 Bags of Coffee (1814) 8 Cranch, 398, 407, 3 L. Ed. 602; Francis v. U. S. (1866) 5 Wall. 338, 341, 18 L. Ed. 603; In re Joyne (D. C. 1886) 28 Fed. 419, 422; In re Ghazal (D. C. 1908) 163 Fed. 602, 604; Hahn v. U. S. (1878) 14 Ct. Cl. 305.

§ 5795. (Act March 4, 1907, c. 2918, § 1.) Fines, etc., fees, and other receipts to be covered into the Treasury.

From and after the close of the fiscal year nineteen hundred and seven all sums received from fines, penalties, and forfeitures, connected with the customs, and from fees paid into the Treasury by customs officers, and from storage, cartage, drayage, labor, and services, shall be covered into the Treasury as are other miscellaneous receipts. (34 Stat. 1315.)

These were provisions accompanying an appropriation to defray the expenses of collecting the revenue from customs in the sundry civil appropriation act for the fiscal year, 1908, cited above.

All moneys collected or received by collectors of customs, "whether as fees, storage, commissions," etc., were required to be covered into the Treasury by article IV of the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

(R. S. §§ 3091–3093. Repealed.)

R. S. § 3091, authorized the issuance of a warrant, upon complaint and affidavit of fraud on the revenue, directing the marshal of the district to enter any place and seize books or papers relating to merchandise in respect to which the alleged fraud was committed, and produce them before the judge.

R. S. § 3092, provided that no warrant for such seizure should be issued unless the complaint should set forth the character of the fraud alleged, its nature, the importations in respect to which it was committed, and the papers to be seized, and required the return of such warrant as other warrants are returned.

R. S. § 3093, provided that books and papers so seized should be subject to the order of the judge, who should allow the examination of the same by the collector or any officer authorized by him, and authorized the retention by the judge of such books and papers as he might deem necessary.

The provisions of Act July 18, 1866, § 39, and of Act March 2, 1867, § 2, which were incorporated into these three sections, were repealed by the Anti-

Moiety Act of June 22, 1874, c. 391, § 1, 18 Stat. 186. These sections were repealed, therefore, by that act, it having effect as subsequent to the Revised Statutes, and as repealing any portion of the revision inconsistent therewith, by virtue of R. S. § 5601, post, § 15598.

§ 5796. (Act June 22, 1874, c. 391, § 2.) Moieties to informers and officers abolished.

All provisions of law under which moieties of any fines, penalties, or forfeitures, under the customs-revenue laws, or any share therein, or commission thereon, are paid to informers, or officers of customs, or other officers of the United States, are hereby repealed; and from and after the date of the passage of this act the proceeds of all such fines, penalties, and forfeitures shall be paid into the Treasury of the United States. (18 Stat. 186.)

This was the second section of the Anti-Moiety Act of 1874, cited above.

The first section of this act repealed Act July 18, 1866, § 39, and Act March 3, 1867, § 2, which were incorporated into R. S. §§ 3091–3093. See note to said sections, ante.

Sections 3–8 of this act are set forth post, §§ 5797–5802.

Sections 9–12 of this act related to invoices, or affidavits in the absence thereof, on entry of dutiable goods and proceedings thereon, and penalties, forfeitures, etc., for making fraudulent or false invoices, etc. They were repealed, and other provisions substituted therefor, by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141, which, as amended, were further amended by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § III, C–H, ante, §§ 5520–5524, 5526.

Section 13 of this act, providing for seizure of merchandise as security for fines, is set forth ante, § 5525.

Section 14 of this act provided that the failure, without intent to defraud the revenue, to add to the invoice of merchandise imported the cost of packing, shipping, etc., should not cause a forfeiture of the merchandise, but the collector or appraiser should add such cost and 100 per cent. of the amount so added, which should be collected as duties are collected. It was repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141.

Section 15 of this act is set forth post, § 5803.

Section 16 of this act, providing for special findings, was repealed by the Customs Administrative Act of June 10, 1890, c. 407, § 29, 26 Stat. 141.

Sections 17 and 18 of this act, relating to remission of fines, are set forth post, §§ 10132, 10133.

Section 19 of this act is set forth post, § 5804.

Section 20 of this act, relating to remission of fines, is set forth post, § 10134.

Section 21 of this act, making settlements of duties after one year conclusive, in absence of fraud or protest, is set forth ante, § 5714.

Section 22 of this act, requiring suits to recover a pecuniary penalty or forfeiture under the customs laws to be commenced within three years, is set forth ante, § 1713.

Section 23 of this act, fixing the salaries of designated collectors, naval officers, and surveyors, was superseded by the Plan of Reorganization of the Customs Service pursuant to the provisions of Act Aug. 24, 1912, c. 355, § 1, ante, § 5327.

Sections 24 and 25 of this act, relating to bonded warehouses and cartage of merchandise, are set forth ante, §§ 5683, 5684.

Section 26 of this act, saving existing rights, is omitted as temporary merely, and executed.

Section 26 of this act repealed all acts, etc., inconsistent with the provisions of this act, and provided that nothing therein should affect existing rights of the United States, and also provided for making compensation, in all cases in which prosecutions had been commenced for forfeitures incurred, to persons who would, under former laws, have been entitled to share in the distribution of such forfeitures. It is omitted as temporary merely and executed.

Provisions for the distribution of fines, penalties, and forfeitures were made by R. S. § 3090, ante, § 5794.

Notes of Decisions

Commissions to customs officers.—In suits brought to enforce forfeitures, the clerk is entitled to tax 1 per cent. on the proceeds (section 1383, ante), and the district attorney 2 per cent. (section 1379, ante), notwithstanding the repeal by this section in relation to payments of commissions, etc., to federal

officers. U. S. v. One Horse (D. C. 1874) Fed. Cas. No. 15,932.

Cited without definite application, U. S. v. Matthews (1899) 19 Sup. Ct. 413, 415, 173 U. S. 381, 43 L. Ed. 738.

§ 5797. (Act June 22, 1874, c. 391, § 3.) Compensation in lieu of moieties.

It shall hereafter be the duty of the Secretary of the Treasury, out of any money specifically appropriated by Congress, to make suitable compensation in certain cases under the customs-revenue laws, as hereinafter provided, and not otherwise; and for the purpose of making such compensation for the next fiscal year, the sum of one hundred thousand dollars is hereby appropriated out of any money in the Treasury not otherwise appropriated; and he shall annually report to Congress, in detail, all payments by him for such purpose. (18 Stat. 186.)

See notes to section 2 of this act, ante, § 5796.

Appropriations for compensation in lieu of moieties were made by subsequent appropriation acts. Such an appropriation was made in the sundry civil appropriation act for the fiscal year 1917, by Act July 1, 1916, c. 209, 39 Stat.

§ 5798. (Act June 22, 1874, c. 391, § 4.) Compensation to officers and others detecting smuggling.

Whenever any officer of the customs or other person shall detect and seize goods, wares, or merchandise, in the act of being smuggled, or which have been smuggled, he shall be entitled to such compensation therefor as the Secretary of the Treasury shall award, not exceeding in amount one-half of the net proceeds, if any, resulting from such seizure, after deducting all duties, costs, and charges connected therewith: Provided, That for the purposes of this act smuggling shall be construed to mean the act, with intent to defraud, of bringing into the United States, or, with like intent, attempting to bring into the United States, dutiable articles without passing the same, or the package containing the same, through the custom house, or submitting them to the officers of the revenue for examination. And whenever any person not an officer of the United States shall furnish to a district attorney, or to any chief officer of the customs, original information concerning any fraud upon the customs-revenue, perpetrated or contemplated, which shall lead to the recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, whether by importers or their agents, or by any officer or person employed in the customs-service, such compensation may, on such recovery, be paid to such person so furnishing information as shall be just and reasonable, not exceeding in any case the sum of five thousand dollars; which compensation shall be paid, under the direction of the Secretary of the Treasury, out of any money appropriated for that purpose. (18 Stat. 186.)

See notes to section 2 of this act, ante, § 5796.

Notes of Decisions

Smuggling defined.—Invoices describing large quantities of valuable woolen, silk, and velvet goods as cotton goods, and so entering them and attempting to pass them through the customhouse is a case of smuggling. Eager v. U. S. (1897) 32 Ct. Cl. 571.

Smuggling is the actual passage of dutiable goods through the lines of the customhouse without paying or securing the payment of the duties thereon. (1903) 24 Op. Atty. Gen. 583.

The application of secret springs to the mechanism of the government scales, by means of which the full weight of a dutiable article was not registered, constituted "smuggling" within the meaning of the statute. (1910) 28 Op. Atty. Gen. 329.

"Chief officers of customs."—The phrase "chief officers of the customs" refers to the collector or acting collector of each collection district, including the surveyor of any district in which there is no collector, and also to the officer legally in charge of any statutorily recognized port, not being the headquarters of a collection district. (1893) 20 Op. Atty. Gen. 675.

Neither inspectors nor general agents are "chief officers of the customs," within the meaning of this section. Id.

A deputy collector of customs, with headquarters in the customs district of Vermont, but stationed for service at Montreal, Canada, is a "chief officer of customs" within the meaning of this section. (1902) 24 Op. Atty. Gen. 61.

United States officers.—One receiving pay from the government, whose duty it is to disclose any information he may receive, is "an officer of the United States" within the meaning of the act of 1874, and therefore cannot be an informer. U. S. v. Simons (D. C. 1881) 7 Fed. 709.

Where an inspector on duty at a freight depot is advised by another inspector that certain importers are suspected of fraudulent practices, and that a number of packages of their goods are in the depot and that he had better examine them, it is not a case of detection by the officer thus acting upon the information and suggestion of another and in the due performance of his duty. Eager v. U. S. (1897) 32 Ct. Cl. 571.

Informers who are appointed special inspectors without compensation except their interest as informers in the result of seizures are not officers of the United States within this section; neither are persons on the weighers' pay roll as temporary laborers but at the time off duty—that is, receiving no pay. (1894) 20 Op. Atty. Gen. 754.

Where the result of an inspector's visit to a station is the examination of a broken package belonging to a suspected firm, and the examination is in the line of the officer's duty, it would be inequitable to permit him to recover a reward. Eager v. U. S. (1900) 35 Ct. Cl. 447.

Informers.—Secretary of the treasury is the sole judge as to whether there is an informer who is entitled to a reward, so that until the secretary acts the informer has merely an expectancy of reward. In re Ghazal (1909) 174 Fed. 809, 98 C. C. A. 517, reversing order (D. C. 1909) 169 Fed. 147.

An informer's expectancy of reward being nonassignable by R. S. § 3477, post, § 6383, prior to allowance by Secretary of Treasury, does not pass to the trustee in bankruptcy, where the informer was adjudicated a bankrupt prior to allowance of the reward. Id.

Sums recovered on forfeited bail bonds are not "fines, penalties, or forfeitures," within this section, and the petitioner is not entitled under its provisions to compensation as an informer. In re Brittingham (D. C. 1880) 5 Fed. 191.

Where a secretary determined as a matter of law that an informer was only entitled to the sum of $5,000 as maximum compensation, and a subsequent secretary transmitted the claim under the Bowman Act, it must be held that the decision of the former was conclusive upon the latter, and that no further action can be taken by the department. Jackson v. U. S. (1884) 19 Ct. Cl. 504.

Though the first information of a fraud on the customs was communicated to the government from the individual discovery and knowledge of one of the claimants, yet if the act of information subsequently assumed the form of authoritative communication, in being reduced to writing and put in the name of all, it became the joint act of all, and gave to each an individual inchoate interest in the result. Jayne v. U. S. (1886) 21 Ct. Cl. 311.

Where a claimant was both seizor and informer in the case of goods forfeited for violation of the customs laws, compensation may be allowed him by the Secretary of the Treasury in either capacity; and the fact that the claimant originally presented his claim as seizor does not estop him from subsequently changing its form and making claim as informer. (1884) 18 Op. Atty. Gen. 69.

The fact that a person has procured testimony, be it ever so valuable, does not entitle such person to an informer's share, where the fraud has been disclosed by others, and proceedings have been commenced in consequence of such information. U. S. v. Simons (D. C. 1881) 7 Fed. 709.

An informer is one who gives the first information to the government of a violation of law which induces the prosecution, and contributes to the conviction of the offender, or the recovery of a fine, penalty, or forfeiture. Id.

Where an informer procures the arrest and conviction of certain members of a conspiracy, who, upon their examination, confess and implicate other conspirators engaged in the same fraudulent transaction, and these in turn are also arrested, convicted, and fined solely upon such information, the original informer is entitled to share in such fine. Id.

The Secretary of the Treasury can make regulations for the future covering cases where it is desirable that informers should communicate with the collector otherwise than personally. (1893) 20 Op. Atty. Gen. 690.

Informers are not entitled to compensation under this section, unless the information is conveyed directly to the chief officer of the customs. Giving information to an inferior officer is not necessarily equivalent thereto. Id.

The Secretary of the Treasury is authorized under this section, notwithstanding the absence of the certificate provided for by section 5800, post, to award compensation to a Canadian customs official who furnished information which resulted in a forfeiture of certain diamonds for violation of section 5785, ante. (1902) 24 Op. Atty. Gen. 61.

The Secretary of the Treasury is au-

thorized to make an award to Richard Parr for his services in detecting the fraudulent weighing of sugars by the American Sugar Refining Company, and for his seizure of the appliances used in committing this fraud and seizure of the cargo of the ship which was discharging at the time of the detection. No other person is entitled to an award in this matter. (1910) 28 Op. Atty. Gen. 329.

Cited without definite application, Keck v. U. S. (1899) 19 Sup. Ct. 254, 263, 172 U. S. 434, 43 L. Ed. 505.

§ 5799. (Act June 22, 1874, c. 391, § 5.) Compulsory production of books, etc., in civil suits.

In all suits and proceedings other than criminal arising under any of the revenue-laws of the United States, the attorney representing the Government, whenever, in his belief, any business-book, invoice, or paper, belonging to or under the control of the defendant or claimant, will tend to prove any allegation made by the United States, may make a written motion, particularly describing such book, invoice, or paper, and setting forth the allegation which he expects to prove; and thereupon the court in which suit or proceeding is pending may, at its discretion, issue a notice to the defendant or claimant to produce such book, invoice, or paper in court, at a day and hour to be specified in said notice, which, together with a copy of said motion, shall be served formally on the defendant or claimant by the United States marshal by delivering to him a certified copy thereof, or otherwise serving the same as original notices of suit in the same court are served; and if the defendant or claimant shall fail or refuse to produce such book, invoice, or paper in obedience to such notice, the allegations stated in the said motion shall be taken as confessed unless his failure or refusal to produce the same shall be explained to the satisfaction of the court. And if produced, the said attorney shall be permitted, under the direction of the court, to make examination (at which examination the defendant or claimant, or his agent, may be present) of such entries in said book, invoice, or paper as relate to or tend to prove the allegation aforesaid, and may offer the same in evidence on behalf of the United States. But the owner of said books and papers, his agent or attorney, shall have, subject to the order of the court, the custody of them, except pending their examination in court as aforesaid. (18 Stat. 187.)

See notes to section 2 of this act, ante, § 5796.

Notes of Decisions

Constitutionality of section.—This section is unconstitutional as applied to suits for penalties, or to establish the forfeiture of a party's goods, as being repugnant to the fourth and fifth amendments of the constitution. Boyd v. U. S. (1886) 6 Sup. Ct. 524, 527, 116 U. S. 616, 29 L. Ed. 746.

Operation of section.—This section applies to cases arising under the internal revenue laws. U. S. v. Distillery No. 28 (D. C. 1875) Fed. Cas. No. 14,966.

Effect of failure to produce books.—The penalty for not complying with an order to produce books and papers is that the allegations in the motion shall be taken as confessed. U. S. v. Distillery No. 28 (D. C. 1875) Fed. Cas. No. 14,966.

Examination of papers.—The mode of separating and examining papers determined. In re Jordan (D. C. 1873) Fed. Cas. No. 7,512.

Decisions under prior statutes.—See U. S. v. Twenty-Eight Packages of Pins (D. C. 1832, 1833) Fed. Cas. No. 16,-561; In re Lippman (D. C. 1868) Fed. Cas. No. 8,382; U. S. v. Three Tons of Coal (D. C. 1875) Fed. Cas. No. 16,-515.

Cited without definite application, Counselman v. Hitchcock (1892) 12 Sup. Ct. 195, 205, 142 U. S. 547, 35 L. Ed. 1110; Fairbank v. U. S. (1901) 21 Sup. Ct. 648, 655, 181 U. S. 283, 45 L. Ed. 862; Hale v. Henkel (1906) 26 Sup. Ct. 370, 377, 201 U. S. 43, 50 L. Ed. 652; In re Chin K. Shue (D. C. 1912) 149 Fed. 282.

§ 5800. (Act June 22, 1874, c. 391, § 6.) Compensation to informers.

No payment shall be made to any person furnishing information in any case wherein judicial proceedings shall have been instituted, unless his claim to compensation shall have been established to the satisfaction of the court or judge having cognizance of such proceedings, and the value of his services duly certified by said court or judge for the information of the Secretary of the Treasury; but no certificate of the value of such services shall be conclusive of the amount thereof. And when any fine, penalty, or forfeiture shall be collected without judicial proceedings, the Secretary of the Treasury shall, before directing payment to any person claiming such compensation, require satisfactory proof that such person is justly entitled thereto. (18 Stat. 187.)

See notes to section 2 of this act, ante, § 5796.

Notes of Decisions

Constitutionality of section.—This section is an attempt to confer on the judiciary power not judicial, which congress is without power to confer. Ex parte Gans (D. C. 1883) 17 Fed. 471; Ex parte Riebeling (D. C. 1895) 70 Fed. 310.

This section seeks to impose upon the court duties which are administrative, and not judicial, and is unconstitutional. U. S. v. Queen (D. C. 1900) 105 Fed. 269.

Operation of section.—This section has no application to the act of June 16, 1880. In re Brittingham (D. C. 1880) 5 Fed. 191, 192.

This section does not apply to claims for information furnished in cases in which proceedings were instituted before the passage of the act, and hence the court of claims has jurisdiction of a claim for furnishing such information, though the United States recovered judgment for the penalty and forfeiture incurred, and the court rendering the judgment failed to certify to the value of the informer's services, where such judgment was recovered prior to the passage of said act. In re Jayne (D. C. 1886) 28 Fed. 419.

Certificate of judge.—Where, after a final decree has been made in a smuggling case, and executed by paying a fine imposed into the United States treasury, a petition was filed in the court which had made the decree, by a party claiming to be the original informer in said case, praying for a certificate from the court as to the value of his services, for the information of the secretary of the treasury, the court had no jurisdiction. Ex parte Gans (D. C. 1883) 17 Fed. 471.

The certificate of a judge, contemplated by this section, is not required in the case of an officer making the discovery and seizure. Eager v. U. S. (1897) 32 Ct. Cl. 571.

Cited without definite application, In re Ghazal (D. C. 1909) 169 Fed. 147, reversed (1909) 174 Fed. 809, 98 C. C. A. 517.

§ 5801. (Act June 22, 1874, c. 391, § 7.) Officers prohibited from receiving informer's compensation; penalty.

Except in cases of smuggling as aforesaid, it shall not be lawful for any officer of the United States, under any pretense whatever, directly or indirectly, to receive, accept, or contract for any portion of the money which may, under any of the provisions of this or any other act, accrue to any such person furnishing information; and any such officer who shall so receive, accept, or contract for any portion of the money that may accrue as aforesaid shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to a fine not exceeding five thousand dollars, or imprisonment for not more than one year, or both, in the discretion of the court, and shall not be thereafter eligible to any office of honor, trust, or emolument. And any such person so furnishing information as aforesaid, who shall pay to any such officer of the United States, or to any person for his use, directly or indirectly, any portion of said money, or any other valuable thing, on account of or because of such money, shall have a right of action against such officer or

other person, and his legal representatives, to recover back the same, or the value thereof. (18 Stat. 187.)

See notes to section 2 of this act, ante, § 5796.

Provisions prescribing a penalty for customs officers receiving any other or greater fee, compensation, or reward than is allowed by law were made by R. S. § 2636, ante, § 5377.

Notes of Decisions

Operation of section.—The anti-moiety act debars treasury officials from receiving moieties under section 4233, R. S., section 7942, post. (1893) 20 Op. Atty. Gen. 592.

§ 5802. (Act June 22, 1874, c. 391, § 8.) Officers, informers, and defendants may be witnesses.

No officer, or other person entitled to or claiming compensation under any provision of this act, shall be thereby disqualified from becoming a witness in any action, suit, or proceeding for the recovery, mitigation, or remission thereof, but shall be subject to examination and cross-examination in like manner with other witnesses, without being thereby deprived of any right, title, share, or interest in any fine, penalty, or forfeiture to which such examination may relate; and in every such case the defendant or defendants may appear and testify and be examined and cross-examined in like manner. (18 Stat. 188.)

See notes to section 2 of this act, ante, § 5796.

§ 5803. (Act June 22, 1874, c. 391, § 15.) Reports of violations of customs laws; district attorneys to prosecute.

It shall be the duty of any officer or person employed in the customs-revenue service of the United States, upon detection of any violation of the customs-laws, forthwith to make complaint thereof to the collector of the district, whose duty it shall be promptly to report the same to the district attorney of the district in which such frauds shall be committed. Immediately upon the receipt of such complaint, if, in his judgment, it can be sustained, it shall be the duty of such district attorney to cause investigation into the facts to be made before a United States commissioner having jurisdiction thereof, and to initiate proper proceedings to recover the fines and penalties in the premises, and to prosecute the same with the utmost diligence to final judgment. (18 Stat. 189.)

See notes to section 2 of this act, ante, § 5796.

The collectors were required to report to the district attorneys violations of the revenue laws, by R. S. § 3084, ante, § 5787.

Notes of Decisions

Operation of section.—This section modifies R. S. § 838, ante, § 1297, so as to require the district attorney to commence proceedings in all cases except only when a cause in his judgment cannot be sustained. (1875) 15 Op. Atty. Gen. 523.

Actions for duties, see § 5710, ante.

§ 5804. (Act June 22, 1874, c. 391, § 19.) Compromise of claims for fines, etc.

It shall not be lawful for any officer or officers of the United States to compromise or abate any claim of the United States arising under the customs laws, for any fine, penalty, or forfeiture incurred by a violation thereof; and any officer or person who shall so compromise or abate any such claim, or attempt to make such compromise or abatement, or in any manner relieve or attempt to relieve from such fine, penalty, or forfeiture, shall be deemed guilty of a felony, and, on conviction thereof, shall suffer imprisonment not exceeding ten years, and be fined not exceeding ten thousand dollars: Provided, however, That the Secretary of the Treasury shall have power to remit any fines, penalties, or for-

feitures, or to compromise the same, in accordance with existing law. (18 Stat. 190.)

See notes to section 2 of this act, ante, § 5796.

This section did not affect the authority of courts, judges, or district attorneys to discontinue proceedings to obtain testimony of accomplices in crime, by Act Jan. 22, 1875, c. 22, set forth post, § 5805.

Notes of Decisions

Operation of section.—The prohibition contained in this section against compromising or abating any claim of the United States for any fine, penalty, or forfeiture incurred does not apply to such arrangements as are ordinarily made by district attorneys for obtaining the testimony of accomplices in criminal cases, whereby an assurance is given to the accomplice, who is to be used as a witness, of exemption from prosecution in case he acts in good faith and makes a full disclosure. (1874) 14 Op. Atty. Gen. 511.

Although the case may belong to that class of cases for relief in which special provisions are found in this section, yet this does not prevent an application for compromise thereof being made under the more general provision in section 6375, post. (1879) 16 Op. Atty. Gen. 259.

Acceptance of offer of compromise.—While a suit for penalties was pending against an importer, he offered to pay to the government $55,000 in settlement of all claims and causes of action, which offer was accepted by the secretary of the treasury. Soon afterwards the importer died, before either he had paid the money or the government had tendered a release. Held, that the acceptance conformed to the offer, and that as no tender of a release had been made by the government before the death of the importer, and the occasion for a release had passed, the contract was not binding on the executors. U. S. v. Richardson (C. C. (1882) 9 Fed. 804.

§ 5805. (Act Jan. 22, 1875, c. 22.) Dismissal of proceedings.

Nothing in the nineteenth section of the act entitled "An act to amend the customs-revenue laws, and to repeal moieties," approved June twenty-second, eighteen hundred and seventy-four, shall be construed to affect any authority, power, or right which might theretofore have been lawfully exercised by any court, judge, or district attorney of the United States to obtain the testimony of an accomplice in any crime against, or fraud upon the customs-revenue laws, on any trial or proceeding for a fine, penalty, or forfeiture under said laws, by a discontinuance or dismissal, or by an engagement to discontinue or dismiss any proceedings against such accomplice. (18 Stat. 303.)

This was a provision of the declaratory act, cited above.

Act June 22, 1874, c. 391, § 19, mentioned in this act, is set forth ante, § 5804.

§ 5806. (R. S. § 3094.) No exemption from taking other oaths.

Nothing contained in this Title shall be construed to exempt the masters or owners of vessels from making and subscribing any oaths required by any laws of the United States not immediately relating to the collection of the duties on the importation of merchandise into the United States.

Act March 2, 1799, c. 22, § 110, 1 Stat. 703.

Provisions for the forfeiture of property owned by trusts engaged in importing the same into this country were made by Act Aug. 27, 1894, c. 349, §§ 73-76, post, §§ 8831-8834.

Violations of provisions for marking, stamping, branding or labeling of imported articles or packages, were punishable by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, F, subsec. 2, ante, § 5298.

The importation of obscene books, etc., was punishable by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, G, ante, §§ 5299-5301.

Violations of provisions relating to importation of cattle were punishable by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, H, ante, §§ 5302, 5303.

CHAPTER ELEVEN

Provisions Applying to Commerce with Contiguous Countries

Sec.
5807. Manner of importation.
5808. Vessels and vehicles.
5809. Entry on the northern and northwestern frontiers.
5810. Delivery of manifests.
5811. Penalty for non-delivery of manifest.
5812. Inspection of merchandise.
5813. Penalty for obstructing inspection.
5814. Sealing cars and vessels.
5815. Regulations for sealing.
5816. Penalty for not proceeding to port of destination, etc.
5817. Penalty for opening sealed packages.
5818. Forfeiture of vessel, etc.
5819. Search, etc., of buildings on boundary-line.
5820. Penalty for receiving, etc., into such building.
5821. Report by masters of foreign vessels.
5822. Forfeiture for transportation by foreign vessels.
5823. Report of sea-stores.
5824. Duty on excess of stores.
5825. Duty on saloon stores.
5826. Duty on equipments for vessels.
5827. Remission for necessary repairs.
5828. Manifests of vessels in the coasting trade.
5829. Entry for goods taken or delivered at intermediate ports.
5830. Departure for place where there is no custom-house.
5831. Report and unlading of cargoes.
5832. Time for delivery of merchandise taken from one port to another; regulations for coasting-trade.
5833. Landing permit for vessel from foreign port.
5834. Departure from place where there is no custom-house.
5835. Steam-tugs.
5836. Forms.
5837. Penalty for neglect.
5838. Registered vessels may touch at foreign ports.
5839. No duty by reason of touching at foreign port.
5840. Lake Champlain.
5841. Entry of foreign vessels from British North American Provinces.

§ 5807. (R. S. § 3095, as amended, Act April 27, 1904, c. 1625, § 1.) Manner of importation.

Except in the districts on the northern, northwestern, and western boundaries of the United States, adjoining to the Dominion of Canada or into the districts adjacent to Mexico, no merchandise of foreign growth or manufacture subject to the payment of duties shall be brought into the United States from any foreign port in any other manner than by sea, nor in any vessel of less than thirty net register tons, or landed or unladen at any other port than is directed by law, under the penalty of seizure and forfeiture of all such vessels and of the merchandise imported therein, laden or unladen in any other manner.

Act March 2, 1799, c. 22, § 92, 1 Stat. 697. Act April 27, 1904, c. 1625, § 1. 33 Stat. 362.

This section, as enacted in the Revised Statutes, was amended by omitting the words "hereinbefore described," before the word "on" in the first line, by changing the words "thirty tons burden, agreeably to the admeasurement directed for ascertaining the tonnage of vessels," to read "thirty net register tons," and by changing the words "this title" to read "law," as set forth here, by Act April 27, 1904, c. 1625, § 1, cited above.

Notes of Decisions

Districts to which applicable.—The exception specified in this section, prohibiting the introduction of foreign products into the United States in vessels of less than 30 tons burden, held not to apply to Brazos de Santiago nor to the district in which it is situated, which runs up the Rio Grande on the boundary line between the United States and Mexico, and adjacent to Mexico; and the prohibition of the statutes applies to all such vessels arriving by sea at the port of Brazos de Santiago from any foreign port, including the port of Tampico, Mexico. This section must be read in connection

with section 5809, post. U. S. v. The Theophile (D. C. 1882) 11 Fed. 696.

Effect of forfeiture.—Property seized by a collector in violation of this section and reported for libel and forfeiture under section 5789, ante, is in the custody of the collector as keeper, and may be delivered to the claimant on payment of duties under section 1564, ante. The G. G. King (D. C. 1883) 16 Fed. 921, 933.

When goods are imported into the United States in violation of the customs laws, the forfeiture of the goods takes place at the time the offense is committed, and a subsequent purchaser is not protected in his title, although he purchased the property without notice of the fact that it had been unlawfully imported. Kneeland v. Willard (1871) 59 Me. 445.

Evidence.—The defense that the party has been prevented by inevitable accident, necessity, or distress from complying with the requisitions of this section and sections 5563–5565, ante, is not admissible under a plea which simply puts in issue a denial of the facts constituting a forfeiture thereunder. U. S. v. Hayward (C. C. 1815) Fed. Cas. No. 15,336.

Cited without definite application, U. S. v. One Gasoline Launch (1904) 133 Fed. 42, 66 C. C. A. 148 (dissenting opinion); Same v. Fifty Waltham Watch Movements (D. C. 1905) 139 Fed. 291, 294.

§ 5808. (R. S. § 3096.) Vessels and vehicles.

All persons may import any merchandise of which the importation shall not be entirely prohibited, into the districts which are or may be established on the northern and northwestern boundaries of the United States, in vessels or boats of any burden, and in rafts or carriages of any kind or nature whatsoever.

Act March 2, 1799, c. 22, § 105, 1 Stat. 702.

Cited without definite application. U. S. v. One Gasoline Launch (1904) 133 Fed. 42, 66 C. C. A. 148 (dissenting opinion).

§ 5809. (R. S. § 3097.) Entry on the northern and northwestern frontiers.

All vessels, boats, rafts, and carriages, of what kind soever, arriving in such districts, on the northern and northwestern frontiers, containing merchandise subject to duties, on being imported into any port of the United States, shall be reported to the collector, or other chief officer of the customs at the port of entry in the district into which it shall be so imported; and such merchandise shall be accompanied with like manifests, and like entries shall be made, by the persons having charge of any such vessels, boats, rafts, and carriages, and by the owners or consignees of the merchandise laden on board the same; and the powers and duties of the officers of the customs shall be exercised and discharged in the districts last mentioned, in like manner as is prescribed in respect to merchandise imported in vessels from the sea; and generally, all such importations shall be subject to like regulations, penalties, and forfeitures as in other districts, except as is hereinafter specially provided.

Act March 2, 1799, c. 22, § 106, 1 Stat. 702.

Notes of Decisions

Construction in general.—This section must be read in connection with section 5807, ante. U. S. v. The Sloop Theophile (D. C. 1882) 11 Fed. 696.

Fraudulent invoice.—In a proceeding to forfeit 11 stallions and a jack, the information charged that certain Canadians were engaged in importing animals from Canada for sale; that they were not engaged in breeding or raising animals; and that they caused certain citizens of Indiana to make their affidavit to the collector of customs that they were the owners of the animals, and had imported them expressly for breeding purposes, when in fact the animals were the property of the Canadians, who imported them for sale and profit. Held, that the fact that the animals were fit for breeding purposes did not entitle the importers to exemption from duties, under the act of March 3, 1883, exempting from duty animals specially imported for breeding purposes, if the animals were in fact imported for sale and that the information sufficiently charged an offense against the customs laws. U. S. v. Eleven Horses (C. C. 1887) 30 Fed. 916.

An allegation, in an information of forfeiture, that the master neither did nor would deliver a true manifest of merchandise, but, on the contrary, delivered a false and fraudulent invoice,

with a view to evade the revenue laws, does not present a case within Act 1821, but within Act 1799, § 106. U. S v. The Margaret Yates (D. C. 1849) Fed. Cas. No. 15,720.

Gasoline launch.—This section, held to apply to an open clinker-built gasoline launch, about 18½ feet long. U. S v. One Gasoline Launch (1904) 133 Fed. 42, 43, 66 C. C. A. 148.

§ 5810. (R. S. § 3098.) Delivery of manifests.

The master of any vessel, except registered vessels, and every person having charge of any boat, canoe, or raft, and the conductor or driver of any carriage or sleigh, and every other person, coming from any foreign territory adjacent to the United States into the United States, with merchandise subject to duty, shall deliver, immediately on his arrival within the United States, a manifest of the cargo or loading of such vessel, boat, canoe, raft, carriage, or sleigh, or of the merchandise so brought from such foreign territory, at the office of any collector or deputy collector which shall be nearest to the boundary-line, or nearest to the road or waters by which such merchandise is brought; and every such manifest shall be verified by the oath of such person delivering the same; which oath shall be taken before such collector or deputy collector; and such oath shall state that such manifest contains a full, just, and true account of the kinds, quantities, and values of all the merchandise so brought from such foreign territory.

Act March 2, 1821, c. 14, § 1, 3 Stat. 616. Act July 18, 1866, c. 201, § 9, 14 Stat. 180.

Notes of Decisions

Horses.—A horse brought in from adjacent foreign territory as a mere instrument of conveyance in the prosecution of a temporary journey is not within this section, and no manifest thereof is necessary. U. S. v. One Sorrel Horse (D. C. 1847) Fed. Cas. No. 15,953.

The statute applies to a horse and stallion borrowed temporarily from a neighbor across the Mexican line, the one for herding stock and the other for breeding purposes. U. S. v. One Sorrel Stallion and One Roan Horse (D. C. 1892) 51 Fed. 877.

Delivery of manifest.—The duty of delivering a manifest of imported merchandise devolves upon him who has charge of it, whether he be the master or not. Steinham v. U. S. (C. C.) Fed. Cas. No. 13,355.

It is not essential that such person should be actually on board the vessel when it enters the waters of the United States. Id.

An indictment for smuggling goods from Canada into the United States without an invoice cannot be maintained under Act Aug. 30, 1842, § 19 (section 5548, ante), as such importations are governed by this act which requires only the delivery to the collector of the manifest of the goods imported from adjacent territory. U. S. v. Nolton (C. C. 1867) Fed. Cas. No. 15,897.

Cited without definite application, U. S. v. Claflin (1878) 97 U. S. 546, 24 L. Ed. 1082; Same v. One Gasoline Launch (1904) 133 Fed. 42, 66 C. C. A. 148 (dissenting opinion); Rogers v. U. S. (1910) 180 Fed. 54, 59, 103 C. C. A. 408, 31 L. R. A. (N. S.) 264; U. S. v. A Lot of Jewelry, etc. (D. C. 1894) 59 Fed. 684, 687.

§ 5811. (R. S. § 3099.) Penalty for non-delivery of manifest.

If the master, or other person having charge of any vessel, boat, canoe, or raft, or the conductor or driver of any carriage or sleigh, or other person bringing such merchandise, shall neglect or refuse to deliver the manifest required by the preceding section, or pass by or avoid such office, the merchandise subject to duty, and so imported, shall be forfeited to the United States, together with the vessel, boat, canoe, or raft, the tackle, apparel, and furniture of the same, or the carriage or sleigh, and harness and cattle drawing the same, or the horses with their saddles and bridles, as the case may be; and such master, conductor, or other importer shall be subject to a penalty of four times the value of the merchandise so imported.

Act March 2, 1821, c. 14, § 1, 3 Stat. 616. Act March 3, 1823, c. 58, § 1, 3 Stat. 781. Act July 18, 1866, c. 201, § 9, 14 Stat. 180.

Notes of Decisions

Borrowed horses.—The statute applies to a horse and stallion borrowed temporarily from a neighbor across the Mexican line, the one for herding stock

and the other for breeding purposes. U. S. v. One Sorrel Stallion and One Roan Horse (D. C. 1892) 51 Fed. 877.

Forfeiture.—A forfeiture is incurred if no manifest is presented, immediately on the arrival of the vessel. One Hundred and Thirty-Four Thousand Nine Hundred and One Feet of Pine Lumber (C. C. 1858) Fed. Cas. No. 10,523.

Innocence of an intent to defraud the revenue will not prevent a forfeiture where a violation of the statute is clearly proven. The Fame (D. C. 1858) Fed. Cas. No. 4,633.

The innocent buyer of smuggled merchandise is under no liability to enter it for the payment of duty. Such payment would not relieve a forfeiture already incurred, nor would failure to pay revive it when once barred. U. S. v. One Dark Bay Horse (D. C. 1904) 130 Fed. 240.

Cited without definite application, Stockwell v. U. S. (1871) 13 Wall. 531, 542, 20 L. Ed. 491; U. S. v. Claflin (1878) 97 U. S. 546, 548, 24 L. Ed. 1082; Rogers v. U. S. (1910) 180 Fed. 54, 59, 103 C. C. A. 408, 31 L. R. A. (N. S.) 264; U. S. v. A Lot of Jewelry, etc. (D. C. 1894) 59 Fed. 684, 687.

§ 5812. (R. S. § 3100, as amended, Act Feb. 18, 1875, c. 80, § 1, and Act Feb. 27, 1877, c. 69, § 1.) Inspection of merchandise.

All merchandise, and all baggage and effects of passengers, and all other articles imported into the United States from any contiguous foreign country, except as hereafter provided, as well as the vessels, cars, and other vehicles and envelopes in which the same shall be imported, shall be unladen in the presence of, and be inspected by, an inspector or other officer of the customs, at the first port of entry or custom-house in the United States where the same shall arrive; and to enable the proper officer thoroughly to discharge this duty, he may require the owner or his agent, or other person, having charge or possession of any trunk, traveling-bag, or sack, valise, or other envelope, or of any closed vessel, car, or other vehicle, to open the same, or to deliver to him the proper key.

Act June 27, 1864, c. 164, § 1, 13 Stat. 197. Act Feb. 18, 1875, c. 80, 18 Stat. 319. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248.

This section, as enacted in the Revised Statutes, was amended by transposing certain lines therein, to correct a typographical error in printing the section in the first edition of the Revised Statutes, and to make it read as set forth here, by Act Feb. 18, 1875, c. 80, § 1, and by Act Feb. 27, 1877, c. 69, § 1, cited above.

Notes of Decisions

Cattle.—Cattle brought into the United States without complying with this section, though not dutiable, held imported contrary to law, within section 5785, ante, as to concealing merchandise so imported. Estes v. U. S. (1915) 227 Fed. 818, 142 C. C. A. 342.

Cited without definite application, U. S. v. Fifty Waltham Watch Movements (D. C. 1905) 139 Fed. 291.

§ 5813. (R. S. § 3101.) Penalty for obstructing inspection.

If any owner, agent, or other person shall refuse or neglect to comply with his demands, allowed by the preceding section, the officer shall retain such trunk, traveling-bag, or sack, valise, or whatsoever it may be, and open the same, and, as soon thereafter as may be practicable, examine the contents; and if any article subject to the payment of duty shall be found therein, the whole contents, together with the envelope, shall be forfeited to the United States, and disposed of as the law provides in other similar cases. If any such dutiable merchandise or article shall be found in any such vessel, car, or other vehicle, the owner, agent, or other person in charge of which shall have refused to open the same or deliver the key as herein provided, the same, together with the vessel, car, or other vehicle, shall be forfeited to the United States, and shall be held by such officer, to be disposed of as the law provides in other similar cases of forfeiture.

Act June 27, 1864, c. 164, § 1, 13 Stat. 197.

Provisions restricting the seizure and forfeiture of vessels by force of the provisions of this Title were made by Act Feb. 8, 1881, c. 34, ante, § 5766.

Cited without definite application, U. S. v. Fifty Waltham Watch Movements (D. C. 1905) 139 Fed. 291.

§ 5814. (R. S. § 3102.) Sealing cars and vessels.

To avoid the inspection at the first port of arrival, the owner, agent, master, or conductor of any such vessel, car, or other vehicle, or owner, agent, or other person having charge of any such merchandise, baggage, effects, or other articles, may apply to any officer of the United States duly authorized to act in the premises, to seal or close the same, under and according to the regulations hereinafter authorized, previous to their importation into the United States; which officer shall seal or close the same accordingly; whereupon the same may proceed to their port of destination without further inspection. Every such vessel, car, or other vehicle, shall proceed, without unnecessary delay, to the port of its destination, as named in the manifest of its cargo, freight, or contents, and be there inspected. Nothing contained in this section shall be construed to exempt such vessel, car, or vehicle, or its contents, from such examination as may be necessary and proper to prevent frauds upon the revenue and violations of this Title.

Act June 27, 1864, c. 164, § 2, 13 Stat. 197.

Notes of Decisions

Continuous passage of sealed cars.—The provision of this section as to continuous passage of goods imported in sealed cars, applies as well to merchandise imported into a contiguous country and then imported into the United States as to merchandise produced in that foreign country and then imported into the United States. (1891) 20 Op. Atty. Gen. 26.

Examination of cars sealed.—The Secretary of the Treasury may have an examination made of cars sealed in a foreign country for passage through this country. (1891) 20 Op. Atty. Gen. 26.

Powers of secretary of the treasury in general.—See notes under § 5815, post.

Power to prohibit transfer of goods.—The Secretary of the Treasury has no power to prohibit the transfer of goods through the United States destined to Mexico. (1894) 20 Op. Atty. Gen. 725.

Sealing cars.—This and the following section probably contemplated that the sealing of cars should be performed by consular officers. The Secretary of the Treasury had no authority by law, and therefore was not required, to appoint new officers especially charged with the duty. (1891) 20 Op. Atty. Gen. 26.

Treaty as affecting inspection.—There was no obligation by force of the treaty of Washington which prevented a modification of the regulations of the Secretary of the Treasury authorized by articles 29 and 30 thereof, in so far as they affected goods and merchandise imported into this country for our consumption. That treaty had no reference whatever to the manner of the inspection and examination of such goods and merchandise in the country of their destination. (1891) 20 Op. Atty. Gen. 26.

Certificate as to domestic production of goods.—In the case of merchandise of domestic production shipped at ports on the Great Lakes to other ports in the United States, by routes through Canadian territory, the issuance of a certificate by the collector of customs showing that the merchandise so shipped is of domestic production is not authorized by law. (1885) 18 Op. Atty. Gen. 261.

§ 5815. (R. S. § 3103.) Regulations for sealing.

The Secretary of the Treasury is hereby authorized and required to make such regulations, and from time to time so to change the same as to him shall seem necessary and proper, for sealing such vessels, cars, and other vehicles, when practicable, and for sealing, marking, and identifying such merchandise, baggage, effects, trunks, traveling-bags, or sacks, valises, and other envelopes and articles; and also in regard to invoices, manifests, and other pertinent papers, and their authentication.

Act June 27, 1864, c. 164, § 3, 13 Stat. 197.

Notes of Decisions

Entry of goods sealed.—While the Secretary of the Treasury cannot require a formal entry of goods sealed in a foreign country at a frontier port, he is not concluded by the seals from requiring an examination of the contents of the cars so secured on arrival at the frontier ports, and he may direct such an examination, notwithstanding the seals, as may seem to him

best adapted to prevent fraud. (1891) 20 Op. Atty. Gen. 26.

Invoices for cars sealed.—The Secretary of the Treasury had authority to impose similar regulations as to invoices for cars sealed in a contiguous foreign country as were imposed by Immediate-Transportation Act 1880 (chapter 7A, ante), and an entry such as was required under the immediate-transportation act might be required by regulation under Anti-Smuggling Act (18 Stat. 186). (1891) 20 Op. Atty. Gen. 86.

Special inspectors.—This and the preceding section probably contemplated that the sealing of cars should be performed by consular officers. The Secretary of the Treasury had no authority by law, and therefore was not required to appoint new officers especially charged with the duty. (1891) 20 Op. Atty. Gen. 26.

Treaty regulations.—The Secretary of the Treasury may modify the regulations authorized by articles 20 and 30 of the treaty of Washington with regard to sealed cars. (1891) 20 Op. Atty. Gen. 26.

§ 5816. (R. S. § 3104.) Penalty for not proceeding to port of destination, etc.

If the owner, master, or person in charge of any vessel, car, or other vehicle so sealed, shall not proceed to the port or place of destination thereof named in the manifest of its cargo, freight, or contents, and deliver such vessel, car, or vehicle to the proper officer of the customs, or shall dispose of the same by sale or otherwise, or shall unload the same, or any part thereof, at any other than such port, or place, or shall sell or dispose of the contents of such vessel, car, or other vehicle, or any part thereof, before such delivery, he shall be deemed guilty of felony, and on conviction thereof, before any court of competent jurisdiction, pay a fine not exceeding one thousand dollars, or shall be imprisoned for a term not exceeding five years, or both, at the discretion of the court; and such vessel, car, or other vehicle, with its contents, shall be forfeited to the United States, and may be seized wherever found within the United States, and disposed of and sold as in other cases of forfeiture. Nothing in this section, however, shall be construed to prevent sales of cargo, in whole or in part, prior to arrival, to be delivered as per manifest, and after due inspection.

Act June 27, 1864, c. 164, § 4, 13 Stat. 197.

Provisions restricting the seizure and forfeiture of vessels by force of the provisions of this title were made by Act Feb. 8, 1881, c. 34, ante, § 5766.

§ 5817. (R. S. § 3105, as amended, Act Feb. 27, 1877, c. 69, § 1.) Penalty for opening sealed packages.

If any unauthorized person or persons shall willfully break, cut, pick, open, or remove any wire, seal, lead, lock, or other fastening or mark attached to any vessel, car, or other vehicle, crate, box, bag, bale, basket, barrel, bundle, cask, trunk, package, or parcel, or anything whatsoever, under and by virtue of this Title and regulations authorized by it, or any other law, or shall affix or attach, or any way willfully aid, assist, or encourage the affixing or attaching, by wire or otherwise, to any vessel, car, or other vehicle, or to any crate, box, bale, barrel, bag, basket, bundle, cask, package, parcel, article, or thing of any kind, any seal, lead, metal, or anything purporting to be a seal authorized by law, such person or persons shall be deemed guilty of felony, and shall be imprisoned for a term not exceeding five years, or shall pay a fine of not exceeding one thousand dollars, or both, at the discretion of the court.

Act June 27, 1864, c. 164, § 5, 13 Stat. 198. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248.

This section, as enacted in the Revised Statutes, was amended by striking out, after the word "affixing," the word "in," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

Notes of Decisions

Removal of seal.—The removal of an official seal in ignorance of its character, and in the honest execution of a supposed duty, will not render the person liable. U. S. v. Three Railroad Cars (D. C. 1868) Fed. Cas. No. 16,513.

§ 5818. (R. S. § 3106.) Forfeiture of vessel, etc.

Each vessel, car, or other vehicle, crate, box, bag, basket, barrel, bundle, cask, trunk, package, parcel, or other thing, with the cargo, or contents thereof, from which the wire, seal, lead, lock, or other fastening or mark shall have been broken, cut, picked, opened, or removed by any such unauthorized person or persons, or to which such seal, or other thing purporting to be a seal, has been wrongfully attached, shall be forfeited.

Act June 27, 1864, c. 164, § 5, 13 Stat. 198.

Provisions restricting the seizure and forfeiture of vessels by force of the provisions of this Title were made by Act Feb. 8, 1881, c. 34, ante, § 5766.

§ 5819. (R. S. § 3107.) Search, etc., of buildings on boundary-line.

If any store, warehouse, or other building shall be upon or near the boundary-line between the United States and any foreign country, and there is reason to believe that dutiable merchandise is deposited or has been placed therein or carried through or into the same without payment of duties, and in violation of law, and the collector, deputy collector, naval officer, or surveyor of customs, shall make oath before any magistrate competent to administer the same, that he has reason to believe, and does believe, that such offense has been therein committed, such officer shall have the right to search such building and the premises belonging thereto; and if any such merchandise shall be found therein, the same, together with such building, shall be seized, forfeited, and disposed of according to law, and the building shall be forthwith taken down or removed.

Act Feb. 28, 1865, c. 67, § 3, 13 Stat. 442.

§ 5820. (R. S. § 3108.) Penalty for receiving, etc., into such building.

Any person who shall have received or deposited in such building upon the boundary-line between the United States and any foreign country, or carried through the same, any merchandise, or shall have aided therein, in violation of law, shall be punishable by a fine of not more than ten thousand dollars, or by imprisonment for not more than two years, or by both.

Act Feb. 28, 1865, c. 67, § 3, 13 Stat. 442.

§ 5821. (R. S. § 3109, as amended, Act Feb. 17, 1898, c. 26, § 4.) Report by masters of foreign vessels.

The master of any foreign vessel, laden or in ballast, arriving, whether by sea or otherwise, in the waters of the United States from any foreign territory adjacent to the northern, northeastern, or northwestern frontiers of the United States, shall report at the office of any collector or deputy collector of the customs, which shall be nearest to the point at which such vessel may enter such waters; and such vessel shall not transfer her cargo or passengers to another vessel or proceed farther inland, either to unlade or take in cargo, without a special permit from such collector, or deputy collector, issued under and in accordance with such general or special regulations as the Secretary of the Treasury may, in his discretion, from time to time prescribe. This section shall also apply to trade with or through Alaska. For any violation of this section such vessel shall be seized and forfeited.

Act July 18, 1866, c. 201, § 41, 14 Stat. 188. Act Feb. 17, 1898, c. 26, § 4, 30 Stat. 248.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "laden or in ballast, arriving," the words "whether by sea or otherwise," and by inserting, after the words "and such vessel shall not," the words "transfer her cargo or passengers to another vessel or," and by inserting, after the words "from time to time prescribe," the words "This section shall also apply to trade with or through Alaska," as set forth here, by Act Feb. 17, 1898, c. 26, § 4, cited above.

Provisions restricting the seizure and forfeiture of vessels by force of the provisions of this Title were made by Act Feb. 8, 1881, c. 34, ante, § 5766.

Notes of Decisions

Gasoline launch.—An "open clinker-built gasoline launch, about 18½ feet," is not required to report by this section which applies only to foreign vessels "laden or in ballast." U. S. v. One Gasoline Launch (1904) 133 Fed. 42, 43, 66 C. C. A. 148.

Intent to proceed inland.—This section is not violated by merely bringing a foreign vessel, without such permit, within the limits of the United States casually, and without intent to unlade or take on cargo there, and without, in fact, proceeding further inland. The Coquitlam (1896) 77 Fed. 744, 23 C. C. A. 438, reversing decree (D. C. 1893) 57 Fed. 706.

§ 5822. (R. S. § 3110.) Forfeiture for transportation by foreign vessels.

If any merchandise shall, at any port in the United States on the northern, northeastern, or northwestern frontiers thereof, be laden upon any vessel belonging wholly or in part to a subject of a foreign country, and shall be taken thence to a foreign port to be reladen and reshipped to any other port in the United States on such frontiers, either by the same or any other vessel, foreign or American, with intent to evade the provisions relating to the transportation of merchandise from one port of the United States to another port of the United States, in a vessel belonging wholly or in part to a subject of any foreign power, the merchandise shall, on its arrival at such last-named port, be seized and forfeited to the United States, and the vessel shall pay a tonnage-duty of fifty cents per ton on her admeasurement.

Act July 18, 1866, c. 201, § 20, 14 Stat. 182.

Notes of Decisions

Construction in general.—This section expresses the legislative intention on the subject of the evasion of R. S. § 4347 (see post, after section 8095) and furnishes conclusive proof that the subject was brought to the attention of Congress, and, its will having been expressed by this enactment, transportation by the method specified between all other domestic ports is by implication excluded from the prohibition. U. S. v. Two Hundred and Fifty Kegs of Nails (1894) 61 Fed. 410, 412, 9 C. C. A. 558; Id. (D. C. 1892) 52 Fed. 231, 232.

§ 5823. (R. S. § 3111.) Report of sea-stores.

If any vessel enrolled or licensed to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States shall touch at any port in the adjacent British provinces, and the master of such vessel shall purchase any merchandise for the use of the vessel, the master of the vessel shall report the same, with cost and quantity thereof, to the collector or other officer of the customs at the first port in the United States at which he shall next arrive, designating them as "sea-stores;" and in the oath to be taken by such master of such vessel, on making such report, he shall declare that the articles so specified or designated "sea-stores" are truly intended for the use exclusively of the vessel, and are not intended for sale, transfer, or private use. If any other or greater quantity of dutiable articles shall be found on board such vessel than are specified in such report or entry of such articles, or any part thereof shall be landed without a permit from a collector or other officer of the customs, such articles, together with the vessel, her apparel, tackle, and furniture, shall be forfeited.

Act July 18, 1866, c. 201, § 22, 14 Stat. 183. Act Feb. 10, 1871, c. 45, 16 Stat. 408.

Provisions restricting the seizure and forfeiture of vessels by force of the provisions of this Title were made by Act Feb. 8, 1881, c. 34, ante, § 5766.

Notes of Decisions

"Merchandise."—The word "merchandise" covers any tangible personal property. (1894) 21 Op. Atty. Gen. 92.

Sea stores.—Ship's stores, and seamen's common stock, are not subject to entry at the custom house, under

the laws of Virginia, and the omission to enter them will not render the vessel liable to forfeiture. Douglass v. Roan (Va. 1790) 4 Call. 353.

§ 5824. (R. S. § 3112.) Duty on excess of stores.

If, upon examination and inspection by the collector or other officer of the customs, such articles are not deemed excessive in quantity for the use of the vessel, until an American port may be reached by such vessel, where such sea-stores can be obtained, such articles shall be declared free of duty; but if it shall be found that the quantity or quantities of such articles, or any part thereof so reported, are excessive, it shall be lawful for the collector or other officer of the customs to estimate the amount of duty on such excess, which shall be forthwith paid by the master of the vessel, on penalty of paying a sum of not less than one hundred dollars, nor more than four times the value of such excess, or such master shall be punishable by imprisonment for not less than three months, and not more than two years.

Act July 18, 1866, c. 201, § 22, 14 Stat. 183. Act Feb. 10, 1871, c. 45, 16 Stat. 408.

§ 5825. (R. S. § 3113.) Duty on saloon stores.

Articles purchased for the use of or for sale on board any such vessel, as saloon stores or supplies, shall be deemed merchandise, and shall be liable, when purchased at a foreign port, to entry and the payment of the duties found to be due thereon, at the first port of arrival of such vessel in the United States; and for a failure on the part of the saloon-keeper or person purchasing or owning such articles to report, make entries and pay duties, as hereinbefore required, such articles, together with the fixtures and other merchandise, found in such saloon or on or about such vessel belonging to and owned by such saloon-keeper or other persons interested in such saloon, shall be seized and forfeited, and such saloon-keeper or other person so purchasing and owning shall be liable to a penalty of not less than one hundred dollars and not more than five hundred, and shall be punishable by imprisonment for not less than three months, and not more than two years.

Act July 18, 1866, c. 201, § 22, 14 Stat. 183. Act Feb. 10, 1871, c. 45, 16 Stat. 409.

Notes of Decisions

"Merchandise."—The word "merchandise" means property imported into the country, whether for sale or not. (1894) 21 Op. Atty. Gen. 92.

§ 5826. (R. S. § 3114.) Duty on equipments for vessels.

The equipments, or any part thereof, including boats, purchased for, or the expenses of repairs made in a foreign country upon a vessel enrolled and licensed under the laws of the United States to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad-valorem duty of fifty per centum on the cost thereof in such foreign country; and if the owner or master of such vessel shall willfully and knowingly neglect or fail to report, make entry, and pay duties as herein required, such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited.

Act July 18, 1866, c. 201, § 23, 14 Stat. 183.

Provisions restricting the seizure and forfeiture of vessels by force of the provisions of this title were made by Act Feb. 8, 1881, c. 34, ante, § 5766.

Notes of Decisions

Cost of repairs of vessels.—The action of a collector in assessing duty on the cost of repairs of vessels is subject to review by the board of general appraisers under section 5595, ante. U. S. v. George Hall Coal Co. (C. C. 1905) 134 Fed. 1003, 1004, affirmed (1906) 142 Fed. 1039, 71 C. C. A. 685.

§ 5827. (R. S. § 3115.) Remission for necessary repairs.

If the owner or master of such vessel shall, however, furnish good and sufficient evidence that such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety of the vessel to enable her to reach her port of destination, then it shall be competent for the Secretary of the Treasury to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this and the preceding sections, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited.

Act July 18, 1866, c. 201, § 23, 14 Stat. 184.
See note to preceding section.

Cited without definite application,
The Laura (1885) 5 Sup. Ct. 881, 883, 114 U. S. 411, 29 L. Ed. 147.

§ 5828. (R. S. § 3116.) Manifests of vessels in the coasting trade.

The master of every vessel enrolled or licensed to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, except canal-boats employed in navigating the canals within the United States, shall, before the departure of his vessel from a port in one collection-district to a port in another collection-district, present to the collector at the port of departure duplicate manifests of his cargo, or, if he have no cargo, duplicate manifests setting forth that fact; such manifests shall be subscribed and sworn to by the master before the collector, who shall indorse thereon his certificate of clearance, retaining one for the files of his office; the other he shall deliver for the use of the master.

Act July 1, 1870, c. 185, § 1, 16 Stat. 176.

§ 5829. (R. S. § 3117.) Entry for goods taken or delivered at intermediate ports.

If any vessel so enrolled or licensed shall touch at any intermediate port in the United States, and there discharge cargo taken on board at an American port, or at such intermediate ports shall take on board cargo destined for an American port, the master of such vessel shall not be required to report such lading or unlading at such intermediate ports, but shall enter the same on his manifest obtained at the original port of departure, which he shall deliver to the collector of the port at which the unlading of the cargo is completed, within twenty-four hours after arrival, and shall subscribe and make oath as to the truth and correctness of the same.

Act July 1, 1870, c. 185, § 1, 16 Stat. 176.

§ 5830. (R. S. § 3118.) Departure for place where there is no custom-house.

The master of any vessel so enrolled or licensed shall, before departing from a port in one collection-district to a place in another collection-district, where there is no custom-house, file his manifest, and obtain a clearance in the same manner, and make oath to the manifest, which manifest and clearance shall be delivered to the proper officer of customs at the port at which the vessel next arrives after leaving the place of destination specified in the clearance.

Act July 1, 1870, c. 185, § 1, 16 Stat. 176.

§ 5831. (R. S. § 3119.) Report and unlading of cargoes.

Nothing contained in the three preceding sections shall exempt masters of vessels from reporting, as now required by law, any merchandise destined for any foreign port. No permit shall be required for the unlading of cargo brought from an American port.

Act July 1, 1870, c. 185, § 1, 16 Stat. 177.

§ 5832. (R. S. § 3120, as amended, Act Feb. 27, 1877, c. 69, § 1.) Time for delivery of merchandise taken from one port to another; regulations for coasting trade.

No merchandise taken from any port in the United States on the northern, northeastern, or northwestern frontiers thereof, to a port in another collection-district of the United States on such frontiers, in any vessel, shall be unladen or delivered from such vessel within the United States, but in open day, that is to say, between the rising and setting of the sun, except by special license from the collector or other principal officer of the port for the purpose. The owner of every vessel whose master or manager shall neglect to comply with the provisions of this section shall be liable to a penalty of not less than one hundred dollars nor more than five hundred. The Secretary of the Treasury may, from time to time, make such regulations as to him shall seem necessary and expedient for unloading at and clearance from any port or place on such frontiers of ships or vessels at night. And that the Secretary of the Treasury be, and he is hereby, authorized, in his discretion, to make such regulations as shall enable vessels engaged in the coasting-trade between ports and places upon Lake Michigan exclusively, and laden with American productions and free merchandise only, to unlade their cargoes without previously obtaining a permit to unlade.

Act July 18, 1866, c. 201, § 26, 14 Stat. 184. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248.

This section, as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the provisions beginning with the words "And that the Secretary of the Treasury be, and he is hereby, authorized," etc., to the end of the section as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

§ 5833. (R. S. § 3121.) Landing permit for vessel from foreign port.

The master of any vessel with cargo, passengers, or baggage from any foreign port, shall obtain a permit and comply with existing laws, before discharging or landing the same.

Act July 1, 1870, c. 185, § 1, 16 Stat. 177.

§ 5834. (R. S. § 3122.) Departure from place where there is no custom-house.

The master of any vessel so enrolled or licensed, destined with a cargo from a place in the United States, at which there may be no custom-house, to a port where there may be a custom-house, shall, within twenty-four hours after arrival at the port of destination, deliver to the proper officer of the customs a manifest, subscribed by him, setting forth the cargo laden at the place of departure, or laden or unladen at any intermediate port, or place, to the truth of which manifest he shall make oath before such officer. If the vessel, however, have no cargo, the master shall not be required to deliver such manifest.

Act July 1, 1870, c. 185, § 2, 16 Stat. 177.

§ 5835. (R. S. § 3123.) Steam-tugs.

Steam-tugs duly enrolled and licensed to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, when exclusively employed in towing vessels, shall not be required to report and clear at the custom-house.

When such steam-tugs, however, are employed in towing rafts or other vessels without sail or steam motive-power, not required to be enrolled or licensed under existing laws, they shall be required to report and clear in the same manner as is hereinbefore provided in similar cases for other vessels.

Act July 1, 1870, c. 185, § 3, 16 Stat. 177.

Cited without definite application, U. S. v. One Gasoline Launch (1904) 133 Fed. 42, 66 C. C. A. 148 (dissenting opinion).

§ 5836. (R. S. § 3124.) Forms.

The manifests, certificates of clearance, and oaths, provided for by the eight preceding sections, shall be in such form, and prepared, filled up, and executed in such manner as the Secretary of the Treasury may from time to time prescribe.

Act July 1, 1870, c. 185, § 4, 16 Stat. 177.

§ 5837. (R. S. § 3125.) Penalty for neglect.

If the master of any enrolled or licensed vessel shall neglect or fail to comply with any of the provisions or requirements of the nine preceding sections, such master shall forfeit and pay to the United States the sum of twenty dollars for each and every failure or neglect, and for which sum the vessel shall be liable, and may be summarily proceeded against, by way of libel, in any district court of the United States.

Act July 1, 1870, c. 185, § 5, 16 Stat. 177.

§ 5838. (R. S. § 3126.) Registered vessels may touch at foreign ports.

Any vessel, on being duly registered in pursuance of the laws of the United States, may engage in trade between one port in the United States and one or more ports within the same, with the privilege of touching at one or more foreign ports during the voyage, and land and take in thereat merchandise, passengers and their baggage, and letters, and mails. All such vessels shall be furnished by the collectors of the ports at which they shall take in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages, by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in warehouse; and the masters of all such vessels shall, on their arrival at any port of the United States from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and be subject to all the penalties therein prescribed.

Act May 27, 1848, c. 48, § 1, 9 Stat. 232.

The collector's fees for granting permits to vessels licensed for the fisheries to trade between ports of the United States, with the privilege of touching at foreign ports, were abolished by Act June 19, 1886, c. 421, § 1, post, § 8138.

Notes of Decisions

Levy of pilotage charge by state.— State held to be without power to levy pilotage charges on registered vessels, though they made calls at a foreign port. The Queen (1910) 186 Fed. 725, 108 C. C. A. 595.

Cited without definite application, Anderson v. Pacific Coast S. S. Co. (1912) 32 Sup. Ct. 626, 631, 225 U. S. 187, 56 L. Ed. 1047; U. S. v. The Walla Walla (D. C. 1891) 44 Fed. 796.

§ 5839. (R. S. § 3127.) No duty by reason of touching at foreign port.

Any foreign merchandise taken in at one port of the United States to be conveyed in registered vessels to any other port within the same, either under the provisions relating to warehouses, or under

[illegible] coastwise of merchandise en- [illegible] merchandise not entitled to draw- [illegible] chargeable by law shall have [illegible] any import duty by reason [illegible] having touched at a foreign [illegible]

[illegible] imported from Canada into the [illegible] Lake Champlain, and the mer- [illegible] duties thereon paid at the [illegible] Lake Champlain, it shall [illegible] same or any other district [illegible]

[illegible] foreign vessels from British [illegible]

[illegible] approbation of the Presi- [illegible] similar privileges are [illegible] the colonies hereinafter [illegible] such regulations as he may [illegible] to permit vessels laden [illegible] Nova Scotia, New- [illegible] of them, to lade or [illegible] of the United States [illegible] vessel entering a port so [illegible] refuse to comply with [illegible] of the Treasury, such [illegible] shall be subject to the [illegible] section had been granted [illegible]

[illegible] in the Revised Statutes: [illegible] following, begins with section [illegible]

TITLE XXXV

INTERNAL REVENUE

Chap.		Sec.
1.	Officers of internal revenue	5842
2.	Of assessments and collections	5895
3.	Special taxes	5955
4.	Distilled spirits and wines	5981
5.	Fermented liquors	6138
6.	Tobacco and snuff	6162
7.	Cigars	6197
7A.	Oleomargarine, adulterated butter, and process or renovated butter	6215
7B.	Filled cheese	6242
7C.	Mixed flour	6258
7D.	White phosphorus matches	6271
7E.	Opium for smoking	6287a
7F.	Opium, coca leaves, and compounds, manufacturers, etc., thereof	6287g
8.	Banks and bankers	6288
8A.	Special excise tax on corporations	6300
8B.	Excise tax on dealings in cotton futures	6309a
9.	Stamp-taxes on specific objects	6310
9A.	Incomes	6319
9B.	Munition Manufacturer's Tax	6336¼a
10.	Legacies and successions	
10A.	Estate Tax	6336½a
11.	Provisions common to several objects of taxation	6337
11A.	Increase of internal revenue	6371a

CHAPTER ONE

Officers of Internal Revenue

Sec.
5842. Definition of the word "State" and the word "person."
5843. Collection districts.
5844. Limit of number of districts and collectors.
5845. Hawaii; collection district; collector, etc.
5846. Collectors.
5847. Collectors' bonds.
5848. Collectors as disbursing agents.
5849. Deputy collectors; compensation; allowances for collectors' salaries and office expenses.
5850. Allowances for collector's expenses.
5851. Accounts of collectors adjusted according to fiscal year.
5852. Detail of deputy collectors for special duty in other districts.
5853. Certificate as to reports before payment to collector.
5854. Disability or vacancy in office of collector.
5855. Deputy collector, when entitled to collector's salary.
5856. Internal revenue agents.
5857. Limitation of number of agents.
5858. Additional agents.
5859. Additional agents.
5860. Limit of compensation of agents; per diem in lieu of subsistence.

Sec.
5861. Compensation of agents assigned to duty of examining accounts.
5861a. Employees engaged in field work, etc.; designation of posts of duty; per diem.
5862. Store-keepers and their salaries.
5863. Assignment and transfer of storekeepers.
5864. Temporary store-keeper.
5865. Gaugers.
5866. Gaugers' fees.
5867. Limit of gauger's compensation.
5868. Compensation of gaugers employed in gauging fruit brandy, or detailed for special duty.
5869. Store-keepers and gaugers; compensation; performance of duties by one officer.
5870. Storekeeper-gauger's compensation.
5871. Compensation of storekeepers at small distilleries; storekeeper-gaugers.
5872. Compensation of storekeepers, gaugers and storekeeper-gaugers, at small distilleries.
5873. Compensation of storekeepers, storekeeper-gaugers, and gaugers, when traveling.
5874. Duties of storekeeper-gauger; bond.

Sec.
5875. Assignment to duty and transfer of gaugers.
5876. Detail of gaugers, etc., for duty in other districts; accounts.
5877. Leave of absence to storekeepers, gaugers, and storekeeper-gaugers.
5877a. Internal revenue agents granted leave of absence with pay.
5878. Limit of number of revenue officers.
5879. Statement under oath of fees, etc.; penalty.
5880. Officers in charge of exportations and drawbacks.
5881. Superintendents of exports and drawbacks may administer oaths.
5882. Commissioner may transfer or suspend officers.
5883. Duties of collectors and agents; power of Commissioner.
5884. Duty of collectors to report violations of law to district attorney.
5885. Revenue officers who may administer oaths and take evidence.
5886. Revenue officers authorized to make seizures.
5887. Revenue officers disclosing operations of manufacturers, etc., punishable.
5888. Officers not to be interested in certain manufactures; penalty.
5889. Officers of internal revenue guilty of extortion, receiving unlawful fees, and other unlawful acts.
5890. Laws imposing fines applicable to all persons in service.
5891. Collector, etc., issuing stamps before payment punishable.
5892. Meaning of term "Revised Statutes."
5893. District attorney or marshal accepting or demanding anything for compromise of violation of internal revenue laws.
5894. Officers suffering injuries may maintain suit for injuries.

§ 5842. (R. S. § 3140, as amended, Act Feb. 27, 1877, c. 69, § 1.) Definition of the word "State" and the word "person."

The word "State," when used in this Title, shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out its provisions. And where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the word "person," as used in this title, shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person.

Act June 30, 1864, c. 173, § 182, 13 Stat. 306. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248.

This section as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the provision defining the word "person," from the words "and where not otherwise distinctly expressed" to the end of the section as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

Notes of Decisions

See, also, notes under § 5955, post.

Application of law to territories.—See, also, § 6350, and notes thereunder.

See Rasmussen v. U. S. (1905) 25 Sup. Ct. 514, 516, 197 U. S. 516, 49 L. Ed. 862.

Although the Revision of 1878, omitted the word "territory" from the provision, as found in the statute of 1864, that no license should be construed "to authorize any business within any state or territory prohibited by the laws thereof," yet the word "state" is by the express provision of this section made to include the territories. Hence it does not appear that congress intended, by omitting the word "territory," to protect liquor licensees in the territories. Territory v. O'Connor (1889) 5 Dak. 397, 41 N. W. 746, 3 L. R. A. 355.

Application of law to District of Columbia.—An application of the war revenue act of June, 1898, to the District of Columbia is secured by section 31, which incorporates therein the laws relating to the assessment of taxes, thereby including this section. Knowlton v. Moore (1900) 20 Sup. Ct. 747, 773, 178 U. S. 41, 44 L. Ed. 969.

Application of law to Indians or Indian country.—See, also, notes under §§ 6162 and 6174, post.

Cotton belonging to a Choctaw Indian, produced by him in the territory of his nation and found beyond its limits, is not subject to the internal revenue tax. (1867) 12 Op. Atty. Gen. 132.

The internal revenue system of the United States has not, in any instance or for any purpose, been extended over the Indian country. (1867) 12 Op. Atty. Gen. 208.

Cotton raised in the Choctaw Nation, by an Indian of that nation, is not liable to taxation, under the internal revenue laws, either while in the Indian country, or in transit through any collection district, or in the collection district where it may have been found or may have been sold. Id.

Property belonging to an Indian may be seized in the Indian Territory for a

violation of the internal revenue laws. (1871) 13 Op. Atty. Gen. 546.

Meaning of word "country." — The word "country," as employed in the revenue laws of the United States, embraces and applies to all the territorial possessions of a foreign state, however widely separated, which are subject to the same supreme executive and legislative control. Sonneborn Sons v. U. S. (1911) 1 Ct. Cust. App. 443.

Application of law to corporation.— Under the amendment made by Act Feb. 27, 1877, the word "person," as used in chapter 4 of this title, is to be understood as so including a corporation engaged in distilling spirits that it may give the bond and perform other acts required by the internal revenue law of distillers, in its corporate capacity. The existence of a penalty in certain sections of that title, prescribing imprisonment as a part of the punishment, is not incompatible with an intent to include under the word "person," as therein employed, a corporation. (1877) 15 Op. Atty. Gen. 230.

Application of law to dispensing and selling agents of state.—The dispensing and selling agents of a state, taking charge of the selling of intoxicating liquors, are fairly within the scope of this section and sections 5955 and 5971(4), post, and are subject to an excise tax. South Carolina v. U. S. (1905) 26 Sup. Ct. 110, 111, 199 U. S. 437, 50 L. Ed. 261, 4 Ann. Cas. 737.

DECISIONS RELATING TO LAW IN GENERAL

Construction of law in general.—Revenue statutes are not to be regarded as penal to be strictly construed, but are remedial in character and to be liberally construed to carry out their purpose. U. S. v. Hodson (1870) 10 Wall. 395, 406, 19 L. Ed. 937.

Statutes to prevent fraud on the revenue are enacted for the public good, and though they impose penalties, they are not to be construed strictly in favor of the defendant, like penal laws generally, but are to be so construed as to carry out the intention of the legislature. U. S. v. Stowell (1890) 10 Sup. Ct. 244, 246, 133 U. S. 1, 33 L. Ed. 555.

There is no reason requiring a statute imposing special internal revenue taxes to be construed liberally in favor of the government, but it should be construed fairly and judicially with reference to both parties. De Bary v. Souer (1900) 101 Fed. 425, 41 C. C. A. 417.

Imposition by the government of a tax is a burden on private interests laid on private property, and where the question is whether given property is subject to a tax the statute must clearly cover the property. Gill v. Bartlett (1915) 224 Fed. 927, 140 C. C. A. 405, affirming judgment Bartlett v. Gill (D. C. 1915) 221 Fed. 476.

The revenue laws are for the purpose of aiding the collection of the government revenue and taxes, and they should not be construed by the courts so as to become odious or oppressive to the people. U. S. v. Howell (C. C. 1884) 20 Fed. 718.

A revenue law authorizing a forfeiture of property for violation thereof is not a penal statute which is to be construed with strictness in favor of defendant. U. S. v. Three Tons of Coal (D. C. 1875) Fed. Cas. No. 16,515.

The rule that the internal revenue law should be strictly construed in favor of exemption is but a rule of construction, which yields when the intent of the statute is manifest. In re Hawley (D. C. 1915) 220 Fed. 372.

When the language of a revenue law would indicate that certain words had been employed by the Congress because the processes of a particular art were changing processes, dictionaries and treatises may be referred to for the purpose of showing the state of that art. Rotograph Co. v. U. S. (1910) 1 Ct. Cust. App. 82.

An internal revenue law should be construed fairly for the government and justly for the citizen, and so as to carry out the intention of the legislature gathered from the language used, read in connection with the general purpose of the law, the nature of the property on which the tax is imposed, and the legal relation of the taxpayer to it. Hubbard v. Brainard (1869) 35 Conn. 563.

An internal revenue law should not be construed liberally like laws intended to effect directly some great public object. Id.

An internal revenue law should not be construed strictly because it takes money or property in invitum, for it is taken as a share of a necessary public burden. Id.

Harmonizing with tariff laws.—Internal revenue acts should be interpreted in harmony with the tariff legislation of the country. Taylor v. Treat (C. C. 1907) 153 Fed. 656, judgment affirmed Treat v. Taylor (1908) 166 Fed. 1021, 91 C. C. A. 330.

Extension of law by construction.—A tax law cannot be extended by construction to things not described as the subject of taxation. Boyd v. Hood (1868) 57 Pa. 98.

Legislative adoption of construction.— The decisions of the internal revenue commissioner are not judicial constructions within the rule that when a judicial construction has been given a statute, the re-enactment of the statute is in effect a legislative adoption of that

construction. Dollar Sav. Bank v. U. S. (1873) 19 Wall. 227, 237, 22 L. Ed. 80.

Evidence to aid construction.—Evidence of foreign trade-names is not material to the question of the meaning of terms used in United States revenue acts. Taylor v. Treat (C. C. 1907) 153 Fed. 656, judgment affirmed Treat v. Taylor (1908) 166 Fed. 1021, 91 C. C. A. 330.

Judicial notice of statute.—The courts are bound to take judicial notice of the federal statute relating to internal revenue. Kessel v. Albetis (N. Y. 1870) 56 Barb. 362.

§ 5843. (R. S. § 3141, as amended, Act Feb. 27, 1877, c. 69, § 1.) Collection districts.

For the purpose of assessing, levying, and collecting the taxes provided by the internal-revenue laws, the President may establish convenient collection-districts, and for that purpose he may subdivide any State, Territory, or the District of Columbia, or may unite two or more States or Territories into one district, and may from time to time alter said districts: Provided, That the number of districts in any State shall not exceed the number of Representatives in Congress to which such State was entitled in the Thirty-seventh Congress, except in such states as were entitled to an increased representation in the Thirty-eighth Congress, in which States the number of districts shall not exceed the number of Representatives to which any such State was so entitled: And provided further, That in the State of California the President may establish a number of districts not exceeding the number of Senators and Representatives to which said State was entitled, in the Thirty-seventh Congress.

Act July 1, 1862, c. 119, § 2, 12 Stat. 433. Act June 30, 1864, c. 173, § 7, 13 Stat. 224. Act July 12, 1870, c. 251, § 1, 16 Stat. 230. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248.

This section, as enacted in the Revised Statutes, was amended by changing the words of the last proviso as originally enacted, "said State is entitled," to read "said State was entitled," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

The President was authorized and directed to reduce the number of internal revenue districts to not exceed 131, by a provision of Act Aug. 15, 1876, c. 287, 19 Stat. 152; such reduction to take effect Sept. 1, 1876, or as soon thereafter as practicable. A further limitation of the number to 126 was made by a provision of Act March 3, 1877, c. 102, § 1, 19 Stat. 303, which was superseded by Act Aug. 23, 1912, c. 350, § 1, and Act July 16, 1914, c. 141, § 1, 38 Stat. 475, post, § 5844.

The Territory of Hawaii was constituted a district for the collection of internal revenue, with a collector at Honolulu, and deputy collectors in other places of the islands as directed by the Secretary of the Treasury, by Act April 30, 1900, c. 339, § 87, post, § 5845.

Notes of Decisions

Power to change established system.—The President, under the authority of Internal Revenue Act July 1, 1862, c. 119, having divided the United States into convenient collection districts, the arrangement which he made became a part of the system established by the statute, and can be changed only by the law-making power. (1863) 10 Op. Atty. Gen. 469.

Consolidation of states to collect cotton tax.—The existing internal revenue laws do not authorize the consolidation of the cotton-growing states into a single collection district for the purpose of collecting the cotton tax. (1866) 12 Op. Atty. Gen. 55.

Limitation of districts.—The provision in the second section of Act July 1, 1862, c. 119, readopted by the seventh section of Act June 30, 1864, c. 173, limiting the number of internal-revenue collection districts in any state, is unrepealed by the provision in Act July 12, 1870, c. 251, authorizing the President, at his discretion, to "divide the States and Territories respectively into convenient collection districts, or alter the same," etc. The restriction as to the number of such districts imposed by the former provision is still in force. (1873) 14 Op. Atty. Gen. 215.

§ 5844. (Act July 16, 1914, c. 141, § 1.) Limit of number of districts and collectors.

On and after October first, nineteen hundred and fourteen, the

whole number of collection districts for the collection of internal revenue and the whole number of collectors of internal revenue shall not exceed sixty-four. (38 Stat. 475.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1915, cited above.

It superseded provisions on the same subject made by Act March 3, 1877, c. 102, § 1, 19 Stat. 303, and Act Aug. 23, 1912, c. 350, § 1, 37 Stat. 381.

The number of revenue officers was limited by a provision of Act March 3, 1885, c. 343, § 1, post, § 5878.

§ 5845. (Act April 30, 1900, c. 339, § 87.) Hawaii; collection district; collector, etc.

The Territory of Hawaii shall constitute a district for the collection of the internal revenue of the United States, with a collector, whose office shall be at Honolulu, and deputy collectors at such other places in the several islands as the Secretary of the Treasury shall direct. (31 Stat. 158.)

The section was part of the act to provide a government for the Territory of Hawaii, cited above.

§ 5846. (R. S. § 3142.) Collectors.

The President, by and with the advice and consent of the Senate, shall appoint for each collection-district a collector, who shall be a resident of the same. When two or more collection-districts are united by him, he may designate from among the existing officers of such districts one collector for the new district, or, at his discretion, he may make a new appointment of such officer for said district.

Act July 1, 1862, c. 119, § 2, 12 Stat. 433. Act June 30, 1864, c. 173, § 7, 13 Stat. 224. Act July 14, 1870, c. 255, § 18, 16 Stat. 261.

Notes of Decisions

Repeal of statute as vacating offices of collectors.—Act June 30, 1864, § 173, repealing most of the provisions of Act July 1, 1862, relating to internal revenue, but providing that "the officers heretofore appointed shall continue to hold the said offices without reappointment," does not vacate the offices of collectors appointed under the earlier act. Pickering v. Day (Del. 1867) 3 Houst. 474, 95 Am. Dec. 291.

Cited without definite application, King v. U. S. (1878) 99 U. S. 229, 232, 25 L. Ed. 373.

§ 5847. (R. S. § 3143, as amended, Act March 1, 1879, c. 125, § 2.) Collectors' bonds.

Every collector, before entering upon the duties of his office, shall execute a bond for such amount as may be prescribed by the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, with not less than five sureties, to be approved by the Solicitor of the Treasury, conditioned that said collector shall faithfully perform the duties of his office according to law, and shall justly and faithfully account for and pay over to the United States, in compliance with the order or regulations of the Secretary of the Treasury, all public moneys which may come into his hands or possession; and he shall, from time to time, renew, strengthen, and increase his official bond, as the Secretary of the Treasury may direct, with such further conditions as the said commissioner shall prescribe; and he shall execute a new bond whenever required so to do by the Secretary of the Treasury, with such conditions as may be required by law or prescribed by the Commissioner of Internal Revenue, with not less than five sureties; which new bond shall be in lieu of any former bond or bonds of such collector in respect to all liabilities accruing after the date of its approval by the Solicitor of the Treasury. Said bonds shall be filed in the office of the First Comptroller of the Treasury.

Act June 30, 1864, c. 173, § 9, 13 Stat. 225. Act March 1, 1879, c. 125, § 2, 20 Stat. 327.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "as the said commissioner shall prescribe," the provision be-

ginning with the words "and he shall execute a new bond," and ending with the words "approval by the Solicitor of the Treasury," which is followed by the provision of the original section, "Said bonds shall be filed in the office of the First Comptroller of the Treasury," as set forth here, by Act March 1, 1879, c. 125, § 2, cited above.

The designation of the First Comptroller of the Treasury, referred to in the last clause of this section, was changed to Comptroller of the Treasury, by the Dockery Act of July 31, 1894, c. 174, § 4, ante, § 402.

General provisions for the examination and renewal of official bonds were made by Act March 2, 1895, c. 177, § 5, ante, §§ 3288-3290.

Notes of Decisions

1. Necessity of bond.
2. Form, requisites, and validity of bond.
3. Execution of bond.
4. Liability of sureties in general.
5. Embezzlement by deputy.
6. Moneys received for taxes.
7. Charges for unaccounted stamps.
8. Payment of storekeepers.
9. Moneys paid to informers.
10. Refunding overpayment by sureties.
11. Lien in favor of government.
12. Judgment against collector as binding sureties or constituting lien.
13. Fraudulent conveyance by surety.
14. Discharge of sureties.
15. Action on bond—Defense in general.
16. —— Set-off.
17. —— Pleading.
18. —— Evidence.
19. —— Questions for jury.
20. —— Judgment and execution.

1. Necessity of bond.—Act June 30, 1864, providing that a collector of the internal revenue, before entering upon the duties of his office, shall execute an official bond, does not apply to collectors appointed under a prior act, but continued in office under a saving clause in such prior act. Pickering v. Day (1866) 2 Del. Ch. 333.

Act June 30, 1864, § 173, directing the collector of internal revenue to execute a bond in an amount fixed by a commissioner of internal revenue, does not make the execution of such a bond by a collector a condition precedent to his authority to exercise the powers of his office. Pickering v. Day (Del. 1867) 3 Houst. 474, 95 Am. Dec. 291.

2. Form, requisites, and validity of bond.—Where a bond given by the collector of internal revenue is objectionable in form, a new bond given by direction of the commissioner of internal revenue cannot be considered as having been extorted by duress from the collector and his sureties, contrary to the statute. Soule v. U. S. (1879) 100 U. S. 8, 25 L. Ed. 536.

Omission in a bond of the place or district in which the duties are to be performed does not render it void. U. S. v. Jackson (1881) 104 U. S. 41, 42, 26 L. Ed. 651.

A bond given to the United States by a collector of internal revenue, conditioned for the faithful performance of their duties by all deputies appointed by him, is valid and enforceable, although such condition is not required by the statute. Laffan v. U. S. (1903) 122 Fed. 333, 58 C. C. A. 495.

A bond given under a statute is void so far as it exceeds the requirements thereof. Armstrong v. U. S. (C. C. 1811) Fed. Cas. No. 549.

The addition of a condition not specifically named in the act, that the obligor should not be liable if each and every deputy appointed by the collectors shall faithfully execute all the duties of such deputy according to law, did not relieve the sureties. Chadwick v. U. S. (C. C. 1880) 3 Fed. 750, 754.

A bond that the officer has faithfully and truly discharged his duties is not authorized under a statute requiring a bond for the true and faithful discharge of duties. U. S. v. Brown (D. C. 1830) Fed. Cas. No. 14,663.

See (1885) 18 Op. Atty. Gen. 274, holding that, where the form of the bond is not prescribed by statute, its form may be determined by the officer whose duty it is to approve the same.

3. Execution of bond.—A collector's bond, accepted in the belief that it had been properly executed, held binding on a surety who signed the printed form and delivered it to the principal, with authority to fill blanks and perfect the instrument. Butler v. U. S. (1874) 21 Wall. 272, 274, 22 L. Ed. 614.

The execution of a collector's bond by the sureties with the date left blank authorizes the principal to fill the blank at his discretion. U. S. v. Halsted (D. C. 1872) Fed. Cas. No. 15,287.

4. Liability of sureties in general.—A bond given by a collector appointed to hold office till the end of the next session of the senate, and then reappointed with the advice and consent of the senate, is to be restricted, as to the liability of the sureties, to the obligations created by the collection acts passed before the date of the bond and to the term of office under the original appointment, not including the term under reappointment. U. S. v. Kirkpatrick (1824) 9 Wheat. 720, 730, 6 L. Ed. 199.

Under 15 Stat. 147, gauging fees to be paid to the collector of internal revenue by the owner or producer of the articles to be gauged, and to be retained by him until the last day of each month, when they were to be paid to the officers performing their duty at a certain fixed rate, the sureties on the collector's bond were liable on his failure to account to the United States for any excess, received and not paid out, over

such fixed rate. Soule v. U. S. (1879) 100 U. S. 8, 25 L. Ed. 536.

The certificate of the commissioner of internal revenue that the collector used due diligence to collect is a condition precedent to the allowance of the credit on the books of the treasury by the first comptroller, before a suit on his bond is brought. U. S. v. Kimball (1879) 101 U. S. 726, 25 L. Ed. 835.

The sureties on an official bond of an internal revenue collector are liable for taxes collected during the term covered by their bond upon assessment rolls recovered during a prior term, or for moneys or stamps on hand at the expiration of a former term, and remaining in possession of the collector at the beginning of the new term, when retained by him as his own successor, as when received from any other predecessor. U. S. v. Stone (1882) 1 Sup. Ct. 287, 106 U. S. 525, 27 L. Ed. 163.

An internal revenue collector is not responsible for more than ordinary care and diligence in the collection of bonds for duties placed in the hands of an attorney by his predecessor for suit by direction of the commissioner of revenue. U. S. v. Snyder (C. C. 1825) Fed. Cas. No. 16,351.

In such case the collector is not bound by a treasury statement charging him with the amount of such bonds. Id.

An officer has the right at any time to resign his office without the consent of the president, and his surety will not be bound beyond the time if the resignation is received at the proper department, and is to take effect. U. S. v. Wright (C. C. 1839) Fed. Cas. No. 16,775.

The ordinary rule applies that the sureties are liable for the faithful performance of all duties imposed by law, whether enacted previous or subsequent to the bond. U. S. v. McCartney (C. C. 1880) 1 Fed. 104, 106.

The bond of a collector of internal revenue is a bond for the indemnity of the government alone, and not for the protection of private persons who may be injured by the torts of the principal or his deputies. Clark v. U. S. (1878) 60 Ga. 156.

5. Embezzlement by deputy.—A collector of internal revenue is liable on his bond for any failure to account for public money or property in his hands, from whatever cause, unless it be the act of God or the public enemy; and it is no defense to an action on his bond, expressly conditioned, in accordance with the statute, for the faithful performance of the duties of the office by himself and his deputies, that the money sued for was embezzled by a deputy without the collector's fault or negligence. Pond v. U. S. (1901) 111 Fed. 989, 49 C. C. A. 582.

6. Moneys received for taxes.—Where a tax long past due to the United States has been paid to the collector of internal revenue, he and his sureties are liable therefor, though the amount so paid had not been then returned to the assessor's office or passed upon by him, nor had a sworn return of the taxpayer been delivered. The tax so paid is public money, covered by the terms of the bond. King v. U. S. (1878) 99 U. S. 229, 25 L. Ed. 373.

The sureties on a collector's bond are liable for the sum received by a collector under Act June 30, 1864, § 122, though there was no assessment or return made of the tax. U. S. v. Chase (C. C. 1875) Fed. Cas. No. 14,-788.

Bond of internal revenue collector not binding as to collections previously made. Armstrong v. U. S. (C. C. 1811) Fed. Cas. No. 549.

Act June 30, 1864, § 173, repealing most of the provisions of Act July 1, 1862, relating to internal revenue, but providing that "the officers heretofore appointed shall continue to hold the said offices without reappointment," does not affect the liabilities of the sureties on their bonds for their failure to account for money collected. Pickering v. Day (Del. 1867) 3 Houst. 474, 95 Am. Dec. 291.

7. Charges for unaccounted stamps.—A collector of internal revenue gave bond September 16, 1864, with sureties, to the United States, conditioned for the payment of the money received by him for stamps sold, and the return of those not sold, which had been or might be delivered to him under Act March 3, 1863, c. 74, which had been repealed by Act June 30, 1864. Held, that the liability of the sureties was limited to the stamps delivered to him before the last-mentioned date. U. S. v. Hough (1880) 103 U. S. 71, 26 L. Ed. 305.

Sureties on a collector's bond are liable for charges for unaccounted stamps, although the collector was not liable to account for such stamps at the date of the bond. Chadwick v. U. S. (C. C. 1880) 3 Fed. 750, 755.

8. Payment of storekeepers.—The official bond of a collector of internal revenue is applicable to the payment of certain storekeepers, under an act of congress providing for the appointment and payment of such storekeepers, enacted subsequently to the execution of such bond. U. S. v. McCartney (C. C. 1880) 1 Fed. 104, 106.

9. Moneys paid to informers.—Where a forfeiture is decreed in a suit for breach of internal revenue law, and defendant on a compromise pays a sum of money into court, and informers are entitled to a portion of the money, and the court makes a final order of distribution, and issues checks to the collector of internal revenue of the district, and no appeal is taken, and he pays the informers the amounts to which they are entitled, he cannot be held liable

on his official bond for the amounts so paid, whether the informers are legally entitled thereto or not. U. S. v. Krum (C. C. 1882) 10 Fed. 823.

10. Refunding overpayment by sureties.—Where the sureties more than make good to the government the amount of the officer's defalcation, the overpayment is in the nature of a mutual mistake of fact, of which he cannot take advantage. If the government refund it to the sureties, no action will lie by the principal to recover it as a balance due to him. Pope v. U. S. (1878) 14 Ct. Cl. 446.

11. Lien in favor of government.—There is no lien in favor of the United States on the property of a collector of internal revenue or of his sureties from the execution of his official bond, or from the date of a default thereon. U. S. v. Ingate (C. C. 1891) 48 Fed. 251.

12. Judgment against collector as binding sureties or constituting lien.—A judgment rendered in favor of the United States against a delinquent collector of the internal revenue in a proceeding against him alone does not bind the sureties on his bond, nor constitute a lien on their property. U. S. v. Ingate (C. C. 1891) 48 Fed. 251.

13. Fraudulent conveyance by surety.—The United States is merely a simple contract creditor of the sureties on the official bond of a collector of internal revenue, after he has defaulted, and cannot sue to set aside a fraudulent conveyance by a surety before judgment has been rendered against him. U. S. v. Ingate (C. C. 1891) 48 Fed. 251.

14. Discharge of sureties.—The sureties on a collector's bond are discharged where, without their knowledge, the proper officers of the treasury took bonds and mortgages on time to secure the payment of a balance due from him. U. S. v. Hillegas (C. C. 1811) Fed. Cas. No. 15,366.

15. Action on bond—Defense in general.—See, also, note under § 5942, post.

Though the certificate of the commissioner of internal revenue that the collector used due diligence to collect is a condition precedent to the allowance of a credit on the books of the treasury by the first comptroller before a suit on his bond is brought, it is not a condition precedent to a defense on the trial. U. S. v. Kimball (1879) 101 U. S. 726, 25 L. Ed. 835.

It is not a ground of defense by the sureties on the bond of a collector of internal revenue to an action for the recovery of the amount of defalcations of the collector that officers of the treasury department failed to notify the sureties of such defalcations until long after they acquired knowledge of them, and after the collector had become insolvent, both because Act Aug. 8, 1888 (section 3291, ante), while making it the duty of the department to give such notice at once, expressly provides that a failure to do so shall not discharge the sureties, and for the further reason that under the general principles of law the government is not responsible to others for the laches or wrongful acts of its officers. Pond v. U. S. (1901) 111 Fed. 989, 49 C. C. A. 582.

In an action on a collector's bond on account of his breach of duty in allowing spirits to be removed from a warehouse without the furnishing of proper bonds, it is no defense that he did not act corruptly, but only negligently. U. S. v. Thorn (D. C. 1869) Fed. Cas. No. 16,493.

16. —— Set-off.—In a suit on the official bond of a collector of internal revenue to recover a balance due to the United States on a settlement of his accounts, items of set-off for his extra services and expenses are properly excluded. Hall v. U. S. (1875) 91 U. S. 559, 23 L. Ed. 446.

A collector of internal revenue appointed under Act July 1, 1862 (12 Stat. 432), is entitled, in a suit against him on his bond, brought to recover public money collected by him and not paid over, to have allowed, as a set-off, money paid by him for publishing advertisements required to be made by section 19 of that act, if the amount is found to be reasonable and proper, although the item was not formally allowed or certified by the accounting officers in the treasury department, or otherwise. U. S. v. Flanders (1884) 5 Sup. Ct. 67, 112 U. S. 88, 28 L. Ed. 630.

17. —— Pleading.—In an action of debt on the bond of a collector of internal revenue, a replication to a plea of performance of the condition of the bond, charging defendant with moneys not collected, is bad. U. S. v. Arthur (1809) 9 U. S. (5 Cranch) 257, 3 L. Ed. 94.

A declaration on a tax collector's bond held demurrable for not alleging of what district he was collector. U. S. v. Jackson (1881) 104 U. S. 41, 26 L. Ed. 651.

Where the breach of an official bond alleged is the failure to pay over or account for a certain sum, a dereliction of duty in not collecting such sum cannot be shown. U. S. v. Glenn (C. C. 1872) Fed. Cas. No. 15,217.

A declaration on an official bond of a tax collector held insufficient where the bond did not identify the officer's district, the date of his commission, the sort of taxes he was to collect, or the date of the statute under which it was given. U. S. v. Jackson (C. C. 1878) Fed. Cas. No. 15,456.

18. —— Evidence.—In a suit on the bond of an internal revenue collector for failure to turn over money collect-

ed, a duly-certified treasury transcript of his accounts was admissible in evidence, though it contained no dates as to when the money was collected; it being certified to cover the period of his bond. U. S. v. Hunt (1881) 105 U. S. 183, 26 L. Ed. 1037.

In an action against sureties on an official bond of an internal revenue collector, it is competent for defendants to show, by certified transcripts of the books of the treasury department, that the balance charged against their principal upon the adjustment of his accounts, during the period when they were liable for his defaults, had in fact arisen by virtue of a default during his prior term. U. S. v. Stone (1882) 1 Sup. Ct. 287, 106 U. S. 525, 27 L. Ed. 163.

A judgment against a collector of internal revenue and the sureties on his bond, conditioned that he would faithfully execute and discharge all the duties of his office according to law, account for and pay over all moneys which might come into his hands, and be responsible for the acts of his deputies, is justified by evidence showing that he received certain stamps from the government, for which he failed to account; and the measure of recovery is the face value of such stamps, as charged to him in his account. Such an action is not one for the conversion of property, but one for a breach of official duty, and is governed by the terms and conditions of the bond and the statutes which prescribe such duty; and the government is not required to prove that the stamps unaccounted for were sold, and the money received therefor, even though such fact is unnecessarily alleged in the complaint. Pond v. U. S. (1901) 111 Fed. 989, 49 C. C. A. 582.

A statement of the account of a public officer from the books of the Treasury Department, properly certified, and showing a balance due the United States, is sufficient prima facie evidence of a breach of his bond in failing to account for public money or property. Laffan v. U. S. (1903) 122 Fed. 333, 58 C. C. A. 495.

The contents of a letter from a collector of internal revenue to the commissioner in an action on the collector's bond can only be proved by a copy of the same duly certified from the treasury department. Chadwick v. U. S. (C. C. 1880) 3 Fed. 750.

A certified transcript of the account of a collector of internal revenue is admissible in evidence in a separate action against his sureties. Id.

The copy of a collector's bond is sufficiently authenticated by the certificate of the secretary of the treasury, in a suit upon the bond, where the original was in the custody of that department, and was wholly disconnected from the transcript certified by the register of the treasury. Id.

Evidence is admissible, in a suit upon the bond of an internal revenue collector, to show that the collector received money to await the result of an attempt to compromise, and that the same was retained by him. Id.

19. —— **Questions for jury.**—Whether an additional bond executed at the request of the commissioner was a substitute or a strengthening bond should be left to the jury. Chadwick v. U. S. (C. C. 1880) 3 Fed. 750, 759.

20. —— **Judgment and execution.**—To support a judgment on a collector's bond at the return term, it must appear by the record that the writ was executed fourteen days before the return day according to Act July 11, 1798, § 14. Dobynes & Morton v. U. S. (1806) 7 U. S. (3 Cranch) 241, 2 L. Ed. 427.

On a joint judgment obtained against all the parties to the bond of a revenue collector, the personal estate of all liable to the execution must be exhausted before the land of any one of them can be reached. 3 Stat. 83. U. S. v. Graves (C. C. 1828) Fed. Cas. No. 15,250.

§ 5848. (R. S. § 3144, as amended, Act March 1, 1879, c. 125, § 2.) Collectors as disbursing agents.

It shall be the duty of collectors of internal revenue to act as disbursing agents of the Treasury for the payment of all expenses of collection of taxes and other expenditures for the internal-revenue service within their respective districts, under regulations and instructions from the Secretary of the Treasury, on giving good and sufficient bond, with such sureties, in such form, and in such penal sum, as shall be prescribed by the First Comptroller of the Treasury, and approved by the Secretary of the Treasury, for the faithful performance of their duties as such disbursing agents; but no additional compensation shall be paid to collectors for such services.

Act March 3, 1865, c. 78, § 4, 13 Stat. 483. Act March 1, 1879, c. 125, § 2, 20 Stat. 328.

This section, as enacted in the Revised Statutes, was amended by changing the words at the beginning of the section as originally enacted, "It shall be the duty of such collectors of internal revenue as may be designated by the Secretary of the Treasury to act as disbursing agents," to read, "It shall be the

duty of collectors of internal revenue to act as disbursing agents," as set forth here, by Act March 1, 1879, c. 125, § 2, cited above.

General provisions for the examination and renewal of official bonds were made by Act March 2, 1895, c. 177, § 5, ante, §§ 3288–3290.

Notes of Decisions

Bond as disbursing agent.—A collector of internal revenue directed by the secretary of the treasury to act as disbursing agent must give a bond as such disbursing agent separate from and additional to his bond as collector, and the accounts of collectors and of collectors as disbursing agents are kept in separate books at the treasury. Sauner v. U. S. (1881) 17 Ct. Cl. 39.

Cited without definite application, U. S. v. McCartney (C. C. 1880) 1 Fed. 104.

(R. S. § 3145. Superseded.)

This section provided for the compensation of collectors by salaries and commissions, and for the payment of charges for advertising, stationery, blank books, and postage, and for further allowances. It was superseded by the provisions for the same purposes made by sections 12, 13, Act Feb. 8, 1875, c. 36, as amended by Act March 1, 1879, c. 125, § 2, set forth post, §§ 5849, 5850. Provisions for equalizing and reducing the aggregate of allowances under this section, made by Act March 3, 1877, c. 102, § 1, 19 Stat. 303, were also superseded by said amendment.

Cited without definite application, See Hall v. U. S. (1875) 91 U. S. 559, 564, 23 L. Ed. 446; Folger v. U. S. (1880) 103 U. S. 30, 39, 26 L. Ed. 364; U. S. v. Dominici (1897) 78 Fed. 334, 336, 24 C. C. A. 116; U. S. v. Hall (C. C. 1873) Fed. Cas. No. 15,284; Patton v. U. S. (1871) 7 Ct. Cl. 362; Landram v. U. S. (1886) 21 Ct. Cl. 128.

§ 5849. (Act Feb. 8, 1875, c. 36, § 12, as amended, Act March 1, 1879, c. 125, § 2.) Deputy collectors; compensation; allowances for collectors' salaries and office expenses.

Each collector of internal revenue shall be authorized to appoint, by an instrument in writing under his hand, as many deputies as he may think proper, to be compensated for their services by such allowances as shall be made by the Secretary of the Treasury, upon the recommendation of the Commissioner of Internal Revenue. Allowances shall also be made in like manner for salary and office expenses of collectors, all of which shall be in lieu of the salary and commissions heretofore provided by law: Provided, however, That the salaries of collectors shall be fixed at two thousand dollars each per annum where the annual collections amount to twenty-five thousand dollars or less, and shall, by the Secretary, on the recommendation of the Commissioner, be graduated up to the maximum limit of four thousand five hundred dollars; which latter sum shall be allowed in all cases where the collections amount to one million of dollars or upward; and the collector shall have power to revoke the appointment of any such deputy, giving such notice thereof as the Commissioner of Internal Revenue may prescribe, and to require and accept bonds or other securities from any deputy; and actions upon such bonds may be brought in any appropriate district or circuit court of the United States; which courts are hereby given jurisdiction of such actions concurrently with the courts of the several States. Each such deputy shall have the like authority in every respect to collect the taxes levied or assessed within the portion of the district assigned to him which is by law vested in the collector himself; but each collector shall, in every respect, be responsible, both to the United States and to individuals, as the case may be, for all moneys collected, and for every act done or neglected to be done, by any of his deputies while acting as such. (18 Stat. 309. 20 Stat. 329.)

This section was part of an act to amend the laws relating to internal revenue, cited above.

The first part of this section, as originally enacted, provided that "each collector of internal revenue shall be authorized to appoint, by an instrument in

writing under his hand, as many deputies as he may think proper, to be by him compensated for their services," etc. The words quoted were changed to read as set forth here by amendment by Act March 1, 1879, c. 125, § 2, last cited above.

This section and section 13 of the same act, post, § 5850, superseded provisions of R. S. §§ 3145, 3147, 3148. See notes to those sections, ante.

Limitations of the number of deputy collectors to be appointed were made by a provision of Act March 3, 1885, c. 343, § 1, post, § 5878.

The detail of deputies in one district for special duty in other districts was authorized by a provision of Act April 17, 1900, c. 192, § 1, set forth post, § 5876.

The appointment of a deputy-collector, to be stationed at San Juan, Porto Rico, was provided for, and his duties in connection with the payment of all internal-revenue taxes on articles of Porto Rican manufacture coming into the United States by affixing stamps thereto, were prescribed, by Act June 29, 1906, c. 3613, set forth ante, §§ 3750, 3751.

Appropriations for salaries and expenses of collectors, deputy collectors, surveyors, and clerks and other employés in internal-revenue offices, are made in the legislative, executive, and judicial appropriation acts for each year. The provision for the fiscal year 1917, was by Act May 10, 1916, c. 117, § 1, 39 Stat.

All laws or parts of laws inconsistent with rates of salaries or compensation appropriated by the legislative, executive, and judicial appropriation acts are repealed, and the rates of salaries or compensation of officers or employés appropriated for in said acts are to constitute the rate of salary or compensation of such officers or employés, respectively, until otherwise fixed by an annual rate of appropriation or other law, by Act July 16, 1914, c. 141, § 6, post, § 3228a.

The officers and employés of the United States whose salaries are appropriated for in the legislative, executive, and judicial appropriation act for the fiscal year 1916, Act March 4, 1915, c. 141, 38 Stat. 1049, are established and continued from year to year to the extent that they are appropriated for by Congress, by § 6 of said act, post, § 3228b.

Notes of Decisions

1. Repeal of Rev. St. § 3314.
2. Application of proviso in § 5850.
3. Deputies as officers or employés.
4. Appointment and removal of deputies.
5. Vacancies in offices of deputies.
6. Bonds of deputies—Right to require.
7. —— Construction in general.
8. —— Liability of sureties.
9. —— Discharge from liability.
10. —— Actions on.
11. Compensation of collectors.
12. Compensation of deputies and allowances therefor.
13. Authority and duties of deputies.

1. Repeal of Rev. St. § 3314.—R. S. § 3314, post, § 6096, allowing commissions to collectors of internal revenue on taxes collected by the sale of tax-paid spirit stamps, was not repealed by Act March 1, 1879, § 2; the intention of congress that it should remain in force being unmistakably expressed by the re-enactment verbatim of section 3314 in section 5 of said act of 1879. U. S. v. Landram (1886) 6 S. Ct. 954, 118 U. S. 81, 30 L. Ed. 58.

2. Application of proviso in § 5850.—The proviso attached to Act Feb. 8, 1875, c. 36, § 13, by Act March 1, 1879 (20 Stat. 329), cannot be applied to anything contained in that section. It must be regarded as independent legislation, applicable to the provisions of section 12. Ryan v. U. S. (1881) 17 Ct. Cl. 47.

3. Deputies as officers or employés.—Deputy collectors of internal revenue cannot be considered employés of the collector. (1907) 26 Op. Atty. Gen. 363.

Deputy collectors of internal revenue would seem to be officers of the United States, at least in the sense that they are subject to classification under the civil service law; but if not officers, they are employés of the United States, and, considered as either, the President has the right to include them in the competitive classified service. Id.

4. Appointment and removal of deputies.—Equity has no jurisdiction to restrain the collector of internal revenue from removing his deputies in violation of the rules promulgated by the commissioner of internal revenue, as provided by R. S. § 3148. Page v. Moffett (C. C. 1898) 85 Fed. 38.

Under this section the rules of the commissioner have no such authority as law that a deputy collector can invoke the equitable interference of the courts to restrain his removal in violation of them. Id.

The power of removal cannot be reviewed by an appeal to the courts. Id.

Section 5854, post, seems to require that a deputy collector of internal revenue should be appointed by the collector in commission, by an instrument in writing under his hand. (1907) 26 Op. Atty. Gen. 363.

A newly appointed collector of internal revenue has a legal right, upon taking office, to drop from the service any deputy collector in commission and to appoint deputies of his own selection, in accordance with the rules of the civil service commission. Id.

United States collectors of revenues

may appoint a particular deputy for a particular county, though his principal district embraces other counties as well. Schuster v. Weissman (1876) 63 Mo. 552.

5. **Vacancies in offices of deputies.**—A vacancy occurring in the office of collector of internal revenue and the appointment of a successor would seem to have the effect, under section 5854, post, of vacating the offices of the deputy collectors. (1907) 26 Op. Atty. Gen. 363.

It is the duty of the newly appointed collector to fill the offices thus vacated, either by recommissioning the deputies in service by an instrument in writing given under his hand, or by selections either from the eligible register or by transfer from other positions in the classified service, the precise method to be adopted being within the administrative discretion of the collector. Id.

6. **Bonds of deputies—Right to require.**—There is nothing in the civil service law which in any way interferes with the right of the collector, under section 12, Act Feb. 8, 1875 (18 Stat. 307), to require bonds of his deputies payable to himself, for his protection against their neglect, default, or wrongdoing. (1907) 26 Op. Atty. Gen. 363.

7. —— **Construction in general.**—The undertaking of sureties on the bonds of a deputy collector of internal revenue must receive a strict interpretation, both as to time and terms. Halsey v. Paulison (1874) 37 N. J. Law (8 Vroom) 205.

8. —— **Liability of sureties.**—The payment of money to a deputy collector as a tax on brandy without receiving stamps therefor is not a payment of the tax; and, where the collector converts the money to his own use, the sureties on his bond are not liable therefor. U. S. v. Hermance (C. C. 1878) Fed. Cas. No. 15,355; Id. (D. C. 1877) Fed. Cas. No. 15,356.

Act July 1, 1862, § 5, authorizing a collector to appoint deputies and to require and accept bonds from such deputies, does not render such deputies or their sureties liable to the public or to any individual other than the collector. Pickering v. Day (Del. 1867) 3 Houst. 474, 95 Am. Dec. 291.

Where by the terms of his bond, a deputy collector was obliged to account for all collections in the collector's district, including Jackson county, and that county was, at the date of the instrument, known as "division 1," and it was afterwards divided into two districts for assessment, such partition was held not to impair the liability of the sureties of the deputy for his breaches of the bond. Schuster v. Weissman (1876) 63 Mo. 552.

The sureties of a deputy United States collector are responsible for taxes assessed in the county for which he is appointed, though collected from persons residing outside of the county. Id.

9. —— **Discharge from liability.**—Mere neglect of an internal revenue collector to comply with the laws and regulations requiring him to frequently examine and verify the accounts of his deputy, and see that he faithfully discharges his duty, will not release the sureties on the deputy's official bond from liability for defalcations, which a strict performance of these duties might have prevented. Williams v. Lyman (1898) 88 Fed. 237, 31 C. C. A. 511.

Mere negligence or failure of the obligee in an official bond, in the discharge of some duty to a third party or in enforcing compliance with its condition, will not release the sureties. Id.

The mere fact that a collector of internal revenue failed to discharge his deputy immediately on discovering that he was a defaulter does not discharge the deputy's surety from liability to the collector. Pickering v. Day (Del. 1867) 3 Houst. 474, 95 Am. Dec. 291.

A collector of internal revenue, consenting to the use of public funds by his deputy in his private business of speculating in grain, is thereby guilty of such fraud on his deputy's sureties as to discharge them from liability to the collector, occasioned by the deputy's failure to account for such funds. Id.

10. —— **Actions on.**—In an action by a district collector of internal revenue against the deputy and the sureties on his official bond for moneys received by such deputy ex officio, it is not a good defense that the money received by him was for taxes not levied, and not due at the time paid to him, coming into his hands by virtue of his office. He is bound to pay over the same to the collector. Fuller v. Calkins (1867) 22 Iowa, 301.

A district collector of internal revenue may recover against a deputy and the sureties in his official bond, in an action thereon, for moneys received by such deputy ex officio, without first showing that he has paid over to the government the amount for which he brings suit. Id.

In an action brought by a collector of internal revenue upon a bond given by his deputy, as such, the appointment of such deputy should be averred; the recital of such appointment, in a copy of the bond set out in the pleadings, is not a sufficient allegation of such appointment. Hall v. Williams (1868) 13 Minn. 260 (Gil. 242).

11. **Compensation of collectors.**—The secretary of the treasury may fix the amount of an extra allowance of a collector of internal revenue in advance of the services rendered. U. S.

v. Morgan (1879) 131 U. S. (Append.) clxiv, 25 L. Ed. 519.

An adjusted account of an internal revenue collector at the treasury, showing the amount finally allowed as extra compensation, is conclusive. Id.

A person appointed and commissioned as a collector of internal revenue, under the act of July 1, 1862 (12 Stat. 432), is entitled to the compensation, provided for by section 34 of that act, of a percentage commission to be computed on the moneys accounted for and paid over by him, from the time he enters on the duties of his office and his services are accepted, and not merely from the time he takes the oath of office and files his official bond. U. S. v. Flanders (1884) 5 Sup. Ct. 67, 112 U. S. 88, 28 L. Ed. 630.

12. Compensation of deputies and allowances therefor.—Where the secretary of the treasury made such allowance as he saw fit to a collector for the payment of deputies, and the collector appointed them and paid them, and the treasury had no accounts with them, no privity existed between them and the government. Herndon v. U. S. (1879) 15 Ct. Cl. 446.

Prior to Act March 1, 1879, § 2, 20 Stat. 329, deputy collectors of internal revenue were employés of the collector by whom they were appointed and compensated, and the government was not liable to them for their services. Id.

The secretary of the treasury may prescribe the compensation to be allowed to deputy collectors of internal revenue either by regulations or instructions. Landram v. U. S. (1880) 16 Ct. Cl. 74.

An allowance for the salary of a deputy collector, made by the secretary of the treasury, unimpeached for fraud or mistake, is binding upon the government and upon the courts. Ryan v. U. S. (1881) 17 Ct. Cl. 47.

The power of the secretary to make such allowances is unlimited as to time, unless it be limited by the proviso attached to Act Feb. 8, 1875, c. 36, § 13, by Act March 1, 1879 (20 Stat. 329), which prohibits certain allowances "if more than one year has elapsed since the close of the fiscal year in which the services were rendered." Id.

13. Authority and duties of deputies.—See, also, notes under § 5889, post.

A deputy is authorized to act as such when his commission has been signed and placed in the mail, and he is notified thereof by telegram. U. S. v. Sykes (D. C. 1893) 58 Fed. 1000.

The revenue act provides that deputy collectors should have the same authority in every respect to collect the duties and taxes levied and assessed as the collector himself, and that in case of sickness or temporary disability of a collector the duties may devolve on one of the deputies. Held that, during the sickness or temporary disability of the collector, the deputy collector could exercise his power of stamping unstamped instruments. Deskin v. Graham (1866) 19 Iowa, 553.

The exercise of such power affords a presumption of such disability, in the absence of affirmative evidence to the contrary. Id.

A deputy collector has no power, except by special authority of the collector, to remit penalties and stamp instruments left unstamped by mistake. Brown v. Crandal (1867) 23 Iowa, 112; McAfferty v. Hale (1868) 24 Iowa, 355.

The authority of a deputy to stamp unstamped instruments will not be presumed from the mere stamping of the instrument, when the certificate of the deputy thereto is not authenticated by the collector's seal. City of Muscatine v. Sterneman (1871) 30 Iowa, 526, 6 Am. Rep. 685.

A deputy has no power to stamp instruments left unstamped by inadvertence or mistake, except when, in case of sickness or inability of the collector, he acts by special authority in his place. Id.

A deputy collector of the duty on carriages made a distress under Act Dec. 15, 1814, § 4, and, contrary to law, sold it at auction for less than one-half of its value, within two hours after the seizure and without giving public notice of the time of sale. Held that, in making such illegal sale, he was a trespasser ab initio and liable for damages. Blake v. Johnson (1817) 1 N. H. 91.

A deputy collector of the direct tax, appointed under Act July 22, 1813, providing for the collection of internal taxes, was not authorized to collect the taxes imposed by the acts of subsequent years without a new appointment and qualification. Preble v. Young (1827) 4 Me. (4 Greenl.) 431.

§ 5850. (Act Feb. 8, 1875, c. 36, § 13, as amended, Act March 1, 1879, c. 125, § 2.) Allowances for collectors' expenses.

There shall be further paid, after the account thereof has been rendered to and approved by the proper officers of the Treasury, to each collector, his necessary and reasonable charges for advertising, stationery, and blank books used in the performance of his official duties, and for postage actually paid on letters and documents received or sent and exclusively relating to official business, but no such account shall be approved or allowed unless it states

the date and the particular items of every such expenditure, and shall be verified by the oath of the collector; Provided, That the Secretary of the Treasury, on the recommendation of the Commissioner of Internal Revenue, be authorized to make such further allowances, from time to time, as may be reasonable, in cases in which, from the territorial extent of the district, or from the amount of internal duties collected, it may seem just to make such allowances; but no such allowance shall be made if more than one year has elapsed since the close of the fiscal year in which the services were rendered. But the total net compensation of a collector shall not in any case exceed four thousand five hundred dollars a year; and no collector shall be entitled to any portion of the salary pertaining to the office unless such collector shall have been confirmed by the Senate, except in cases of commissions to fill vacancies occurring during the recess of the Senate. (18 Stat. 309. 20 Stat. 330.)

This section was part of the act to amend the laws relating to internal revenue, cited above.

This section, as originally enacted, was amended, by substituting for the words "except within one year after such services are rendered," the words "if more than one year has elapsed since the close of the fiscal year in which the services were rendered," and by substituting for the words "which may have happened by death or resignation" the word "occurring," making the section read as set forth here, by Act March 1, 1879, c. 125, § 2, last cited above.

This section superseded part of the provisions of R. S. § 3145. See note to that section, ante, following § 5848.

Notes of Decisions

Power and discretion of secretary of the treasury as to allowances.—Additional allowances could not be made by the accounting officers of the treasury, unless previously approved by the secretary, under the second proviso of section 25, Act June 30, 1864 (R. S. § 3145). Hall v. U. S. (1875) 91 U. S. 559, 564, 23 L. Ed. 446.

The discretion of the secretary of the treasury in making additional allowances to collectors (Act June 30, 1864, § 25) cannot be judicially revised. U. S. v. Hall (C. C. 1873) Fed. Cas. No. 15,284.

Under Internal Revenue Act June 30, 1864, c. 173, § 25, 13 Stat. 231 (R. S. § 3145), the Secretary of the Treasury might make further allowances of compensation to collectors, and it rested wholly in his discretion to do so; but when he had exercised that discretion, and the increased salary had been paid to the collector, he had no legal right to exact a return of any portion of it as a condition to allowing to the collector a reimbursement of the expenses of his office. In such a case the order for reimbursement stood, and the collector might maintain his action to recover the amount of salary withheld by the treasury on the final settlement of his accounts. Patton v. U. S. (1870) 7 Ct. Cl. 362.

The power of the secretary to make such allowances is unlimited as to time, unless it be limited by the proviso attached to Act Feb. 8, 1875, c. 36, § 13, by Act March 1, 1879 (20 Stat. 329), which prohibits certain allowances "if more than one year has elapsed since the close of the fiscal year in which the services were rendered." Ryan v. U. S. (1881) 17 Ct. Cl. 47.

The proviso attached to Act Feb. 8, 1875, c. 36, § 13, by Act March 1, 1879 (20 Stat. 329), cannot be applied to anything contained in that section. It must be regarded as independent legislation, applicable to the provisions of section 12. Id.

§ 5851. (R. S. § 3146.) Accounts of collectors adjusted according to fiscal year.

In adjusting the accounts of collectors, accruing after June thirtieth, eighteen hundred and sixty-four, and in the payment of their compensation for services, the fiscal year of the Treasury shall be observed.

Act July 13, 1866, c. 184, § 9, 14 Stat. 106.

§ 5852. (Act April 17, 1900, c. 192, § 1.) Detail of deputy collectors for special duty in other districts.

The Commissioner of Internal Revenue is authorized to detail deputy collectors of internal revenue in one district for special duty in other districts, and the deputy collectors so detailed shall be paid by the collector of internal revenue and disbursing agent for the district

for which they are appointed and for which the allowance for their salary and expenses is made, the same as if all their services had been performed and expenses incurred in that district. (31 Stat. 107.)

This was a provision annexed to an appropriation for salaries and expenses of collectors, deputy collectors, etc., in the legislative, executive, and judicial appropriation act for the fiscal year 1901, cited above.

The detail in like manner of gaugers, storekeeper-gauges, and storekeepers, appointed in one district, for duty in other districts, was authorized by further provisions of the same act, post, § 5876.

§ 5853. (R. S. § 3147.) Certificate as to reports before payment to collector.

No payment shall be made to collectors, on account of salaries or commissions, without the certificate of the Commissioner of Internal Revenue that all reports required by law or regulation have been received, or that a satisfactory explanation has been rendered to him of the cause of delay.

Act June 30, 1864, c. 173, § 26, 13 Stat. 232. Act July 13, 1866, c. 184, § 9, 14 Stat. 106.

Provisions of this section preceding those set forth here authorized apportionment of commissions due, in consequence of a new appointment, to more than one collector within the same year. It was rendered inoperative by the provision for allowances for salary, etc., in lieu of salary and commissions previously provided for made by Act Feb. 8, 1875, c. 36, § 12, as amended by Act March 1, 1879, c. 125, § 2, ante, § 5849.

(R. S. § 3148. Superseded.)

This section provided for the appointment, etc., of deputy collectors. It was superseded by other provisions for the same purpose made by Act Feb. 8, 1875, c. 36, § 12, as amended by Act March 1, 1879, c. 125, § 2, ante, § 5849.

Cited without definite application, See U. S. v. Farden (1878) 99 U. S. 10, 16, 25 L. Ed. 267; Chadwick v. U. S. (C. C. 1880) 3 Fed. 750; U. S. v. Patrick (C. C. 1893) 54 Fed. 338, 344.

§ 5854. (R. S. § 3149, as amended, Act March 1, 1879, c. 125, § 2.) Disability or vacancy in office of collector.

In case of the sickness or absence of a collector, or in case of his temporary disability to discharge his duties, they shall devolve upon his senior deputy, unless he shall have devolved them upon another of his deputies; and for the official acts or defaults of such deputies the collector and his sureties shall be held responsible to the United States.

In case of a vacancy occurring in the office of collector, the deputies of such collector shall continue to act until his successor is appointed; and until a successor is appointed, the deputy of such collector senior in service shall discharge all the duties of collector, and also the duties of disbursing agent; and of two or more deputies appointed on the same day, the one residing nearest the residence of the collector when the vacancy occurred shall discharge the said duties until another collector is appointed. When it appears to the Secretary of the Treasury that the interest of the government so requires, he may, by his order, direct the said duties to be performed by such other one of the said deputies as he may designate. For the official acts and defaults of the deputy upon whom said duties are devolved, remedy shall be had on the official bond of the collector, as in other cases; and for the official acts and defaults of such deputy as acting disbursing agent, remedy shall be had on the official bond of the collector as disbursing agent. And any bond or security taken from a deputy by a collector, pursuant to section twelve of "An act to amend existing customs and internal-revenue laws, and for other purposes," approved February eighth, eighteen hundred and seventy-five, shall be available to his legal representatives and sureties to indemnify them for loss or damage accruing from any act or omis-

sion of duty by the deputy so continuing or succeeding to the duties of such collector.

Act June 30, 1864, c. 173, §§ 39, 40, 13 Stat. 238. Act March 3, 1865, c. 78, § 1, 13 Stat. 471. Act March 2, 1867, c. 169, § 9, 14 Stat. 473. Act March 1, 1879, c. 125, § 2, 20 Stat. 328.

This section, as enacted in the Revised Statutes, was amended principally by changing the provision at the beginning of the section as originally enacted, that, "In case of the sickness of a collector or of his temporary disability to discharge his duties they may be devolved by him upon one of his deputies," to read, "In case of the sickness or absence of a collector, or in case of his temporary disability to discharge his duties, they shall devolve upon his senior deputy, unless he shall have devolved them upon another of his deputies"; by inserting, after the words "shall discharge all the duties of collector," the words, "and also the duties of disbursing agent"; by omitting the words, "Provided that," before the words, "When it appears to the Secretary of the Treasury"; by changing the provision of the original section, "For the official acts and defaults of such senior deputy, remedy shall be had on the official bond of the collector, as in other cases," to read, "For the official acts and defaults of the deputy upon whom said duties are devolved remedy shall be had on the official bond of the collector, as in other cases; and for the official acts and defaults of such deputy as acting disbursing agent, remedy shall be had on the official bond of the collector as disbursing agent"; and by changing the words in the last provision, "pursuant to the preceding section," to "pursuant to section twelve of 'An act to amend existing customs and internal-revenue laws, and for other purposes,' approved February eighth, eighteen hundred and seventy-five," as set forth here, by Act March 1, 1879, c. 125, § 2, cited above.

Section 12 of Act Feb. 8, 1875, mentioned in this section, is set forth ante, § 5849.

Notes of Decisions

Suspension of collector as creating vacancy.—Where a supervisor of internal revenue suspends a collector for fraud and the Secretary of the Treasury recognizes the suspension and designates a deputy to act as collector "vice F. W., the collector, suspended," there is a vacancy in the office and the deputy will be entitled to the compensation of a collector. Farden v. U. S. (1877) 13 Ct. Cl. 347.

Effect of vacancy in office and appointment of successor.—A vacancy occurring in the office of collector of internal revenue and the appointment of a successor would seem to have the effect, under this section, of vacating the offices of the deputy collectors. (1907) 26 Op. Atty. Gen. 363.

Appointment of deputies.—It is the duty of the newly appointed collector to fill the offices thus vacated, either by recommissioning the deputies in service by an instrument in writing given under his hand, or by selections either from the eligible register or by transfer from other positions in the classified service, the precise method to be adopted being within the administrative discretion of the collector. (1907) 26 Op. Atty. Gen. 363.

Deputies should be appointed by collector by an instrument in writing, and this section seems to require that a deputy collector of internal revenue should be appointed by the collector in commission, by an instrumennt in writing under his hand. Id.

Sickness or disability of collector.—The revenue act provides that deputy collectors should have the same authority in every respect to collect the duties and taxes levied and assessed as the collector himself, and that in case of sickness or temporary disability of a collector the duties may devolve on one of the deputies. Held that, during the sickness or temporary disability of the collector, the deputy collector could exercise his power of stamping unstamped instruments. Deskin v. Graham (1866) 19 Iowa, 553.

The exercise of such power affords a presumption of such disability, in the absence of affirmative evidence to the contrary. Id.

The deputy collector of internal revenue has no power to stamp instruments left unstamped by inadvertence or mistake, except when, in case of sickness or inability of the collector, he acts by special authority in his place. City of Muscatine v. Sterneman (1871) 30 Iowa, 526, 6 Am. Dec. 685.

Power of collector after removal.—A collector of internal revenue, after removal from office, has no power to collect the duties outstanding at the time of his removal, and which had accrued while he remained in office, but the power and duty devolve on his successor. Streshley v. U. S. (1807) 8 U. S. (4 Cranch) 169, 2 L. Ed. 584.

Liability of acting collector for public money.—An acting collector of internal revenue is liable for whatever public money he personally took and appropriated to his own use. Hiland v. U. S. (1885) 20 Ct. Cl. 410.

Cited without definite application, U. S. v. Farden (1878) 99 U. S. 10. 18, 25 L. Ed. 267; Pond v. U. S. (1901) 111 Fed. 989, 49 C. C. A. 582.

§ 5855. (R. S. § 3150.) Deputy collector, when entitled to collector's salary.

Any deputy collector who has performed or may perform, under authority of law, the duties of any collector in consequence of a vacancy in the office of said collector, shall be entitled to receive the salary and commissions allowed by law to such collector, or the allowance in lieu of said salary and commissions allowed by the Secretary of the Treasury to such collector, and the Secretary of the Treasury may make to such deputy collector such allowance in lieu of salary and commissions as he might lawfully make to such collector. And such deputy shall not be debarred from receiving such salary and commissions, or allowances in lieu thereof, by reason of the holding of another Federal office by said collector during the time for which such deputy acts as collector. But all payments to such deputy collector shall be upon duly audited vouchers.

Act March 1, 1869, c. 57, § 1, 15 Stat. 282. Act July 1, 1870, c. 187, 16 Stat. 179.

Subsequent provisions relating to allowances for compensation of deputy collectors and for collectors' salaries and expenses were made by Act Feb. 8, 1875, c. 36, §§ 12, 13, as amended by Act March 1, 1879, c. 125, § 2, ante, §§ 5849, 5850.

Notes of Decisions

Repeal of former statute.—Act March 1, 1869 (15 Stat. 282), precluding a deputy collector of internal revenue in any case from receiving the compensation to which the collector is entitled for services rendered during a period for which the collector is entitled to compensation, is repealed by Act July 1, 1870 (16 Stat. 179), relating to the compensation of such officers and omitting such provision. U. S. v. Farden (1878) 99 U. S. 10, 25 L. Ed. 267.

Compensation of deputy on suspension of collector.—Act March 1, 1869 (15 Stat. 282), precluding a deputy collector of internal revenue from receiving compensation as collector while the collector is entitled to compensation for his services, does not preclude a deputy collector from receiving such compensation for acting as collector while the collector is suspended for fraud. U. S. v. Farden (1878) 99 U. S. 10, 25 L. Ed. 267.

A deputy internal revenue collector, appointed to assume the duties of a collector until some person is appointed and qualified for the office, is entitled to compensation so long as he discharges the duties of the office, and until a person appointed takes possession of the office, though such person takes the oath and gives the required bond several days before taking possession of the office. Id.

The suspension of a collector by the supervisor of internal revenue, on the ground of alleged fraud, and the action of the secretary of the treasury directing a deputy to continue in office until a successor to the suspended officer was appointed and qualified, created a vacancy within the meaning of the act entitling the deputy to the compensation. Id.

Where a collector was suspended for alleged fraud and the deputy was acting, the deputy was not to be deprived of the salary by virtue of the first section of the original act providing that no such payment should be made where the collector had received or was entitled to receive the compensation, even if such provision is not repealed. The better opinion is that that provision is not in force. It was left out of the act passed the next year to define the true intent of the provision and is not contained in section 3150. Id.

Where the Secretary of the Treasury directs a deputy collector of internal revenue to perform the duties of collector, "vice F. W., suspended," the person so designated is entitled to the compensation of a collector under this section. Farden v. U. S. (1877) 13 Ct. Cl. 347.

Time for which deputy is entitled to compensation.—After a deputy collector has been designated by the Secretary of Treasury to act as collector during a vacancy, he is entitled to the compensation of a collector until the subsequently appointed collector enters upon the discharge of his duties and appoints his own deputy; i. e., his compensation as collector is not stopped by the new collector taking the oath and giving bonds. Farden v. U. S. (1877) 13 Ct. Cl. 347.

Action for compensation.—When a deputy collector of internal revenue performs under authority of law the duties of collector, a privity arises, and he may maintain an action for his compensation as collector. Herndon v. U. S. (1879) 15 Ct. Cl. 446.

(R. S. § 3151. Repealed.)

This section provided for the appointment of inspectors of tobacco and cigars. It was repealed by Act Aug. 4, 1886, c. 896, § 2, 24 Stat. 218.

The appointment of twelve inspectors to aid in the ascertainment of the amount of sugar bounty payable under the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 1, pars. 231–236, 26 Stat. 583, was authorized by Act March 3, 1891, c. 541, § 1, 26 Stat. 925. The provisions authorizing the payment of sugar bounties were repealed by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 1, par. 182, 28 Stat. 521, and therefore the authority to appoint such inspectors may be regarded as impliedly repealed.

Cited without definite application,
See Hartson v. U. S. (1886) 21 Ct. Cl. 451.

§ 5856. (R. S. § 3152, as amended, Act March 1, 1879, c. 125, § 2.) Internal revenue agents.

The Commissioner of Internal Revenue may, whenever in his judgment the necessities of the service so require, employ competent agents, not exceeding at any time thirty-five in number, to be paid such compensation as he may deem proper, not exceeding in the aggregate any appropriation made for that purpose; and he may, at his discretion, assign any such agent to duty under the direction of any officer of internal revenue, or to such other special duty as he may deem necessary; and no general or special agent or inspector, by whatever designation he may be known, of the Treasury Department, in connection with the internal revenue, except inspectors of tobacco, snuff, and cigars and except as provided for in this title, shall be appointed, commissioned, employed, or continued in office.

The agents whose employment is authorized by this section shall be known and designated as internal-revenue agents, and they shall have all the powers of entry and examination conferred upon any officer of internal revenue, by sections thirty-one hundred and seventy-seven, thirty-two hundred and seventy-seven, thirty-two hundred and eighty-six, and thirty-three hundred and eighteen of the Revised Statutes; and all the provisions of said sections, including those imposing fines, forfeitures, penalties, or other punishments for the enforcement thereof, are hereby made applicable to the action of internal-revenue agents, in the same manner as if such agents were specially named in each of said sections.

And all the provisions of sections thirty-one hundred and sixty-seven, thirty-one hundred and sixty-eight, thirty-one hundred and sixty-nine, and thirty-one hundred and seventy-one of the Revised Statutes shall apply to internal-revenue agents as fully as to internal-revenue officers.

Act March 2, 1867, c. 169, § 7, 14 Stat. 473. Act July 20, 1868, c. 186, § 50, 15 Stat. 145. Act June 6, 1872, c. 315, § 12, 17 Stat. 241. Act March 1, 1879, c. 125, § 2, 20 Stat. 329.

This section, as enacted in the Revised Statutes, was amended by increasing the limit of the number of internal-revenue agents from twenty-five, as originally authorized, to thirty-five, and by adding at the end of the section, as originally enacted, the provisions beginning with the words, "The agents whose employment is authorized," to the end of the section as set forth here, by Act March 1, 1879, c. 125, § 2, cited above.

The number of internal revenue agents was limited to twenty by a provision of Act July 7, 1884, c. 331, § 1, set forth post, § 5857. Ten additional agents were authorized by a provision of Act June 13, 1898, c. 448, § 3, 30 Stat. 450, and additional clerks and agents, not to exceed twenty, necessary to carry into effect sections 35–49 of that act, were authorized by section 47 thereof. Said sections 3 and 47 were superseded by provisions of Act April 28, 1902, c. 594, § 1, 32 Stat. 142, and subsequent acts set forth post, §§ 5858–5861.

The compensation of internal-revenue agents was more definitely prescribed by provisions of Act March 3, 1885, c. 343, § 1, 23 Stat. 404, and Act April 17, 1900, c. 192, § 1, post, § 5860.

R. S. §§ 3177, 3277, 3286, 3318, mentioned in the second paragraph of this section, are set forth post, §§ 5900, 6017, 6027, 6100; and sections 3167–

3169, 3171, mentioned in the last paragraph of this section, are set forth post, §§ 5887–5889, 5894.

Falsely assuming to be a revenue officer, and in such character demanding or receiving money, was punishable by R. S. § 5448, which was incorporated into the Criminal Code, in section 66 thereof, post, § 10234, and was repealed by section 341 thereof, post, § 10515.

Notes of Decisions

Revocation of appointment of agent.—Where the commissioner appoints a person to be an agent during the pleasure of the commissioner, his appointment may be revoked at any time. Wheelock v. U. S. (1910) 46 Ct. Cl. 1.

Compensation of agent.—Where a person was appointed agent on a per diem compensation, and by the terms of the appointment was to be paid only when actually employed, and a telegraphic order in effect, placed him on waiting orders, he will not be entitled to compensation if not actually employed. Wheelock v. U. S. (1910) 46 Ct. Cl. 1.

Detectives as revenue officers.—Detectives whom the commissioner of internal revenue is authorized to employ by the fiftieth section of Act July 20, 1868, c. 186, are not internal revenue officers. (1870) 13 Op. Atty. Gen. 229.

Cited without definite application, U. S. v. Fifty-Nine Demijohns of Aguadiente and Four Barrels of Cigarettes (D. C. 1889) 39 Fed. 401, 402.

§ 5857. (Act July 7, 1884, c. 331, § 1.) Limitation of number of agents.

Hereafter there shall not be employed exceeding twenty agents, in lieu of the number now authorized by law. (23 Stat. 172.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1885, cited above.

Additional agents were authorized by provisions of Act June 13, 1898, c. 448, §§ 3, 47, 30 Stat. 450, 469, which were superseded by the provisions of Act April 28, 1902, c. 594, § 1, 32 Stat. 142, and other subsequent acts, set forth post, §§ 5858–5861.

The number of internal revenue agents authorized under R. S. § 3152, ante, § 5856, and the provisions of this act and Act June 13, 1898, c. 448, §§ 3, 47, 30 Stat. 450, 469, was affected by the provisions of Act April 28, 1902, c. 594, § 1, 32 Stat. 142, and subsequent acts, set forth post, §§ 5858–5861.

§ 5858. (Act Feb. 25, 1903, c. 755, § 1.) Additional agents.

For salaries and expenses of twenty additional internal revenue agents to be appointed and employed by the Commissioner of Internal Revenue, and these twenty agents to be in lieu of the agents provided for and appointed under the provisions of sections three and forty-seven of the act of June thirteenth, eighteen hundred and ninety-eight, providing for war revenue expenditures and other purposes, and these to be the only internal revenue agents employed in addition to those provided for in section three thousand one hundred and fifty-two of the Revised Statutes. The existing provisions of law with regard to internal revenue agents shall apply to the duties, compensation, and expenses of these twenty additional agents. (32 Stat. 877.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1904, cited above, which repeated a provision of the similar act for the preceding fiscal year, Act April 28, 1902, c. 594, § 1, 32 Stat. 142.

An appropriation "for continuing salaries and expenses of twenty additional internal revenue agents" was made for the fiscal year 1905, by Act March 18, 1904, c. 716, § 1, set forth post, § 5859. And for subsequent fiscal years an appropriation was made "for salaries and expenses of forty revenue agents provided for by law," as in Act Feb. 3, 1905, c. 297, § 1, also set forth post, § 5861.

§ 5859. (Act March 18, 1904, c. 716, § 1.) Additional agents.

For continuing salaries and expenses of twenty additional internal-revenue agents appointed and employed by the Commissioner of Internal Revenue, the employment of this force being made necessary by the increased collections of internal revenue. The existing provisions of law with regard to internal-revenue agents shall apply to the duties,

compensation, and expenses of these twenty additional agents. (33 Stat. 106.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1905, cited above.

The corresponding provision for the year next following, by Act Feb. 3, 1905, c. 297, § 1, is set forth post, § 5861.

§ 5860. (Act April 17, 1900, c. 192, § 1.) Limit of compensation of agents; per diem in lieu of subsistence.

The compensation of the chief of the internal-revenue agents shall not exceed ten dollars per day, and of the other agents not exceeding seven dollars per day each; [and for per diem in lieu of subsistence, when absent on duty from their legal residence, said agents shall receive, at a rate to be fixed by the Secretary of the Treasury, not exceeding three dollars per day]. (31 Stat. 107.)

This was a proviso annexed to an appropriation for salaries and expenses of agents, etc., in the legislative, executive, and judicial appropriation act for the fiscal year ending 1901, cited above.

This proviso was a repetition of a proviso annexed to a provision of Act March 3, 1885, c. 343, § 1, post, § 5878.

The limitation imposed by this provision on the per diem to be allowed to agents was extended, as to agents assigned to the duty of examining accounts of collectors, by a provision of Act Feb. 3, 1905, c. 297, § 1, set forth post, § 5861.

The detail of gaugers, etc., was authorized by another proviso of this act, set forth post, § 5876.

The words in brackets are superseded by Act Aug. 1, 1914, c. 223, § 13, 38 Stat. 680, ante, § 3236b. But the latter provision is in turn superseded as to employés of the internal revenue service by Act May 10, 1916, c. 117, § 1, post, § 5861a.

§ 5861. (Act Feb. 3, 1905, c. 297, § 1.) Compensation of agents assigned to duty of examining accounts.

For salaries and expenses of forty revenue agents provided for by law, * *: Provided, That internal-revenue agents assigned to the duty of examining the accounts of collectors of internal revenue shall receive for per diem in lieu of subsistence, when absent from their legal residences on duty, a sum, to be fixed by the Commissioner of Internal Revenue, approved by the Secretary of the Treasury, not to exceed four dollars. (33 Stat. 652.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1906, cited above.

The appropriation by this act "for salaries and expenses of forty revenue agents provided for by law" was repeated in the similar subsequent appropriation acts. The provision for the fiscal year 1917 was by Act May 10, 1916, c. 117, § 1, 39 Stat.

Previous provisions relating to per diem to be allowed to internal revenue agents, were made by Act April 17, 1900, c. 192, § 1, ante, § 5860.

§ 5861a. (Act May 10, 1916, c. 117, § 1.) Employees engaged in field work, etc.; designation of posts of duty; per diem.

Hereafter the Commissioner of Internal Revenue shall determine and designate the posts of duty of all employees of the Internal Revenue Service engaged in field work or traveling on official business outside of the District of Columbia, and when ordered from their designated posts of duty all internal revenue agents appointed under Section thirty-one hundred and fifty-two, Revised Statutes, as amended, and cotton-futures attorneys, may be granted per diem in lieu of subsistence not exceeding $4, and, when ordered from their designated posts of duty, income-tax agents and inspectors, special gaugers, and special employees may be granted a per diem in lieu of subsistence not exceeding $3, the per diem in lieu of subsistence to be fixed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury. (39 Stat.)

See § 3236b, ante, for a provision relating to all executive departments.

§ 5862. (R. S. § 3153.) Store-keepers and their salaries.

There shall be appointed by the Secretary of the Treasury such number of internal-revenue store-keepers as may be necessary, who shall each receive such compensation, not exceeding five dollars a day, to be paid monthly by the United States, as may be determined by the Commissioner of Internal Revenue. No store-keeper shall be engaged in any other business while in the service of the United States, without the written permission of the Commissioner of Internal Revenue. Every store-keeper shall take an oath faithfully to perform the duties of his office, and shall give a bond, to be approved by the Commissioner of Internal Revenue, for the faithful discharge of his duties, in such form and for such amount as the Commissioner may prescribe.

Act July 20, 1868, c. 186, § 52, 15 Stat. 145. Res. March 29, 1869, No. 5, 16 Stat. 52. Act July 12, 1870, c. 251, § 1, 16 Stat. 239. Act June 6, 1872, c. 315, § 14, 17 Stat. 244.

The duties of store-keeper and gauger may be imposed upon one officer by provisions of Act Aug. 15, 1876, c. 287, § 1, and Act Aug. 27, 1894, c. 349, § 64, post, §§ 5869, 5874.

The compensation of store-keepers and of store-keepers and gaugers was prescribed by provisions of Act Aug. 15, 1876, c. 287, § 1, Act June 21, 1879, c. 34, § 2, Act March 3, 1885, c. 343, § 1, as amended by Act Feb. 24, 1911, c. 149, Act Aug. 27, 1894, c. 349, § 63, as amended by Act May 13, 1910, c. 236, and Act July 7, 1898, c. 571, § 1, post, §§ 5868, 5869, 5871–5873.

The officer holding the combined office of storekeeper and gauger was denominated storekeeper-gauger, and his compensation was prescribed by Act June 28, 1902, c. 1312, set forth post, § 5870.

Notes of Decisions

Expenses and salary of storekeepers.—Per diem wages paid to storekeepers for taking charge of distillery warehouses on Sundays, are expenses within the joint resolution of March 29, 1869, which declares that the proprietors of all internal revenue bonded warehouses shall reimburse to the United States the expenses of storekeepers put by it in charge of them. U. S. v. Powell (1871) 81 U. S. (14 Wall.) 493, 20 L. Ed. 726.

The "distillery warehouses" which distillers are required by Act July 20, 1868, § 15 (15 Stat. 128), to provide, situated on their distillery premises are "bonded warehouses," within the joint resolution of March 29, 1869 (16 Stat. 52), which declares that the proprietors of all "internal revenue bonded warehouses" shall reimburse to the United States the expenses and salary of all storekeepers put by it in charge of them. Id.

Cited without definite application, U. S. v. McCartney (C. C. 1880) 1 Fed. 104, 105.

§ 5863. (R. S. § 3154.) Assignment and transfer of store-keepers.

One or more store-keepers shall be assigned by the Commissioner of Internal Revenue to every bonded or distillery warehouse established by law; and any store-keeper may be transferred by the supervisor on duty in the district, or by the Commissioner of Internal Revenue, from one warehouse to another.

Act July 20, 1868, c. 186, § 52, 15 Stat. 146. Act June 6, 1872, c. 315, § 12, 17 Stat. 241.

On the abolition of the office of supervisor of internal revenue by Act Aug. 15, 1876, c. 287, § 1, the power of transfer of officers conferred on supervisors by R. S. § 3163, as originally enacted, was vested in the Commissioner of Internal Revenue, by a provision of that act, post, § 5882; and the Commissioner was further authorized to make such transfer by R. S. § 3163, as amended by Act March 1, 1879, c. 125, § 2, post, § 5883.

The transfer of gaugers from one place of duty to another was provided for by Act Aug. 27, 1894, c. 349, § 65, post, § 5875.

§ 5864. (R. S. § 3155.) Temporary store-keeper.

In case of the absence of any internal-revenue store-keeper by reason of sickness or other cause, the collector having control of the warehouse may designate a person to have temporary charge thereof, who shall, during such absence, perform the duties and receive the pay of the store-keeper for the time he may be so employed, and

shall for any violation of the law be subject to the same punishment as store-keepers.

Act July 20, 1868, c. 186, § 52, 15 Stat. 146.

§ 5865. (R. S. § 3156.) Gaugers.

The Secretary of the Treasury shall appoint in every collection-district where they may be necessary, one or more internal-revenue gaugers, who shall each take an oath faithfully to perform his duties, and shall give bond, with one or more sureties, satisfactory to the Commissioner of Internal Revenue, for the faithful discharge of the duties assigned to him by law or regulations; and the penal sum of said bond shall not be less than five thousand dollars, and said bond shall be renewed or strengthened as the Commissioner of Internal Revenue may require. The duties of every such gauger shall be performed under the supervision and direction of the collector of the district to which he may be assigned, or of the collector in charge of exports at any port of entry to which he may be assigned.

Act July 20, 1868, c. 186, § 53, 15 Stat. 147.

Provisions for the performance of duties of storekeeper and gauger by one officer were made by Act Aug. 15, 1876, c. 287, § 1, post, § 5869.

The officer holding the combined office of storekeeper and gauger was denominated storekeeper-gauger, and his compensation was prescribed by Act June 28, 1902, c. 1312, set forth post, § 5870.

Provisions of Act March 3, 1885, c. 343, § 1, and Act Aug. 28, 1894, c. 349, § 63, relating to compensation of storekeepers and storekeeper-gaugers, were amended, by Act May 13, 1910, c. 236, and Act Feb. 24, 1911, c. 149, set forth post, §§ 5872, 5874.

A gauger employing distiller, etc., to use brands or perform his duties, was punishable by R. S. § 3290, post, § 6031.

Gaugers were required to make daily returns by R. S. § 3291, post, § 6032.

Fraudulent inspection, gauging, etc., was punishable by R. S. § 3292, post, § 6033.

Notes of Decisions

Gauger as officer.—A gauger is an officer. Hedrick v. U. S. (1880) 16 Ct. Cl. 88.

Form of bond.—See (1885) 18 Op. Atty. Gen. 274, holding that, where the form of the bond is not prescribed by statute, its form may be determined by the officer whose duty it is to approve the same.

Regulations as to gaugers and gauging.—The commissioner of internal revenue has a right to make regulations concerning gauging and in relation to gaugers obligatory upon them. U. S. v. Bittinger (D. C. 1875) Fed. Cas. No. 14,599.

Mistake in overgauging spirits.—A distiller cannot avail himself of any mistake of the officer in overgauging the spirits. U. S. v. Dutcher (C. C. 1868) Fed. Cas. No. 15,014.

Liability for negligence.—A United States gauger in charge of plaintiff's warehouse is bound to use ordinary care; and, if whisky is lost through his gross negligence, he is liable. Rock Springs Distilling Co. v. Thruston (1897) 39 S. W. 253, 19 Ky. Law Rep. 166.

To establish the defense that defendant left open a stopcock (causing the loss), at plaintiff's request, it must appear that he was so requested by one authorized to act for plaintiff. Id.

Where it was the duty of a United States gauger in charge of plaintiff's warehouse to lock the box inclosing the faucets through which the whisky was drawn, unless he was requested not to do so by one authorized to act for plaintiff, if the faucet obstructed the locking of the box, he should have removed the obstruction, or required it to have been removed. Id.

Cited without definite application, Soule v. U. S. (1879) 100 U. S. 8, 10, 25 L. Ed. 536.

§ 5866. (R. S. § 3157.) Gaugers' fees.

Gaugers shall be entitled to receive such fees, to be determined by the quantity gauged, as may be prescribed by the Commissioner of Internal Revenue; and said fees, together with their actual and necessary traveling expenses, shall be verified by their oaths, and shall be paid by the United States monthly.

Act July 20, 1868, c. 186, § 53, 15 Stat. 147. Act June 6, 1872, c. 315, § 14, 17 Stat. 244.

The compensation of gaugers and of storekeepers and gaugers was prescribed by provisions of Act Aug. 15, 1876, c. 287, § 1, Act June 19, 1878, c. 329, § 1, Act June 21, 1879, c. 34, § 2, Act March 3, 1885, c. 343, § 1, as

amended by Act Feb. 24, 1911, c. 149, Act Aug. 27, 1894, c. 349, § 63, as amended by Act May 13, 1910, c. 236, and Act July 7, 1898, c. 571, § 1, set forth post, §§ 5867–5869, 5871–5873.

Notes of Decisions

Gauging fees paid to collector.—Under 15 Stat. 147, gauging fees to be paid to the collector of internal revenue by the owner or producer of the articles to be gauged, and to be retained by him until the last day of each month, when they were to be paid to the officers performing their duty at a certain fixed rate, the sureties on the collector's bond were liable on his failure to account to the United States for any excess, received, and not paid out, over such fixed rate. Soule v. U. S. (1879) 100 U. S. 8, 25 L. Ed. 536.

§ 5867. (Act June 19, 1878, c. 329, § 1.) Limit of gauger's compensation.

Hereafter the compensation of gaugers shall not exceed five dollars per day while actually employed. (20 Stat. 187.)

This was a provision following an appropriation for salaries, fees, and expenses of internal-revenue officers in the legislative, executive, and judicial appropriation act for the fiscal year 1879, cited above.

The pay of gaugers employed in gauging fruit brandy was limited by Act July 7, 1898, c. 571, § 1, set forth post, § 5868.

The fees of gaugers were fixed by R. S. § 3157, ante, § 5866.

The compensation of gaugers assigned to supervise the fortification of wines was prescribed by Act June 7, 1906, c. 3046, § 3, as amended by Act Oct. 22, 1914, c. 331, § 2, 38 Stat. 750, post, § 6119. See, also, Act Sept. 8, 1916, c. 463, § 402[g], post, § 6114d and notes thereunder.

§ 5868. (Act July 7, 1898, c. 571, § 1.) Compensation of gaugers employed in gauging fruit brandy, or detailed for special duty.

Gaugers employed in gauging fruit brandy, and gaugers specially detailed for special duty under the direction of the Commissioner of Internal Revenue, may be paid, at the discretion of the Commissioner of Internal Revenue, either by fees to be determined by the quantity gauged, or by a daily compensation not to exceed five dollars per diem while actually employed; and in calculating the daily compensation of all gaugers paid by fees, the quantity gauged for which fees are paid may be determined by dividing the aggregate gallons of spirits gauged by the number of days on which the gauger was actually employed during the month. (30 Stat. 656.)

This was a provision following an appropriation for detecting and punishing violations of internal revenue laws in the deficiency appropriation act for the fiscal year 1898, cited above.

The compensation of gaugers generally was limited by Act June 19, 1878, c. 329, § 1, set forth ante, § 5867.

Bonded warehouses for the manufacture of fruit brandy were established by Act March 3, 1877, c. 114, Act March 1, 1879, c. 125, § 6, Act Oct. 18, 1888, c. 1194, post, §§ 6039–6050, 6091.

§ 5869. (Act Aug. 15, 1876, c. 287, § 1.) Store-keepers and gaugers; compensation; performance of duties by one officer.

Hereafter no storekeeper shall receive a greater compensation than four dollars per day; and said gaugers and storekeepers, respectively shall only receive compensation when rendering actual service.

* * * * * * * *

The Secretary of the Treasury may, upon the recommendation of the Commissioner of Internal Revenue, impose the duties of storekeeper and gauger upon one officer, where the amount of spirits produced at the distillery, to which such officer may be assigned, is not sufficient, in the judgment of the Commissioner to warrant the employment of two officers to perform the separate duties of storekeeper and gauger. The Secretary of the Treasury may issue a commission to such officer as storekeeper and gauger, but the compensation for his services as storekeeper and gauger shall be that of storekeeper only. (19 Stat. 152.)

These were provisions following an appropriation for salaries, fees, and expenses of internal-revenue officers in the legislative, executive, and judicial appropriation act for the fiscal year 1877, cited above.

The pay of store-keepers was limited to five dollars a day by R. S. § 3153, ante, § 5862.

The pay of store-keepers and of store-keepers and gaugers at distilleries that mash less than sixty bushels of grain a day was limited by Act June 21, 1879, c. 34, § 2, set forth post, § 5871. The pay of store-keepers and of store-keepers and gaugers at distilleries with a registered capacity of twenty bushels or less was fixed by Act March 3, 1885, c. 343, § 1, as amended by Act Feb. 24, 1911, c. 149, set forth post, § 5872. The pay of gaugers and storekeeper-gaugers at wineries is fixed by Act June 6, 1906, c. 3046, § 3, as amended by Act Oct. 22, 1914, c. 331, § 2, 38 Stat. 750, post, § 6119, and by Act Sept. 8, 1916, c. 463, § 402[g], post, § 6114d.

A further provision at the end of the second paragraph of this act, set forth here, requiring the officer appointed storekeeper and gauger to give a bond in the penal sum of not less than $5,000 for the faithful performance of the combined duties of store-keeper and gauger, was superseded by Act Aug. 27, 1894, c. 349, § 64, post, § 5874.

The duties of storekeeper-gaugers were prescribed by said Act Aug. 27, 1894, c. 349, § 64, post, § 5874.

Notes of Decisions

Compensation of storekeeper.—The declaration that internal revenue storekeepers "shall only receive compensation when rendering actual service" excludes compensation during intervals when a storekeeper is not assigned to duty. McNeil v. U. S. (1888) 23 Ct. Cl. 413.

Under the statute a storekeeper is entitled to receive a per diem compensation only while "rendering actual service," and hence during such time as he is not assigned to duty and does not perform duty no compensation can be allowed him. (1886) 18 Op. Atty. Gen. 398.

§ 5870. (Act June 28, 1902, c. 1312.) Storekeeper-gauger's compensation.

The internal-revenue officer holding the combined office of storekeeper and gauger shall hereafter be known and denominated as a storekeeper-gauger, and when performing the combined duties of storekeeper-gauger, or when assigned by the Commissioner of Internal Revenue to perform the duties of a storekeeper only at any distillery, or at any general or special bonded warehouse, he shall receive for his services the compensation of storekeeper only; but when assigned by the Commissioner of Internal Revenue to perform the duties of gauger only, under the internal-revenue laws, as provided by those laws, he shall receive only the compensation for his services and the traveling expenses which are allowed by law to United States gaugers. (32 Stat. 492.)

This was a provision of an Act to amend the internal-revenue laws in regard to storekeepers and gaugers, cited above.

Previous provisions for the performance of the duties of storekeeper and gauger by one officer were made by Act Aug. 15, 1876, c. 287, § 1, ante, § 5869.

Notes of Decisions

See notes under § 6009, post.

§ 5871. (Act June 21, 1879, c. 34, § 2.) Compensation of storekeepers at small distilleries; storekeeper-gaugers.

Hereafter storekeepers at distilleries that mash less than sixty bushels of grain per day shall be allowed not exceeding fifty dollars per month. But when one person acts as storekeeper and gauger, his salary shall not exceed four dollars per day for the time actually employed. (21 Stat. 27.)

This was a provision following an appropriation to meet a deficiency in the appropriation for salaries, fees, and expenses of internal revenue officers in the legislative, executive, and judicial appropriation act for the fiscal year 1880, cited above.

The duties of store-keeper and gauger may be imposed upon one officer by Act Aug. 15, 1876, c. 287, § 1, ante, § 5869, and Act Aug. 27, 1894, c. 349, § 64, set forth post, § 5874.

Notes of Decisions

See notes under § 6009, post.

§ 5872. (Act March 3, 1885, c. 343, § 1, as amended, Act Feb. 24, 1911, c. 149.) Compensation of storekeepers, gaugers and storekeeper-gaugers, at small distilleries.

Hereafter storekeepers, gaugers, and storekeeper-gaugers who are assigned to distilleries with a registered capacity of twenty bushels or less, or who are assigned to other places where the compensation is now less than three dollars a day, shall receive three dollars a day for services. (23 Stat. 404. 36 Stat. 928.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1886, first cited above.

The provision as originally enacted was as follows:

"Hereafter storekeepers, or storekeepers and gaugers, who are assigned to distilleries whose registered capacity is twenty bushels or less, shall receive two dollars per day for their services."

It was amended to read as set forth here by Act Feb. 24, 1911, c. 149, last cited above.

The number of revenue officers was limited by a further provision of said Act March 3, 1885, c. 343, § 1, set forth post, § 5878.

Notes of Decisions

See notes under § 6009, post.

§ 5873. (Act Aug. 27, 1894, c. 349, § 63, as amended, Act May 13, 1910, c. 236.) Compensation of storekeepers, storekeeper-gaugers, and gaugers, when traveling.

Storekeepers, storekeeper-gaugers, and gaugers, when traveling to or from assignments, or when transferred from one assignment to another, either in the same district or in different districts, shall receive the same compensation per day during the time necessarily occupied in traveling that they would be entitled to if on duty at the place to which assigned or transferred, or from which relieved, together with actual and necessary traveling expenses. (28 Stat. 567. 36 Stat. 369.)

This section and the two sections next following were part of the Wilson Tariff Act of 1894, first cited above.

This section, as originally enacted, provided that storekeepers, and storekeepers and gaugers, when transferred from one distillery to another, should receive "compensation not exceeding four dollars per day during the time necessarily occupied in traveling from one distillery to the other, together with actual and necessary traveling expenses." It was amended to read as set forth here by Act May 13, 1910, c. 236, last cited above.

The compensation of storekeepers and of storekeepers and gaugers was prescribed by Act Aug. 15, 1876, c. 287, § 1, and subsequent acts set forth ante, §§ 5869–5872.

A general limitation on subsistence allowances, or money in lieu thereof, is made by §§ 3236a, 3236b, ante.

Notes of Decisions

See notes under § 6009, post.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 5874. (Act Aug. 27, 1894, c. 349, § 64.) Duties of storekeeper-gauger; bond.

The officer holding the combined office of storekeeper and gauger, under the provisions of the legislative, executive, and judicial appropriation Act, approved August fifteenth, eighteen hundred and seventy-six (Nineteenth Statutes, page one hundred and fifty-two), may be assigned by the Commissioner of Internal Revenue to perform the separate duties of a storekeeper at any distillery, or at any general or special bonded warehouse, or to perform any of the duties of a gauger under the internal-revenue laws. And the said officer, before entering upon the discharge of such separate duties, shall give a bond to be approved by the Commissioner of Internal Revenue for the faithful discharge of his duties in such form

and for such amount as the Commissioner may prescribe. (28 Stat. 567.)

See notes to section 63 of this act, ante, § 5873.

The duties of storekeeper and gauger may be imposed upon one officer, by Act Aug. 15, 1876, c. 287, § 1, set forth ante, § 5869.

The provisions of this section as to the bond to be given superseded the provisions on the same subject made by Act Aug. 15, 1876, c. 287, § 1, 19 Stat. 152.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 5875. (Act Aug. 27, 1894, c. 349, § 65.) Assignment to duty and transfer of gaugers.

Internal-revenue gaugers may be assigned to duty at distilleries, rectifying houses, or wherever gauging is required to be done, and transferred from one place of duty to another, by the Commissioner of Internal Revenue, in like manner as storekeepers and storekeepers and gaugers are now assigned and transferred. (28 Stat. 567.)

The transfer of storekeepers was provided for by R. S. § 3154, ante, § 5863.

Gaugers, storekeepers and storekeeper-gaugers may be transferred from one place of duty to another, or from one district to another, by Act March 1, 1879, c. 125, § 2, incorporated into R. S. § 3163, post, § 5883.

The assignment of gaugers for the supervision of fortification of wines was provided for by Act June 7, 1906, c. 3046, § 3, as amended by Act Oct. 22, 1914, c. 331, § 2, post, § 6119. See, also, in this connection, § 6114d, and notes thereunder.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 5876. (Act April 17, 1900, c. 192, § 1.) Detail of gaugers, etc., for duty in other districts; accounts.

The Commissioner of Internal Revenue is authorized to detail gaugers, storekeeper-gaugers, and storekeepers, appointed in one district, for special or regular duty in other districts, and the accounts of gaugers, storekeeper-gaugers, and storekeepers so detailed shall be adjusted and paid in the district where they are appointed the same as if assigned to regular duty, without regard to the number of districts in which they may have been employed in any one month, the same as if all their services had been performed and expenses incurred in the district in which appointed, and the order of the Commissioner of Internal Revenue transferring gaugers, storekeeper-gaugers, or storekeepers to special work shall be accepted by the accounting officers of the Treasury Department as full authority for proper expenses incurred by said gaugers, storekeeper-gaugers, or storekeepers, while so assigned. (31 Stat. 107.)

This was a proviso following an appropriation for salaries, fees, and expenses of agents, gaugers, and storekeepers, and of storekeepers and gaugers, in the legislative, executive, and judicial appropriation act for the fiscal year 1901, cited above.

The proviso preceding this proviso, as to the pay of agents and a per diem allowance in lieu of subsistence, which was a repetition of a proviso annexed to a provision of Act March 3, 1885, c. 343, § 1, 23 Stat. 404, is set forth ante, § 5852.

The detail of deputy collectors in one district for duty in other districts was authorized by other provisions of this act, ante, § 5852.

The Commissioner was authorized to transfer gaugers, storekeeper-gaugers, and storekeepers, by R. S. § 3154, Act Aug. 27, 1894, c. 349, § 65, set forth ante, §§ 5863, 5875, and by R. S. § 3163, as amended by Act March 1, 1879, c. 125, § 2, set forth post, § 5883.

§ 5877. (Act June 23, 1910, c. 356.) Leave of absence to storekeepers, gaugers, and storekeeper-gaugers.

Storekeepers, gaugers, and storekeeper-gaugers shall be, and are hereby, granted a cumulative annual leave of absence, with pay, not to exceed in the aggregate fifteen days for any one year: Provided, That said leave of absence is so computed as not to exceed one and

one-quarter days for each twenty-six days said storekeepers, gaugers, and storekeeper-gaugers are actually assigned to duty: Provided further, That such leave shall be operative under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. (36 Stat. 592.)

§ 5877a. (Act Sept. 8, 1916, c. 463, § 413.) Internal revenue agents granted leave of absence with pay.

That all internal revenue agents and inspectors be granted leave of absence with pay, which shall not be cumulative, not to exceed thirty days in any calendar year, under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. (39 Stat.)

This is a provision of "An act to increase the revenue, and for other purposes," cited above. By section 412, post, § 5980m, this section takes effect the day following its passage.

§ 5878. (Act March 3, 1885, c. 343, § 1.) Limit of number of revenue officers.

No collector in any district shall recommend, nor shall there be appointed or commissioned, more deputy collectors, storekeepers, storekeepers and gaugers, gaugers, inspectors, or other officers, or allowed to remain in commission more of any of said officers, at any one time, than fifteen per centum in excess of the number actually engaged in performing duty at the time and indispensably necessary for the performance of said duty. (23 Stat. 404.)

This was part of a provision following an appropriation for salaries and expenses of internal-revenue officers in the legislative, executive, and judicial appropriation act for the fiscal year 1886, cited above.

A preceding provision, limiting the compensation of storekeepers, and storekeeper-gaugers, at small distilleries, was amended by Act Feb. 24, 1911, c. 149, as set forth ante, § 5872.

A proviso, following this provision, limiting the compensation of internal-revenue agents, and for a per diem in lieu of subsistence, omitted here, was repeated by Act April 17, 1900, c. 192, § 1, ante, § 5860.

The number of collectors was limited by Act Aug. 23, 1912, c. 350, § 1, ante, § 5844.

§ 5879. (R. S. § 3158, as amended, Act Feb. 18, 1875, c. 80, § 1.) Statement under oath of fees, etc.; penalty.

Every internal-revenue officer, whose payment, charges, salary, or compensation are composed, wholly or in part, of fees, commissions, allowances, or rewards, from whatever source derived, shall be required to render to the Commissioner of Internal Revenue, under regulations to be approved by the Secretary of the Treasury, a statement under oath setting forth the entire amount of such fees, commissions, emoluments, or rewards of whatever nature, or from whatever source received, during the time for which said statement is rendered; and any false statement knowingly and willfully rendered under the requirements of this section, or regulations established in accordance therewith, shall be deemed willful perjury, and punished in the manner provided by law for the crime of perjury. And any neglect or omission to render such statement when required shall be punished by a fine of not less than two hundred dollars, nor more than five hundred dollars, in the discretion of the court.

Act June 30, 1864, c. 173, § 42, 13 Stat. 239. Act July 13, 1866, c. 184, § 60, 14 Stat. 168. Act Feb. 18, 1875, c. 80, § 1, 18 Stat. 319.

This section, as enacted in the Revised Statutes, was amended by inserting after the words "of not less than" the word "two," as set forth here, by Act Feb. 18, 1875, c. 80, § 1, cited above.

Notes of Decisions

Accounting for fees.—Officers' fees need not be immediately paid over to the internal revenue department, but may be accounted for in the semian-

nual returns of the officers. U. S. v. Cigars, etc. (D. C. 1880) Fed. Cas. No. 14,793a.

Indictment for false return and for perjury—Election.—Where indictments are found under Act June 30, 1864, both for making false returns (section 15) and for perjury (section 42), the prosecution must elect between them. U. S. v. Rumsey (D. C. 1867) Fed. Cas. No. 16,207.

(R. S. §§ 3159, 3160. Repealed.)

These sections authorized the appointment of supervisors of internal revenue, not exceeding ten, at an annual salary not exceeding $3,000 a year each, in addition to necessary expenses, for assignment to duty in any part of the United States, and subject to transfer from place to place. They were repealed by a provision of Act Aug. 15, 1876, c. 287, § 1, set forth, post, § 5882.

§ 5880. (R. S. § 3161.) Officers in charge of exportations and drawbacks.

In any port of the United States where there is more than one collector of internal revenue, the Secretary of the Treasury may designate one of them to have charge of all matters relating to the exportation of articles subject to tax under the internal-revenue laws; and at any port where he may deem it necessary, there shall be appointed by him an officer to superintend all matters of exportation and drawback, under the direction of the collector. The compensation of the officers last named shall be prescribed by the Secretary of the Treasury, but shall not exceed, in any case, an annual rate of two thousand dollars, excepting at New York, where such compensation shall be at the annual rate of three thousand dollars. At any port where there is no superintendent of exports, all the duties and services required of such officers shall be performed by the collector of internal revenue designated to have charge of exportation. All the books, papers, and documents in the bureau of drawbacks in the respective ports, relating to the drawback of taxes paid under the internal-revenue law, shall be delivered to the collector of internal revenue in charge of exportation.

Act March 3, 1865, c. 78, § 15, 13 Stat. 486. Act July 13, 1866, c. 184, §§ 20, 41, 14 Stat. 153, 161.

Provisions relating to drawback were made by R. S. §§ 3015–3057, ante, §§ 5720–5759.

Notes of Decisions

Claim for drawback.—Where the commissioner of internal revenue has not acquired jurisdiction of a claim for drawback because certain papers were not filed with the proper officer within the time prescribed by law, his certificate is a nullity, and an action cannot be maintained upon it. Davis v. U. S. (1881) 17 Ct. Cl. 292.

§ 5881. (R. S. § 3162.) Superintendents of exports and drawbacks may administer oaths.

Every collector of internal revenue and every superintendent of exports and drawbacks is authorized to administer such oaths and to certify to such papers as may be necessary under any regulation prescribed under the authority of the internal-revenue laws.

Act March 3, 1865, c. 78, § 15, 13 Stat. 486. Act July 13, 1866, c. 184, § 20, 14 Stat. 153.

§ 5882. (Act Aug. 15, 1876, c. 287, § 1.) Commissioner may transfer or suspend officers.

Sections thirty-one hundred and fifty-nine, and thirty-one hundred and sixty of the Revised Statutes, and all laws and parts of laws in conflict with the provisions of the foregoing paragraphs relating to the internal revenue service, are hereby repealed. The powers of transfer, and of suspension, of officers conferred upon supervisors by section thirty-one hundred and sixty-three of the Revised Statutes, are hereby vested in the Commissioner of Internal Revenue; and all other powers conferred, and duties imposed, by said section upon supervisors, are hereby conferred and imposed upon collectors of internal revenue within their respective districts. In

case of the supervision of a collector, under the power hereby conferred, the Commissioner of Internal Revenue shall, as soon thereafter as practicable, report the case to the President through the Secretary of the Treasury for such action as he may deem proper. (19 Stat. 152.)

This was a provision following an appropriation for salaries, fees, and expenses of internal-revenue officers in the legislative, executive, and judicial appropriation act for the fiscal year 1877, cited above.

A provision immediately preceding this repealed R. S. §§ 3159, 3160, and all laws in conflict with foregoing paragraphs relating to the internal-revenue service.

In the last sentence of this provision, the word "supervision" is intended, apparently, for the word "suspension."

The powers and duties of said supervisors were defined by section 3163, as originally enacted, as follows:

"Every supervisor, under the direction of the Commissioner, shall see that all laws and regulations relating to the collection of internal-taxes are faithfully executed and complied with; and shall aid in the prevention, detection, and punishment of any frauds in relation thereto, and examine into the efficiency and conduct of all officers of internal revenue; and for such purposes he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel a compliance with such summons in the same manner as collectors may do. He shall report in writing to the Commissioner of Internal Revenue any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal-revenue officer of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same. He may, by notice in writing, suspend from duty any inspector, gauger, or storekeeper, and he may suspend any collector for fraud, or gross neglect of duty, or abuse of power. In case of the suspension of any inspector, gauger, or storekeeper, he shall immediately notify the collector of the proper district and the Commissioner of Internal Revenue, and within three days thereafter report his action and his reasons therefor, in writing, to the Commissioner. In case of the suspension of any collector, he shall immediately report his action to the Commissioner, with his reasons therefor, in writing, and the Commissioner, in all cases of suspension, shall thereupon take such action as he may deem proper. Every supervisor may also transfer any inspector, gauger, or storekeeper from one distillery, or other place of duty, or from one collection-district, to another."

The powers and duties of the Commissioner and collectors were modified by the amendment of R. S. § 3163, by Act March 1, 1879, c. 125, § 2, incorporated into that section, post, § 5883.

Notes of Decisions

Supervisors under former law.— There was no privity of contract between the clerk of a supervisor of internal revenue and the government. The supervisor, and not the clerk, was the proper party to bring an action for the clerk's salary. Hedrick v. U. S. (1880) 16 Ct. Cl. 88.

§ 5883. (R. S. § 3163, as amended, Act March 1, 1879, c. 125, § 2.) Duties of collectors and agents; power of Commissioner.

Every collector within his collection-district and every internal-revenue agent shall see that all laws and regulations relating to the collection of internal taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. And it shall be the duty of every collector and of every internal-revenue agent to report to the Commissioner in writing any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal-revenue officer or agent of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same. The Commissioner may also transfer any inspector, gauger, storekeeper, or storekeeper and gauger, from one distillery or other place of duty, or from one collection-district, to another.

Act July 20, 1868, c. 186, §§ 49, 51, 15 Stat. 144, 145. Act June 6, 1872, c. 315, § 12, 17 Stat. 241. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401. Act March 1, 1879, c. 125, § 2, 20 Stat. 328.

This section, as enacted in the Revised Statutes, was amended by trans-

ferring the powers and duties of the supervisors as defined in the section as originally enacted, upon the Commissioner, collectors, and agents, as set forth here, by Act March 1, 1879, c. 125, § 2, cited above. This amendment was in consequence of the abolition of the office of supervisor by the repeal of R. S. §§ 3159, 3160, by Act Aug. 15, 1876, c. 287, § 1, ante, § 5882. This section, as originally enacted, is set forth in the note to said provision, ante, § 5882.

The office of inspector, referred to in the last sentence of this section, was abolished by the repeal of R. S. § 3151, by Act Aug. 4, 1886, c. 896, § 2, 24 Stat. 218.

The Commissioner was authorized to detail deputy collectors for special duty in other districts by a provision of Act April 17, 1900, c. 192, § 1, ante, § 5852, and the detail in like manner of gaugers, storekeeper-gaugers, and storekeepers, was authorized by a further provision of that act set forth ante, § 5876.

The authority, power, and jurisdiction, in relation to the exclusion from the United States, of Chinese, vested by law or treaty in the collectors of internal revenue, were conferred upon such officers under the control of the Commissioner-General of Immigration as the Secretary of Commerce and Labor might designate therefor, by provisions of Act Feb. 14, 1903, c. 552, § 7, ante, § 858.

Notes of Decisions

Authority of commissioner to define and limit duties.—The commissioner of internal revenue has no authority to define and limit the official duties of deputy collectors and internal revenue agents by providing that, while it shall be a part of their official duties to appear before United States commissioners and federal grand juries in cases involving frauds against the revenue laws, up to the time when the parties charged are bound over to or held by a grand jury, after a prima facie case has been made out and the accused has been so bound over or held, such attendance shall not be a part of their official duties, and they should respond, in such cases, as a rule, only to a regular subpœna and attend "simply as a witness." (1908) 26 Op. Atty. Gen. 518.

There is no sound distinction between such officers testifying to facts within their knowledge before a United States commissioner or a federal grand jury, for the purpose of having the accused bound over to court or indicted, and their afterwards testifying upon the trial in the court. Id.

The secretary of the treasury would not be authorized to approve of such a definition and limitation of the duties of deputy collectors and internal revenue agents, for the reason that this section makes it the duty of all such officers to aid in the prevention, detection, and punishment of any frauds in relation to the collection of internal revenue taxes, and these duties are not finished when a "prima facie case has been made" against the offender. Id.

Section 492, ante, while relating generally to "matters pertaining to the assessment and collection of internal revenue," does not authorize a limitation of the duties of internal revenue officers and agents in special matters otherwise provided by law. Id.

Transfer of gaugers and storekeepers to more subordinate positions.—This section is mandatory and binding on every officer who comes within its terms, but it does not authorize the transfer of gaugers and storekeepers to more subordinate positions, but only from one place of duty to another. Butler v. White (C. C. 1897) 83 Fed. 578, 584, reversed (1898) 18 Sup. Ct. 949, 171 U. S. 379, 43 L. Ed. 204.

Effect of civil service law.—Since the passage of the Civil Service Act the power of removal is limited and controlled by it, and, being subsequent to this section, it limits and controls it. Butler v. White (C. C. 1897) 83 Fed. 578, 584, reversed (1898) 18 Sup. Ct. 949, 171 U. S. 379, 43 L. Ed. 204.

Cited without definite application, Stacey v. Emery (1878) 97 U. S. 642, 24 L. Ed. 1035; U. S. v. Farden (1878) 99 U. S. 10, 18, 25 L. Ed. 267.

§ 5884. (R. S. § 3164.) Duty of collectors to report violations of law to district attorney.

It shall be the duty of every collector of internal revenue to report within ten days to the district attorney of the district in which any fine, penalty, or forfeiture may be incurred for the violation of any law of the United States relating to the revenue, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, and which may come to his knowledge from time to time, stating the provisions of the law believed to be violated, and on which a reliance may be had for condemnation or conviction; and if any collector shall in any case fail to report to the proper district attorney as prescribed in this sec-

tion, his right to any compensation, benefit, or allowance in such case shall be forfeited to the United States, and the same may, in the discretion of the Secretary of the Treasury, be awarded to such persons as may make complaint and prosecute the same to judgment or conviction.

Act March 3, 1873, c. 244, 17 Stat. 580.

The duties of district attorneys in the prosecutions of violations of internal revenue laws were prescribed by R. S. § 838, ante, § 1297.

Notes of Decisions

Duties of deputy collector.—Under this section, and under sections 5889, 5962, 5693, and 5971, post, one of the duties imposed on a deputy internal revenue collector is to see to it that retail liquor dealers shall place and keep conspicuously in their establishments or places of business stamps denoting the payment of the special tax, and the information as to the names of persons in whose places of business the special tax stamps are posted or the places in which they are posted was obtained in his official capacity, and he could not be compelled by a court to disclose such names as a witness. In re Lamberton (D. C. 1903) 124 Fed. 446, 448, 449.

Cited without definite application, Waters v. U. S. (1897) 32 Ct. Cl. 277.

§ 5885. (R. S. § 3165, as amended, Act March 1, 1879, c. 125, § 2.) Revenue officers who may administer oaths and take evidence.

Every collector, deputy collector, and inspector is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

Act June 30, 1864, c. 173, § 52, 13 Stat. 242. Act March 3, 1865, c. 78, § 1, 13 Stat. 471. Act March 1, 1879, c. 125, § 2, 20 Stat. 329.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "are authorized by law," the words "or regulation authorized by law," as set forth here, by Act March 1, 1879, c. 125, § 2, cited above.

The office of inspector, referred to in this section, was abolished by the repeal of R. S. § 3151, by Act Aug. 4, 1886, c. 896, § 2, 24 Stat. 218.

Notes of Decisions

Authority to require oath.—The section establishes the authority of a deputy to administer oaths, but does not establish the authority of the department to require an oath in returns by wholesale dealers made under the Oleomargarine Act. U. S. v. Lamson (C. C. 1908) 165 Fed. 80.

Perjury.—Where, pursuant to this section and section 492, ante, a regulation required collectors of taxes on distilled spirits to examine distiller's sureties, and to require them to "justify" on a prescribed form, an oath taken by a surety with reference to his qualifications before a deputy collector, was held to be an oath taken in a case in which "a law of the United States authorizes an oath to be administered," within section 10295, post, defining perjury. U. S. v. Hardison (D. C. 1905) 135 Fed. 419, 420, 421.

§ 5886. (R. S. § 3166.) Revenue officers authorized to make seizures.

Any officer of internal revenue may be specially authorized by the Commissioner of Internal Revenue to seize any property which may by law be subject to seizure, and for that purpose such officer shall have all the power conferred by law upon collectors; and such special authority shall be limited in respect of time, place, and kind and class of property, as the Commissioner may specify: Provided, That no collector shall be detailed or authorized to discharge any duty imposed by law upon any other collector.

Act March 2, 1867, c. 169, § 19, 14 Stat. 482. Act July 20, 1868, c. 186, § 51, 15 Stat. 145.

Notes of Decisions

Liability for officer's negligence.—The United States is not responsible for the negligence of an internal revenue officer, by reason of which spirits seized for nonpayment of the tax by the distiller were lost. U. S. v. Sisk (1910) 176 Fed. 885, 100 C. C. A. 355.

Cited without definite application, Agnew v. Haymes (1905) 141 Fed. 631, 72 C. C. A. 325.

§ 5887. (R. S. § 3167, as amended, Act Aug. 27, 1894, c. 349, § 34, Act Oct. 3, 1913, c. 16, § II, I, and Act Sept. 8, 1916, c. 463, § 16.) Revenue officers disclosing operations of manufacturers, etc., punishable.

It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or source of income profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment. (39 Stat.)

This section was part of § 16 of an act entitled an "Act to increase the revenue, and for other purposes," cited above. It amends R. S. § 3167, as amended, which read as follows:

"It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employé of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employé of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government." Act June 30, 1864, c. 173, §§ 36, 38, 13 Stat. 238. Act March 3, 1865, c. 78, § 1, 13 Stat. 471. Act Aug. 27, 1894, c. 349, § 34, 28 Stat. 557. Act Oct. 3, 1913, c. 16, § II, I, 38 Stat. 177.

This section, as enacted in the Revised Statutes, was as follows:

"If any collector or deputy collector, or any inspector, or other officer acting under the authority of any revenue law of the United States, divulges to any party, or makes known in any other manner than may be provided by law, the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, he shall be subject to a fine of not exceeding one thousand dollars, or to be imprisoned for not exceeding one year, or to both, at the discretion of the court, and shall be dismissed from office, and be forever thereafter incapable of holding any office under the Government."

It was amended to read as set forth here by a provision of the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 34, cited above, which amendment was re-enacted in the same language as a part of the income tax provisions of the Underwood Tariff Act, cited above.

The amending section so re-enacted was a part of the income tax provisions in the Wilson Tariff Act of 1894, held unconstitutional in Pollock v. Trust Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759.

The inspection of returns made for assessment of income tax was authorized by a provision of section 14 (b), of Act Sept. 8, 1916, c. 463, set forth post, § 6336n (b).

The provisions of this section were made applicable to internal-revenue agents by an amendment of R. S. § 3152, by Act March 1, 1879, c. 125, § 2, ante, § 5856.

Notes of Decisions

Reports to collector as public records.—Reports to a collector are not public records, but are the private property of the government. In re Comingore (D. C. 1899) 96 Fed. 552, 555, affirmed (1900) 20 Sup. Ct. 701, 177 U. S. 459, 44 L. Ed. 846.

Refusal to produce records or copies in court.—Under this section and regulations of the treasury department a collector might refuse the commands of a state court to produce his records or copies. Boske v. Comingore (1900) 20 Sup. Ct. 701, 703, 177 U. S. 459, 44 L. Ed. 846.

There is no statute of the United States requiring or permitting a collector of internal revenue to make or certify copies of reports on file in his office, and a state has no authority, either in its sovereign capacity or as a litigant, to impose such duty upon him. In re Comingore (D. C. 1899) 96 Fed. 552, judgment affirmed Boske v. Comingore (1900) 20 Sup. Ct. 701, 177 U. S. 459, 44 L. Ed. 846.

Information not to be divulged by storekeeper or gauger.—A storekeeper and gauger may not divulge information in regard to the business of a distiller, even when called as a witness in a state court. Stegall v. Thurman (D. C. 1910) 175 Fed. 813, 819.

§ 5888. (R. S. § 3168, as amended, Act Feb. 27, 1877, c. 69, § 1.) Officers not to be interested in certain manufactures; penalty.

Any internal-revenue officer who is or shall become interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigars, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and every officer who becomes so interested in any such manufacture or production, rectification, or redistillation, or in the production of fermented liquors, shall be fined not less than five hundred dollars nor more than five thousand dollars.

Act July 13, 1866, c. 184, § 59, 14 Stat. 167. Act July 20, 1868, c. 186, § 97, 15 Stat. 164. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248.

This section, as enacted in the Revised Statutes, was amended by striking out after the word "distilled," the word "spriits," and inserting in place thereof the word "spirits," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

The provisions of this section were made applicable to internal-revenue agents by an amendment of R. S. § 3152, by Act March 1, 1879, c. 125, § 2, ante, § 5856.

Notes of Decisions

Compromise of case.—Where an assessor of internal revenue was indicted upon the provisions of section 10201, post, and of sections 97 and 98 of the act of July 20, 1868 (this section and section 5889, post), for having entered into a corrupt arrangement with certain distillers to defraud the government, and before trial proposed terms of compromise to the commissioner of internal revenue, under section 102 of the last-mentioned act (section 5952, post), it was held that the case did not come within the purview of the latter section. (1872) 14 Op. Atty. Gen. 43.

§ 5889. (R. S. § 3169.) Officers of internal revenue guilty of extortion, receiving unlawful fees, and other unlawful acts.

Every officer or agent appointed and acting under the authority of any revenue law of the United States—

First. Who is guilty of any extortion or willful oppression under color of law; or,

Second. Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or,

Third. Who willfully neglects to perform any of the duties enjoined on him by law; or,

Fourth. Who conspires or colludes with any other person to defraud the United States; or,

Fifth. Who makes opportunity for any person to defraud the United States; or,

Sixth. Who does or omits to do any act with intent to enable any other person to defraud the United States; or,

Seventh. Who negligently or designedly permits any violation of the law by any other person; or,

Eighth. Who makes or signs any false entry in any book, or makes or signs any false certificate or return, in any case where he is by law or regulation required to make any entry, certificate, or return; or,

Ninth. Who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to his next superior officer and to the Commissioner of Internal Revenue; or,

Tenth. Who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do, shall be dismissed from office, and shall be held to be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years. The court shall also render judgment against the said officer or agent for the amount of damages sustained in favor of the party injured, to be collected by execution. One-half of the fine so imposed shall be for the use of the United States, and the other half for the use of the informer, who shall be ascertained by the judgment of the court.

Act July 20, 1868, c. 186, § 98, 15 Stat. 165.

Extortion by internal-revenue informers was punishable by R. S. § 5484, which was incorporated in the Criminal Code, in section 145 thereof, post, § 10315, and was repealed by section 341 thereof, post, § 10515.

The provisions of this section were made applicable to internal-revenue agents by an amendment of R. S. § 3152, by Act March 1, 1879, c. 125, § 2, ante, § 5856.

Notes of Decisions

See, also, notes under § 10201, post.

Violation of law in general.—A revenue officer cannot disregard a requirement of the law as useless, or because he deems the government protected by other provisions. U. S. v. Allen (C. C. 1868) Fed. Cas. No. 14,432.

A deputy collector who accepted a bond for the withdrawal of whisky from a warehouse, knowing that the signatures thereto have been forged, was subject to punishment under Act July 13, 1866, § 42. Id.

The repealing clause of Act Jan. 11, 1868, did not operate to prevent conviction and punishment for an offense, under Act July 13, 1866, § 42. In re Callicot (C. C. 1870) Fed. Cas. No. 2,-323.

A deputy collector of the duty on carriages made a distress under Act Dec. 15, 1814, § 4, and contrary to law sold it at auction for less than half its value, within two hours after seizure and without giving public notice of the time of sale. Held, that he was a trespasser ab initio and liable for damages. Blake v. Johnson (1817) 1 N. H. 91.

Violations of subdivisions 1 and 2.—A Chinese inspector, appointed by the treasury department to assist the collector of a port in enforcing the Chinese exclusion laws, is not a person acting under authority of any "revenue" or "customs" law, within the meaning of this section, or of section 5890, post, so as to be subject to indictment thereunder for extorting money under color of his office. The words "extortion or willful oppression under color of law," and the knowingly demanding "other or greater sums than are authorized by law," or the receiving "any fee, compensation or reward, except as by law prescribed, for the performance of any duty," illegal acts described in subdivisions 1 and 2 of this section, refer to offenses committed by officers or agents "appointed and acting under the authority of any revenue law of the United States." The accused, in his capacity of Chinese inspector, did not act under any law that could properly be regarded as a revenue law. He was appointed pursuant to acts of congress appropriating money to be used by the treasury department "to prevent unlawful entry of Chinese." Williams v. U. S. (1897) 18 Sup. Ct. 92, 94, 168 U. S. 382, 42 L. Ed. 509, reversing (D. C. 1896) 76 Fed. 223.

Illegal acts described in subdivisions 1 and 2 refer to offenses committed by officers or agents appointed and acting under authority of the revenue law of the United States. Williams v. U. S. (1897) 18 Sup. Ct. 92, 93, 168 U. S. 382, 42 L. Ed. 509.

A collector with whom money has been

deposited by a distiller to pay for patented meters is a mere stakeholder, and the distiller cannot recover such deposit. Nusbaum v. Emery (C. C. 1873) Fed. Cas. No. 10,380.

A government officer, who after seizing property used for illegal purposes, discontinued a suit brought to enforce forfeiture of the property, but retained possession thereof afterwards without color of process, is liable to the owner of the property for damages for the wrongful retention thereof, though he acted in good faith. Crawford v. Eidman (C. C. 1902) 129 Fed. 992.

A person who carries on business without having paid the special tax is not a delinquent of whom mileage may be collected. U. S. v. Highleyman (D. C. 1876) Fed. Cas. No. 15,361.

Where an officer willfully and knowingly makes false representations to his superior officers as to the violent and lawless condition of the country, and thus induces his superior officer to send soldiers, which were unnecessary for the proper execution of the law, he is guilty of oppression. The law invests its officers with the necessary power to execute its mandates, and affords them protection while properly performing official duties. U. S. v. Deaver (D. C. 1882) 14 Fed. 595.

Where a revenue officer collects from parties sums of money as special taxes as wholesale and retail dealers in spirits, when no such taxes have been regularly assessed against them, he is guilty of oppression, although such parties had been guilty of selling spirits at wholesale and retail without a license, as required by law; and the fact that he reported such taxes to the collector of the district as received, and the collector of the district, in his settlement with the revenue department, was required to pay the sums collected after the manner of their collection was fully known to the department, will not render legal the acts of the defendants knowingly and willfully done, without authority of law. Id.

Extortion is the taking or obtaining of anything from another by a public officer by means of illegal compulsion or oppressive exaction. The offense of extortion, under subdivision 1, is the same as the offense of extortion in the common law. Id.

Oppression is an act of cruelty, severity, unlawful exaction, domination, or use of excessive authority. Id.

To make an act oppressive on the part of an officer, under the statute, it must be done willfully, "under color of law," and "without legal authority." Id.

Destruction of a still by a revenue officer before it has been condemned by proper decree is an act of oppression. Id.

Extortion and the mere taking of money in excess of lawful fee are not the same. U. S. v. Harned (D. C. 1890) 43 Fed. 376, 378.

Violations of subdivision 7.—On the trial of a government storekeeper and gauger at a distillery, charged under this section with having negligently and designedly permitted a violation of the law by another person by leaving the door of a cistern room unlocked, in consequence of which distilled spirits were unlawfully removed therefrom, proof that the room was negligently left open or unlocked is sufficient to warrant a conviction, and it is not essential that it should have been with intent that the spirits should be removed. Mason v. U. S. (1908) 162 Fed. 23, 89 C. C. A. 63, writ of certiorari denied (1909) 29 Sup. Ct. 700, 214 U. S. 519, 53 L. Ed. 1065.

On an indictment charging a storekeeper with having "negligently and designedly" left a door unlocked, so that distilled spirits were unlawfully removed, it is not essential to show that the act was done with intent that the spirits should be removed. Id.

Under this section and section 5884, ante, and sections 5962, 5963, and 5971, post, a collector of internal revenue cannot be compelled by a court to disclose as a witness the names of the persons in whose places of business special tax stamps are posted, or the places in which they are posted, this information being obtained in an official capacity. In re Lamberton (D. C. 1903) 124 Fed. 446, 448, 449.

Effect of subdivision 10 as extending common law.—The principle and policy of the common law, that a ministerial officer, who had arrested a person, and who takes from such person money or other reward, under a pretense or promise of getting the offender discharged, is guilty of a criminal offense, was intended to be extended by subdivision 10 to the officers of the revenue; and any subordinate revenue officer who demands or accepts, or attempts to collect, directly or indirectly, as payment or gift, or otherwise, any sum of money, or other thing of value, for a compromise of the violation of the revenue laws, is guilty of a misdemeanor. U. S. v. Deaver (D. C. 1882) 14 Fed. 595.

Damages for injuries.—Where a government officer injures a citizen by an official act, he is liable, not only for actual damages, but for exemplary damages as well, if he proceeded in malicious or wanton disregard of the citizen's rights. Crawford v. Eidman (C. C. 1902) 129 Fed. 992.

A suit for forfeiture of property seized by a government officer for violation of law was discontinued by the officer. Held, in an action by the owners against the officer for damages for his wrongful detention of the property after such discontinuance, the costs incurred by plaintiff in the former proceeding could

not be recovered as a part of his damages. Id.

Prosecution and punishment.—Counts charging a defendant with the forgery of Chinese duplicate certificates, and with violating this section as an officer in the revenue service, by negligently and designedly permitting the commission of such offenses, may properly be joined in the same indictment, under section 2164, ante, since they cover "acts or transactions connected together." Dillard v. U. S. (1905) 141 Fed. 303, 72 C. C. A. 451.

An internal revenue officer, named as such in the indictment, cannot be jointly indicted with a private person for conspiracy to defraud the revenue. U. S. v. McDonald (C. C. 1876) Fed. Cas. No. 15,670.

Quære, whether one charged in different counts, under this section, with knowledge of separate frauds upon the revenue, may be punished by cumulative sentences. U. S. v. Maguire (C. C. 1876) Fed. Cas. No. 15,708.

The United States have an option, where custom officers and individuals have combined, to proceed against the custom officers under this and other sections. U. S. v. Grunberg (C. C. 1904) 131 Fed. 137, 139.

So officers who conspire with others to defraud the United States may be prosecuted therefor under this section, or they may be joined with the individual conspirators in an indictment under the Criminal Code. Grunberg v. U. S. (1906) 145 Fed. 81, 76 C. C. A. 51.

Two offenses—the conspiracy to defraud, and a knowledge of a violation of law without reporting the same—may be committed by a revenue officer, and may be joined in the same indictment. Ex parte Joyce (D. C. 1877) Fed. Cas. No. 7,556.

The words "willful, and corruptly," in an indictment herein, tend to uncertainty, in view of the use of the word "knowingly" in the statute. U. S. v. Williams (D. C. 1896) 76 Fed. 223, 225, 226.

Under subdivision 2, providing for the punishment of any revenue officer who demands or receives any fee, except as prescribed by law, "for the performance of any duty," an indictment which charged the receiving of such fee for services rendered "under color of his office" is insufficient. Id.

Where an assessor of internal revenue was indicted upon the provisions of section 10201, post, and of sections 97 and 98 of the act of July 20, 1868 (this section, and section 5888, ante), for having entered into a corrupt arrangement with certain distillers to defraud the government, and before trial proposed terms of compromise to the commissioner of internal revenue, under section 102 of the last-mentioned act (section 5952, post), it was held that the case did not come within the purview of the latter section. (1872) 14 Op. Atty. Gen. 43.

Cited without definite application, Wichsler v. U. S. (1907) 158 Fed. 579, 86 C. C. A. 37; U. S. v. Van Leuven (D. C. 1894) 62 Fed. 62, 69; U. S. v. Sandefuhr (D. C. 1906) 145 Fed. 49.

§ 5890. (Act Feb. 8, 1875, c. 36, § 23.) Laws imposing fines applicable to all persons in service.

All acts and parts of acts imposing fines, penalties, or other punishment for offenses committed by an internal revenue officer or other officer of the Department of the Treasury of the United States, or under any bureau thereof, shall be, and are hereby, applied to all persons whomsoever, employed, appointed, or acting under the authority of any internal revenue or customs law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money. (18 Stat. 312.)

This section was part of an Act to amend the customs and internal-revenue laws, cited above.

Notes of Decisions

Acting under authority of law.—A Chinese inspector appointed by the treasury department to assist in enforcing Chinese exclusion laws does not act under authority of a "revenue" or "customs" law, within this section, so as to subject him to indictment under this section for extorting money under color of office. Williams v. U. S. (1897) 18 Sup. Ct. 92, 93, 168 U. S. 382, 42 L. Ed. 509, reversing (D. C. 1896) 76 Fed. 223.

Cited without definite application, U. S. v. Dominici (1897) 78 Fed. 334, 336, 24 C. C. A. 116.

§ 5891. (Act March 1, 1879, c. 125, § 1.) Collector, etc., issuing stamps before payment punishable.

Any collector of internal revenue, or any deputy collector or other employee of, or person acting for, such collector, who shall issue any stamp or stamps indicating the payment of any internal-revenue tax, before payment in full therefor has been made to the officer or per-

son issuing the same, shall be deemed guilty of a misdemeanor, and shall be fined for each stamp thus issued an amount equal to the face value thereof, in addition to the liability of the collector on his official bond on account of such stamp; and such collector, deputy collector, or employee shall be dismissed from office. (20 Stat. 327.)

This section was part of an act to amend the laws relating to internal revenue, cited above.

Other provisions amending the Revised Statutes and other laws relating to internal revenue were made by sections 2–22 of this act. The provisions of these sections which are in force are set forth in other chapters of this Title and in the preceding Title.

Section 23 of the act, defining the words "Revised Statutes" as used in the preceding sections thereof, is set forth post, § 5892.

Cited without definite application,
U. S. v. Ridenour (D. C. 1902) 119 Fed. 411, 415.

§ 5892. (Act March 1, 1879, c. 125, § 23.) Meaning of term "Revised Statutes."

Wherever in any of the foregoing sections of this act the Revised Statutes are referred to, it shall be held to mean the "edition of eighteen hundred and seventy-eight." (20 Stat. 352.)

See notes to section 1 of this act, ante, § 5891.

§ 5893. (R. S. § 3170.) District attorney or marshal accepting or demanding anything for compromise of violation of internal revenue laws.

Every district attorney or marshal who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money or other property of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of any provision of the internal-revenue laws, except as expressly authorized by law to do so, shall be held to be guilty of a misdemeanor, and shall be fined in double the sum or value of the money or property received or demanded, and be imprisoned for not less than one nor more than ten years.

Act March 2, 1867, c. 169, § 26, 14 Stat. 483.

§ 5894. (R. S. § 3171, as amended, Act March 1, 1879, c. 125, § 2.) Officers suffering injuries may maintain suit for injuries.

If any officer appointed under and by virtue of any act to provide internal revenue, or any person acting under or by authority of any such officer, shall receive any injury to his person or property, in the discharge of his duty, under any law of the United States for the collection of taxes, he shall be entitled to maintain suit for damage therefor, in the circuit court of the United States, in the district wherein the party doing the injury may reside or shall be found.

Act July 13, 1866, c. 184, § 67, 14 Stat. 172. Act March 1, 1879, c. 125, § 2, 20 Stat. 329.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "person or property," the words "for or on account of any act by him done," and inserting in place thereof the words "in the discharge of his duty," as set forth here, by Act March 1, 1879, c. 125, § 2, cited above.

The provisions of this section were made applicable to internal revenue agents by an amendment of R. S. § 3152, by Act March 1, 1879, c. 125, § 2, ante, § 5856.

This provision is probably superseded by Act Sept. 7, 1916, c. 458, set forth post, §§ 8932a–8932uu, providing for compensation in case of injury or death of employés of the government.

Notes of Decisions

Civil remedy as consistent with criminal statute.—The civil remedy for recovery of damages is in no way inconsistent with R. S. § 5508, post, § 10183. U. S. v. Patrick (C. C. 1893) 54 Fed. 338, 349.

CHAPTER TWO

Of Assessments and Collections

Sec.
5895. Canvass of districts for objects of taxation.
5896. Annual returns of persons liable to tax.
5897. Summons, form and manner of service of.
5898. Failure to obey summons, proceedings on.
5899. When collector to make returns; further time allowed for filing returns; assessment of taxes on returns made by collector; amounts added for failure to file returns.
5900. Officers may enter premises where taxable articles are kept.
5901. Making false return, or refusing to produce books; penalty.
5902. Taxable property owned by nonresidents.
5903. Lists, when taken and how denominated.
5904. Commissioner of Internal Revenue to make assessments; correction of incomplete or imperfect lists.
5905. Duty and authority of collectors and deputies to collect all taxes.
5906. Notice and demand of taxes.
5907. Monthly returns and special returns, when to be made, and when tax payable.
5908. Lien for taxes.
5909. Taxes collectible by distraint.
5910. Mode of levying distraint.
5911. Delinquents must exhibit evidences relating to property distrained.
5912. Proceedings on distraint.
5913. When property sold under distraint is subject to tax, and tax not paid.
5914. When property sold under distraint may be purchased for United States, etc.
5915. Property distrained to be restored on payment before sale.
5916. Effect of certificate of sale on distraint.
5917. When property distrained is not divisible.
5918. When real estate may be sold to satisfy taxes.
5919. Proceedings for seizure and sale of real estate for taxes.
5920. Certificate of purchase; deed.
5921. Collector's deed to be prima-facie evidence, etc.
5922. Collector may seize lands of delinquent in any district of same State.
5923. Redemption of land prior to sale.
5924. Redemption of lands after sale.
5925. Record of sales; transmission of copy to Commissioner.
5926. Redemptions to be entered on record.
5927. Successive seizures may be made, when.
5928. Fees and charges in seizure cases.
5929. Proceedings in chancery to subject real estate to payment of tax.
5930. Commissioner to have charge of real estate acquired by United States under internal-revenue laws.
5931. List to be sent to district where the party taxed resides or has property, when.
5932. Collections to be paid into Treasury daily.
5933. All collections to be covered into Treasury as internal revenue collections.
5934. Depositories.
5935. Collector's monthly statement; final accounts.
5936. Collectors to render accounts quarterly.
5937. Suits, etc., for fines, penalties, and forfeitures, and for taxes.
5938. Suits for taxes, etc., not to be brought without sanction of Commissioner.
5939. Regulations as to suits, for government of officers.
5940. Moneys recovered by suits to be paid to collectors.
5941. Dues from delinquent collector to be collected by distraint and sale.
5942. Collectors charged with what.
5943. Death, etc., of collector; uncollected balances.
5944. Refundment of taxes, penalties, etc.
5945. Taxes on spirits accidentally destroyed.
5946. When tax on lost spirits is indemnified by insurance.
5947. Suits to restrain assessments or collection of taxes.
5948. Suits to recover taxes collected under second assessment; burden of proof to show fraud.
5949. Suits for recovery of taxes wrongfully collected.
5950. Limitation of suits for recovery of taxes wrongfully collected.
5951. Claims for refundment; limitation.
5952. Compromises.
5953. Discontinuances of criminal prosecutions.
5954. Continuances of internal-revenue cases.

§ 5895. (R. S. § 3172, as amended, Act Aug. 27, 1894, c. 349, § 34, Act Oct. 3, 1913, c. 16, § II, I, and Act Sept. 8, 1916, c. 463, § 16.) Canvass of districts for objects of taxation.

Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects. (39 Stat.)

Act June 30, 1864, c. 173, § 12, 13 Stat. 225. Act March 2, 1867, c. 169, § 1, 14 Stat. 471. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401. Act Aug. 27, 1894, c. 349, § 34, 28 Stat. 558. Act Oct. 3, 1913, c. 16, § II, I, 38 Stat. 178. Act Sept. 8, 1916, c. 463, § 16.

This section, as enacted in the Revised Statutes, was as follows:

"Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay a special tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects."

It was amended to read as set forth here by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 34, cited above, which amendment was re-enacted as a part of the income tax provisions of the Underwood Tariff Act, last cited above.

This amendment, as originally enacted, was a part of the income tax provisions in the Wilson Tariff Act of 1894, cited above, held unconstitutional in Pollock v. Trust Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759.

This section, as above set forth, was part of § 16 of an act entitled "An act to increase the revenue, and for other purposes," cited above. It amends R. S. § 3172, as amended. It is in the exact language of the section as amended by Act Oct. 3, 1913, c. 16, § II, I.

Notes of Decisions

Effect of statute on settlement of income taxes.—Effect of this section and sections 5896–5904, post, on settlements of income taxes. In re Archer (D. C. 1878) Fed. Cas. No. 506.

Effect of this and following sections as to title under deed from collector.—A deed from a collector of internal revenue is, under section 5921, post, only prima facie evidence of the facts required by statute to be stated therein. In order to establish title thereunder, the prerequisites prescribed by this section et seq., to the right to seize and sell, also the assessment of the tax and the notice of the sale, must be shown by evidence aliunde. Brown v. Goodwin (1878) 75 N. Y. 409.

Cited without definite application, U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103; U. S. v. Patrick (C. C. 1893) 54 Fed. 338, 344.

§ 5896. (R. S. § 3173, as amended, Act March 1, 1879, c. 125, § 3, Act Aug. 27, 1894, c. 349, § 34, Act Oct. 3, 1913, c. 16, § II, I, and Act Sept. 8, 1916, c. 463, § 16.) Annual returns of persons liable to tax.

It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before the thirty-first day of July in each year, (2) in case of income tax on or before the first day of March in each year, or on or before the last day of the sixty-day period next following the closing date of the fiscal year for which it makes a return of its income, and (3) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and

merchandise, article or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: Provided further, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned: Provided, That "person," as used in this section, shall be construed to include any corporation, joint-stock company or association, or insurance company when such construction is necessary to carry out its provisions. (39 Stat.)

Act June 30, 1864, c. 173, §§ 11, 13, 13 Stat. 225, 226. Act July 13, 1866, c. 184, § 9, 14 Stat. 101. Act March 2, 1867, c. 169, § 1, 14 Stat. 471. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401. Act March 1, 1879, c. 125, § 3, 20 Stat. 330. Act Aug. 27, 1894, c. 349, § 34, 28 Stat. 558. Act Oct. 3, 1913, c. 16, § II, I, 38 Stat. 178. Act Sept. 8, 1916, c. 463, § 16, 39 Stat.

This section, as enacted in the Revised Statutes, was amended by Act March 1, 1879, c. 125, § 3, cited above, by striking out, after the words "when not otherwise provided for," the words "on or before the first Monday of March of each year," and inserting in place thereof the words "in case of a special tax on or before the thirteenth day of April in each year," and by striking out, after the words "and in other cases before the day," the words "of levy," and inserting in place thereof the words "on which the taxes accrue," making the section read as follows:

"It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, stamp, or tax imposed by law,

when not otherwise provided for, in case of a special tax, on or before the thirteenth day of April in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the deputy collector of the district where located, of the articles or objects charged with a special duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a specific or ad valorem duty or tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, for which such person, partnership, firm, association or corporation is liable: Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any special tax as aforesaid, then, and in that case, it shall be the duty of the deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: Provided further, That in case any person shall be absent from his or her residence or place of business at the time a deputy collector shall call for the annual list or return and no annual list or return has been rendered by such person to the deputy collector as required by law, it shall be the duty of such deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office, a note or memorandum, addressed to such person, requiring him or her to render to such deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any under-valuation or under-statement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such State, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned."

It was further amended to read as set forth here, by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 34, cited above, which amendment was re-enacted in the same language as a part of the income tax provisions of the Underwood Tariff Act, last cited above.

This amendment, as originally enacted, was a part of the income tax provisions in the Wilson Tariff Act of 1894, cited above, held unconstitutional in Pollock v. Trust Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759.

The requisites of returns for the assessment and collection of the income tax imposed by Act Sept. 8, 1916, c. 463, §§ 8, 13, are set forth post, §§ 6336h, 6336m.

Provisions requiring returns to show whether the rates and amounts were stated according to their values in legal-tender currency or according to their values in coined money were made by R. S. § 3178, now obsolete.

This section and the two following sections are extended to and made applicable in the enforcement of the Cotton Futures Act, post, § 6309n.

This section, in its present form, was part of § 16 of an act entitled "An act to increase the revenue, and for other purposes," cited above. It amends R. S. § 3173, as amended. The section as amended by Act Oct. 3, 1913, c. 16, § II, I, read as follows:

"It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation,

to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: Provided further, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum, addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned."

Notes of Decisions

See notes under § 5895, ante, and § 5937, post.

Constitutionality of former statute.—Act July 20, 1868, § 49 (15 Stat. 144), giving supervisors the right to examine books and papers, etc., is not unconstitutional, either as purporting to authorize an unreasonable seizure and search, or as compelling a party to testify against himself. Stanwood v. Green (D. C. 1870) Fed. Cas. No. 13,301.

Production of books and papers in general.—A tobacco manufacturer will be required to produce his books before the assessor, notwithstanding a criminal proceeding against him; but he will be allowed to object to the exhibit of any particular entry as tending to criminate himself. In re Lippman (D. C. 1868) Fed. Cas. No. 8,382.

A corporation is not bound to produce its books to the assessor on an inquiry into the income of its shareholders. In re Chadwick (D. C. 1870) Fed. Cas. No. 2,570.

R. S. § 860, is modified and partially repealed by Act June 22, 1874, § 5, in relation to the production of books and papers. U. S. v. Three Tons of Coal (D. C. 1875) Fed. Cas. No. 16,515.

Right to examine or require production thereof.—An assessor has no right, in order to determine liability for income tax, to examine books of third persons who have had dealings with the taxpayer. In re Chadwick (D. C. 1870) Fed. Cas. No. 2,570.

The supervisor of internal revenue is entitled to examine the books and papers belonging to banks, bankers, brokers, and banking associations, and is not bound to inform the owners of his purpose in making such examination. Act July 20, 1868, § 49. Stanwood v. Green (D. C. 1870) Fed. Cas. No. 13,301.

The government has the right to examine all books kept by the distiller or rectifier pertaining to the business—private, as well as those required by

law. U. S. v. Mason (D. C. 1875) Fed. Cas. No. 15,735.

The business of distillers and rectifiers, being wholly within control of the government, it may require the production of, and, if necessary, seize, any or all the books and papers kept by them in their business. U. S. v. Three Tons of Coal (D. C. 1875) Fed. Cas. No. 16,515.

A collector of internal revenue has no authority, under this section, to require a wholesale dealer in oleomargarine to produce his books for examination and inspection. In re Kearns (D. C. 1894) 64 Fed. 481.

The provisions of the statute authorizing a collector to summon before him for examination any person charged by the law with the duty of making returns of "objects subject to tax" do not apply to persons required under the oleomargarine law to make returns of "materials and products." Such provisions relate only to objects of taxation upon which the tax is collected by the method of return and assessment, and not to those upon which the tax is required to be paid by a stamp, and a collector has no power under section 3173 to compel a person to appear and testify to the correctness of the returns made under the oleomargarine law. In re Kinney (D. C. 1900) 102 Fed. 468.

Summons and service thereof.—See § 5897, post, and note thereunder.

The service by a supervisor of internal revenue, in person, of a summons upon a clerk of a railroad company to produce certain books and papers, and submit to examination under Act July 20, 1868, § 49, held sufficient. Perry v. Newsome (D. C. 1869) Fed. Cas. No. 11,009.

Adjournment of hearing does not necessitate a new summons. In re Becker (D. C. 1875) Fed. Cas. No. 1,208.

Authority of supervisor to issue summons to produce books and papers, made coextensive with that of assessors (Act July 20, 1868), is not affected by subsequent transfer of assessor's authority to collectors. Id.

Summons reciting appropriate statute and section as authority need not refer to section of statutes embodying it. Id.

Order for production of books.—The order need not specify the books, but the officers may take all books found on the premises; the presumption being that they belong to the distilling business. U. S. v. Mason (D. C. 1875) Fed. Cas. No. 15,735.

In an order for the production of books and papers of a distiller or rectifier, the same need not be more specifically described than as those used and kept in his business as distiller or rectifier between certain dates named. U. S. v. Three Tons of Coal (D. C. 1875) Cas. No. 16,515.

Order to open vaults containing books.—If a distiller refuse to produce his books, the court may order the vaults containing them to be opened by its officers. U. S. v. Mason (D. C. 1875) Fed. Cas. No. 15,735.

Examination of books or papers.—Claimants and their counsel have the right to be present at the examination of their books and papers. U. S. v. Mason (D. C. 1875) Fed. Cas. No. 15,735; Same v. Three Tons of Coal (D. C. 1875) Id. 16,515.

Examination of witness or taxpayer.—The taxpayer cannot be examined as to returns and payments made prior to the passage of Act June 30, 1864. In re Brown (D. C. 1866) Fed. Cas. No. 1,977.

A witness, summoned for examination before an assessor, may be compelled to answer questions touching the falsity of tax returns of tobacco manufacturers, as disclosures or admissions thus made cannot be used against him in criminal prosecutions under Act Feb. 25, 1868. In re Phillips (D. C. 1869) Fed. Cas. No. 11,097.

Remission of penalty for failure to render return or list property.—It is within the discretion of the Secretary of the Treasury, under R. S. § 5293, post, § 10131, to remit a penalty imposed under R. S. § 3176, post, § 5899, for failure to render a return or list of taxable property, required by this section. (1882) 17 Op. Atty. Gen. 433.

Cited without definite application, U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103.

§ 5897. (R. S. § 3174.) Summons, form and manner of service of. Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

Act June 30, 1864, c. 173, § 14, 13 Stat. 226. Act July 13, 1866, c. 184, § 9, 14 Stat. 101. Act Dec. 24, 1872, c. 13, 17 Stat. 401.

This section has been made applicable to the cotton futures provisions of Act Aug. 11, 1916, c. 313. See § 6309n, post.

Notes of Decisions

See note under § 5895, ante.

Summons.—See notes under § 5896, ante.

A summons issued to a person not engaged in a business particularly affected by revenue laws must be limited to books and papers concerning the subject of investigation, and describe them with reasonable certainty. In re Becker (D. C. 1875) Fed. Cas. No. 1,208.

Cited without definite application, U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103; In re Kearns (D. C. 1894) 64 Fed. 481.

§ 5898. (R. S. § 3175.) Failure to obey summons, proceedings on. Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collectors may apply to the judge of the district court or to a commissioner of the circuit court of the United States for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

Act June 30, 1864, c. 173, § 14, 13 Stat. 226. Act July 13, 1866, c. 184, § 9, 14 Stat. 101. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401.

The office of commissioner of the circuit court, mentioned in this section, was abolished, and the appointment of United States commissioners, to have the same powers and perform the same duties, was provided for, by Act May 28, 1896, c. 252, § 19, ante, § 1333.

This section has been made applicable to the cotton futures provisions of Act Aug. 11, 1916, c. 313. See § 6309n, post.

Notes of Decisions

See notes under §§ 5895, 5896, ante.

Application to oleomargarine law.—This procedure is not applicable to the oleomargarine law. In re Kinney (D. C. 1900) 102 Fed. 468, 471.

Right to issue writ.—Where a summons for the production of books has not been complied with, the district judge, upon application, may issue a writ of attachment. Stanwood v. Green (D. C. 1870) Fed. Cas. No. 13,301.

Application for attachment.—A supervisor may procure an attachment to compel a person liable to taxation to appear and testify, without showing that he acted under special instructions from the commissioner in issuing the summons. In re Meador (D. C. 1869) Fed. Cas. No. 9,375.

The court has power to authorize an assessor to amend his application for attachment for contempt against a taxpayer for not producing his books, and giving evidence concerning his liability for the income tax. In re Chadwick (D. C. 1870) Fed. Cas. No. 2,570.

Order to show cause.—On the application by an assessor for an attachment for contempt against a taxpayer for not producing his books and giving evidence as to his liability for the income tax, the court may issue an order to show cause, instead of proceeding ex parte. In re Chadwick (D. C. 1870) Fed. Cas. No. 2,570.

Order for attachment.—Order for attachment for failure to obey summons to produce books and papers will be conditional. In re Becker (D. C. 1875) Fed. Cas. No. 1,208.

When banking firm not punishable.—A banking firm held not punishable for a contempt in refusing to produce their books on the demand of a supervisor of the internal revenue, and in not appearing in response to a summons, where they asked a short delay to consult counsel, and there was no place of return in the summons. U. S. v. Fordyce (D. C. 1871) Fed. Cas. No. 15,130.

Cited without definite application, U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103; In re Kearns (D. C. 1894) 64 Fed. 481.

§ 5899. (R. S. § 3176, as amended, Act March 1, 1879, c. 125, § 3, Act Aug. 27, 1894, c. 349, § 34, Act Oct. 3, 1913, c. 16, § II, I, and Act Sept. 8, 1916, c. 463, § 16.) When collector to make returns; further time allowed for filing returns; assessment of taxes on returns made by collector; amounts added for failure to file returns.

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return or list so made and subscribed by a collector or deputy collector shall be prima facie good and sufficient for all legal purposes.

If the failure to file a return or list is due to sickness or absence the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

The Commissioner of Internal Revenue shall assess all taxes, other than stamp taxes, as to which returns or lists are so made by a collector or deputy collector. In case of any failure to make and file a return or list within the time prescribed by law or by the collector, the Commissioner of Internal Revenue shall add to the tax fifty per centum of its amount except that, when a return is voluntarily and without notice from the collector filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax one hundred per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax. (39 Stat.)

Act June 30, 1864, c. 173, § 14, 13 Stat. 226. Act July 13, 1866, c. 184, § 9, 14 Stat. 101. Act Dec. 24, 1872, c. 13, § 2, 17 Stat. 402. Act March 1, 1879, c. 125, § 3, 20 Stat. 331. Act Aug. 27, 1894, c. 349, § 34, 28 Stat. 559. Act Oct. 3, 1913, c. 16, § II, I, 38 Stat. 179. Act Sept. 8, 1916, c. 463, § 16, 39 Stat.

This section, as enacted in the Revised Statutes, was amended by Act March 1, 1879, c. 125, § 3, cited above, by striking out, after the words "The amount so added to the tax shall," the words "in all cases," and by inserting, after the words "same manner as the tax," the words "unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax," making the section read as follows:

"The collector or any deputy collector in every district shall enter into and upon the premises, if it be necessary, of every person therein who has taxable property and who refuses or neglects to render any return or list required by law, or who renders a false or fraudulent return or list, and make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the objects liable to tax, owned or possessed or under the care or management of such person, and the Commissioner of Internal Revenue shall assess the tax thereon, including the amount, if any, due for special tax, and in case of any return of a false or fraudulent list or valuation, he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid, the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in

the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held good and sufficient for all legal purposes."

It was further amended as set forth here by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 34, cited above, which amendment was re-enacted in the same language as a part of the income tax provisions of the Underwood Tariff Act, cited above.

This amendment, as originally enacted, was part of the income tax provisions in the Tariff Act of 1894, cited above, held unconstitutional in Pollock v. Trust Co., 157 U. S. 429, 15 Sup. Ct. 673, 30 L. Ed. 759.

This section was part of § 16 of an act entitled "An act to increase the revenue, and for other purposes," cited above. It amends R. S. § 3176, as amended. That section, as amended by Act Oct. 3, 1913, c. 16, § II, I, read as follows:

"When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property and objects liable to tax owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add 100 per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add 50 per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes."

Notes of Decisions

See note under § 5895, ante.

Nature of authority under statute.—The provisions of section 14 of the internal revenue act of 1864, as amended by the act of 1866, which authorize the assessor to do various things in order to get at the taxable property of a party whom he is seeking to assess and who will not make proper returns of his estate, do not make it obligatory on him to do so. Bailey v. New York Cent. & H. R. R. Co. (1874) 89 U. S. (22 Wall.) 604, 22 L. Ed. 840.

The assessor may investigate returns made by a distiller, and increase the amount of the assessment in all cases of fraud or omission, and assess the amount of tax for which the party is liable (Act June 30, 1864, §§ 14, 20, amended by Act July 13, 1866); and such authority is in its nature judicial. U. S. v. Hodson (C. C. 1871) Fed. Cas. No. 15,376.

Penalty of 100 per cent.—The assessor himself must find a false and fraudulent omission whereby the penalty was incurred. Merely adding the penalty, by order of his superior officer, is illegal. Michigan Cent. R. Co. v. Slack (C. C. 1873) Fed. Cas. No. 9,527.

The penalty of 100 per cent. on reassessment for fraudulent omissions from the return to the assessor (Act March 2, 1867) is not collectible if a sum not legally taxed is included in the reassessment. Id.

An addition of 100 per cent. is authorized for an untrue return, although the return is not willfully false. German Sav. Bank v. Archbold (C. C. 1878) Fed. Cas. No. 5,364.

Under Act June 30, 1864, c. 173, § 14, the assessor has power, in all cases of false or fraudulent lists or valuations, to add the penal duty of 100 per cent. before the lists have been returned to the collector; but such power terminates on the transmission of such lists to the collector. (1865) 11 Op. Atty. Gen. 280.

Penalty of 50 per cent.—The 50 per centum required by the statute is a penalty, not a tax. (1882) 17 Op. Atty. Gen. 398, 433.

Presumption from threats of penalties under statute.—The fact that persons of whom a tax was demanded refused to make return or pay the tax, notwithstanding threats of penalties imposed by this section, afforded no warrant for a legal presumption that the refusal was based on illegality of the tax. Beer v. Moffatt (D. C. 1912) 192 Fed. 984.

Remission of penalty.—It is within the discretion of the Secretary of the Treasury, under R. S. § 5293, post, § 10131, to remit a penalty imposed under this

section for failure to render a return or list of taxable property, required by the internal revenue laws (R. S. § 3173, ante, § 5896). (1882) 17 Op. Atty. Gen. 433.

In the case presented, where the delinquent, a private banker, was not guilty of fraud or willful negligence, but in ignorance of the statute failed to make his semiannual return, and obeyed the law as soon as he knew its requirements, held, that the facts bring it within the discretion of the Secretary of the Treasury, given by section 10131, to remit fines, penalties, etc. Id.

The Secretary of the Treasury has authority, under section 10131, post, to remit the penalty imposed under this section on a national bank for its failure to make a timely return of its liability for the special tax levied under section 2 of the War Revenue Act of June 13, 1898 (30 Stat. 448). (1901) 23 Op. Atty. Gen. 398.

Application to oleomargarine tax.—This section does not apply to the Oleomargarine Act. Craft v. Schafer (1907) 153 Fed. 175, 82 C. C. A. 349 (affirming judgment Schafer v. Craft [D. C. 1906] 144 Fed. 907); Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513 (affirming [C. C. 1907] 150 Fed. 658).

Cited without definite application, U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103; Eaton v. Calhoun (C. C. 1880) 15 Fed. 155; U. S. v. Patrick (C. C. 1893) 54 Fed. 338, 344; Hastings v. Herold (C. C. 1910) 184 Fed. 759.

§ 5900. (R. S. § 3177.) Officers may enter premises where taxable articles are kept.

Any collector, deputy collector, or inspector may enter, in the day-time, any building or place where any articles or objects subject to tax are made, produced, or kept, within his district, so far as it may be necessary, for the purpose of examining said articles or objects. And any owner of such building or place, or person having the agency or superintendence of the same, who refuses to admit such officer, or to suffer him to examine such article or articles, shall, for every such refusal, forfeit five hundred dollars. And when such premises are open at night, such officers may enter them while so open, in the performance of their official duties. And if any person shall forcibly obstruct or hinder any collector, deputy collector, or inspector, in the execution of any power and authority vested in him by law, or shall forcibly rescue or cause to be rescued any property, articles, or objects after the same shall have been seized by him, or shall attempt or endeavor so to do, the person so offending, excepting in cases otherwise provided for, shall, for every such offense, forfeit and pay the sum of five hundred dollars, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years, at the discretion of the court.

Act June 30, 1864, c. 173, §§ 37, 38, 13 Stat. 238.

The provisions of this section were made applicable to internal revenue agents by an amendment of R. S. § 3152, by Act March 1, 1879, c. 125, § 2, ante, § 5856.

Notes of Decisions

See note under § 5895, ante.

Entry into distillery building.—A collector, deputy collector, or inspector of internal revenue may, without process, enter any building where distilled spirits subject to tax are produced or kept, so far as may be necessary for examining the same, and may without process seize illicit distilled spirits. U. S. v. Fears (C. C. 1878) Fed. Cas. No. 15,080.

Examination of bank.—In a suit against the cashier of a national bank for refusing to permit the collector to examine bank checks drawn upon and paid by it, the declaration was bad in not alleging that the paid checks on the bank remaining in its possession were not duly stamped at the time they were signed and issued. U. S. v. Mann (1877) 95 U. S. 580, 581, 24 L. Ed. 531.

A national bank is not exempt from examination by the internal revenue officers under this section. U. S. v. Rhawn (D. C. 1875) Fed. Cas. No. 16,150. But see U. S. v. Parkhill (D. C. 1875) Fed. Cas. No. 15,994.

A clerk of a supervisor of internal revenue cannot make such examination. U. S. v. Rhawn (D. C. 1875) Fed. Cas. No. 16,150.

Search of premises at night.—Instructions that search warrant did not authorize internal revenue officers to enter and search plaintiff's premises at night held properly refused, as ignoring their rights, under this section, where the

premises were open at night. Kercheval v. Allen (1915) 220 Fed. 262, 135 C. C. A. 1.

Collection of oleomargarine tax.—This section and section 6364, post, apply to the collection of special taxes imposed by the Oleomargarine Act. Kercheval v. Allen (1915) 220 Fed. 262, 135 C. C. A. 1.

Violation of statute.—A declaration to recover the penalty imposed by this section, on a person in charge of a building or place where articles or objects subject to taxation are produced or kept, who refuses to admit the collector or inspector of internal revenue to such building for the purpose of examining such articles, must allege all the facts necessary to show that the articles in the building where the revenue officer was refused admission were subject to taxation. U. S. v. Mann (1877) 95 U. S. 580, 24 L. Ed. 531.

Persons other than the owner of a building or place of business cannot be held liable to the penalty prescribed in this section, unless it be alleged and proved that he had at the time the agency or superintendence of the same, and that it was a building or place where articles subject to taxation were made, produced or kept, and that the person accused of having violated the prohibition of the section then and there refused to allow the officer to enter the building for the described purpose, or to suffer him to examine the articles or objects subject to taxation then kept in the building. Id.

The express extension of the provisions of R. S. §§ 3232–3241, 3243 (this compilation, § 5955 et seq.), which deal with special taxes, to the special tax on oleomargarine, made by Act Aug. 2, 1886, § 3, c. 840, 24 Stat. 209, imposing such tax, and not purporting to be complete in itself, is not an implied exclusion of the general provisions of this section for the entry by revenue officers of any building or place where any articles or objects subject to tax are made, produced, or kept, for the purpose of examining such articles or objects. U. S. v. Barnes (1912) 32 Sup. Ct. 117, 222 U. S. 513, 56 L. Ed. 291.

A person may be guilty under this statute of obstructing a revenue officer in entering a building, etc., although he does not own the building or the articles subject to tax, and did not make, produce, or keep them. U. S. v. Fears (C. C. 1878) Fed. Cas. No. 15,080.

A dealer in tobacco has no right to forcibly eject a customs officer from his premises after the officer has fulfilled his errand. U. S. v. Mosely (D. C. 1871) Fed. Cas. No. 15,823.

One who, knowing that certain casks of whisky are without revenue stamps, obstructs an officer attempting to seize the same, in order that opportunity may be given for another to escape therewith, is guilty under the statute. United States v. Sykes (D. C. 1893) 58 Fed. 1000.

Indictment.—Sufficiency of indictment under this section. U. S. v. Fears (C. C. 1878) Fed. Cas. No. 15,080.

An indictment in the words of the section that defendant "did forcibly attempt to rescue" property assessed by a collector, did not state with sufficient certainty the acts done by defendant. U. S. v. Ford (D. C. 1888) 34 Fed. 26, 29.

Cited without definite application, U. S. v. Patrick (C. C. 1893) 54 Fed. 338, 344; U. S. v. Gibson (D. C. 1891) 47 Fed. 833, 834; In re Kinney (D. C. 1900) 102 Fed. 468, 471.

(R. S. § 3178. Obsolete.)

This section required the returns or lists of objects charged with an internal tax to show whether the several rates and amounts were stated according to their values in legal tender currency or according to their values in coined money. It is omitted as obsolete.

§ 5901. (R. S. § 3179.) Making false return, or refusing to produce books; penalty.

Whenever any person delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made, or, being duly summoned to appear to testify, or to appear and produce such books as aforesaid, neglects to appear or to produce said books, he shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

Act June 30, 1864, c. 173, § 15, 13 Stat. 226.

Making false return to evade the income tax is punishable by a provision of Act Sept. 8, 1916, c. 463, §§ 14c, 18, post, §§ 6336n (c), 6336q.

Notes of Decisions

See note under § 5895, ante.

Repealing act as preserving prosecution for false return.—Act March 31, 1868, § 2, which repeals Act June 30, 1864, §§ 94, 95, and acts amendatory thereof, does not operate to preserve

a prosecution for a false return commenced, but not carried to judgment, before the repeal took effect. U. S. v. Finlay (D. C. 1869) Fed. Cas. No. 15,099.

Return of income.—A false return of income for taxation made with an intent to be acted upon by the government, will subject the party to an indictment, though he make a subsequent correct return. U. S. v. Bens (D. C. 1868) Fed. Cas. No. 14,576.

Return by tobacco manufacturers.—Tobacco manufacturers may be indicted for making a false and fraudulent return under the internal revenue laws. U. S. v. McGinnis (D. C. 1866) Fed. Cas. No. 15,678.

Indictment—Election.—Where indictments are found, both for making false returns and for perjury, the prosecution must elect between them. U. S. v. Rumsey (D. C. 1867) Fed. Cas. No. 16,207.

Evidence.—The government, claiming that a distiller must have used more material and manufactured more spirits than he returned is bound to prove that such was necessarily the fact, and must exclude any other conclusion. U. S. v. Furlong (D. C. 1869) Fed. Cas. No. 15,178.

To sustain the theory that a given amount of material will produce a certain quantity of spirits, it must be shown that this is a necessary and unavoidable inference from the facts proved. Id.

Cited without definite application, U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103.

§ 5902. (R. S. § 3180.) Taxable property owned by non-residents.

Whenever there are in any district any articles not owned or possessed by or under the care or control of any person within such district, and liable to be taxed, and of which no list has been transmitted to the collector, as required by law, the collector or one of his deputies shall enter the premises where such articles are situated and shall take such view thereof as may be necessary, and make lists of the same, according to the form prescribed. Said lists, being subscribed by such collector or deputy, shall be taken as sufficient lists of such articles for all purposes.

Act June 30, 1864, c. 173, § 16, 13 Stat. 227. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401.

Notes of Decisions

See note under § 5895, ante.

Cited without definite application, U. S. v. Pacific R. R. (C. C. 1880) 1 Fed 97, 103.

§ 5903. (R. S. § 3181, as amended, Act Feb. 18, 1875, c. 80, § 1.) Lists, when taken and how denominated.

The lists or returns aforesaid shall, where not otherwise specially provided for, be taken with reference to the day fixed for that purpose by this Title as aforesaid; and where duties accrue at other and different times, the list shall be taken with reference to the time when said taxes become due, and shall be denominated annual, monthly, and special lists or returns.

Act June 30, 1864, c. 173, § 18, 13 Stat. 228. Act Feb. 18, 1875, c. 80, § 1, 18 Stat. 319.

This section, as originally enacted in the Revised Statutes, was amended by striking out, after the words "and different times, the," the word "last," and inserting in the place thereof the word "list," as set forth here, by Act Feb. 18, 1875, c. 80, § 1, cited above.

Notes of Decisions

See note under § 5895, ante.

§ 5904. (R. S. § 3182.) Commissioner of Internal Revenue to make assessments; correction of incomplete or imperfect lists.

The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this Title, or accruing under any former internal-revenue act, where such taxes have not been duly paid by stamp at the time and in the manner provided by law, and shall certify a list of such assessments when made to the proper collectors respectively, who shall proceed to collect and account for the taxes and penalties so certified. Whenever it is ascertained that any

list which has been or shall be delivered to any collector, is imperfect or incomplete in consequence of the omission of the name of any person liable to tax, or in consequence of any omission, or understatement, or undervaluation, or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner of Internal Revenue may, at any time within fifteen months from the time of the delivery of the list to the collector as aforesaid, enter on any monthly or special list the name of such person so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return, as aforesaid, there has been or shall be any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been or shall be assessed upon any return made as aforesaid; and he shall certify and return such list to the collector as required by law. And all provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary, to the proceedings herein authorized and directed.

Act June 30, 1864, c. 173, § 20, 13 Stat. 229. Act July 13, 1866, c. 184, § 9, 14 Stat. 103. Act Dec. 24, 1872, c. 13, § 2, 17 Stat. 402.

Notes of Decisions

1. Construction with other statutes.
2. Proceedings of commissioner in general.
3. Decisions of commissioner as judicial constructions.
4. Mistake or irregularity in proceedings.
5. Assessment as protecting collector from personal liability.
6. Assessment of tax on notes used for circulation.
7. Reassessment on supplementary assessment and correction of error.
8. Increase of amount in case of fraud or omission.
9. Evidence of assessment.
10. Presumption as to assessment.
11. Assessment as evidence of amount of tax.
12. Impeachment of assessment.
13. Remedy for illegal assessment.

See note under § 5895, ante, and §§ 5905, 5937, post.

1. Construction with other statutes.—Act June 13, 1898, imposing an internal revenue tax on certain legacies, required the executor to sign a statement to the collector and to pay the tax to him, and section 30 gave the commissioner of internal revenue control of the assessment. This section and section 5905, post, require the collector to pay the tax into the treasury, and declare that on the death of the collector all lists should be transferred to his successor; and section 1594, ante, declares that an action against such collector should not abate by his death, but his successor should be substituted as defendant. Held that, where the collector wrongfully received an inheritance tax on bequests which were not taxable, on his death the liability to refund was enforceable against his successor in office; it being the duty of the commissioner to pay any judgment rendered against the collector as provided by section 5944, post. Armour v. Roberts (C. C. 1907) 151 Fed. 846.

2. Proceedings of commissioner in general.—Under this section and sections 5907, 5910, and 5920, post, it was held that a purchaser claiming land under a sale for internal revenue taxes against the owner cannot sustain his title under a collector's deed where he fails to show, independently of the mere recitals in the records or in the deed, that a return was made by the person liable to be assessed, that the commissioner of internal revenue had made the assessment, that a warrant of distraint had issued, or that a certificate of purchase had been given to him. Stewart v. Pergusson (1903) 45 S. E. 585, 133 N. C. 276.

3. Decisions of commissioner as judicial constructions.—The decisions of the internal revenue commissioner are not judicial constructions, within the rule that, when a judicial construction has been given a statute, the re-enactment of the statute is in effect a legislative adoption of that construction. Dollar Sav. Bank v. U. S. (1873) 19 Wall. 227, 237, 22 L. Ed. 80.

4. Mistake or irregularity in proceedings.—The assessor acts judicially in determining what persons and things are subject to taxation, and a mistake in this respect, or an irregularity of proceedings, does not invalidate his action so as to make the collector a trespasser. Delaware R. Co. v. Prettyman (C. C. 1872) Fed. Cas. No. 3,767.

The power of assessing taxes on tobacco necessarily covers the question of quantity, rate of tax, amount of tax, and persons liable to taxation; and mistakes in any of these respects are only errors, and do not make the

assessment void. Kensett v. Stivers (C. C. 1880) 10 Fed. 517.

5. Assessment as protecting collector from personal liability.—An assessment duly certified to the collector by the assessor in the exercise of the latter's jurisdiction will protect the collector from personal liability for the levy. Erskine v. Hohnbach (1871) 81 U. S. (14 Wall.) 613, 20 L. Ed. 745.

A tax collector of the United States cannot revise or refuse to enforce an assessment regularly made by the assessor in the exercise of the latter's jurisdiction; his duties in this respect being merely ministerial. Id.

6. Assessment of tax on notes used for circulation.—In an action under section 6289, post, levying on every person, firm, or association, other than a national bank, a tax of 10 per cent. on the amount of their notes used for circulation, recovery may be had without an assessment of the taxes by the commissioner of internal revenue. U. S. v. Warrick (C. C. 1885) 25 Fed. 138.

7. Reassessment or supplementary assessment and correction of error.—Under Act June 30, 1864, § 20, as amended by Act July 13, 1866, § 9, it is unnecessary that an assessor, in making a reassessment for deficiencies, should make his reassessment coincide, month by month, in the terms which it covers, with the monthly returns of the manufacturer; that is to say, it is not requisite that he should make a separate specification of deficiency for each defective return. Dandelet v. Smith (1873) 85 U. S. (18 Wall.) 642, 21 L. Ed. 758.

Nor under the terms of the act of 1866, when the reassessment was made within 15 months from the passage of the act, was it necessary that the reassessment should have reference only to returns made within 15 months prior to the reassessment. Id.

Nor under Act March 2, 1867 (R. S. § 3437), conceding that since the act of 1866 brewers are taxable, in the first instance, by stamps per barrel, and not on monthly returns, would a reassessment for deficiency be void, even though it had been made out on the principle of an assessment for false returns, under the previous act of July 13, 1866. Id.

An assessor has power to reassess the income tax of a citizen who has already paid the tax first assessed against him. Doll v. Evans (C. C. 1872) Fed. Cas. No. 3,969.

Assessor has power to make a supplementary assessment, increasing amount of distiller's tax. Barker v. White (C. C. 1874) Fed. Cas. No. 996.

Where the assessment is too small, the assessor may make an assessment of an additional tax to cover the deficiency. U. S. v. Black (C. C. 1874) Fed. Cas. No. 14,600.

Under this section the commissioner, in making a reassessment upon distilled spirits, for the purpose of rectifying an error, is not confined to a period of 15 months last past. U. S. v. O'Neill (C. C. 1884) 19 Fed. 567, 571.

The assessment cannot be re-examined after the assessor has accepted the returns, assessed the tax, made a return, and the tax has been paid. In re Brown (D. C. 1866) Fed. Cas. No. 1,977.

The assessable capacity of a distillery, as determined by survey (Act July 20, 1868), cannot be raised by the assessor or the government, except by a new survey directed by the commissioner of internal revenue. U. S. v. King (D. C. 1871) Fed. Cas. No. 15,-533.

The fact that, in the aggregate, there is no excess in the number of matches on which a tax is paid will not prevent the commissioner from assessing an additional tax on those boxes of the lot which overrun. Schmitt v. Trowbridge (D. C. 1878) Fed. Cas. No. 12,-468.

An assessment of internal revenue tax on distilled spirits based on an estimate is lawful, and is not rendered invalid by a voluntary correction of errors in the estimate. U. S. v. United States Fidelity & Guaranty Co. (D. C. 1906) 144 Fed. 866, judgment reversed (C. C. A. 1907) United States Fidelity & Guaranty Co. v. U. S. (1907) 158 Fed. 604, 85 C. C. A. 426.

8. Increase of amount in case of fraud or omission.—The assessor may investigate returns made by a distiller, and increase the amount of the assessment in all cases of fraud or omission, and assess the amount of tax for which the party is liable (Act June 30, 1864, §§ 14, 20, amended by Act July 13, 1866); and such authority is in its nature judicial. U. S. v. Hodson (C. C. 1871) Fed. Cas. No. 15,376.

9. Evidence of assessment.—In the assessment of special taxes the officers of the internal revenue act in a quasi judicial capacity, and in an action to recover such taxes the introduction in evidence of the assessment list, regular in form, makes a prima facie case for the government. Western Express Co. v. U. S. (1905) 141 Fed. 28, 72 C. C. A. 516.

The original assessment list signed by the commissioner, and on file in office of collector, is evidence of assessment. U. S. v. Bristow (C. C. 1884) 20 Fed. 378.

The defendants in a suit on a distiller's bond, instituted for the recovery of internal-revenue taxes assessed under section 5988, post, have no legal right to the use at the trial of the reports, documents, and other papers on file in the office of the commissioner, upon which the commissioner acted in

making the inquiries and determinations contemplated by this section, and from which he derived the information that, in whole or in part, formed the basis of the assessment. Nor has the court authority to compel the production of such papers. (1878) 16 Op. Atty. Gen. 24.

10. Presumption as to assessment.—Two assessments, covering partially the same period, will be presumed to be for different liquors till the contrary is shown. U. S. v. O'Neill (C. C. 1884) 19 Fed. 567.

11. Assessment as evidence of amount of tax.—An internal revenue assessment by the commissioner on liquors distilled held prima facie evidence of the amount of the tax due against both the distiller and the surety on his bond. United States Fidelity & Guaranty Co. v. U. S. (1912) 201 Fed. 91, 119 C. C. A. 429.

The assessor's original list, transmitted to the collector, is prima facie evidence of the amount of the tax due. U. S. v. Butler (C. C. 1873) Fed. Cas. No. 14,702.

12. Impeachment of assessment.—In a suit on a distiller's bond for the amount of an assessment, defendant may impeach the assessment, though he has not first appealed to the commissioner. U. S. v. Myers (C. C. 1878) Fed. Cas. No. 15,846.

13. Remedy for illegal assessment.—See, also, §§ 5944 and 5947, post, and notes thereunder.

A federal court has power to prevent, by injunction, the imposition of an illegal tax under Act June 30, 1864. See Act March 2, 1833, § 2, and Act June 30, 1864, § 50. Cutting v. Gilbert (C. C. 1865) Fed. Cas. No. 3,519.

The taxpayer has a remedy by an action at law against an assessor making an illegal assessment. Id.

Cited without definite application, Bergdoll v. Pollock (1877) 95 U. S. 337, 338, 24 L. Ed. 512; U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103.

§ 5905. (R. S. § 3183, as amended, Act March 1, 1879, c. 125, § 3.) Duty and authority of collectors and deputies to collect all taxes.

It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax.

Act June 30, 1864, c. 173, §§ 36, 41, 13 Stat. 238, 239. Act July 13, 1866, c. 184, § 9, 14 Stat. 110. Act March 1, 1879, c. 125, § 3, 20 Stat. 331.

This section, as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the provision beginning with the words "excepting only when the same are in payment," to the end of the section, as set forth here, by Act March 1, 1879, c. 125, § 3, cited above.

Collectors were required to give receipts for the payment of taxes, except when represented by stamps, by Act Sept. 8, 1916, c. 463, § 17, post, § 6336p.

Certified checks on banks, etc., were made receivable for internal taxes, as well as for duties on imports, by Act March 2, 1911, c. 191, § 1, ante, § 5711.

Notes of Decisions

See notes under the preceding section.

Power and duty to collect after removal from office.—See, also, § 5943, and note thereunder.

A collector of internal revenue, after removal from office, has no power to collect the duties outstanding at the time of his removal, and which had accrued while he remained in office, but the power and duty devolve on his successor. Sthresh v. U. S. (1807) 8 U. S. (4 Cranch) 169, 2 L. Ed. 584.

Duty to collect by distraint.—A tax collector of the United States cannot revise or refuse to enforce an assessment regularly made by the assessor in the exercise of the latter's jurisdiction; his duties in this respect being merely ministerial. Erskine v. Hohnbach (1871) 81 U. S. (14 Wall.) 613, 20 L. Ed. 745.

An assessment duly certified to the collector by the assessor in the exercise of the latter's jurisdiction will protect the collector from personal liability for the levy. Id.

The duty imposed on the collector to collect by distraint is not suspended by an action by the government on the distiller's bond for the collection of the same taxes. Harding v. Woodcock (1890) 11 Sup. Ct. 6, 137 U. S. 43, 34 L. Ed. 580.

The doctrine that a ministerial officer will be protected in the enforcement of process regular on its face, issued by an officer or tribunal possessing jurisdiction over the subject-matter, and having the power to issue process for the enforcement of its judgment, applies to a collector of internal revenue in enforcing against a distiller an assessment for taxes, regu-

lar on its face, made by the commissioner of internal revenue, and duly certified to the collector, though such assessment may in fact have been invalid. Id.

Collection of duties on imported spirits.—Under Act March 7, 1864, imposing an additional duty on imported spirits, the duty is to be collected in such manner as the secretary of the treasury may direct, and he has power to direct it to be paid to a collector of internal revenue. Westfall v. Shook (C. C. 1867) Fed. Cas. No. 17,448.

Power of collectors to make commutation.—Internal revenue collectors cannot make a commutation so as to affect the government. Martin's Adm'rs v. U. S. (1827) 20 Ky. (4 T. B. Mon.) 487.

Cited without definite application, Armour v. Roberts (C. C. 1907) 151 Fed. 846.

§ 5906. (R. S. § 3184.) Notice and demand of taxes.

Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

Act July 13, 1866, c. 184, § 9, 14 Stat. 106. Act March 2, 1867, c. 169, § 8, 14 Stat. 473. Act Dec. 24, 1872, c. 13, § 2, 17 Stat. 402.

Notes of Decisions

Strict construction and enforcement of statute.—This section must be strictly construed and enforced. U. S. v. Allen (C. C. 1882) 14 Fed. 263, 265.

So, when land has been sold and bid in by the United States for taxes due from a firm of distillers in 1867, but not assessed until the interest and penalty exceeded the tax, and not enforced until 1876, and no formal notice and demand of payment could be proved, the United States acquires no title, and a conveyance made before such sale to an innocent purchaser will not be set aside. Id.

Notice.—This notice is not part of the assessment, nor a condition precedent thereto, but is necessary before the taxpayer can be charged with the penalty and interest. U. S. v. Bristow (C. C. 1884) 20 Fed. 378, 379.

Plaintiffs deposited distilled spirits in their bonded warehouse in December, 1880, and gave bond under section 6034, post, to pay the tax within three years from entry. The tax was not paid within three years, and on February 24, 1884, the collector gave them notice to pay the tax as required by this section, stating, as in the section provided, that unless the tax was paid within 10 days it would be the collector's duty to collect a penalty of 5 per centum in addition, and interest. By section 5982, post, the tax attaches as soon as the spirits come into existence. Held, that the tax and penalty were due and payable before March 5, 1884. Clay v. Swope (C. C. 1889) 38 Fed. 396.

In absence of any prescribed method of giving the notice of the assessment of the special excise tax on corporations, this section is applicable. U. S. v. General Inspection & Loading Co. (D. C. 1913) 204 Fed. 657, 658.

Penalty and interest.—The interest is not a penalty, but is recoverable as interest, and the limitation of five years, prescribed by R. S. § 1047, ante, § 1712, for suits to recover penalties, does not apply to a suit to recover such interest as a part of the debt. U. S. v. Guest (1906) 143 Fed. 456, 458, 74 C. C. A. 590, judgment affirmed (1906) 150 Fed. 121, 80 C. C. A. 75.

Plaintiffs did not pay the tax within the 10 days, and on March 15th the collector gave notice that the tax and penalty were due and unpaid, and unless paid within 10 days he would distrain and sell the spirits. The penalty was afterwards paid. After March 5th permission to plaintiffs to export the spirits was given, and they gave their bond, and afterwards the spirits were exported. Held, that the penalty is imposed on the person for default, and is not a tax or duty on spirits which have been exported, and that the penalty was not discharged by the exportation. Clay v. Swope (C. C. 1889) 38 Fed. 396, 399.

Cited without definite application, U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103.

§ 5907. (R. S. § 3185.) Monthly returns and special returns, when to be made, and when tax payable.

All returns required to be made monthly by any person liable to tax shall be made on or before the tenth day of each month, and the tax assessed or due thereon shall be returned by the Commissioner of Internal Revenue to the collector on or before the last day of each month. All returns for which no provision is otherwise made shall be made on or before the tenth day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made. When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of five per centum, together with interest at the rate of one per centum per month, upon such tax from the time the same became due; but no interest for a fraction of a month shall be demanded: Provided, That notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner of Internal Revenue. It shall then be the duty of the collector, in case of the non-payment of said tax on or before the last day of the month, as aforesaid, to demand payment thereof, with five per centum added thereto, and interest at the rate of one per centum per month, as aforesaid, in the manner prescribed by law; and if said tax, penalty, and interest, are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law.

Act July 13, 1866, c. 184, § 11, 14 Stat. 150. Act March 2, 1867, c. 169, § 8, 14 Stat. 473. Act Dec. 24, 1872, c. 13, §§ 1, 2, 17 Stat. 401, 402.

Notes of Decisions

Construction and operation in general.—This section must be strictly construed and complied with. U. S. v. Allen (C. C. 1882) 14 Fed. 263, 265.

Cited without definite application, U. S. v. Wilson (1886) 6 Sup. Ct. 991, 992, 118 U. S. 86, 30 L. Ed. 110; Mansfield v. Excelsior Refinery Co. (1890) 10 Sup. Ct. 825, 829, 135 U. S. 326, 34 L. Ed. 162.

§ 5908. (R. S. § 3186, as amended, Act March 1, 1879, c. 125, § 3, and Act March 4, 1913, c. 166.) Lien for taxes.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: Provided, however, That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: Provided further, Whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, or in the State of Louisiana in the parishes thereof, then such lien shall not be valid in that State as against any mortgagee, purchaser, or judgment creditor, until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, within which the property subject to the lien is situated.

Act July 13, 1866, c. 184, § 9, 14 Stat. 107. Act March 1, 1879, c. 125, § 3, 20 Stat. 331. Act March 4, 1913, c. 166, 37 Stat. 1016.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "in favor of the United States," the words "from the time it was due until paid," and inserting in place thereof the words "from the time

when the assessment-list was received by the collector, except when otherwise provided, until paid," as set forth here, by Act March 1, 1879, c. 125, § 3, cited above.

It was further amended by adding, after the word "person," the provisos beginning with the words, "Provided however, that such lien," etc., to the end of the section as set forth here, by Act March 4, 1913, c. 166, last cited above.

Notes of Decisions

1. Creation of lien in general.
2. Receipt of assessment list.
3. Deficiency of distilled spirits exported.
4. Extent of lien in general.
5. Corporate assets as subject to lien.
6. Tax on ships under former law.
7. Direct tax.
8. Income tax.
9. Oleomargarine tax.
10. Tax on spirits about to be exported.
11. Record of lien.
12. Priority of lien.
13. Loss of lien.
14. Satisfaction of lien.
15. Enforcement of lien.
16. Forfeiture passing land to United States on nonpayment of tax in insurrectionary district under law of 1862.
17. Recovery of taxes paid under protest.

1. Creation of lien in general.—A demand for the payment of taxes is necessary, under the statute to create and bring into operation a lien therefor, and such demand must state the amount of the tax. U. S. v. Pacific R. R. (C. C. 1877) Fed. Cas. No. 15,984.

The nonpayment of the internal revenue tax under this section is and continues a mere personal liability until its payment is demanded, when, if payment is refused or neglected, it becomes a lien on property, and can be satisfied thereout. Brown v. Goodwin (N. Y. 1876) 1 Abb. N. C. 452.

2. Receipt of assessment list.—The receipt of the ascertainment of deficiency by the collector of internal revenue from the collector of customs is, in effect, his receipt of an assessment list of the tax, within the meaning of the statute. (1879) 16 Op. Atty. Gen. 634.

3. Deficiency of distilled spirits exported.—The "tax on deficiency" in the quantity of distilled spirits exported is secured by a lien, under the general provision contained in this section, upon all the property of the person liable therefor. The special provisions found in section 5985, post, do not forbid the application of the general provision of this section to all cases where there is nothing in such special provisions to contradict. (1879) 16 Op. Atty. Gen. 634.

4. Extent of lien in general.—A lien of the government is limited to the property belonging to the tax debtor, and it is only such property that the collector can levy on and sell. A sale for the collection of a tax does not cut off the title of a third person. Sheridan v. Allen (1907) 153 Fed. 568, 82 C. C. A. 522.

5. Corporate assets as subject to lien.—Assets of a corporation are subject to a lien for the payment of taxes, provided the corporation has not been dissolved and all its assets distributed prior to the time the list of assessments came into the hands of the collector. (1910) 28 Op. Atty. Gen. 241.

Where the corporation is dissolved before the taxes become due, and no lien attaches to the assets of a corporation, as in the case first above referred to, the tax imposed may be collected by the government by pursuing the assets into the hands of the stockholders, in the same manner as any other creditor might obtain satisfaction of his debt. Id.

6. Tax on ships under former law.—Where a tax on ships was changed to a tax on hulls only, pending completion of a vessel, and after it was sold by the builder for a price "in full" the purchaser is not liable for the tax. Size v. Curtis (C. C. 1866) Fed. Cas. No. 12,920.

7. Direct tax.—Act Jan. 9, 1815, providing that the direct tax laid thereby shall remain a lien on land during two years after it shall become payable, does not restrain the collector from selling the land after the two years have expired, where there has been no alienation of it by the owner. Holden v. Eaton (1828) 24 Mass. (7 Pick.) 15.

8. Income tax.—Allegations in bill against commissioner of internal revenue to enjoin collection of taxes imposed by income tax law, that by the provision, making tax a lien on plaintiff's property, its assessment would constitute a cloud on plaintiff's title, do not take case out of rule that by section 5947, post, collection of tax cannot be enjoined because of alleged unconstitutionality of act imposing it. Dodge v. Osborn (1916) 36 Sup. Ct. 275.

The lien of the income tax (Act July 13, 1866, c. 184, 14 Stat. 107), relates back, upon demand, to the time when the tax was due, but only attaches to the property belonging to the person from whom the tax was due at the time when the demand for the payment of the tax was made. U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 100.

The assessment of such tax by the assessor, in the mode prescribed by law, is essential to the creation of such lien. Id.

9. Oleomargarine tax.—The preceding sections not applying to the Oleomargarine Act, a lien for penalty and in-

terest under this section could not stand in an attempted application to that act. Grier v. Tucker (C. C. 1907) 150 Fed. 658, 661.

10. Tax on spirits about to be exported.—As the internal revenue laws imposing a tax, with a penalty for nonpayment, on distilled spirits, create a lien on all other property of the delinquent, and the same, with a certain exception, may be seized therefor, there is no presumption that the delinquent was coerced into payment of the penalty by reason of a lien claimed on spirits about to be exported so as to entitle him to maintain an action to recover the same. Clay v. Swope (C. C. 1889) 38 Fed. 396.

11. Record of lien.—A state law, requiring that all liens on real estate must be recorded to affect third parties, does not apply to tax liens in favor of the United States. U. S. v. Snyder (1893) 13 Sup. Ct. 846, 847, 149 U. S. 210, 37 L. Ed. 705.

Such lien, though not recorded, may be enforced against the lands in the hands of innocent purchasers. Id.

12. Priority of lien.—Bona fide purchaser of distillery property for value and without notice takes subject to existing liens for taxes. U. S. v. Turner (C. C. 1873) Fed. Cas. No. 16,548; Alkan v. Bean (C. C. 1877) Fed. Cas. No. 202.

This lien is superior to a mortgage or deed of trust executed subsequently to the demand for payment, and embraces every species of property subject to ownership. Blacklock v. U. S. (1906) 41 Ct. Cl. 89.

A mortgagee may protect his security against the prior lien of the government or may redeem the premises, if sold. Id.

13. Loss of lien.—Lien on distillery for unpaid taxes is not lost by a bonding and release of the property in forfeiture proceedings afterwards discontinued without judicial action. Alkan v. Bean (C. C. 1877) Fed. Cas. No. 202.

14. Satisfaction of lien.—Where a municipal corporation, by its officers and agents, distills spirits, and, without paying the gallon tax on them, removes them from the place of distillation to a place other than the United States bonded warehouse, and sells them and converts the money into its treasury, a payment of the taxes under protest and under threat of distraint is a satisfaction of a lien held by the United States, and the money cannot be recovered in an action against the United States collector. Salt Lake City v. Hollister (1882) 3 Utah, 200, 2 Pac. 200.

15. Enforcement of lien.—The government is not estopped by statements of its collector to enforce existing liens for unpaid taxes. Alkan v. Bean (C. C. 1877) Fed. Cas. No. 202.

An action to enforce the statutory lien for internal revenue taxes alleged to have been evaded by defendant is "a civil action in which the United States are concerned," and which it is the duty of the district attorney to prosecute under R. S. § 771, ante, § 1296. Bliss v. U. S. (C. C. 1889) 37 Fed. 191.

Where an executor fails to pay a legacy tax under War Revenue Act June 13, 1898, the United States may sue him to impose a lien on the property bequeathed if he had it in his possession, and, if not, may institute proceedings against the person having the property in possession. U. S. v. Priest (D. C. 1914) 210 Fed. 332.

Where an executor paid to a legatee the balance of her legacy after paying part of a legacy tax owing to the United States under War Revenue Act June 13, 1898, the legatee was not liable in assumpsit for the balance of the tax which could be collected only by suit to enforce the government's lien on the property so transferred. Id.

Act March 3, 1865, § 1, amending Act June 30, 1864, providing that, if any person liable to pay an internal revenue duty fail to pay it after demand, the amount shall be a lien on all property and rights of property, and the collector may levy on all property and rights of property belonging to such person, does not make such amount payable out of the proceeds of a sale of the taxpayer's property under an execution on a judgment in the common pleas in favor of another creditor. Bosset v. Miller (Pa. 1871) 2 Woodw. Dec. 40.

16. Forfeiture passing land to United States on nonpayment of tax in insurrectionary district under law of 1862.—Act June 7, 1862, § 4, for the collection of taxes in insurrectionary districts, does not, on failure to pay the same, create such a forfeiture that the property in the land passes ipso facto, on the nonpayment of taxes for 60 days, from the former owner to the United States. Martin v. Snowden (Va. 1868) 18 Grat. 100.

17. Recovery of taxes paid under protest.—Plaintiff company, having leased all the property, and taking over the entire business of another company, and agreeing to pay taxes against it, and, to avoid threatened distraint and sale of the leased property under this and sections following, having paid the tax under protest, held to have paid under duress, and entitled to sue for its recovery. Cambria Steel Co. v. McCoach (D. C. 1915) 225 Fed. 278.

Cited without definite application, Mansfield v. Excelsior Refinery Co. (1890) 10 Sup. Ct. 825, 829, 135 U. S. 326, 34 L. Ed. 162.

§ 5909. (R. S. § 3187.) Taxes collectible by distraint.

If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, and evidences of debt, of the person delinquent as aforesaid: Provided, That there shall be exempt from distraint and sale, if belonging to the head of a family, the school-books and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market-value of said sheep shall not exceed fifty dollars; the necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days; fuel to an amount not greater in value than twenty-five dollars; provisions to an amount not greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred dollars; and the books, tools, or implements, of a trade or profession, to an amount not greater than one hundred dollars shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt.

Act July 13, 1866, c. 184, § 9, 14 Stat. 106, 107, 108. Act March 2, 1867, c. 169, § 8, 14 Stat. 473.

Notes of Decisions

See, also, notes under the preceding section.

Application to oleomargarine tax.—This section does not apply to the Oleomargarine Act. Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658.

Enforcement of lien.—The United States held not required to enforce the lien of internal revenue taxes against the taxpayer's chattels and personal effects under this section and sections 5910–5918, post, before resorting to a sale of his real estate and leaseholds. U. S. v. Curry (D. C. 1912) 201 Fed. 371.

Warrant as equivalent to demand.—The issue of the warrant to a collector of internal revenue tax is not an equivalent for the demand required by the statute, where the person taxed has had no notice of it. Brown v. Goodwin (N. Y. 1876) 1 Abb. N. C. 452.

Warrant as justification for distraint.—The assessor's warrant is a justification to a collector distraining the taxpayer's property. Haffin v. Mason (1872) 15 Wall. 671, 675, 21 L. Ed. 196.

Execution of erroneous assessment.—A collector of the direct tax will not be liable for executing an erroneous assessment by distress, if the house be liable to be assessed. Henderson v. Brown (N. Y. 1803) 1 Caines, 92, 2 Am. Dec. 164.

Bank taxes.—Where a national bank refuses to pay taxes assessed upon its income and profits (Act July 14, 1870, §§ 15, 17), a collector or his deputy, after notice and demand, may distrain therefor. State Nat. Bank of Minneapolis v. Morrison (C. C. 1874) Fed. Cas. No. 13,325.

Cited without definite application, Mansfield v. Excelsior Refinery Co. (1890) 10 Sup. Ct. 825, 829, 135 U. S. 326, 34 L. Ed. 162; U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103; U. S. v. Howell (C. C. 1881) 9 Fed. 674, 678.

§ 5910. (R. S. § 3188.) Mode of levying distraint.

In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for non-payment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy.

Act July 13, 1866, c. 184, § 9, 14 Stat. 107.

Notes of Decisions

See, also, notes under §§ 5908, 5909, ante.

Spirits in bonded warehouse before withdrawal by purchaser.—See Sheri-

dan v. Allen (1907) 153 Fed. 568, 82 C. C. A. 522. See note under § 396.

Nothing can be plainer in legal decision than the proposition that the lien in the case of an assessment for taxes under section 6089, post, attaches to the distillery, the distilled spirits, and the real and personal property used in connection with the distillery, and that it may be enforced against the distilled spirits at any time before the purchaser of the same withdraws them from the bonded warehouse. Hartman v. Bean (1878) 99 U. S. 393, 397, 25 L. Ed. 455.

Land in hands of bona fide purchaser from delinquent.—Lien on real estate of a delinquent internal revenue tax under this section held enforceable against the land in the hands of subsequent bona fide purchasers from the delinquent without notice. U. S. v. Curry (D. C. 1912) 201 Fed. 371.

Cotton captured as prize.—Cotton captured as prize, and in the custody of the marshal under a warrant from the prize court is not liable to be proceeded against for the internal revenue tax while in his custody. The Victory (D. C. 1863) Fed. Cas. No. 16,938.

Cited without definite application, U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103.

§ 5911. (R. S. § 3189.) Delinquents must exhibit evidences relating to property distrained.

All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid.

Act July 13, 1866, c. 184, § 9, 14 Stat. 107.

Notes of Decisions

See note under § 5909, ante.

Cited without definite application, U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103.

§ 5912. (R. S. § 3190.) Proceedings on distraint.

When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post-office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days.

Act July 13, 1866, c. 184, § 9, 14 Stat. 107.

Notes of Decisions

See note under § 5909, ante.

Notice of sale.—Where a collector of the duty on carriages made a distress under Act Dec. 15, 1814, § 4, and sold it, at auction, for less than half the value, in two hours after seizure, without giving public notice of the time and place of sale, such sale was void. Blake v. Johnson (1817) 1 N. H. 91.

Cited without definite application, U. S. v. Pacific R. R. (C. C. 1880) 1 Fed. 97, 103.

§ 5913. (R. S. § 3191.) When property sold under distraint is subject to tax, and tax not paid.

When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon.

Act July 13, 1866, c. 184, § 9, 14 Stat. 108. Act Dec. 24, 1872, c. 13, § 2, 17 Stat. 402.

Notes of Decisions

See note under § 5909, ante.

§ 5914. (R. S. § 3192.) When property sold under distraint may be purchased for United States, etc.

When any property advertised for sale under distraint, as aforesaid, is of a kind subject to tax, and the tax has not been paid, and the amount bid for such property is not equal to the amount of the tax, the collector may purchase the same in behalf of the United States for an amount not exceeding the said tax. All property so purchased may be sold by the collector, under such regulations as may be prescribed by the Commissioner of Internal Revenue. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of sale, shall pay into the Treasury the surplus, if any there be, after defraying all lawful charges and fees.

Act July 13, 1866, c. 184, § 9, 14 Stat. 108.

Notes of Decisions

See note under § 5909, ante.

§ 5915. (R. S. § 3193.) Property distrained to be restored on payment before sale.

In any case of distraint for the payment of the taxes aforesaid, the goods, chattels, or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, payment of the amount due is made to the proper officer charged with the collection, together with the fees and other charges; but in case of non-payment as aforesaid, the said officers shall proceed to sell the said goods, chattels, or effects at public auction, and shall retain from the proceeds of such sale the amount demandable for the use of the United States, and a commission of five per centum thereon for his own use, with the fees and charges for distraint and sale, rendering the overplus, if any there be, to the person who may be entitled to receive the same.

Act July 13, 1866, c. 184, § 9, 14 Stat. 106.

Notes of Decisions

See note under § 5909, ante.

Commission of 5 per cent. under former law.—Under Act Jan. 9, 1815, § 26, providing that, in case of distress to enforce a direct tax, the goods shall be restored on payment of the amount demanded, with reasonable expenses, and, if the property is sold, allowing 5 per cent. commission to the collector, he is not entitled to the 5 per cent., except in case of actual distress and sale. Stow v. Converse (1820) 3 Conn. 325, 8 Am. Dec. 189.

§ 5916. (R. S. § 3194.) Effect of certificate of sale on distraint.

In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and

where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

Act July 13, 1866, c. 184, § 9, 14 Stat. 107. Act June 30, 1864, c. 173, § 45, 13 Stat. 240.

Notes of Decisions

See note under § 5909, ante.

Title of purchaser.—A sale of property by an internal revenue officer under a distraint warrant for the collection of a tax does not cut off the title of a third person who does not owe the tax and against whose property the warrant is not directed, and the true owner may assert his title and right of possession by replevin against the purchaser after the officer has made the sale and transferred possession, and has thus completed his official acts with respect to the property. A sale of property by a collector under a distraint warrant is clearly distinguishable from a sale of property seized and condemned in forfeiture proceedings for violation of the customs or internal revenue laws, and passes only the interest of the tax debtor. Sheridan v. Allen (1907) 153 Fed. 568, 82 C. C. A. 522, reversing order Allen v. Sheridan (C. C. 1906) 145 Fed. 963.

Cited without definite application. Mansfield v. Excelsior Refinery Co. (1890) 10 Sup. Ct. 825, 829, 135 U. S. 326, 34 L. Ed. 162; Blacklock v. U. S. (1908) 28 Sup. Ct. 228, 233, 208 U. S. 75, 52 L. Ed. 396.

§ 5917. (R. S. § 3195.) When property distrained is not divisible. When any property liable to distraint for taxes is not divisible, so as to enable the collector by a sale of part thereof to raise the whole amount of the tax, with all costs, charges, and commissions, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after satisfying the tax, costs, and charges, shall be paid to the person legally entitled to receive the same; or, if he cannot be found, or refuses to receive the same, shall be deposited in the Treasury of the United States, to be there held for his use until he makes application therefor to the Secretary of the Treasury, who, upon such application and satisfactory proofs in support thereof, shall, by warrant on the Treasury, cause the same to be paid to the applicant.

Act July 13, 1866, c. 184, § 9, 14 Stat. 108.

Notes of Decisions

See note under § 5909, ante.

Sale of land as a whole.—Where the collector acted in good faith, it was not improper for him, in the exercise of his discretion, to sell as an entirety the lands, consisting of two town lots, which were inclosed and occupied as a single homestead, a dwelling house being upon one and a barn on the other. The state statute under which they were separately assessed has no application to his proceedings. Springer v. U. S. (1880) 102 U. S. 586, 26 L. Ed. 253.

Act 1815, c. 174, provides that where property, liable to a direct tax under that act, shall not be divisible, so that the collector may, by a sale of part thereof, raise the whole amount of the tax, etc., the whole of such property shall be sold, etc. In the case of certain real estate capable of such division, all of which was owned by the party assessed, it was held that the sale of an undivided portion of such estate for the payment of the tax was invalid. Loud v. Penniman (1837) 36 Mass. (19 Pick.) 539.

A law of congress which requires that the whole land shall be sold in all cases for payment of taxes, without regard to the fact that it may be divided without injury to it and the tax paid by a sale of a part of it, is unconstitutional. Martin v. Snowden (Va. 1868) 18 Grat. 100.

Surplus proceeds of sale for direct tax.—Where application by the owner of land sold for direct taxes and not redeemed was made to the secretary of the treasury for the $929.50 surplus, and, no action being taken there-

on, he sued in the court of claims to recover that sum, it was held that he was entitled to recover it. U. S. v. Lawton (1884) 110 U. S. 146, 3 Sup. Ct. 545, 28 L. Ed. 100.

Until an application has been made to the treasury, the statute does not begin to run against a claim for the surplus proceeds of a sale under Act Aug. 5, 1861, relative to the sale of property which was subject to direct taxes, and which proceeds have, under the statute, been deposited in the treasury to be held until called for by the owner. U. S. v. Cooper (1887) 120 U. S. 124, 7 Sup. Ct. 459, 30 L. Ed. 606.

§ 5918. (R. S. § 3196.) When real estate may be sold to satisfy taxes.

When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate.

Act July 13, 1866, c. 184, § 9, 14 Stat. 108.

Notes of Decisions

See note under § 5909, ante.

Cited without definite application, Mansfield v. Excelsior Refinery Co. (1890) 10 Sup. Ct. 825, 829, 135 U. S. 326, 34 L. Ed. 162.

§ 5919. (R. S. § 3197, as amended, Act Feb. 27, 1877, c. 69, § 1, and Act March 1, 1879, c. 125, § 3.) Proceedings for seizure and sale of real estate for taxes.

The officer making the seizure mentioned in the preceding section shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection-district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the post-office nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of ten dollars. When the real estate so seized consists of several distinct tracts or parcels, the officer making sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses, charges, and fees aforesaid to such several tracts or parcels, or to any of them, in estimating the minimum price aforesaid. If no person offers for said estate the amount of said minimum price, the officer shall declare the same to be purchased by him for the United States; otherwise the same shall be declared to be sold to the highest bidder. And in case the same shall be declared to be purchased for the United States, the officer shall immediately transmit a certificate of the purchase to the Commissioner of Internal Revenue, and, at the proper time, as hereafter provided, shall execute a deed therefor, after its preparation and the indorsement of approval as to its form by the United States district attorney for the district in which the property is situate, and shall without delay, cause the same to be duly recorded in the proper registry of deeds, and immediately thereafter shall transmit such deed to the Commissioner of Internal Revenue. And said sale may

be adjourned from time to time by said officer for not exceeding thirty days in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid, the officer shall forthwith proceed to again sell said estate in the same manner. And it is hereby provided, That all certificates of purchase, and deeds of property purchased by the United States under the internal-revenue laws, on sales for taxes, or under executions issued from United States courts, which now are, or hereafter may be, found in the office of any collector, United States marshal, or United States district attorney, shall be immediately transmitted by such officers respectively to the Commissioner of Internal Revenue. And it is hereby further provided, That for the preparation and approval by the United States district attorney of each deed as above required, a fee of five dollars shall be allowed to that officer, to be paid by the United States, and which he shall account for in his emolument returns.

Act July 13, 1866, c. 184, § 9, 14 Stat. 109. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248. Act March 1, 1879, c. 125, § 3, 20 Stat. 331.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "post-office nearest to the estate," the words "to be," by Act Feb. 27, 1877, c. 69, § 1, cited above.

It was further amended by striking out, after the words "by him for the United States," the words "and shall deposit with the district attorney of the United States a deed thereof, as hereafter provided," and by inserting, after the words "sold to the highest bidder," the provisions beginning with the words "And in case the same," and ending with the words "shall transmit such deed to the Commissioner of Internal Revenue," and by adding, after the words "proceed to again sell said estate in the same manner," the provisions beginning with the words "And it is hereby provided," etc., to the end of the section, as set forth here, by Act March 1, 1879, c. 125, § 3, cited above.

The last proviso of this section was superseded as to all district attorneys, except in and for the District of Columbia, by the abolition of fees in addition to salary by Act May 28, 1896, c. 252, §§ 7, 24, and Act March 3, 1905, c. 1483, § 1, ante, §§ 1419, 1431, 1435.

Notes of Decisions

Effect of provisions for proceedings in chancery.—The remedy of sale by distraint was not superseded by the provisions for suits in chancery to sell real estate (section 5929, post). Blacklock v. U. S. (1908) 28 Sup. Ct. 228, 230, 208 U. S. 75, 52 L. Ed. 396.

Necessity of sale for direct tax.—Act June 7, 1862, for the collection of direct taxes in insurrectionary districts, provides that, unless the taxes therein mentioned shall be paid within 60 days from the time of levying the same, the title to the property taxed shall "become forfeited" to the United States. Held; that there was no effectual forfeiture until sale had been made pursuant to the act. Dickerson v. Acosta (1876) 15 Fla. 614; Soutter v. Miller, Id. 625.

Necessity of strict compliance with statute.—In the sale of lands by a collector of the taxes imposed by Act 1798, the collector must comply strictly with the requisitions of the act in his proceedings preparatory to the sale. Allen v. Smith (Va. 1829) 1 Leigh, 231.

Notice.—When the owner of land, on account of which a United States succession tax has been assessed, resides in the same collection district with the land, but not upon it, a collector's notice of seizure and sale of the same to pay the tax is not lawfully served upon him by leaving a copy at the domicile on the land. Peyrie v. Schreiber (1877) 66 Mo. 38.

Where it appears that, in the case of land sold for nonpayment of an internal revenue tax, the 20 days' notice of sale required by the statute was not given, the collector's deed is void on its face. Dow v. Chandler (1884) 85 Mo. 245.

Act Jan. 1, 1815, § 28, enacts that with respect to property lying within any collection district, not owned by a resident thereof and on which the tax was unpaid, the collector shall transmit lists of the same to one of the collectors designated for that purpose, and the latter shall cause notifications of the tax to be published for 60 days. Section 4 prescribes that the secretary of the treasury shall establish regulations necessary for carrying the act into effect. Held, that where a collector sold land belonging to a nonresident, and the only notification which he published was that he had received lists of taxes due and that he was authorized to receive them, but did not state what taxes remained unpaid, the notification, though in the form prescribed by the secretary of the treasury, was insufficient, and a sale thereunder void. Eastman v. Little (1830) 5 N. H. 290.

Where the military power of the United States had not been so firmly established that citizens could safely obey its laws, and go without danger to the headquarters of the commissioners to pay their taxes, and have free benefit of the mails to receive notice of advertisement of sales, a sale of land for nonpayment of the direct taxes imposed by the acts of congress was void. Buck v. Williams (1872) 57 Tenn. (10 Heisk.) 264.

Sale of nonresident's land in custodia legis.—A sale of land for nonpayment of direct taxes may be valid, though, when it and the assessment were made, the lands belonged to a nonresident, and were in custodia legis; the state court in which the lis was pending having enjoined all creditors from interfering with or selling them, and they were sold as an entirety, notwithstanding the fact that the tax bore but a small proportion to their value. A description of the lands in the notice of sale, which identifies them so that the owner may have information of the claim thereon, is all that the law requires. Keely v. Sanders (1878) 99 U. S. 441, 25 L. Ed. 327; Sherry v. McKinley (1878) 99 U. S. 496, 25 L. Ed. 330.

Sale of succession without offering and adjudication.—A sale by the United States tax collector of land of a succession without an offering and adjudication of the land, but made 25 miles from where the distraining was effected, by a mere naked transfer by a notarial act from the tax collector, is an absolute nullity, since not in compliance with the act of congress. Johnson v. Dunbar (1874) 26 La. Ann. 188.

Sale of land as a whole.—See note under § 5917, ante.

Purchase by government and subsequent sale.—Act June 7, 1862 (12 Stat. 422, § 7), in regard to the collection of a direct tax in insurrectionary districts after the Civil War, provided, inter alia, that the board of tax commissioners should, on nonpayment of the tax, advertise the land charged therewith for sale, and at the time and place of sale cause the same to be sold to the highest bidder for a sum not less than the taxes, interest, penalty, and costs, or, in the absence of a bid amounting to such sum, to bid it off for the United States. As amended by Act Feb. 6, 1863 (12 Stat. 640), it provided that, where payment of the taxes, or a request that the property be struck off to a purchaser for a less sum than two-thirds of its assessed value, was not made before the day of sale, the commissioners should be "authorized" at the sale to bid off the property for the United States at a sum "not exceeding two-thirds of the assessed value thereof," unless some person shall bid a larger sum. Held, that the commissioners were not bound to bid two-thirds of the assessed value, but could sell the property for any sum over the amount of taxes, interest, and costs. Turner v. Smith (1871) 81 U. S. (14 Wall.) 553, 20 L. Ed. 724, reversing (Va. 1868) 18 Grat. 830.

Where land subject to a direct tax was sold for its nonpayment, and bought in by the United States for $1,100, under Act June 7, 1862, c. 98, § 7, as amended by Act Feb. 6, 1863, c. 21 (12 Stat. 640), the tax, penalty, interest, and costs being $170.50, but no money was paid, and the United States took possession of the land and leased it, and afterwards sold all but 50 acres for $130, under Act June 8, 1872, c. 337 (17 Stat. 330), and the land was not redeemed, an action would lie in the court of claims by the landowner to recover $929.50, representing the surplus which must be regarded as being in the treasury of the United States, under section 36 of the act of 1861, for the use of the owner, in like manner as if it were the surplus of purchase money received by the United States from a third person on a sale of the land to such person for the nonpayment of the tax: U. S. v. Lawton (1884) 3 Sup. Ct. 545, 547, 110 U. S. 146, 28 L. Ed. 100.

Where a debt originally due to the United States by virtue of an assessment of an internal revenue tax has been merged in the tax sale and purchase in pursuance thereof by the United States, the United States holds the legal title to the land, and has a full, complete, and adequate remedy at law in the action of ejectment against the original owners in possession, or against any grantee in possession who became such subsequent to the assessment of the tax. U. S. v. Wilson (1886) 6 Sup. Ct. 991, 992, 118 U. S. 86, 30 L. Ed. 110.

As the purchase of the wife gave her possession of the property, her devisee will recover back one-third of the purchase money paid by or for her, that being the share in the land which she would be entitled to under the law of South Carolina, as widow. Chisolm v. U. S. (1896) 31 Ct. Cl. 328.

A purchase of such property by the wife of the owner or her trustee cannot operate to defeat the right of his heirs to relief under the statute. Id.

Where a lot in Beaufort, S. C., sold under the direct-tax acts, was afterwards purchased from the United States by the trustee of the owner's wife, so that he lost the land in law by the tax sale, and in fact by not repurchasing it, his children will recover half of the assessed value, under the act of March 2, 1891 (26 Stat. 822); and the purchase by the wife's trustee will be regarded as that of a stranger, as against the children. Id.

Commissioners selling land for taxes under Act Feb. 6, 1863, are bound to bid off the land for the United States, if no person will bid more than two-

thirds of its assessed value, unless the owner request it to be struck off to some other person at a less price. Turner v. Smith (Va. 1868) 18 Grat. 830.

Collateral attack on sale.—A sale by the United States revenue tax collector of land of a succession, without an offering and adjudication of the land, may be attacked collaterally by the administrator, since an absolute nullity Johnson v. Dunbar (1874) 26 La. Ann. 188.

Surplus proceeds of direct tax sale to be held in treasury for owner.—See U. S. v. Taylor (1881) 104 U. S. 216. 26 L. Ed. 721.

§ 5920. (R. S. § 3198.) Certificate of purchase; deed.

Upon any sale of real estate, as provided in the preceding section, and the payment of the purchase-money, the officer making the seizure and sale shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor; and if the said real estate be not redeemed in the manner and within the time hereafter provided, the said collector or deputy collector shall execute to the said purchaser, upon his surrender of said certificate, a deed of the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate, and in accordance with the laws of the State in which such real estate is situate upon the subject of sales of real estate under execution.

Act July 13, 1866, c. 184, § 9, 14 Stat. 109.

Notes of Decisions

Certificate of sale by deputy collector.—A certificate of sale by the deputy collector of internal revenue, for internal revenue taxes, is not evidence that title has passed, but only that the holder has a right to acquire title by deed, or to receive the money necessary to effect redemption. Flemister v. Flemister (1889) 83 Ga. 79, 9 S. E. 724.

Certificate of direct tax commissioners.—A certificate signed by only two of the direct tax commissioners appointed under Act June 7, 1862, authorizing the appointment of three commissioners to sell at public sale lots on which direct taxes had been levied in any state where, by reason of insurrection or rebellion, the civil authority of the federal government was obstructed, and requiring commissioners to give the purchaser a certificate of sale, that land charged with taxes had been sold to the United States is admissible in evidence in an action brought to try title to the land. Cooley v. O'Connor (1870) 79 U. S. (12 Wall.) 391, 20 L. Ed. 446.

The certificate given by the commissioners to the purchaser of lands at a sale for direct taxes under Act June 7, 1862 (12 Stat. 422), as amended by Act Feb. 6, 1862 (12 Stat. 640), is prima facie evidence of the regularity of the sale, and of all antecedent facts essential to its validity and to that of his title thereunder, and can only be affected by establishing that the lands were not subject to tax, or that it had been paid prior to the sale, or that they had been redeemed. De Treville v. Smalls (1878) 98 U. S. 517, 25 L. Ed. 174; Keely v. Sanders (1878) 99 U. S. 441, 25 L. Ed. 327; Sherry v. McKinley (1878) 99 U. S. 496, 25 L. Ed. 330.

The certificate of the sale of lands by the United States direct tax commissioners under Act June 7, 1862, for the nonpayment of taxes, is prima facie evidence of the regularity and validity of the sale and of the title of the purchaser. Billings v. McDermott, (1875) 15 Fla. 60; Hill v. Vanderpool, Id. 128; Billings v. Stark, Id. 297.

A certificate of lands sold by the United States direct tax commissioners, under Act June 7, 1862, for unpaid taxes charged thereon, signed by only two of the three tax commissioners, is admissible in evidence in an action to try the title to the land, as an authority given to several for public purposes may be executed by a majority of their number. Hill v. Vanderpool (1875) 15 Fla. 128.

A certificate of the clerk of the United States direct tax commissioners is not evidence of a sale by them for taxes. Billings v. Stark (1875) 15 Fla. 297.

A tax certificate signed by two of the United States direct tax commissioners on sale of property for taxes, as authorized by Act June 7, 1862, is prima facie evidence of regularity and validity of the sale and of the purchaser's title, though one of the three commissioners forming the board refused to act and dissented from the proceedings of the majority. Id.

A tax certificate issued by United States direct tax commissioners cannot affect the question of the ownership of lands by including them within its boundaries. State v. Pinckney (1885) 22 S. C. 484.

Under a certificate of sale of island

lands by United States commissioners for nonpayment of direct taxes, the vacant marshes surrounding such island, being property of the state, and therefore not taxable under the act of congress, did not pass, and evidence could be introduced to show the state's ownership. Id.

A commissioner's certificate which shows on its face that the land was sold to a purchaser other than the United States for less than two-thirds its assessed value is void and of no effect. Turner v. Smith (Va. 1868) 18 Grat. 830.

Title of purchaser in general.—Act June 7, 1862 (12 Stat. 422), entitled an act for the collection of direct taxes in insurrectionary districts, provided that the lands therein should be charged with a direct tax, which should be a lien thereon without further proceedings. Section 3 provided that the owners of said lands might pay the tax within a certain time. Section 4 provided that the title to each piece of land on which said tax has not been paid shall become forfeited to the United States, and on the sale provided for shall vest in the United States or in the purchasers at such sale, in fee simple, free and discharged from all prior liens, incumbrances, and claims whatsoever. Sections 5–7 provided for sales by a board of tax commissioners after advertisement. Held, that the tax was a direct one, and the sale passed all the interest in the land, by whomsoever held, subject only to a right of redemption within a certain time as permitted by the statute. Turner v. Smith (1871) 81 U. S. (14 Wall.) 553, 20 L. Ed. 724.

Where land is sold for taxes due from a distiller, who does not own the fee, only his interest passes under the collector's deed. Mansfield v. Excelsior Refinery Co. (1890) 10 Sup. Ct. 825, 829, 135 U. S. 326, 34 L. Ed. 162.

A tax sale conveys to the purchaser no other interest in the property than that belonging to the delinquent tax debtor at the time the government's lien attached. Blacklock v. U. S. (1906) 41 Ct. Cl. 89.

It is not necessary for the purchaser of lands sold for nonpayment of the direct tax of the year 1813, in an action between him and the original owner of the land, to show that the collector had given bond for the faithful performance of his duty; this being intended only for the security of the United States. Hale v. Cushing (1823) 2 Me. (2 Greenl.) 218.

Act June 7, 1862, for the collection of direct taxes in insurrectionary districts, provides that "the title of, in, and to each and every piece or parcel of land upon which said tax has not been paid * * * shall thereupon become forfeited to the United States, and, upon the sale hereinafter provided for, shall vest in the United States, or in the purchasers at such sale, in fee simple, free, and discharged from all prior liens, incumbrances, right, title, and claim whatsoever." Under this provision, where the plaintiff shows title under a certificate of sale by the tax commissioners, the evidence of the defendant's good title anterior to the tax, assessment and sale, or of a title by deed from the former owner, is not a defense. Billings v. Stark (1875) 15 Fla. 297.

There is no power vested by law in the officers of the United States treasury department to set aside a sale, or vacate a title acquired by a purchaser at a sale, for direct taxes; and the assent of the purchaser to the setting aside of the sale, after he had conveyed the premises to a third person, cannot affect the rights of such third person, unless he also assented. Id.

Deed of marshal for land sold for direct tax.—A deed from a United States marshal to the purchaser of land sold for the nonpayment of the direct tax imposed by congress is not sufficient evidence to support the title of the purchaser, in ejectment, without additional proof of the authority of the marshal to make such conveyance. Christy v. Minor (Va. 1815) 4 Munf. 431.

One claiming land under a sale by a collector of taxes imposed by Act 1798, must prove the regularity thereof. The marshal's deed to him is not even prima facie evidence of the regularity of the collector's proceedings; nor shall the regularity be presumed from 22 years' quiet possession under the sale, or from any time short of that from which any other link of the chain of title to real estate may be presumed. Allen v. Smith (Va. 1829) 1 Leigh, 231.

Collector's deed.—A deed of land sold for nonpayment of United States taxes by a collector of internal revenue is of no effect without proof of the collector's authority and of his performance of the statute prerequisites. Emery v. Harrison (1850) 13 Pa. (1 Harris) 317.

A party claiming title under a deed from the collector of the United States for land sold for the direct tax must show that every thing was done which the law required to be done before making the sale; and the deposition of the collector, in general terms, that the sale was made in exact pursuance of the act of congress, without specifying what was done, is not proper evidence of the fact. Evidence of the various proceedings required by law before the sale was made should be adduced, to enable the court to determine, on the facts so proved, whether the authority to sell was properly exercised in the particular case. Jesse v. Preston (Va. 1848) 5 Grat. 120.

—— **As prima facie evidence.**—The recitals, in a collector's deed of land sold for taxes, under a statute of the United States for the assessment, etc., of a direct tax, of the proceedings re-

quired by the statute previous to the sale, are not even prima facie evidence. Proof must be made that those proceedings were had, independently of the deed and the recitals therein. Williams v. Peyton (1819) 17 U. S. (4 Wheat.) 77, 4 L. Ed. 518; Jackson v. Shepard (N. Y. 1827) 7 Cow. 88, 17 Am. Dec. 502; Powell v. Brown (Vt. 1802) 1 Tyler, 286.

The recital in a collector's deed of lands sold for taxes under Direct Tax Act July 22, 1813, c. 554, § 546, that the tax was demanded, the dwelling house of the person to whom it was assessed, and that sufficient goods to satisfy the taxes could not be found, is not prima facie evidence of such facts, which must be proved in an action of a judgment against the purchaser by evidence independent of the deed. Jackson v. Shepard (N. Y. 1827) 7 Cow. 88, 17 Am. Dec. 502.

A deed given to the purchaser at a sale of land for taxes by a United States collector of internal revenue is prima facie evidence only of those facts which are by law authorized or required to be stated therein. A plaintiff who claims under such a deed must, to prove title, show aliunde that a lien was acquired by the United States on the land by notice and demand of the tax, and neglect to pay, and also a failure to find personal estate to satisfy the tax. Brown v. Goodwin (N. Y. 1878) 56 How. Prac. 301.

A deed from a collector of internal revenue is, under section 5921, post, only prima facie evidence of the facts required by statute to be stated therein. In order to establish title thereunder, the prerequisites prescribed by section 5895 et seq., ante, to the right to seize and sell, also the assessment of the tax and the notice of the sale, must be shown by evidence aliunde. Id.

The provisions of this and the following section do not make the collector's deed prima facie evidence of any facts other than those which the statute requires to be stated therein. Fox v. Stafford (1884) 90 N. C. 296.

Under section 5921, post, the deed is not prima facie evidence as to other recitals than those recited pursuant to this section. Stewart v. Pergusson (1903) 45 S. E. 585, 133 N. C. 276.

The deed of the collector, made under the act of January 9, 1815, imposing direct taxes, does not furnish prima facie evidence of the regularity of the collector's proceedings, though the recitals in the deed state specifically all the proceedings which the law requires to be had to make the sale of the land conveyed by the deed legal, and also recites that all the proceedings had been had. Jesse v. Preston (Va. 1848) 5 Grat. 120.

Cited without definite application, Blacklock v. U. S. (1908) 28 Sup. Ct. 228, 230, 208 U. S. 75, 52 L. Ed. 396.

§ 5921. (R. S. § 3199.) Collector's deed to be prima-facie evidence, etc.

The deed of sale given in pursuance of the preceding section shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto.

Act July 13, 1866, c. 184, § 9, 14 Stat. 109.

Notes of Decisions

See notes under the preceding section.

Cited without definite application, Blacklock v. U. S. (1908) 28 Sup. Ct. 228, 233, 208 U. S. 75, 52 L. Ed. 396.

§ 5922. (R. S. § 3200.) Collector may seize lands of delinquent in any district of same State.

Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell the lands of such person situated in any other collection-district within the State in which such officer resides; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection-district.

Act July 13, 1866, c. 184, § 9, 14 Stat. 110.

§ 5923. (R. S. § 3201.) Redemption of land prior to sale.

Any person whose estate may be proceeded against as aforesaid shall have the right to pay the amount due, together with the costs and charges thereon, to the collector or deputy collector at any

time prior to the sale thereof, and all further proceedings shall cease from the time of such payment.

Act July 13, 1866, c. 184, § 9, 14 Stat. 109.

Notes of Decisions

Prior payment or tender of tax as invalidating sale.—Though an act of congress may provide that, unless the "owner" shall appear in person and pay the tax, the commissioners shall proceed to sell the land, the sale would be void if the tax had been paid or tendered by any person before the sale. Martin v. Snowden (Va. 1868) 18 Grat. 100.

Payment of direct tax.—Under Act June 7, 1862, as amended Feb. 6, 1863, "for the collection of the direct tax in insurrectionary districts," the tax imposed could be paid by some friend or agent of the owner, as well as by the owner in person. Bennett v. Hunter (1869) 76 U. S. (9 Wall.) 326, 19 L. Ed. 672; Lee v. Chase (C. C. 1874) Fed. Cas. No. 8,185; Atwood v. Weems (1878) 99 U. S. 183, 25 L. Ed. 471; Lee v. Kaufman (C. C. 1879) Fed. Cas. No. 8,192, affirmed Kaufman v. Lee (1882) 106 U. S. 196, 1 Sup. Ct. 240, 27 L. Ed. 171.

Under Act June 7, 1862, relating to the collection of direct taxes in insurrectionary districts within the United States, etc., the right to pay the tax and relieve the land from sale is not limited to 60 days after the fixing of the amount. Payment of the tax before sale is sufficient. Bennett v. Hunter (1869) 76 U. S. (9 Wall.) 326, 19 L. Ed. 672.

Where the tax commissioners have made an illegal rule that a payment of taxes on property advertised for sale under Act June 7, 1862, for the collection of taxes in insurrectionary districts must be made in person, and that a tender by a relative will not be received, it is a sufficient tender if a relative of the owner went to the office of the commissioner to see about the payment of the taxes, though he made no formal tender. Tracey v. Irwin (1873) 85 U. S. (18 Wall.) 549, 21 L. Ed. 786.

§ 5924. (R. S. § 3202.) Redemption of lands after sale.

The owners of any real estate sold as aforesaid, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract thereof, at any time within one year after the sale thereof, upon payment to the purchaser, or, in case he cannot be found in the county in which the land to be redeemed is situate, then to the collector of the district in which the land is situate, for the use of the purchaser, his heirs or assigns, the amount paid by the said purchaser and interest thereon at the rate of twenty per centum per annum.

Act July 13, 1866, c. 184, § 9, 14 Stat. 109.

Notes of Decisions

Redemption by minors.—In the absence of a provision in Act June 7, 1862, relating to tax sales and providing for redemption by minors, as to the right of a minor on redemption to recover rents and profits, Code Tenn. § 2135, relating to execution sales, and providing that, if the debtor redeems after possession taken by the purchaser, the debtor is entitled to "the fair rent of the premises during the term they were in the purchaser's possession," is applicable to such tax sales. Shelton v. Sears (1872) 57 Tenn. (10 Heisk.) 303.

Redemption by trustee.—Act March 3, 1865 (13 Stat. 502), precluding an "owner" of land in insurrectionary districts from redeeming from a sale for taxes, if he assisted in the rebellion against the United States, does not preclude a trustee of a decedent's estate from redeeming for the benefit of his cestui que trust, though the trustee assisted in such rebellion. Corbett v. Nutt (1870) 77 U. S. (10 Wall.) 464, 19 L. Ed. 976, affirming (Va. 1868) 18 Grat. 624.

Under Act June 7, 1862 (12 Stat. 423, 424), enabling a person "having charge" of the estate of the owner of lands sold for taxes in insurrectionary districts to redeem them, a person named in a decree as a trustee, being thereby clothed with prima facie authority, may make a valid redemption, though his appointment was in fact invalid. Id.

Validity of redemption as depending on return of purchase money into treasury.—The validity of the redemption of lands sold for taxes under the acts of 1862-63 does not depend on the return of the purchase money into the treasury by the commissioners. The owner's title may be made complete, though the secretary should refuse to refund the money to the purchaser. Corbett v. Nutt (Va. 1868) 18 Grat. 624.

Cited without definite application, Blacklock v. U. S. (1908) 28 Sup. Ct. 228, 230, 208 U. S. 75, 52 L. Ed. 396.

§ 5925. (R. S. § 3203, as amended, Act March 1, 1879, c. 125, § 3.) Record of sales; transmission of copy to Commissioner.

It shall be the duty of every collector to keep a record of all sales of land made in his collection-district, whether by himself or his deputies, or by another collector, in which shall be set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making said sale, amount of fees and expenses, the name of the purchaser and the date of the deed; and said record shall be certified by the officer making the sale. And on or before the fifth day of each succeeding month he shall transmit a copy of such record of the preceding month to the Commissioner of Internal Revenue. And it shall be the duty of every deputy making sale, as aforesaid, to return a statement of all his proceedings to the collector, and to certify the record thereof. In case of the death or removal of the collector, or the expiration of his term of office from any other cause, said record shall be delivered to his successor in office; and a copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated.

Act July 13, 1866, c. 184, § 9, 14 Stat. 110. Act March 1, 1879, c. 125, § 3, 20 Stat. 332.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "and said record shall be certified by the officer making the sale," the provision requiring a transmission to the Commissioner of a copy of such record, beginning with the words "And on or before the fifth day," and ending with the words "Commissioner of Internal Revenue," as set forth here, by Act March 1, 1879, c. 125, § 3, cited above.

Collectors were required to make a monthly statement of collections, by R. S. § 3212, post, § 5935.

Notes of Decisions

Return for direct tax sale.—Where no return has been made to the clerk of the district court for a sale of land by a deputy collector for the United States direct tax of 1815, as provided by act of Congress, it must be shown that the tax was granted by Congress and duly assessed, and that all the proceedings necessary to give validity to the sale, except those which it was the duty of the defendant to perform, were legally had. Holden v. Eaton (1829) 25 Mass. (8 Pick.) 436.

§ 5926. (R. S. § 3204.) Redemptions to be entered on record.

When any lands sold, as aforesaid, are redeemed as heretofore provided, the collector shall make entry of the fact upon the record mentioned in the preceding section, and the said entry shall be evidence of such redemption.

Act July 13, 1866, c. 184, § 9, 14 Stat. 108.

§ 5927. (R. S. § 3205.) Successive seizures may be made, when.

Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the United States for which distraint or seizure is made, the collector may, thereafter, and as often as the same may be necessary, proceed to seize and sell, in like manner, any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

Act July 13, 1866, c. 184, § 9, 14 Stat. 110.

Cited without definite application, Mansfield v. Excelsior Refinery Co. (1890) 10 Sup. Ct. 825, 829, 135 U. S. 326, 34 L. Ed. 162.

§ 5928. (R. S. § 3206.) Fees and charges in seizure cases.

The Commissioner of Internal Revenue shall by regulation determine the fees and charges to be allowed in all cases of distraint and

other seizures; and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary.

Act July 13, 1866, c. 184, § 9, 14 Stat. 108.

Notes of Decisions

Per diem for watching seized property.—The collector will not be allowed a per diem for watching seized property, where he fails to turn it over to the district attorney, to have proceedings commenced, for 37 days after the seizure. Fifteen Empty Barrels (D. C. 1867) Fed. Cas. No. 4,778.

§ 5929. (R. S. § 3207.) Proceedings in chancery to subject real estate to payment of tax.

In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed, in a district [or circuit] court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. All persons having liens upon or claiming any interest in the real estate sought to be subjected as aforesaid, shall be made parties to such proceedings, and be brought into court as provided in other suits in chancery therein. And the said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein, and finally determine the merits of all claims to and liens upon the real estate in question, and, in all cases where a claim or interest of the United States therein is established, shall decree a sale of such real estate, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

Act July 20, 1868, c. 186, § 106, 15 Stat. 167.

The words of this section "or circuit," inclosed in brackets, were superseded by the abolition of circuit courts by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

Jurisdiction of suits in equity to enforce internal-revenue taxes was conferred upon the district courts by R. S. § 563, subsec. 5, which was incorporated into the Judicial Code, § 24, subsec. 5, ante, § 991 (5).

Notes of Decisions

Statute as directory.—This statute is directory. Blacklock v. U. S. (1906) 41 Ct. Cl. 89.

Remedy as cumulative.—The remedy of sale by distraint was not superseded by this act. Blacklock v. U. S. (1908) 28 Sup. Ct. 228, 231, 208 U. S. 75, 52 L. Ed. 396, affirming judgment (1906) 41 Ct. Cl. 89.

The remedy in equity to collect assessments is cumulative. Alkan v. Bean (C. C. 1877) Fed. Cas. No. 202.

Enforcement of liens as against bona fide purchasers.—Though liens are not recorded as required by a state law relating to liens, they may be enforced against the lands in the hands of purchasers for value without notice. U. S. v. Snyder (1893) 13 Sup. Ct. 846, 847, 149 U. S. 210, 37 L. Ed. 705.

Validity of assessment as subject of inquiry.—The validity of an assessment against a distiller may be inquired into by defendant's answering a bill by the United States to subject to the payment of such assessment lands transferred to them. U. S. v. Rindskopf (C. C. 1879) Fed. Cas. No. 16,166.

Where defendants have rebutted the presumption of law as to the validity of the assessment, the burden of proof is shifted upon the government to establish its validity. Id.

Cited without definite application, Mansfield v. Excelsior Refinery Co. (1890) 10 Sup. Ct. 825, 829, 135 U. S. 326, 34 L. Ed. 162; U. S. v. Nebraska Distilling Co. (1897) 80 Fed. 285, 286, 25 C. C. A. 418.

§ 5930. (R. S. § 3208, as amended, Act March 1, 1879, c. 125, § 3.) Commissioner to have charge of real estate acquired by United States under internal-revenue laws.

The Commissioner of Internal Revenue shall have charge of all real estate which is now or shall become the property of the United

States by judgment of forfeiture under the internal-revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, and of all trusts created for the use of the United States in payment of such debts due them; and, with the approval of the Secretary of the Treasury, may, at public vendue, and upon not less than twenty day's notice, sell and dispose of all real estate owned or held by the United States aforesaid; and until such sale the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may lease such real estate owned as aforesaid on such terms and for such period as they shall deem expedient. And in cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of one per centum per month, to the United States, within two years from the date of the acquisition of such real estate, it shall be lawful for the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury to release by deed, or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives.

Act March 2, 1867, c. 169, § 4, 14 Stat. 472. Act March 1, 1879, c. 125, § 3, 20 Stat. 332.

This section as enacted in the Revised Statutes, was amended by inserting, after the words "charge of all real estate which," the words "is now or shall become the property of the United States by judgment of forfeiture under the internal-revenue laws, or which," and by inserting, after the words "payment of debts," the words "or penalties," and by inserting, after the words "relating to internal revenue" the words "or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts," and by inserting, after the words "sell and dispose of," in place of the words "lands assigned or set off to the United States in payment of such debts, or vested in them by mortgage or other security, for the payment of such debts," the provisions beginning with the words "all real estate owned or held," and ending with the words "for such period as they shall deem expedient," which are followed by the provisions of the original section, beginning with the words "And in cases where," to the end of the section, as set forth here, by Act March 1, 1879, c. 125, § 3, cited above.

The Solicitor of the Treasury was to have charge of property transferred to the United States for debts, except property transferred in payment of debts under internal-revenue laws, by R. S. § 3750, post, § 6946.

Notes of Decisions

Forfeited real estate.—This section does not devolve upon the commissioner of internal revenue the charge of real estate forfeited under the internal revenue laws where the forfeiture is enforced by proceedings in rem. (1878) 16 Op. Atty. Gen. 186.

But the custody of real estate acquired in satisfaction of a pecuniary forfeiture arising under those laws is thereby devolved upon the commissioner. Id.

Land acquired by judgments on official bonds.—The commissioner of internal revenue is not authorized by law to take charge of lands acquired by the United States in satisfaction of judgments recovered on the official bonds of collectors of internal revenue, and, with the approval of the secretary of the treasury, to dispose of the same by sale or otherwise. (1878) 16 Op. Atty. Gen. 144.

§ 5931. (R. S. § 3209.) List to be sent to district where the party taxed resides or has property, when.

Whenever a collector has on any list duly returned to him the name of any person not within his collection-district who is liable to tax, or of any person so liable who has, in the collection-district in which he resides, no sufficient property subject to seizure or distraint, from which the money due for tax can be collected, such collector shall transmit a statement containing the name of the person liable

to such tax, with the amount and nature thereof, duly certified under his hand, to the collector of any district to which said person shall have removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom the said certified statement is transmitted shall proceed to collect the said tax in the same way as if the name of the person and objects of tax contained in the said certified statement were on any list of his own collection-district; and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him.

Act June 30, 1864, c. 173, § 32, 13 Stat. 236.

§ 5932. (R. S. § 3210.) Collections to be paid into Treasury daily.

The gross amount of all taxes and revenues received or collected by virtue of this Title, or of any law hereafter enacted providing internal revenue, shall be paid, by the officers receiving or collecting the same, daily into the Treasury of the United States, under the instructions of the Secretary of the Treasury, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description; and a certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer, assistant treasurer, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Commissioner of Internal Revenue: Provided, That in districts where, from the distance of the officer, collector, or agent receiving or collecting such taxes and revenues from a proper Government depository, the Secretary of the Treasury may deem it proper, he may extend the time for making such payment, not exceeding, however, in any case a period of one month.

Act March 3, 1865, c. 78, § 3, 13 Stat. 483.

See § 5933, post, and notes thereunder.

Notes of Decisions

Effect of statute as to recovery of taxes paid and interest.—The statute does not make a suit against a collector for taxes collected one against the United States, so as to preclude recovery of interest. Kinney v. Conant (1909) 166 Fed. 720, 92 C. C. A. 410, affirming (C. C. 1908) 162 Fed. 581, certiorari denied (1909) 29 S. Ct. 703, 214 U. S. 526, 53 L. Ed. 1068.

The internal revenue law, as shown by this section and sections 5949–5951, post, substitutes a statutory remedy for the common-law remedy to recover taxes paid; but, differing from customs cases, the action remains an action at law against the collector individually. Treat v. Farmers' Loan & Trust Co. (1911) 185 Fed. 760, 108 C. C. A. 98.

Payment.—It is not ordinarily necessary to the consummation of payment that money received by public officers in discharge of a debt be formally covered into the treasury; but where one public officer charges a sum of money in payment of a tax to the official account of another public officer without his consent, and takes a certificate of deposit for it, but requests the secretary to suspend covering it into the treasury, and the three agree that the matter be suspended, it must be held that payment was not intended to be consummated. Johnston v. U. S. (1881) 17 Ct. Cl. 157.

Recovery of collection as money had and received.—Money collected by a collector of internal revenue under Act March 3, 1791, and paid over by him to the inspector, cannot be recovered back by the collector as money had and received to his use. Wells v. Neville (C. C. 1818) Fed. Cas. No. 17,403.

Cited without definite application. U. S. v. Real Estate Sav. Bank (1881) 104 U. S. 728, 731, 26 L. Ed. 908; Coudert v. U. S. (1899) 20 Sup. Ct. 56, 57, 175 U. S. 178, 44 L. Ed. 122.

§ 5933. (Act May 10, 1916, c. 117, § 1.) All collections to be covered into Treasury as internal revenue collections.

Collectors of internal revenue shall pay daily into the Treasury of the United States, under instructions of the Secretary of the Treasury, the gross amounts of all collections of whatever nature, made by authority of law (including sums offered in compromise under the provisions of section thirty-two hundred and twenty-

nine, Revised Statutes, as well as all other money received for which they are accountable under their respective collection bonds required to be given under section thirty-one hundred and forty-three, Revised Statutes), and the same shall be covered into the Treasury as internal-revenue collections: Provided, That nothing herein contained shall be construed as affecting the provisions of subsection "D" of Section II, Act of October third, nineteen hundred and thirteen, in the matter of withholding the normal income tax at the source. (39 Stat.)

From legislative, executive and judicial appropriation act, cited above.

R. S. § 3229, mentioned above, is set forth post, § 5952.

Subsection D of section II, Act Oct. 3, 1913, referred to, was repealed by Act Sept. 8, 1916, c. 463, set forth post, §§ 6336a–6336x.

This section supersedes Act May 27, 1908, c. 200, § 1, 35 Stat. 325, which read as follows:

"After June thirtieth, nineteen hundred and eight, collectors of internal revenue shall pay daily into the Treasury of the United States, under instructions of the Secretary of the Treasury, the gross amounts of all collections of whatever nature, made by authority of law, and the same shall be covered into the Treasury as internal-revenue collections."

§ 5934. (R. S. § 3211.) Depositories.

The Secretary of the Treasury is authorized to designate one or more depositories in each State, for the deposit and safe-keeping of the money collected by virtue of the internal-revenue laws; and the receipt of the proper officer of such depository to a collector for the money deposited by him shall be a sufficient voucher for such collector in the settlement of his accounts at the Treasury Department.

Act June 30, 1864, c. 173, § 33, 13 Stat. 236.

The Secretary of the Treasury was directed to discontinue the depositories at Buffalo, Santa Fé, and Pittsburg by a provision of Act Aug. 15, 1876, c. 287, § 1, 19 Stat. 155.

The failure of custodians to safely keep the public moneys is punishable by R. S. § 5490, which was incorporated into the Criminal Code, in section 89 thereof, post, § 10257, and was repealed by section 341 thereof, post, § 10515.

§ 5935. (R. S. § 3212.) Collector's monthly statement; final accounts.

Every collector shall, at the expiration of each month after he commences his collections, transmit to the Commissioner of Internal Revenue a statement of the collections made by him within the month. And every collector shall complete the collection of all sums assigned to him for collection, and shall pay over the same into the Treasury, and shall render his accounts to the Treasury Department as often as he may be required.

Act June 30, 1864, c. 173, § 33, 13 Stat. 236.

Collectors were required to transmit to the Commissioner monthly a copy of the record of sales of land for taxes, by Act March 1, 1879, c. 125, § 3, incorporated into R. S. § 3203, ante, § 5925.

§ 5936. (Act May 27, 1908, c. 200, § 1.) Collectors to render accounts quarterly.

Collectors of internal revenue shall render their revenue accounts quarterly. (35 Stat. 325.)

This was a provision of the sundry civil appropriation act for the fiscal year 1909, cited above.

§ 5937. (R. S. § 3213.) Suits, etc., for fines, penalties, and forfeitures, and for taxes.

It shall be the duty of the collectors, in their respective districts, subject to the provisions of this Title, to prosecute for the recovery of any sums which may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, qui tam or other-

wise, before any [circuit or] district court of the United States, for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction; and taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any [circuit or] district court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action.

Act July 13, 1866, c. 184, § 9, 14 Stat. 110.

The words of this section "circuit or," inclosed in brackets, were superseded by the abolition of circuit courts by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

Settlements of duties upon imports were made conclusive after one year, in absence of fraud, by Act June 22, 1874, c. 391, § 21, ante, § 5714.

Suits for penalties or forfeitures under customs-revenue laws must be commenced within three years by section 22 of said act, ante, § 1713.

Notes of Decisions

1. Application to oleomargarine tax.
2. Application to stamp tax.
3. Application to capacity tax on distillers.
4. Right of action and defenses in general.
5. Set-off.
6. Limitation or laches.
7. Assessment as condition precedent.
8. Suit against executor or administrator personally or in representative capacity.
9. Suit against legatee or cestui que trust.
10. Form of action.
11. Pleading.
12. Evidence.
13. Trial.

See, also, notes as to informers under § 6365, post.

See notes under § 5997, ante.

See U. S. v. Belding (C. C. 1870) Fed. Cas. No. 14,562.

1. Application to oleomargarine tax. This section does not apply to the Oleomargarine Act. Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513.

Section 19 of the Oleomargarine Act, section 6231, post, accomplishes the same purpose as this section, and would not have been enacted if it was intended that the general internal revenue law applied to the Oleomargarine Act. Grier v. Tucker (C. C. 1907) 150 Fed. 658, 662.

2. Application to stamp tax.—The stamp tax which, under War Revenue Act June 13, 1898, c. 448, § 6, 30 Stat. 451, is to be "levied, collected, and paid" upon the execution of a conveyance, may be recovered by the United States in an action of debt, notwithstanding the further provisions of the statute imposing fine or imprisonment for issuing an unstamped conveyance, and making such unstamped instrument inadmissible in evidence, incapable of record, and invalid and of no effect, which must be deemed made in order to induce the payment of the tax, and not as substitutes for payment. U. S. v. Chamberlin (1911) 31 Sup. Ct. 155, 219 U. S. 250, 55 L. Ed. 204, reversing judgment (1907) 156 Fed. 881, 84 C. C. A. 461, 13 A. & E. Ann. Cas. 720.

Express statutory authority for an action by the United States to recover the stamp tax which, under War Revenue Act June 13, 1898, c. 448, § 6, was to be levied, collected, and paid upon the execution of a conveyance, was given by section 31 of that act, making applicable all administrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes not heretofore specifically repealed, which comprehended the authority conferred by this section. Id. See, also, U. S. v. Jourden (1912) 193 Fed. 986, 113 C. C. A. 606.

3. Application to capacity tax on distillers.—Taxes assessed by commissioner of internal revenue under section 6089, post, may be sued for under this section. U. S. v. Bristow (C. C. 1884) 20 Fed. 378.

4. Right of action and defenses in general.—The recovery of an assessment and the penalty for a failure to make return of income held no bar to an action to recover the tax on income, under Act March 2, 1867, § 13. U. S. v. Hazard (C. C. 1876) Fed. Cas. No. 15,337.

An assessment and payment are not a bar to a suit for the recovery of an amount claimed to be due over and above the amount which has been thus assessed and paid. U. S. v. Little Miami, C. & X. R. Co. (C. C. 1880) 1 Fed. 700, 701, reversed (1883) 2 Sup. Ct. 727, 108 U. S. 277, 27 L. Ed. 724.

Taxes assessed by the commissioner of internal revenue under section 6089, post, may be sued for under this section. U. S. v. Bristow (C. C. 1884) 20 Fed. 378.

A verdict in a prosecution by the United States, which necessarily negatives the allegation that defendant was "a wholesale dealer in malt liquors," does not estop the United States to allege that fact in a civil action for special taxes due from defendant as such dealer. U. S. v. Schneider (C. C. 1888) 35 Fed. 107.

The causes of action for unpaid taxes on income arising under the Acts of 1862 et seq. are not barred by delays

in discovering imperfections in the return after the tax was paid, or by the fact that no return was made, and a tax and penalty was assessed and paid. U. S. v. Tilden (D. C. 1878) Fed. Cas. No. 16,519.

5. Set-off.—In a suit for taxes defendant cannot plead a set-off, legal or equitable, growing out of independent claims. U. S. v. Pacific R. R. (C. C. 1877) Fed. Cas. No. 15,983.

In a suit by the United States for the recovery of taxes, the defendant is entitled to a deduction of any amount admitted by the plaintiff to have been previously overpaid, even though there is no plea of offset. Missouri R., F. S. & G. R. Co. v. U. S. (C. C. 1884) 19 Fed. 66.

6. Limitation or laches.—The limitation of 15 months within which an assessment may be made has no application to an action against a corporation for taxes imposed by statute. U. S. v. Little Miami, C. & X. R. Co. (C. C. 1880) 1 Fed. 700, 701, reversed (1883) 2 Sup. Ct. 627, 108 U. S. 277, 27 L. Ed. 724.

As it was made the duty of the railroad company, under the acts of 1866 and 1870, to make returns to the proper internal revenue officer of the amount of income, profits, and taxes, when no returns have been made by the company, a failure on the part of the United States to demand such tax, or to institute proceedings to recover the same, until 1881, cannot constitute a bar to an action to recover such tax when it does not appear that the delay has prejudiced the company by the disappearance or loss of evidence essential to its defense. U. S. v. Marquette, H. & O. R. Co. (C. C. 1883) 17 Fed. 719, judgment reversed Marquette, H. & O. R. Co. v. U. S. (1887) 8 Sup. Ct. 319, 123 U. S. 722, 31 L. Ed. 302.

7. Assessment as condition precedent.—An assessment was not required by Act 1864, c. 173, and, if made, is not conclusive on either party, and in an action against a railroad corporation under section 122 thereof, as amended by Act 1866, c. 184, to recover the unpaid taxes on undivided profits, the controlling question was not what had been assessed, but what was by law due. U. S. v. Philadelphia & R. Co. (1887) 8 Sup. Ct. 77, 123 U. S. 113, 31 L. Ed. 138.

An action of debt may be maintained to recover taxes without an assessment, where the statute describes the subject of the taxes and fixes the rates, so that the amount may be ascertained by evidence. U. S. v. Little Miami, C. & X. R. Co. (C. C. 1880) 1 Fed. 700, 701, reversed (1883) 2 Sup. Ct. 627, 108 U. S. 277, 27 L. Ed. 724.

In an action under section 6289, post, levying on every person, firm, or association, other than a national bank, a tax of 10 per cent. on the amount of their notes used for circulation, recovery may be had without an assessment of the taxes by the commissioner of internal revenue. U. S. v. Warrick (C. C. 1885) 25 Fed. 138.

Under the revenue acts of 1862 and 1864 the United States may sue for and collect a tax on income without a prior assessment in the mode specified in the act creating the tax. U. S. v. Tilden (D. C. 1878) Fed. Cas. No. 16,519.

8. Suit against executor or administrator personally or in representative capacity.—Before a suit can be maintained under this section, the taxes must be due from the party against whom the suit is instituted; hence, where an executor was not personally liable for war taxes imposed by United States, suit could not be maintained against him personally. U. S. v. Fitts (D. C. 1912) 197 Fed. 1007.

The legacy tax imposed by War Revenue Act June 13, 1898, §§ 29, 30, is not a debt of the decedent's estate, and the United States cannot maintain an action at law to recover the same against the executor or administrator in his representative capacity. Id.

9. Suit against legatee or cestui que trust.—The legatee or cestui que trust is not liable in personam for the legacy tax imposed by Act July 1, 1862, §§ 111, 112, and an action will not lie against him to recover it. U. S. v. Allen (D. C. 1877) Fed. Cas. No. 14,430.

10. Form of action.—An indictment will lie to recover a penalty for failure to affix a revenue stamp to a package sold, under Act July 13, 1866, § 9. U. S. v. Abbott (C. C. 1869) Fed. Cas. No. 14,416; Same v. Fenelon (D. C. 1871) Fed. Cas. No. 15,085.

The United States are not prohibited from adopting the action of debt or any other remedy for the collection of internal revenue taxes and penalties due them, and taxes may be sued for and recovered in any proper form of action. Dollar Sav. Bank v. U. S. (1873) 19 Wall. 227, 237, 22 L. Ed. 80.

Although in practice suits in rem for forfeitures for violations of the internal revenue laws are more frequently brought in the district courts, yet cases are to be found of such suits originally brought in the circuit courts, where jurisdiction was taken and not questioned. Coffey v. U. S. (1886) 6 Sup. Ct. 432, 435, 116 U. S. 427, 29 L. Ed. 681.

An action in personam to recover the forfeiture of $500 under Act July 1, 1862, § 54, will lie, although the seizure provided for therein has not taken place. U. S. v. Mynderse (C. C. 1870) Fed. Cas. No. 15,850.

The obligation or duty to pay taxes is one which may be enforced by suit, by an action at law, or a bill in equity,

according to the nature of the relief sought. U. S. v. Pacific R. R. (C. C. 1877) Fed. Cas. No. 15,983.

A common-law action cannot be maintained to enforce the payment of legacy and succession taxes imposed by the act of June 30, 1864. That act provides a remedy which the United States must pursue where the tax has not been paid. U. S. v. Truck's Adm'x (C. C. 1886) 28 Fed. 846.

For failure to take out a license to refine petroleum, both a criminal prosecution and an action qui tam are authorized, and the institution of one is no bar to the other. U. S. v. Trobe (D. C. 1865) Fed. Cas. No. 16,541.

When the punishment prescribed for violation of the internal revenue laws is a pecuniary penalty or fine only, and the act fixes the exact amount, an action of debt will lie to recover it. U. S. v. Ebner (D. C. 1867) Fed. Cas. No. 15,020.

The penalty declared under section 6019, post, is recoverable in a civil action under this section. U. S. v. Thompson (D. C. 1881) 45 Fed. 468, 469.

The statute authorizes fines, forfeitures, and penalties incurred under the laws of the United States to be recovered by indictment. U. S. v. Craft (D. C. 1890) 48 Fed. 374.

11. Pleading.—In an action for a penalty against a bank cashier for refusing the revenue officer leave to inspect the pay checks of the bank, the declaration must aver that the checks were unstamped, since otherwise they were not subject to taxation. U. S. v. Mann (1877) 95 U. S. 580, 24 L. Ed. 531.

Proceedings in rem under the revenue laws being kindred to such proceedings in admiralty, so far as the pleadings are concerned, no reply or replication to the answer is necessary to raise an issue of fact on the matters averred in it, but new matter is considered as denied. Hence an issue of fact as to a former conviction raised by the answer must be held to have been covered by the verdict; and no question in regard to the defense set up can be raised, in the absence of a demurrer to the answer and of a bill of exceptions raising specific questions. Coffey v. U. S. (1886) 6 Sup. Ct. 432, 116 U. S. 427, 29 L. Ed. 681.

In a proceeding by the United States for the forfeiture of certain property for an alleged violation of the internal revenue laws, the claimants answered denying the unlawful acts charged in the information. They subsequently filed an amended and supplemental answer setting up an additional defense, but expressly reserving the right to rely on the denials of the original answer. A demurrer to the amended answer was overruled, and the cause was submitted to the court generally on an admission of the facts alleged in the amended answer and on the pleadings. Held that, in the absence of proof of the allegations of the information, a judgment of dismissal was proper, and could not be reversed, and the sufficiency of the amended answer and the correctness of the ruling on the demurrer thereto became immaterial. U. S. v. One Distillery (1899) 19 Sup. Ct. 624, 174 U. S. 149, 43 L. Ed. 929.

To a suit to recover the balance of a tax the defense that the amount already paid was determined to be the true amount by the assessor cannot be tried upon demurrer. U. S. v. New York Guaranty & Indemnity Co. (D. C. 1875) Fed. Cas. No. 15,872.

Where the complaint in an action to recover arrears of income tax due from a national bank failed to state that defendant had "neglected or omitted to make a return of dividends or additions to its surplus or contingent funds as often as once in six months," it is insufficient. U. S. v. Central Nat. Bank (D. C. 1882) 10 Fed. 612, judgment affirmed Central Nat. Bank v. U. S. (1890) 11 Sup. Ct. 126, 137 U. S. 355, 34 L. Ed. 703.

In an action for the penalty imposed by Act April 19, 1816, on distillers of spirituous liquors, the sum claimed for double duties should be stated in the declaration. Buckwalter v. U. S. (Pa. 1824) 11 Serg. & R. 193.

The term during which the defendant used the still should also be stated in the declaration. Id.

12. Evidence.—In action for penalties for alleged frauds in the payment of the internal revenue tax on liquor, certificate books of canal collectors, which show the amount of liquor shipped over the canal, but not by whom it was shipped, the collector having no personal knowledge of the entries made in such books, were incompetent as evidence against the defendant. Chaffee v. U. S. (1873) 85 U. S. (18 Wall.) 516, 21 L. Ed. 908, reversing U. S. v. Chaffee (1867) Fed. Cas. No. 14,772 [2 Bond, 110].

In the assessment of special taxes the officers of the internal revenue act in a quasi judicial capacity, and in an action to recover such taxes the introduction in evidence of the assessment list, regular in form, makes a prima facie case for the government. Western Express Co. v. U. S. (1905) 141 Fed. 28, 72 C. C. A. 516.

The assessor's original list, transmitted to the collector, is prima facie evidence of the amount of the tax due. U. S. v. Butler (C. C. 1873) Fed. Cas. No. 14,702.

Sufficiency of complaint in an action against a bank for the $1,000 penalty for failing to make return of its net earnings, incomes, or gains under Act June 30, 1864, § 120 (13 Stat. 223), as re-enacted July 14, 1870 (16 Stat.

274). U. S. v. State Nat. Bank of Minneapolis (C. C. 1874) Fed. Cas. No. 16,380.

In an action by the United States to recover a tax of one twenty-fourth of 1 per centum each month upon the capital stock of a bank, under section 3408, subsec. 2, of the Revised Statutes as originally enacted, the assessment list made by the commissioner of internal revenue, and not appealed from, is not conclusive evidence, but the defendant may show that the assessment was excessive or illegal. U. S. v. Bank of America (C. C. 1883) 15 Fed. 730.

Evidence that the pecuniary circumstances of a distiller were apparently improved while engaged in distilling, during a period when such business was not profitable, is not admissible to show fraud. U. S. v. Chaffee (D. C. 1867) Fed. Cas. No. 14,772.

An action for a penalty for the violation of the internal revenue act is a civil action and the jury are to find according to the preponderance of the evidence. U. S. v. Brown (D. C. 1869) Fed. Cas. No. 14,662.

A duebill given for the capacity tax on stills is prima facie evidence that a demand for such tax was made as required by Act March 3, 1871, imposing such duty. Miller v. Probst (Pa. 1797). Add. 344.

13. Trial.—A general verdict, on an information in several counts for a single forfeiture, under the internal revenue laws, is valid, if one count is good. Snyder v. U. S. (1884) 5 Sup. Ct. 118, 112 U. S. 216, 28 L. Ed. 697.

In an action under section 6289, post, levying on every person, firm, or association other than a national bank a tax of 10 per cent. on the amount of their own notes used for circulation, it must be shown that the defendant intended to put his notes in circulation as money, and paid them out for that purpose; but, in showing such intention, his declarations when he paid out the notes are not the only proper evidence thereof, and it is not error to instruct the jury that paying out the notes, knowing that they would be used and circulated as money, is evidence from which they may infer the intention to pay them out for that purpose. U. S. v. Warrick (C. C. 1885) 25 Fed. 138.

Cited without definite application, U. S. v. Payne (D. C. 1884) 22 Fed. 426, 427.

§ 5938. (R. S. § 3214.) Suits for taxes, etc., not to be brought without sanction of Commissioner.

No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner of Internal Revenue authorizes or sanctions the proceedings: Provided, That in case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector or deputy collector, the United States shall not be subject to any costs of suit.

Act July 13, 1866, c. 184, § 9, 14 Stat. 111.

Notes of Decisions

Application to war revenue tax.—This section held applicable to suits for taxes under War Revenue Act, June 13, 1898, c. 448. U. S. v. Chamberlin (1911) 31 Sup. Ct. 155, 162, 219 U. S. 250, 55 L. Ed. 204.

Informers.—See notes under § 6365, post.

§ 5939. (R. S. § 3215.) Regulations as to suits, for government of officers.

It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to establish such regulations, not inconsistent with law, for the observance of revenue officers, district attorneys, and marshals, respecting suits arising under the internal-revenue laws in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws.

Act March 2, 1867, c. 169, § 3, 14 Stat. 472.

The Solicitor of the Treasury was required to establish regulations respecting suits in which the United States is a party, except suits arising under the internal-revenue laws, by R. S. § 377, ante, § 553.

Notes of Decisions

Regulations as having force of statutes.—Regulations issued by the secretary have the force of statutes. Stegall v. Thurman (D. C. 1910) 175 Fed. 818.

§ 5940. (R. S. § 3216.) Moneys recovered by suits to be paid to collectors.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties, shall be paid to collectors as internal taxes are required to be paid.

Act July 13, 1866, c. 184, § 9, 14 Stat. 111.

Notes of Decisions

Payment of stamp taxes.—In view of this section the satisfaction of a judgment for the recovery of the stamp tax which, under War Revenue Act June 13, 1898, c. 448, was to be levied, collected, and paid upon the execution of a conveyance, must be deemed the equivalent of the payment of the price of the stamps under section 13 of that act, as amended, validating unstamped instruments on making the prescribed payment. U. S. v. Chamberlin (1911) 31 Sup. Ct. 155, 219 U. S. 250, 55 L. Ed. 204, reversing judgment (1907) 156 Fed. 881, 84 C. C. A. 461, 13 Ann. Cas. 720.

Costs, fees, etc.—The "receiving, keeping, and paying out" of money by the clerk under an execution issued on a judgment in an action under the internal revenue laws, for which section 1383, ante, allows the clerk 1 per cent. commission (2 in California, by section 1405, ante), is a service rendered the government, for which the government is liable; and such commissions are to be paid, under this section, through the collector of internal revenue, into the treasury, as are the clerk's fees, that are taxed and included in the judgment and collected from the defendant. U. S. v. Wolters (C. C. 1892) 51 Fed. 896, disapproving Same v. Cigars, etc. (D. C. 1880) 2 Fed. 494.

Under this section and section 1462, ante, it was held that, on motion for an order for payment to a local collector of internal revenue the fees, costs, charges, and expenses of the officers of the court, recovered by the government in certain revenue cases, the above provisions relate only to cases in which the government is unsuccessful, and to cases in which it has paid fees in the progress of the cause, and subsequently recovered them as costs. U. S. v. Cigars (D. C. 1800) 2 Fed. 494, 495.

This statute does not require the officers' fees, which are the emoluments of their offices, to be paid over to the collectors of internal revenue. Id.

Cited without definite application, Howard v. U. S. (1900) 102 Fed. 77, 81, 42 C. C. A. 169, affirmed (1902) 22 Sup. Ct. 543, 184 U. S. 676, 46 L. Ed. 754.

§ 5941. (R. S. § 3217.) Dues from delinquent collector to be collected by distraint and sale.

When any collector fails either to collect or to render his account, or to pay over in the manner or within the times provided by law, the First Comptroller of the Treasury shall, immediately after evidence of such delinquency, report the same to the Solicitor of the Treasury, who shall issue a warrant of distress against such delinquent collector, directed to the marshal of the district, expressing therein the amount with which the said collector is chargeable, and the sums, if any, which have been paid over by him, so far as the same are ascertainable. And the said marshal shall, himself, or by his deputy, immediately proceed to levy and collect the sum which may remain due, with five per centum thereon, and all the expenses and charges of collection, by distress and sale of the goods and chattels, or any personal effects of the delinquent collector, giving at least five days' notice of the time and place of sale, in the manner provided by law for advertising sales of personal property on execution in the State wherein such collector resides. And the bill of sale of the officer of any goods, chattels, or other personal property, distrained and sold as aforesaid, shall be conclusive evidence of title to the purchaser, and prima-facie evidence of the right of the officer to make such sale, and of the correctness of his proceedings in selling the same. And for want of goods and chattels, or other personal effects of such collector, sufficient to satisfy any warrant of distress, issued as aforesaid, the real estate of such collector, or so much thereof as may be necessary for satisfying the said warrant, after being advertised for at least three weeks next before the time of sale, in not less than three public places in the collection-district,

and in one newspaper printed in the county or district, if any there be, shall be sold at public auction by the marshal or his deputy. Upon such sale, the marshal shall make and deliver to the purchaser of the premises sold a deed of conveyance thereof, to be executed and acknowledged in the manner and form prescribed by the laws of the State in which said lands are situated, and said deed so made shall invest the purchaser with all the title and interest of the defendant named in said warrant, existing at the time of the seizure thereof. And all moneys that may remain of the proceeds of such sale of personal or real property, after satisfying the said warrant of distress, and paying the reasonable costs and charges of sale, shall be returned to the proprietor of the property sold as aforesaid.

Act June 30, 1864, c. 173, § 35, 13 Stat. 237.

The First Comptroller of the Treasury was designated Comptroller of the Treasury by the Dockery Act of July 31, 1894, c. 174, § 4, ante, § 402.

§ 5942. (R. S. § 3218.) Collectors charged with what.

Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; and he shall be credited with all payments into the Treasury made as provided by law, with all stamps returned by him uncanceled to the Treasury, and with the amount of taxes contained in the lists transmitted in the manner heretofore provided to other collectors, and by them receipted as aforesaid; also with the amount of the taxes of such persons as may have absconded, or become insolvent, prior to the day when the tax ought, according to the provisions of law, to have been collected, and with all uncollected taxes transferred by him or by his deputy acting as collector to his successor in office: Provided, That it shall be proved to the satisfaction of the Commissioner of Internal Revenue, who shall certify the facts to the First Comptroller of the Treasury, that due diligence was used by the collector. And each collector shall also be credited with the amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same as required by law.

Act July 13, 1866, c. 184, § 9, 14 Stat. 110. Act Dec. 24, 1872, c. 13, § 2, 17 Stat. 402.

Notes of Decisions

See, also, notes under § 5847, ante.

Credits to collector.—A collector of internal revenue is entitled to a credit for all uncollected taxes transferred by him to a successor in office, if he proves that due diligence was used by him for their collection. U. S. v. Kimball (1879) 101 U. S. 726, 25 L. Ed. 835.

The rejection by the commissioner of internal revenue of a claim of a collector of internal revenue for a credit for uncollected taxes, presented by the collector, entitles the latter, when sued for such taxes, to prove his claim. Id.

The proper credits to a collector on transferring the list of assessments to his successor. U. S. v. Able (D. C. 1872) Fed. Cas. No. 14,417.

§ 5943. (R. S. § 3219.) Death, etc., of collector; uncollected balances.

In case of the death, resignation, or removal of any collector, all lists and accounts of taxes uncollected shall be transferred to his successor in office as soon as such successor is appointed and qualified, and it shall be the duty of such successor to collect the same.

Act July 13, 1866, c. 184, § 9, 14 Stat. 110.

Notes of Decisions

Power and duty of collector after removal.—A collector of internal revenue after removal from office has no power to collect the duties outstanding at the

time of his removal, and which had accrued while he remained in office, but the power and duty devolve on his successor. Sthreshley v. U. S. (1807) 8 U. S. (4 Cranch) 169, 2 L. Ed. 584.

§ 5944. (R. S. § 3220.) Refundment of taxes, penalties, etc.

The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty: Provided, That where a second assessment is made in case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is proved that said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation.

Act July 13, 1866, c. 184, § 9, 14 Stat. 111. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401.

A permanent appropriation to refund taxes illegally collected under the internal revenue laws was made by R. S. § 3689, post, § 6799.

Redemption of stamps issued under Act Oct. 22, 1914, c. 331, is provided for by Act Sept. 8, 1916, c. 463, § 411, set forth post, § 6346a.

Notes of Decisions

1. Constitutionality.
2. Remedy for illegal assessment in general.
3. Jurisdiction and authority of commissioner and secretary of the treasury.
4. Protest, voluntary payment, and mistake of fact.
5. Special taxes.
6. Tax paid by distiller on account of loss or destruction of stamps.
7. Tax on spirits lost by leakage.
8. Oleomargarine tax.
9. Income tax.
10. Excise tax on corporations.
11. Direct tax under former law.
12. Rights of surety on distiller's bond.
13. Practice and procedure in general.
14. When appeal lies to commissioner.
15. Presentation of appeal or claim.
16. Treasury regulations.
17. Decisions of commissioner in general.
18. Commissioner's certificate.
19. Conclusiveness or finality of decision.
20. Reopening and re-examining refund allowed and paid.
21. Set-off of claim.
22. Right of action to recover tax paid.
23. Enforcement of liability to refund against collector's successor.
24. Liability of officer for trespass.
25. Recovery of interest.
26. Compromise of suits.
27. Jurisdiction of suits.
28. Time to sue to recover taxes back.
29. Parties and process.
30. Pleading.
31. Evidence.
32. Question for jury.
33. Costs.
34. Review.
35. Payment of judgment against officer.
36. Rebate of taxes on tobacco and snuff.

1. Constitutionality.—There is no want of due process of law in this section and sections 5949 and 5950, post, making appeal to commissioner of internal revenue after payment and his refusal prerequisite to suit to recover taxes illegally assessed. Dodge v. Osborn (1916) 36 S. Ct. 275.

2. Remedy for illegal assessment in general.—The remedy against an illegal tax assessment under this and other statutes pointed out. U. S. v. Pacific R. R. (C. C. 1877) Fed. Cas. No. 15,-983.

3. Jurisdiction and authority of commissioner and secretary of the treasury.—Congress has conferred upon the commissioner the power of passing upon the merits and determining the validity of the claims for refund of taxes therein specified. First Nat. Bank of Greencastle v. U. S. (1879) 15 Ct. Cl. 225.

The secretary of the treasury and the commissioner of internal revenue are not accounting officers. Their adjudication upon matters submitted by law to the sole discretion and determination of either one of them bear a relation to the rights or liabilities of parties different from the results reached by accounting officers. Real Estate Savings

under a mutual mistake of law, as the judgment of the Supreme Court ([1906] 200 U. S. 488, 26 Sup. Ct. 327, 50 L. Ed. 569), in sustaining the ruling of the commissioner that the company had no legal claim against the government, deprived the commissioner of jurisdiction to again entertain the claim. (1906) 25 Op. Atty. Gen. 605.

The commissioner may, however, allow similar claims where no legal protest has been made; but such cases must arise under a misapprehension of fact and not of law. Id.

The decision in the case of Thacher v. U. S. (C. C. 1906) 149 Fed. 902, as to the matter of protest in the refunding of inheritance legacy taxes, together with the views expressed in this opinion, should be regarded by the Treasury Department as the rule of administrative action in claims arising under this section. Opinion of May 7, 1906 (25 Op. Atty. Gen. 605), in so far as it conflicts with these views, is reversed. (1907) 26 Op. Atty. Gen. 194.

The rule is firmly established and unqualified that protest is indispensable to the right to recover taxes claimed to have been illegally exacted. (1908) 26 Op. Atty. Gen. 472.

The commissioner of internal revenue has no power under this section to refund taxes voluntarily paid, without protest, under a mutual mistake of law. Id.

The unwilling payment of an illegal tax to a collector of internal revenue to avoid seizure and sale of property is not voluntary. Hubbard v. Brainard (1869) 35 Conn. 563.

Where a municipal corporation, by its officers and agents, distills spirits, and, without paying the gallon tax on them, removes them from the place of distillation to a place other than the United States bonded warehouse, and sells them and converts the money into its treasury, a payment of the taxes under protest and under threat of distraint is a satisfaction of a lien held by the United States, and the money cannot be recovered in an action against the United States collector. Salt Lake City v. Hollister (1883) 3 Utah, 200, 2 Pac. 200.

5. **Special taxes.**—This section and section 5949, post, relating to the return of internal revenue taxes illegally assessed, and providing that no suit shall be maintained in any court for the recovery of an internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty or sum claimed to have been wrongfully collected until an appeal shall have been duly made to the commissioner of internal revenue, provided that, if the decision is delayed more than six months from the date of the appeal, suit may be brought without first having the commissioner's decision, apply to special taxes assessed and collected under the laws regulating the manufacture and sale of oleomargarine. Hastings v. Herold (C. C. 1910) 184 Fed. 759.

6. **Tax paid by distiller on account of loss or destruction of stamps.**—Where a distiller loses his tax-paid stamps before they are affixed to the cask, and pays the tax again to procure other stamps, the duplicate payment is an overpayment, which may be refunded by the commissioner of internal revenue. Woolner v. U. S. (1877) 13 Ct. Cl. 355.

Distillers whose tax-paid stamps are lost before being affixed to the cask are not restricted to applying to the commissioner of internal revenue for duplicate stamps under the statutes. They may pay the tax a second time to the collector and apply for a refund. Id.

Semble, that where a distiller, in consequence of the destruction of a revenue stamp without fault on his part, is forced to affix a new one, the commissioner, upon proof of these facts, may direct the price of the second stamp, or rather the tax thus a second time exacted, to be refunded, under the power given him to refund taxes illegally assessed. (1871) 13 Op. Atty. Gen. 574.

7. **Tax on spirits lost by leakage.**—In the winter of 1866–67, R. purchased a large quantity (1,777 barrels) of distilled spirits in bond, which were not withdrawn from warehouse until May, 1869. Upon their withdrawal therefrom the internal revenue tax was exacted on the whole quantity originally deposited in the warehouse, without allowance for leakage (which amounted to about 13,000 gallons) whilst there. R. subsequently made application to the commissioner of internal revenue, under this section, for repayment of so much of the tax which was exacted as covered the amount of spirits lost by warehouse leakage, claiming that to this extent such tax was "wrongfully collected." Held that, under the provisions of the internal revenue laws in force at the time (Act July 13, 1866, c. 184, and Act July 20, 1868, c. 186), the tax was chargeable upon spirits in warehouse according to the quantity originally deposited therein, without regard to leakage, and that the tax in the above case upon the whole quantity originally deposited being therefore exacted pursuant to law, there was in the collection thereof "nothing wrongful" within the meaning of this section, and accordingly the case is not one wherein the commissioner is authorized by that section to refund. (1880) 16 Op. Atty. Gen. 667.

8. **Oleomargarine tax.**—The provisions of the general internal revenue legislation do not apply to the oleomargarine law, except those sections expressly made applicable. Grier v.

Tucker (C. C. 1907) 150 Fed. 658, 661.

The provisions of the general internal revenue legislation do not apply to Oleomagarine Act, except those sections expressly made applicable by that act. Tucker v. Grier (1908) 160 Fed. 611, 615, 87 C. C. A. 53, affirming (C. C. 1907) 150 Fed. 658.

The statute applies to the Oleomargarine Act. U. S. v. Barnes (1912) 32 Sup. Ct. 117, 118, 222 U. S. 513, 56 L. Ed. 291.

9. Income tax.—The inhibition of section 5947, post, of suits to restrain assessment or collection of a tax, and provisions of this section and of sections 5949 and 5950, post, making an appeal to a commissioner of internal revenue after payment and refusal to refund prerequisite to a suit to recover taxes illegally collected, are applicable to taxes under the income tax section of tariff act (Act Oct. 3, 1913, § 2, par. L). Dodge v. Osborn (1916) 36 Sup. Ct. 275.

Federal district court did not commit reversible error in passing on merits of controversy in supplemental bill to enjoin collection of surtaxes under income tax law 1913, on ground of its unconstitutionality, that the commissioner of internal revenue had ruled adversely upon plaintiff's protest and the taxes had been paid, notwithstanding failure of such bill to allege compliance with conditions imposed by this section and section 5949, post, as prerequisites to such suit. Dodge v. Brady (1916) 36 Sup. Ct. 277.

Under Act June 30, 1864, c. 173, § 120, money earned and received by a bank during any one of the four years beginning with April 1, 1864, and added to its surplus or contingent funds, either actually (i. e., at periods having intervals of less than six months) or by construction of law (i. e., once in six months), remained liable to the 5 per centum tax imposed by said section, notwithstanding that subsequently an equivalent amount of money was stolen from the bank by one of its officers. But where the money earned and received was stolen and lost, either before having been actually added to the surplus or before the expiration of the six months, the case is one entitled to relief. (1874) 14 Op. Atty. Gen. 643.

The amount of taxes illegally collected from the Illinois Central Railroad Company from 1863 to 1866, as income tax upon dividends on stock held by nonresident aliens, should be repaid to that company, after deducting so much therefrom as has already been paid over to the stockholders lawfully entitled thereto. (1875) 15 Op. Atty. Gen. 67.

Judgment for defendant was ordered in this case upon the ground that the claim of the plaintiff was barred by the act of July, 1862, as construed by the supreme court. Francis v. Slack (C. C. 1872) Fed. Cas. No. 5,041.

A bill in equity will not lie to enjoin the assessment and collection by the commissioner of internal revenue of a surtax imposed upon the plaintiff's income under section 2, Act Oct. 3, 1913, as the plaintiffs have an adequate remedy at law under this section and sections 5949, 5950, post, and section 5947, post, expressly provides that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. Dodge v. Osborn (1915) 43 App. D. C. 144.

10. Excise tax on corporations.—Remedy by suit against collector, where internal revenue taxes have been wrongfully collected under Corporation Tax Law, Aug. 5, 1909, § 38, post, § 6300 et seq., is not exclusive. U. S. v. Emery, Bird, Thayer Realty Co. (1915) 35 Sup. Ct. 499, 237 U. S. 28, 59 L. Ed. 825, affirming judgment Emery, Bird, Thayer Realty Co. v. U. S. (D. C. 1912) 198 Fed. 242.

Under this section and section 5949, post, a stockholder could not sue in equity to restrain the corporation from paying taxes on its income under Act Aug. 5, 1909, post, § 6300. Straus v. Abrast Realty Co. (D. C. 1912) 200 Fed. 327.

A collector held not personally liable for return of amount of excise tax improperly collected from a company which had leased its railway and was not doing business. Public Service Ry. Co. v. Herold (D. C. 1915) 219 Fed. 301.

Plaintiff company, having leased all the property, and taking over the entire business of another company, and agreeing to pay taxes against it, and, to avoid threatened distraint and sale of the leased property under R. S. § 3186 et seq. ante, § 5908 et seq., having paid the tax under protest, held to have paid under duress, and entitled to sue for its recovery. Cambria Steel Co. v. McCoach (D. C. 1915) 225 Fed. 278.

11. Direct tax under former law.—The act of congress providing for the refunding of the federal direct tax contemplates that it shall be refunded to the person on whose property the tax was collected, and not necessarily to the person who paid the tax. Herbert v. Harbert (Tex. Civ. App. 1894) 28 S. W. 250.

12. Rights of surety on distiller's bond.—The commissioner of internal revenue has no authority to refund to a surety on a distiller's bond, who has paid a judgment recovered against him thereon, the amount of such judgment, when the commissioner finds that the tax upon which this recovery was had was not illegally assessed, but was justly due from the distiller, and the only claim for refund is founded on the

allegation that the surety was not liable therefor on his bond. Seat v. U. S. (1883) 18 Ct. Cl. 458.

Where an assessment is made against a distiller, and paid by a surety on his bond, and the distiller obtains an allowance for repayment on the ground that the assessment was erroneous, and such distiller, after the issue of a warrant which was delivered to such surety for delivery to his principal, has removed to parts unknown, preventing the collection of the warrant, the surety, being ultimately entitled to the amount, may recover it from the government. Shwarz v. U. S. (1900) 35 Ct. Cl. 303.

Where the government has received money from a surety, his right to recover it back as money had and received arises, if it be determined that it was paid on an erroneous assessment. Id.

13. Practice and procedure in general.—Where the authority is in the commissioner of internal revenue to refund a tax in his discretion, errors in the mere forms of procedure are wholly immaterial, not being within the control of the applicant. Woolner v. U. S. (1877) 13 Ct. Cl. 355.

The uniform practice of the commissioner of internal revenue and the secretary of the treasury in proper cases to make allowances of refund to creditors who recover judgments against collectors for taxes illegally assessed or collected, and not to require the collectors first to pay such judgments and then apply themselves for refund, is reasonable and proper, and ought to be upheld. Nixon v. U. S. (1883) 18 Ct. Cl. 448.

14. When appeal lies to commissioner.—From any assessment or collection growing out of the regauging of spirits, an appeal lies to the commissioner of internal revenue under this section. Corning & Co. v. U. S. (1899) 34 Ct. Cl. 271.

In any assessment or collection growing out of the regauging of spirits an appeal lies to the commissioner. Id.

15. Presentation of appeal or claim.—See, also, note under § 5951, post.

The lodging of an appeal made out in due form with the proper collector for transmission to the commissioner in the usual course of business under the requirements of the regulations of the secretary of the treasury held in legal effect a presentation. U. S. v. Real Estate Sav. Bank (1881) 104 U. S. 728, 734, 26 L. Ed. 908.

A written application to the commissioner to refund, though it might be sufficient to justify favorable action by him under this section, was not equivalent to an appeal from an adverse decision of the collector essential to the maintenance of a suit under sections 5949, 5951, post. Chesebrough v. U. S. (1904) 24 Sup. Ct. 262, 265, 192 U. S. 253, 48 L. Ed. 432.

The filing of the claim for drawback or rebate under Act April 12, 1902, c. 500, § 4, with the collector of internal revenue held in legal effect a presentation of it to the commissioner. U. S. v. Hyams (1906) 146 Fed. 15, 76 C. C. A. 523.

It is immaterial whether the application to the commissioner be made by the collector against whom a judgment has been recovered or by the judgment creditor. Frerichs v. U. S. (1886) 21 Ct. Cl. 16.

If a claim for "refunding taxes illegally collected" is brought before the commissioner of internal revenue by a statement from the comptroller within the time prescribed by law, and he attaches to it a regular printed blank and acts upon it, it is a sufficient presentation to confer jurisdiction upon him. Wayne v. U. S. (1891) 26 Ct. Cl. 274.

16. Treasury regulations.—Regulation 3 prescribed by the secretary of the treasury requires the commissioner, after hearing an appeal, to make a formal certificate of his decision, with the amount in writing which should be refunded; regulation 4 requires the entry of the decision in a docket; regulation 5 requires a weekly transmission of the list of awards, with the vouchers, to the first comptroller of the treasury; and regulation 7 requires the transmission of the case, with the evidence in support of it, to the secretary of the treasury, for his consideration and advisement, before final decision of an appeal involving over $250. Held, that the examination and allowance of a claim exceeding $250 by the commissioner without complying with regulations 3, 4, and 5, and the subsequent transmission of the claim to the secretary of the treasury for his consideration and advisement, did not constitute a final award by the commissioner, which was binding on the government. Stotesbury v. U. S. (1892) 13 Sup. Ct. 1, 2, 146 U. S. 196, 36 L. Ed. 940, affirming (1888) 23 Ct. Cl. 285.

The fact that the duty of determining whether any, and, if so, how much, should be returned to claimants, was committed to the commissioner did not take the revising power from a secretary or prevent his regulations from determining the procedure to be followed by the commissioner in hearing and deciding on claims. Id.

The regulations made by the Secretary of the Treasury prescribing the manner in which appeals for the refund of taxes shall be made is a proper exercise of his statutory authority. Real Estate Savings Bank of Pittsburgh v. U. S. (1880) 16 Ct. Cl. 335.

A treasury regulation which requires the commissioner of internal revenue to transmit certain claims, before they

are finally decided, to the secretary of the treasury, "for his consideration and advisement," is not repugnant to the statute. Dupasseur v. U. S. (1883) 19 Ct. Cl. 1.

17. Decisions of commissioner in general.—The commissioner of internal revenue, when considering claims for the overpayment of taxes or a refund of a tax excessive in amount, may take all the facts and circumstances into consideration, and will act upon his own judgment and discretion. Woolner v. U. S. (1877) 13 Ct. Cl. 355.

The decisions of the commissioner concerning a refund of taxes are in the nature of awards. First Nat. Bank of Greencastle v. U. S. (1879) 15 Ct. Cl. 225.

When the commissioner of internal revenue acts beyond his jurisdiction in making an allowance, such an allowance is without force or effect, and no action can be maintained thereon. Seat v. U. S. (1883) 18 Ct. Cl. 458.

An allowance by the commissioner, as a refund, of taxes illegally collected, when approved by the secretary of the treasury, is an award upon which an action may be maintained in the court of claims. City of Louisville v. U. S. (1896) 31 Ct. Cl. 1.

An allowance by the commissioner as a refund of taxes illegally collected, duly approved by the secretary of the treasury, is an award upon which an action may be maintained; it is conclusive unless impeached, and the burden of impeaching it is upon the defendants. Id.

Where the allowance of a claim by the commissioner of internal revenue for the refund of a tax illegally collected is rejected by the commissioner, a judicial remedy is given the party by an action against the commissioner. Edison Electric Illuminating Co. v. U. S. (1903) 38 Ct. Cl. 208.

An allowance by the Commissioner for the refund of a tax illegally collected is not the simple passing of an ordinary claim by an ordinary accounting officer, but an award upon which an action may be brought, and which is conclusive unless impeached for fraud or mistake. Id.

18. Commissioner's certificate.—It is immaterial whether the commissioner's certificate be in form under this section, so long as it represents a case where he is authorized to refund and the amount which the party is entitled to have refunded. Kaufman v. U. S. (1875) 11 Ct. Cl. 659.

The commissioner's certificate allowing a claim for "damages and costs recovered" against a revenue officer is not invalidated because the claim is styled therein as one "for the refunding of taxes erroneously assessed." Dunnegan v. U. S. (1881) 17 Ct. Cl. 247.

19. Conclusiveness or finality of decision.—See, also, note under § 5951, post.

An allowance by the commissioners of internal revenue for an excess of stamp tax paid by a brewer on his business is conclusive, unless impeached in some proper form by the United States. U. S. v. Kaufman (1877) 96 U. S. 567, 24 L. Ed. 792.

Where the commissioner of internal revenue, in a case within the scope of his authority and jurisdiction, has ordered a refund of an overpaid tax, a court cannot inquire as to the sufficiency of the evidence before him. Woolner v. U. S. (1877) 13 Ct. Cl. 355.

An award of the commissioner cannot be impeached for error in the determination of any fact which it is his duty to determine. Whether the claim was presented to him in due time is such a fact. First Nat. Bank of Greencastle v. U. S. (1879) 15 Ct. Cl. 225.

An award or refund of the commission may be impeached for fraud, want of jurisdiction, mistake apparent upon the face of his certificate, or for such irregularities as would avoid an award. Id.

When the commissioner makes and certifies to an allowance, the liability of the government is fixed, and the claimant is not obliged to follow the award through the treasury, nor to satisfy other officials of its correctness. Id.

Although the comptroller of the treasury must sign a warrant for the payment of a refund allowed by the Commissioner, neither he nor any accounting officer has authority to review the commissioner's decision. Id.

An allowance by the commissioner of internal revenue can be impeached only for fraud or mistake. It may be impeached for want of jurisdiction in the commissioner to act upon the application therefor, but it cannot be impeached for a mistake of judgment or discretion when the commissioner acts within the scope of his authority. Nixon v. U. S. (1883) 18 Ct. Cl. 448.

The law plainly imposes upon the commissioner the duty of deciding whether a tax has been erroneously or illegally assessed and whether it should be refunded, and neither the accounting officers nor the courts can review the evidence and say that it is insufficient. Sybrandt v. U. S. (1884) 19 Ct. Cl. 461.

The decision of the commissioner of internal revenue (after advisement with the secretary of the treasury) that there was probable cause for a seizure is final, and cannot be reviewed by the accounting officers. Frerichs v. U. S. (1886) 21 Ct. Cl. 16.

An award of the commissioner of internal revenue for the refund of a tax illegally assessed cannot become final and irrevocable before it has passed out of his control by being transmitted to the first comptroller. Stotesbury v. U. S. (1888) 23 Ct. Cl. 285.

An allowance by the commissioner as a refund of taxes illegally collected is

conclusive unless impeached. City of Louisville v. U. S. (1895) 31 Ct. Cl. 1.

The commissioner's decision is final. Dugan v. U. S. (1899) 34 Ct. Cl. 458.

An allowance by the commissioner of internal revenue for the refund of a tax illegally collected is not the simple passing of an ordinary claim by an ordinary accounting officer, but an award on which an action may be brought, and which is conclusive unless impeached for fraud or mistake. Edison Electric Illuminating Co. v. U. S. (1903) 38 Ct. Cl. 208.

Where a decision of the commissioner rests entirely upon his construction of a statute it is not final; and, if adverse to the claimant, the court of claims has jurisdiction of the case. American West Indies Trading Co. v. U. S. (1910) 45 Ct. Cl. 488.

20. Reopening and re-examining refund allowed and paid.—Act Feb. 25, 1893, requires the commissioner to audit and adjust the claim of the city of Louisville "for internal revenue taxes collected on railroad dividends on stock, and on interest on railroad bonds, * * * to the extent that such taxes were deducted from any dividends or interest due and payable," and directs that the amounts, when ascertained, if "not heretofore refunded, shall be paid out of the permanent annual appropriation." Held not to authorize reopening and re-examining a refund previously allowed by the commissioner, and paid under a special appropriation by congress. City of Louisville v. U. S. (1896) 31 Ct. Cl. 1.

21. Set-off of claim.—See, also, notes under § 5951, post.

A claim for internal revenue taxes paid, which has not been presented to the accounting officers of the treasury and disallowed, cannot be set off in an action by the United States for other internal revenue taxes. Western Union R. Co. v. U. S. (1879) 101 U. S. 543, 548, 25 L. Ed. 1008.

22. Right of action to recover tax paid.—The court has no power to allow an abatement of tax to a distiller from the loss of mash by the bursting of a fermenting tub. Turner v. Williams (C. C. 1873) Fed. Cas. No. 14,265.

The collector having assessed and collected an additional tax of 6 cents per pound under the War Revenue Act of 1898 on tobacco while it still remained in the factory, whereas it was not subject to the payment of any tax until its removal for consumption or sale, his action amounted to a finding of the jurisdictional fact that it had been removed and was being held for sale, which, as against the government, fixed its status for taxation under the act, and rendered the collection of any additional tax above 3 cents per pound illegal, and such excess recoverable by the taxpayer. Robards Tobacco Co. v. Franks (C. C. 1900) 103 Fed. 276, judgment affirmed Franks v. Robards Tobacco Co. (1901) 112 Fed. 784, 50 C. C. A. 527.

A manufacturer of surgical supplies, which purchased internal revenue stamps from time to time under protest for use on articles made and sold by it, may maintain different actions against successive collectors to recover the amounts paid to each, and different actions against the same collector, when required to prevent the bar of limitations, or when they relate to different classes of articles, and the questions involved may be different, and a recovery in one such suit is not a bar to the prosecution of the others pending, where no motion has been made to consolidate. Johnson & Johnson v. Herold (C. C. 1907) 161 Fed. 593.

No suit lay at common law on an implied assumpsit to recover taxes illegally paid, and hence an action to recover such taxes could only be maintained under and in strict pursuance of the statutes authorizing the same. Hastings v. Herold (C. C. 1910) 184 Fed. 759.

A person cannot recover from an internal revenue collector taxes paid which were in fact due from him even though the manner of their assessment or collection was unauthorized. Schafer v. Craft (D. C. 1906) 144 Fed. 907, judgment affirmed Craft v. Schafer (1907) 153 Fed. 175, 82 C. C. A. 349.

Where a tax is paid under such circumstances that the terms of protest are understood and sufficiently expressed to be brought to the notice of the government, and where the levy is used merely to protect the government officer in acting under the statute, an action is maintainable to recover the tax illegally imposed. Abrast Realty Co. v. Maxwell (D. C. 1913) 206 Fed. 333.

If any indistinguishable or inseparable part or proportion of an assessment for internal revenue is illegal, the whole assessment is illegal. There is no sufficient consideration for the payment of the money, and it may be recovered. Hubbard v. Brainard (1869) 35 Conn. 563.

23. Enforcement of liability to refund against collector's successor.—Act June 13, 1898, imposing an internal revenue tax on certain legacies, required the executor to sign a statement to the collector and to pay the tax to him, and section 30 gave the commissioner of internal revenue control of the assessment. Sections 5904 and 5905, ante, require the collector to pay the tax into the treasury, and declare that on the death of the collector all lists should be transferred to his successor; and section 1594, ante, declares that an action against such collector should not abate by his death, but his successor should be substituted as defendant. Held that, where the collector wrongfully received an inheritance tax on

bequests which were not taxable, on his death the liability to refund was enforceable against his successor in office; it being the duty of the commissioner to pay any judgment rendered against the collector as provided by this section. Armour v. Roberts (C. C. 1907) 151 Fed. 846.

24. Liability of officer for trespass.—See, also, notes under § 1611, ante, and § 6362, post.

An assessment duly certified to the collector by the assessor in the exercise of the latter's jurisdiction will protect the collector from personal liability for the levy. Erskine v. Hohnbach (1871) 81 U. S. (14 Wall.) 613, 20 L. Ed. 745.

A tax collector of the United States cannot revise or refuse to enforce an assessment regularly made by the assessor in the exercise of the latter's jurisdiction; his duties in this respect being merely ministerial. Id.

Trespass will not lie against a collector of internal revenue for improperly seizing and carrying away goods forfeited, if he, as such collector, had good cause to believe, and did believe, that the owner was attempting to sell the goods to avoid the payment of the internal revenue duties imposed thereon. Averill v. Smith (1872) 84 U. S. (17 Wall.) 82, 21 L. Ed. 613.

Proof of probable cause, shown by the certificate of the district court, is a good defense to an action of trespass brought by the claimant against a collector of internal revenue who seized the property for forfeiture. Id.

The fact that, after a decree discharging property seized for forfeiture by an internal revenue collector, the collector neglected to return the property, does not make him a trespasser ab initio, where the property was taken out of his possession by process issued by the district court and remained in the custody of the marshal. Id.

A mere failure by an internal revenue collector to return property seized for forfeiture after the rendition of a decree directing its discharge will not amount to such an abuse of authority as will render him a trespasser ab initio. Id.

The doctrine that a ministerial officer will be protected in the enforcement of process regular on its face, issued by an officer or tribunal possessing jurisdiction over the subject-matter, and having the power to issue process for the enforcement of its judgment, applies to a collector of internal revenue in enforcing against a distiller an assessment for taxes, regular on its face, made by the commissioner of internal revenue and duly certified to the collector, though such assessment may in fact have been invalid. Harding v. Woodcock (1890) 11 Sup. Ct. 6, 137 U. S. 43, 34 L. Ed. 580.

An internal revenue officer, who, under color of his office, commits a trespass, is liable therefor; such cases being contemplated by the internal revenue act of July 13, 1866. Coblens v. Abel (C. C. 1868) Fed. Cas. No. 2,926.

25. Recovery of interest.—Plaintiff having paid excessive tax and having accepted a sum appropriated by Congress for repayment (July 26, 1886), assumpsit against the collector for the sum illegally exacted, with interest, would not lie, the principal sum having been paid, and the action, not sounding in damages, could not be maintained for the interest. Stewart v. Barnes (1894) 14 Sup. Ct. 849, 850, 153 U. S. 456, 38 L. Ed. 781.

Where an internal revenue tax on certain legacies was illegally exacted, interest was properly allowed on the principal of the tax in a suit to recover the same. Herold v. Shanley (1906) 146 Fed. 20, 76 C. C. A. 478, affirming judgment Shanley v. Herold (C. C. 1905) 141 Fed. 423.

Certain parties became entitled to a judgment against an internal revenue collector for the cost of stamps which he had illegally compelled them to use. Held, that, inasmuch as they had purchased the revenue stamps in large quantities and evidently for other purposes than that of paying the unlawful tax, they were entitled to interest only from the date of their demand. Treat v. Taylor (1908) 166 Fed. 1021, 91 C. C. A. 330, affirming judgment Taylor v. Treat (C. C. 1907) 153 Fed. 656.

A suit against a collector to recover a tax collected is not in form against the United States, and hence the successful claimant may recover interest. Kinney v. Conant (1909) 166 Fed. 720, 92 C. C. A. 410, certiorari denied (1909) 29 Sup. Ct. 703, 214 U. S. 526, 53 L. Ed. 1068.

On judgment against a collector of internal revenue for taxes unlawfully exacted and paid under protest, interest was properly awarded. Treat v. Farmers' Loan & Trust Co. (1911) 185 Fed. 760, 108 C. C. A. 98, affirming judgments Central Trust Co. of New York v. Treat (C. C. 1909) 171 Fed. 301, and Farmers' Loan & Trust Co. v. Same (C. C. 1909) Id. 302.

By analogy to this section interest should not be allowed in a suit to recover customs duties. White v. Arthur (C. C. 1882) 10 Fed. 80, 83.

On taxes originally paid without protest no right of interest was given. Commissioners of the Sinking Fund v. Buckner (C. C. 1891) 48 Fed. 533, 538, 539.

Where there was such delay in the prosecution of a claim for the repayment of internal revenue taxes alleged to have been illegally exacted by the collector that nearly 30 years elapsed before action was brought thereon,

the plaintiff will not be allowed interest during such time, but he is entitled to interest on the principle recovered from the time the suit was commenced. Burrough v. Abel (C. C. 1900) 105 Fed. 366.

One from whom internal revenue taxes have been illegally exacted, and who pays the same under threats of distraint, and acts promptly in prosecuting his claim for their recovery, is entitled to recover interest from the time of their payment. Pennsylvania Co. for Insurances on Lives and Granting Annuities v. McClain (C. C. 1900) 105 Fed. 367, judgment affirmed McClain v. Pennsylvania Co. for Insurances on Lives and Granting Annuities (1901) 108 Fed. 618, 47 C. C. A. 529.

A suit against a collector for a tax illegally exacted held not one against the United States, so as to preclude recovery of interest. Conant v. Kinney (C. C. 1908) 162 Fed. 581, affirmed (1909) 166 Fed. 720, 92 C. C. A. 410, certiorari denied (1909) 29 Sup. Ct. 703, 214 U. S. 526, 53 L. Ed. 1068.

In an action against a collector of internal revenue to recover taxes and penalties paid under protest, plaintiff, on recovery, is entitled to interest up to the entry of final judgment, unless an appeal is taken, when, if the judgment is affirmed, interest will be allowed up to the date of judgment on the mandate of the appellate court unless plaintiff has unduly delayed the presentation of his claim. Klock Produce Co. v. Hartson (D. C. 1914) 212 Fed. 758.

In a suit to recover taxes paid under protest, interest is recoverable, without any statute to that effect. State Line & S. R. Co. v. Davis (D. C. 1915) 228 Fed. 246.

26. Compromise of suits.—See, also, §§ 5952, 6375, post, and notes thereunder.

In passing on cases submitted to him for compromise, under sections 5952, 6375, post, the secretary of the treasury, while he is not at liberty to act from motives merely of compassion or charity, may consider, not only the pecuniary interests of the government, but take into view general considerations of justice and equity and of public policy. (1881) 17 Op. Atty. Gen. 213.

The power given the Secretary of the Treasury by section 5952, post, to compromise cases arising under the internal revenue laws, extends only to suits commenced by the government to recover taxes, while the ampler power of compromise given him by section 6375, post, is limited to claims in favor of the United States. (1901) 23 Op. Atty. Gen. 507.

The Secretary of the Treasury has no power to compromise a suit brought against a collector of internal revenue for the recovery of taxes claimed to have been illegally collected. Id.

Except as modified by sections 5952 and 6375, post, the power to determine whether a compromise should be made of pending litigation would seem to rest with the attorney-general, such suits being necessarily under his control and subject to his direction. Id.

27. Jurisdiction of suits.—Suits to recover money illegally exacted as internal revenue taxes cannot, under existing laws, be commenced in the circuit courts, except where the taxpayer and the officer are citizens of different states. Collector of Internal Revenue v. Hubbard (1870) 79 U. S. (12 Wall.) 1, 20 L. Ed. 272.

The court of claims held to have jurisdiction of suits on claims for taxes and penalties. U. S. v. Real Estate Sav. Bank (1881) 104 U. S. 728, 732, 26 L. Ed. 908.

R. S. §§ 3220, 3226–3228, this section, and sections 5949–5951, post, held not inconsistent with Tucker Act March 3, 1887 (ante, § 991 [20]), and hence a federal district court had jurisdiction of an action against the United States to recover money paid on an erroneous internal revenue assessment. U. S. v. Finch (1912) 201 Fed. 95, 119 C. C. A. 433.

Until the officer exercises his power and decides in favor of a claim, no court has jurisdiction of it; when a claim is allowed and certified, a new cause of action arises by implied contract upon the award or allowance. First Nat. Bank of Greencastle v. U. S. (1879) 15 Ct. Cl. 225.

28. Time to sue to recover taxes back.—See, also, §§ 5949, 5950, and notes thereunder.

Under this section and sections 5949–5951, post, a corporate excise tax illegally collected could not be recovered back, where suit was not brought within two years. Public Service Ry. Co. v. Herold (D. C. 1915) 219 Fed. 301.

Under this section and sections 5949–5951, post, suit to recover corporate excise tax illegally collected could not be maintained more than two years after payment, though the claim was presented to and rejected by the commissioner of internal revenue after the expiration of the two years. Id.

29. Parties and process.—Rev. St. Mo. 1899, § 542 [Ann. St. 1906, pp. 581, 583, 745], provides that all parties having an interest in the object of an action may be joined as plaintiff. Section 544 declares that both as to actions at law and in equity parties united in interest must join, and if one refuses he may be made a defendant; and section 767 provides that judgment may be given for or against any one or more plaintiffs or defendants, and the judgment will determine the respective rights of

the parties. Held that, where an internal revenue tax was wrongfully assessed against three cestuis que trust under a will and was jointly paid under protest by the trustees, such trustees and beneficiaries were entitled to join in a single suit against the internal revenue collector to recover the same. Armour v. Roberts (C. C. 1907) 151 Fed. 846.

Where, in an action to recover oleomargarine taxes paid under protest into the hands of a deputy collector of internal revenue and by him deposited to the credit of the treasurer of the United States, the summons was issued against the collector individually, but the demand claimed was for moneys paid into his office as collector of internal revenue, and a petition for removal of the cause to the federal court alleged that defendant, acting as internal revenue collector under and by authority of the acts of Congress relating to the manufacture and sale of oleomargarine, collected the moneys in question, and the case was tried on the theory that the moneys were received by defendant as such, and it was admitted at the trial that defendant made the assessment and sent it to his deputy for collection, the summons would be considered as amended, so that it would be directed to defendant in his official capacity, or otherwise, as might be necessary. Hastings v. Herold (C. C. 1910) 184 Fed. 759.

30. Pleading.—The rule that justification of an alleged trespass, to avail, must be pleaded, does not apply in an action against a collector of internal revenue for the alleged wrongful seizure of a distiller's property, where the declaration itself shows that the collector acted in his official capacity, and in conformity with law, in making the seizure. Harding v. Woodcock (1890) 11 Sup. Ct. 6, 137 U. S. 43, 34 L. Ed. 580.

In a complaint against a collector of internal revenue to recover the amount of taxes exacted by him from plaintiffs, who were shipping agents, as due, under the war revenue act, on copies of charter parties in their possession, and alleged by them to have been obtained for the information of themselves and their customers, an allegation that "plaintiffs' said firm were strangers to said charter parties and the matter to which the same related" is not sufficient to show that plaintiffs were not agents or representatives of one or the other of the parties to such instruments, and properly chargeable with the tax. Simpson v. Treat (C. C. 1904) 126 Fed. 1003.

A statement of claim in a suit against a collector to recover internal revenue taxes assessed and collected from plaintiff as a broker under War Revenue Act June 13, 1898, c. 448, § 1, 30 Stat. 448, as amended by Act March 2, 1901, c. 806, § 1, 31 Stat. 938, on the ground that plaintiff was not subject to such taxes, should set out the transactions on account of which they were assessed. Haight & Freese Co. v. McCoach (C. C. 1905) 135 Fed. 894.

31. Evidence.—In a suit against a revenue collector to recover taxes, the burden is on the plaintiff to show that the collector ex æquo et bono is bound to refund the amount which he has paid. Bailey v. New York Cent. R. Co. (1874) 89 U. S. (22 Wall.) 604, 22 L. Ed. 840.

A railroad company issued certificates entitling each stockholder to 80 per cent. of his stock, payable ratably out of future earnings, with dividends thereon at the same rates and times as capital stock, and convertible into stock, at the option of the company, whenever authorized to sufficiently increase its capital. At a former hearing, it was held that, while these certificates constituted a scrip dividend, and were subject to the 5 per cent. income tax imposed by Internal Revenue Act 1864, § 122 (13 Stat. 284), still, as they represented earnings expended in the improvement, construction, and equipment of the road through a period of 15 years, during only 6 of which the income tax was in force, the amount subject thereto was properly reduced to six-fifteenths of their total. The company paid under protest, and brought action to recover the amount as illegally exacted. Held, that it was competent for plaintiff to show just how much of the sums represented by the certificates had been expended for construction and improvement during the six years covered by the tax, and had not already been assessed for taxation as profits carried to construction or other account. Bailey v. New York Cent. & H. R. R. Co. (1882) 106 U. S. 109, 1 Sup. Ct. 62, 27 L. Ed. 81.

In a suit to recover back taxes paid on a reassessment, for error in the first assessment, the record of reassessment is not evidence of the error. Barker v. White (C. C. 1874) Fed. Cas. No. 996.

Where it appears that some of the boxes of matches in a lot contained an excessive number, the burden is put upon the manufacturer to show what boxes did not overrun the number. Schmitt v. Trowbridge (D. C. 1878) Fed. Cas. No. 12,468.

In an action to recover a special tax assessed against and collected from plaintiff as a dealer in oleomargarine, on the ground that it was based on an erroneous finding that he sold oleomargarine colored to resemble butter, and was therefore excessive, the burden of proof to establish such contention rests upon the plaintiff. Schafer v. Craft (D. C. 1906) 144 Fed. 907, judgment affirmed Craft v. Schafer (1907) 153 Fed. 175, 82 C. C. A. 349.

32. Question for jury.—Whether or not a regulation of the commissioner of internal revenue, made in pursuance of Oleomargarine Act May 9, 1902, § 4, post, § 6233 et seq., has the force of

law as a conclusive determination of the fact, it furnishes a working rule for the guidance of officers and the information of manufacturers, and on the trial of an action by a manufacturer to recover taxes exacted on butter claimed to contain more than 16 per cent. of water the submission to the jury of the question whether such a percentage of water was "abnormal" was not an error of which the plaintiff could complain. Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595.

33. **Costs.**—By analogy, costs should be allowed in a suit to recover customs duties under Act June 10, 1890. U. S. v. Davis (1893) 54 Fed. 147, 157, 4 C. C. A. 251.

Costs held to be recoverable against a collector in a suit against him, removed from a state court to the federal court. De Bary v. Carter (1900) 102 Fed. 130, 131, 42 C. C. A. 209.

On judgment against a collector of internal revenue for taxes paid under protest, costs incurred before judgment and before any certificate of probable cause was granted were properly awarded against him. Treat v. Farmers' Loan & Trust Co. (1911) 185 Fed. 760, 108 C. C. A. 98, affirming judgments Central Trust Co. of New York v. Treat (C. C. 1909) 171 Fed. 301, and Farmers' Loan & Trust Co. v. Same (C C. 1909) 171 Fed. 302.

34. **Review.**—A judgment dismissing an action by a legatee against the United States to recover an alleged illegal tax where the statute is held constitutional, but on a proper construction thereof is held not to justify the imposition of the whole amount collected, will be reversed, though in another action the executor has established his right to recover the excess from the internal revenue collector, in order that the dismissal may not embarrass plaintiff's right to indemnity from the executor. Sherman v. U. S. (1900) 20 Sup. Ct. 779, 780, 178 U. S. 150, 44 L. Ed. 1014.

In an action to recover the amount of internal revenue taxes which plaintiff was required to pay as a brewer and for beer stamps, tried by stipulation without a jury, it was stipulated that plaintiff manufactured a beverage from ingredients and in a manner stated, but it was a disputed question, upon which testimony was taken, whether such beverage was a "fermented liquor manufactured from malt, wholly or in part, or from any substitute therefor," within the meaning of section 5971, post, which rendered plaintiff liable for special tax as a brewer, and which was subject to tax under section 6143, post. Held, that requests to the court to hold as propositions of law on the facts stipulated that plaintiff was not a brewer, and the beverage was not subject to tax under the statute, conceding the practice of requiring findings upon propositions of law in such cases to be permissible, involved a finding of the disputed question of fact whether the beverage was a fermented liquor, and, as such requests were not based on all the evidence, so as to be treated as a motion for judgment as matter of law on the entire case, the ruling of the court thereon was not reviewable on a writ of error. Davis v. Daugherty (1901) 105 Fed. 769, 45 C. C. A. 39.

35. **Payment of judgment against officer.**—Under this section an officer applied to the commissioner for payment of a judgment, who, with the approval of the secretary of the treasury, allowed the claim, and certified it for payment to the judgment creditor, "upon due satisfaction of the judgment." Held, it was proper, under the statute, to make the payment directly to the judgment creditor, on satisfaction of the judgment by him, when it appeared that payment had not been made by the officer. U. S. v. Frerichs (1888) 8 Sup. Ct. 514, 124 U. S. 315, 31 L. Ed. 471.

The term "repay" in the statute does not imply that the officer must pay the judgment before the commissioner can act. The statute is for the protection of the officer, and the "damages and costs recovered" against him may be allowed by the commissioner directly to the judgment creditor. Dunnegan v. U. S. (1881) 17 Ct. Cl. 247.

Where application for refund of a tax collected is rejected, suit may be maintained on an allowance, to a judgment creditor, of the repayment of a judgment against the collector to recover back the same tax, where the collector does not object thereto and sets up no claim himself. Nixon v. U. S. (1883) 18 Ct. Cl. 448.

36. **Rebate of taxes on tobacco and snuff.**—See notes under § 6174, post.

Cited without definite application, Kings County Sav. Inst. v. Blair (1886) 6 Sup. Ct. 353, 355, 116 U. S. 200, 29 L. Ed. 657; Commissioners of Sinking Fund of Logan County, Ky., v. U. S. (1898) 18 Sup. Ct. 361, 169 U. S. 255, 42 L. Ed. 737; Spreckels Sugar Ref. Co. v. McClain (1904) 24 Sup. Ct. 376, 378, 192 U. S. 397, 48 L. Ed. 496; Christie-Street Commission Co. v. U. S. (1905) 136 Fed. 326, 328, 329, 69 C. C. A. 464; U. S. v. Shipley (1912) 197 Fed. 265, 116 C. C. A. 627; Hicks v. James' Adm'x (C. C. 1882) 48 Fed. 542 (affirmed [1884] 4 Sup. Ct. 6, 110 U. S. 272, 28 L. Ed. 144); Commonwealth Title Ins. & Trust Co. v. U. S. (1902) 37 Ct. Cl. 532.

§ 5945. (R. S. § 3221, as amended, Act March 1, 1879, c. 125, § 6.) Taxes on spirits accidentally destroyed.

The Secretary of the Treasury, upon the production to him of satisfactory proof of the actual destruction by accidental fire or other casualty, and without any fraud, collusion, or negligence of the owner thereof, of any distilled spirits, while the same remained in the custody of any officer of internal revenue in any distillery warehouse, or bonded warehouse of the United States and before the tax thereon has been paid, may abate the amount of internal taxes accruing thereon, and may cancel any warehouse bond, or enter satisfaction thereon, in whole or in part, as the case may be. And if such taxes have been collected since the destruction of said spirits, the said Secretary shall refund the same to the owners thereof out of any moneys in the Treasury not otherwise appropriated. And when any distilled spirits are hereafter destroyed by accidental fire or other casualty, without any fraud, collusion, or negligence of the owner thereof, after the time when the same should have been drawn off by the gauger and placed in the distillery-warehouse provided by law, no tax shall be collected on such spirits so destroyed, or, if collected, it shall be refunded upon the production of satisfactory proof that the spirits were destroyed as herein specified.

Act May 27, 1872, c. 218, § 1, 17 Stat. 162. Act March 1, 1879, c. 125, § 6, 20 Stat. 341.

This section, as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the provisions beginning with the words, "And when any distilled spirits are hereafter destroyed," etc., to the end of the section as set forth here, by Act March 1, 1879, c. 125, § 6, cited above.

The provisions of this section were extended to grape brandy accidentally destroyed while stored in fortifying room on winery premises, by Act June 7, 1906, c. 3046, § 5, post, § 6121. See, also, in this connection, § 6114e, post.

Notes of Decisions

See note under § 5947, post.

Construction with other statute.—This section must be construed together with section 6034, post, as parts of the same statute. U. S. v. Peace (1893) 53 Fed. 999, 1001, 4 C. C. A. 148.

Loss by casualty in general.—An "unavoidable casualty," within this section, is an event or accident which human prudence, foresight, and sagacity cannot prevent. Crystal Springs Distillery Co. v. Cox (1892) 49 Fed. 555, 1 C. C. A. 365, affirming (C. C. 1891) 47 Fed. 693.

Spirits lost after seizure by an internal revenue officer, through the latter's mere negligence, were not lost by reason of "casualty," within this section. U. S. v. Sisk (1910) 176 Fed. 885, 100 C. C. A. 355.

The secretary of the treasury has jurisdiction of claims for refund founded on the actual destruction by casualty of distilled spirits in the custody of an officer of internal revenue, and his decision is final and conclusive. Hoffheimer Bros. v. U. S. (1885) 20 Ct. Cl. 371.

See, also, Thompson v. U. S. (1892) 12 Sup. Ct. 299, 300, 142 U. S. 471, 35 L. Ed. 1084.

Destruction by fire.—An order from the secretary of the treasury pursuant to Act May 27, 1872 (17 Stat. 162), abating taxes upon bonded spirits on account of their destruction by fire, cancels the warehouse bond; and, although the order may be revoked for cause and the tax reimposed, the obligation of the bond can never be revived. U. S. v. Alexander (1884) 4 S. Ct. 99, 110 U. S. 325, 28 L. Ed. 166.

The abandonment under this section of the tax on distilled spirits destroyed while in a bonded warehouse "by accidental fire or other casualty," does not include a loss by the warping of barrels from unusual and excessive summer heat, abnormal evaporation caused by such heat, or the existence of undiscoverable wormholes in the barrels. Crystal Spring Distillery Co. v. Cox (1892) 49 Fed. 555, 1 C. C. A. 365, affirming (C. C. 1891) 47 Fed. 693.

The Secretary of the Treasury has the authority under this section to abate the tax on whisky which was accidentally destroyed by fire in a distillery warehouse without any fraud, collusion or negligence of the distillers, and while the same remained under the custody of an internal revenue officer, a portion of which whisky had been in warehouse beyond the bonded period of three years. (1886) 18 Op. Atty. Gen. 379.

See, also, Hedger v. Union Ins. Co. (C. C. 1883) 17 Fed. 498.

Cited without definite application, Christie-Street Commission Co. v. U. S. (1905) 136 Fed. 326, 329, 69 C. C. A. 464.

(R. S. § 3222. Temporary.)

This section provided that the preceding section should take effect in all cases of loss which had occurred since January 1, 1868. It is omitted as temporary merely.

§ 5946. (R. S. § 3223, as amended, Act March 1, 1879, c. 125, § 3.) When tax on lost spirits is indemnified by insurance.

When the owners of distilled spirits in the cases provided for by the two preceding sections may be indemnified against such tax by a valid claim of insurance, for a sum greater than the actual value of the distilled spirits before and without the tax being paid, the tax shall not be remitted to the extent of such insurance.

Act May 27, 1872, c. 218, § 2, 17 Stat. 162. Act March 1, 1879, c. 125, § 3, 20 Stat. 333.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "valid claim of insurance," the words "for a sum greater than the actual value of the distilled spirits before and without the tax being paid," as set forth here, by Act March 1, 1879, c. 125, § 3, cited above.

A similar provision relating to spirits withdrawn for exportation was made by Act Dec. 20, 1879, c. 1, § 2, post, § 6056.

The provisions of this section were extended to grape brandy accidentally destroyed while stored in fortifying room on winery premises, by Act June 7, 1906, c. 3046, § 5, post, § 6121. See, also, in this connection, § 6114e, post.

Cited without definite application, Christie-Street Commission Co. v. U. S. (1905) 136 Fed. 326, 329, 69 C. C. A. 464; Kensett v. Stivers (C. C. 1880) 10 Fed. 517, 521.

See Hedger v. Union Ins. Co. (C. C. 1883) 17 Fed. 498.

§ 5947. (R. S. § 3224.) Suits to restrain assessments or collection of taxes.

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

Act March 2, 1867, c. 169, § 10, 14 Stat. 475.

Notes of Decisions

Construction with other sections.—The inhibition of this section of suits to restrain asessment or collection of a tax, and provisions of section 5944, ante, and sections 5949, 5950, post, making an appeal to a commissioner of internal revenue after payment and refusal to refund prerequisite to a suit to recover taxes illegally collected, are applicable to taxes under the income tax section of tariff act (Act Oct. 3, 1913, § 2, par. L). Dodge v. Osborn (1916) 36 Sup. Ct. 275.

This provision, having been enacted as an amendment to Act July 13, 1866, § 19 (R. S. § 3226, post, § 5949), is to be construed as applying to taxes erroneously or illegally assessed as well as legal taxes. Kensett v. Stivers (C. C. 1880) 10 Fed. 517, 522.

This section was originally an amendment to what is now R. S. § 3221, ante, § 5945, and should be construed with it. Miles v. Johnson (C. C. 1893) 59 Fed. 38, 40.

Restraining assessment or imposition of tax.—Maintenance by stockholder of suit to restrain corporation from voluntarily complying with income tax provisions of Act Oct. 3, 1913, as unconstitutional, is not forbidden by this section. Brushaber v. Union Pac. R. Co. (1916) 36 S. Ct. 236; Stanton v. Baltic Mining Co. (1916) 36 S. Ct. 278.

A suit by a stockholder in a corporation to restrain it from voluntarily making the returns required, and paying the tax levied under an act of congress alleged to be unconstitutional, should not be sustained on the ground of a right to equitable relief arising from the fact that the stockholder is without other remedy; the proper course, in case of illegal taxation, being to pay the tax under protest or with notice of suit, and then bring an action against the officer who collected it. Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 673, 700, 157 U. S. 429, 39 L. Ed. 759, per Mr. Justice White and Mr. Justice Harlan.

A federal court has power to prevent, by injunction, the imposition of an illegal tax under Act June 30, 1864. Act March 2, 1833, § 2; Act June 30, 1864, § 50. Cutting v. Gilbert (C. C. 1865) Fed. Cas. No. 3,519.

Where a great number of persons are affected by a tax, and the remedy by separate suits in equity will involve onerous and vexatious litigation, the court will not interfere by injunction in any suit. Id.

To justify a holding that this section does not forbid the issuance of an injunction, it must appear that the assessment could not by any possibility be legal. Kissinger v. Bean (C. C. 1875) Fed. Cas. No. 7,853.

Restraining collection.—This statute was intended to apply alone to tax levy by the United States. In addition to illegality, hardship, or irregularity, a proceeding to restrain the collection of illegal taxes must be brought within some of the recognized foundations of equitable jurisdiction, and mere errors or excess in valuation or hardship, or injustice of the law, or any grievance which can be remedied by a suit at law, will not justify a court of equity to interpose by injunction to stay collection of a tax. State Railroad Tax Cases (1875) 92 U. S. 575, 613, 23 L. Ed. 663.

Under this section prohibiting suits restraining the collection of internal revenue taxes, and providing a remedy by suit to recover back the tax after it is paid, the statutory remedy is exclusive, and a bill in equity will not lie to enjoin the collection of an internal revenue tax on tobacco, on the theory that a tax illegally assessed is not a tax, within the statute. Snyder v. Marks (1883) 3 Sup. Ct. 157, 109 U. S. 189, 27 L. Ed. 901.

Where the court below did not grant an injunction against the collection of war revenue taxes, but dismissed the bill, it was not necessary to consider whether the collector of internal revenue might have been enjoined, even had the court concluded that the bill disclosed a good cause of action. High v. Coyne (1900) 20 Sup. Ct. 747, 178 U. S. 111, 44 L. Ed. 997.

Courts are precluded by this section from taking jurisdiction of a bill against commissioner of internal revenue to enjoin collection of taxes imposed by income tax section of Tariff Act Oct. 3, 1913, on the ground that the statute is in violation of Const. U. S. Dodge v. Osborn (1916) 36 S. Ct. 275.

Allegations in bill against commissioner of internal revenue to enjoin collection of taxes imposed by income tax law, that by the statute, making tax a lien on plaintiff's property, its assessment would constitute a cloud on plaintiff's title, do not take case out of rule that by this section collection of tax cannot be enjoined because of alleged unconstitutionality of act imposing it. Id.

The inhibition of this section against suits "for the purpose of restraining the assessment or collection of a tax," and the provisons of sections 5949, 5950, post, that a suit to recover an illegal tax shall not be brought "until after appeal to the commissioner of internal revenue, and must be brought within two years next after the cause of action accrued," do not apply to a proceeding in which the government is the moving party; and, therefore, upon an application by the United States for an order upon a receiver to pay an assessment, the receiver may show that the assessment was erroneous or illegal, without regard to the lapse of time, or to whether there has been an appeal to the commissioner of internal revenue. U. S. v. Nebraska Distilling Co. (1897) 80 Fed. 285, 25 C. C. A. 418.

The circuit court has power to enjoin threatened proceedings of a collector of internal revenue to collect a tax which is not authorized by act of congress. Georgia v. Atkins (C. C. 1866) Fed. Cas. No. 5,350; Frayser v. Russell (C. C. 1878) Fed. Cas. No. 5,067.

This section prohibits a suit to restrain the collection of any sum by authority of the United States, having the form and color of a tax, by any means authorized by law for the collection of taxes. Howland v. Soule (C. C. 1868) Fed. Cas. No. 6,800.

A suit in equity will not lie to restrain the collection of an income tax on the ground that the act of congress imposing the tax is unconstitutional and void. Robbins v. Freeland (C. C. 1871) Fed. Cas. No. 11,883.

The constitutionality of an internal revenue act cannot be tested in a suit to restrain the collection of a tax levied thereunder. Delaware R. Co. v. Prettyman (C. C. 1872) Fed. Cas. No. 3,767.

Under this section, a federal court cannot enjoin the collection of an assessment levied by the commissioner of internal revenue against a stockholder of a corporation engaged in the business of distilling spirits. Kissinger v. Bean (C. C. 1875) Fed. Cas. No. 7,853.

Collection of assessment not restrained on allegation in bill that assessment is irregular, and in violation of law, and void. Alkan v. Bean (C. C. 1877) Fed. Cas. No. 202.

Whether this section applies to a suit in a federal court to restrain the collection of a state tax, quære. Wells v. Central Vermont R. R. Co. (C. C. 1878) Fed. Cas. No. 17,390.

The collection of the tax cannot be restrained by injunction in any court of equity in the United States, however erroneously or illegally it may have been assessed, if assessed by the proper officer. It is prohibited by the statute. The right to a remedy is merely a remedy which congress may take away without affecting an accrued right. Kensett v. Stivers (C. C. 1880) 10 Fed. 517.

While this section probably refers to taxes levied by the general government only, it shows the attitude of the government upon the general question of restraining the collection of taxes and federal courts will always refrain from taking jurisdiction, except when the complaint makes a case free from doubt and under some well-recognized head of equity. Schulenberg-Boeckeler Lumber Co. v. Hayward (C. C. 1884) 20 Fed. 422, 423.

A bill for a mandatory injunction re-

quiring a collector to accept an export bond for certain spirits in a bonded warehouse after the bonded period has expired, and allow their withdrawal for export without requiring payment of the tax thereon, is in effect a bill to restrain the collection of internal revenue taxes, which the court is forbidden to entertain by this section. Miles v. Johnson (C. C. 1893) 59 Fed. 38.

Under this section, and on general principles of equity, an injunction suit cannot be maintained to restrain the collection by town authorities of a personal property tax. Nye, Jenks & Co. v. Town of Washburn (C. C. 1903) 125 Fed. 817.

Both under this section and on general principles of equity, an injunction suit cannot be maintained to restrain the collection by town authorities of a personal property tax; there being an adequate remedy at law to be had, by paying the tax and bringing an action to recover it, and it being contrary to public policy to tie up the collection of taxes. Id.

An injunction does not lie to restrain the collection of further taxes imposed by Act Aug. 5, 1909, c. 6, § 38. Pacific Building & Loan Ass'n v. Hartson (D. C. 1913) 201 Fed. 1011.

A decree of the Supreme Court of this district dismissing a bill in equity to enjoin the commissioners of internal revenue from proceeding with the collection of the income tax affirmed. Moore v. Miller (1895) 5 App. D. C. 413.

Remedy at law.—The taxpayer has a remedy by an action at law against an assessor making an illegal assessment. Cutting v. Gilbert (C. C. 1865) Fed. Cas. No. 3,519.

A bill in equity will not lie to enjoin the assessment and collection by the Commissioner of Internal Revenue of a surtax imposed upon the plaintiff's income under section 2, Act Oct. 3, 1913, as the plaintiffs have an adequate remedy at law under section 5944, ante, and sections 5949, 5950, post, and as this section expressly provides that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. Dodge v. Osborn (1915) 43 App. D. C. 144.

Cited without definite application, Andreae v. Redfield (1878) 98 U. S. 225, 232, 25 L. Ed. 158; Pittsburg, C., C. & St. L. Ry. Co. v. Board of Public Works (1898) 19 Sup. Ct. 90, 93, 172 U. S. 32, 43 L. Ed. 354; Pacific Steam Whaling Co. v. U. S. (1903) 23 Sup. Ct. 154, 156, 187 U. S. 447, 47 L. Ed. 253; Taylor v. Louisville & N. R. Co. (1898) 88 Fed. 350, 357, 31 C. C. A. 537 (writ of certiorari denied [1898] 19 Sup. Ct. 887, 172 U. S. 647, 43 L. Ed. 1182); Christie-Street Commission Co. v. U. S. (1905) 136 Fed. 326, 328, 69 C. C. A. 464; Sheridan v. Allen (1907) 153 Fed. 568; 82 C. C. A. 522; Western Union Telegraph Co. v. Trapp (1911) 186 Fed. 114, 108 C. C. A. 226; Zerres v. Vanina (C. C. 1905) 134 Fed. 610 (affirmed [1907] 150 Fed. 564, 80 C. C. A. 366); Armour v. Roberts (C. C. 1907) 151 Fed. 846; Plant v. One Hundred and Seven Barrels of Porto Rican Bay Rum (D. C. 1908) 165 Fed. 941.

§ 5948. (R. S. § 3225, as amended, Act Sept. 8, 1916, c. 463, § 14(d).) Suits to recover taxes collected under second assessment; burden of proof to show fraud.

When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suit unless it is proved that the said list, statement, or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this section shall not apply to statements or returns made or to be made in good faith under the laws of the United States regarding annual depreciation of oil or gas wells and mines. (39 Stat. 773.)

Act July 13, 1866, c. 184, § 9, 14 Stat. 111. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401. Act Sept. 8, 1916, c. 463, § 14(d), 39 Stat. 773.

This section was part of § 14 of an act entitled "An act to increase the revenue, and for other purposes," cited above. It amends R. S. § 3225, which read as follows:

"When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no taxes collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement, or return was not false nor fraudulent, and did not contain any understatement or undervaluation."

Notes of Decisions

See, also, notes under §§ 6300–6309, post.

Necessity of compliance with statute.—In view of this and the following sec-

tion and section 6799, post, the right to sue the United States through its collector to recover taxes alleged to have been illegally collected is a remedy given by statute, and not a common-law action; and hence the action is not maintainable unless the conditions prescribed by this and the following section are strictly complied with. Commissioners of the Sinking Fund v. Buckner (C. C. 1891) 48 Fed. 533, 535.

Evidence as to return containing no understatements.—In an action by a manufacturer of fermented liquors against the collector to recover taxes paid under protest, on a second assessment, the books of such manufacturer, though not necessarily conclusive for or against the government, under all circumstances, ought to be the best evidence, if kept as the law requires, to prove the quantity of liquor drawn from the fermenting vessels, for the purpose of showing that his return contained no understatements, as required by Act July 13, 1866 (this section); and, until it is shown that they cannot be produced, or that they do not contain the information required, resort cannot be had to the recollection or knowledge of witnesses as to circumstances bearing on the ultimate fact in issue. Bergdoll v. Pollock (1877) 95 U. S. 337, 24 L. Ed. 512.

Stamp tax.—By comparison of the returns with the account for stamps sold, a collector can always tell whether the taxes upon the reported production have been paid, and by comparison of the estimated production with the actual production as returned and with the quantity of material purchased, he can judge as to the probable honesty of the returns. To prove the accuracy of returns, the manufacturer may refer to his books, and parol testimony is only required to identify the books. Bergdoll v. Pollock (1877) 95 U. S. 337, 338, 24 L. Ed. 512.

Cited without definite application, Christie-Street Commission Co. v. U. S. (1905) 136 Fed. 326, 329, 69 C. C. A. 464.

§ 5949. (R. S. § 3226, as amended, Act Feb. 27, 1877, c. 69, § 1.) Suits for recovery of taxes wrongfully collected.

No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: Provided, That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited in the next section.

Act July 13, 1866, c. 184, § 19, 14 Stat. 152. Act June 6, 1872, c. 315, § 44, 17 Stat. 257. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "Commissioner of," the word "the," to read as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

Notes of Decisions

1. Constitutionality.
2. Suits to which statute applies.
3. Application to oleomargarine tax.
4. Statutory remedy as exclusive.
5. Compliance with statutes in general.
6. Necessity of appeal in general.
7. Appeal as condition precedent to trespass against collector.
8. Effect of statute as to defense by one sued for tax.
9. Presentation of appeal.
10. Necessity of decision on merits.
11. Delayed decision.
12. Appeal as suspending limitations.
13. Pleading failure to take appeal.
14. Proof of appeal and decision thereon.
15. Restraining, assessment, payment, or collection of taxes.
16. Suits against government.

See note under § 5947, ante.

1. Constitutionality.—There is no want of due process of law in this section and section 5944, ante, and section 5950, post, making appeal to commissioner of internal revenue after payment and his refusal prerequisite to suit to recover taxes illegally assessed. Dodge v. Osborn (1916) 36 Sup. Ct. 275.

2. Suits to which statute applies.—This section operates on all suits brought subsequently to the time fixed by the act, and on suits in state as well as federal courts. Brainard v. Hubbard (1870) 12 Wall. 1, 20 L. Ed. 272.

Under this and the two following sections suit to recover corporate excise tax paid under protest, brought within two years after rejection of claims by commissioner of internal revenue, held not barred by limitations. State Line

& S. R. Co. v. Davis (D. C. 1915) 228 Fed. 246.

3. Application to oleomargarine tax.—This section held applicable to the enforcement of an oleomargarine tax assessed under Act Aug. 2, 1886. Weaver v. Ewers (1912) 195 Fed. 247, 115 C. C. A. 219, affirming judgment Ewers v. Weaver (C. C. 1910) 182 Fed. 713.

The provisions of the general internal revenue legislation do not apply to Oleomargarine Law Aug. 2, 1886, c. 840, 24 Stat. 209, except those sections expressly made applicable by section 3 thereof, section 5977, post; and one assessed with a special tax under such law as a dealer, who before paying such tax, at the suggestion of the collector, made application to the Commissioner for an abatement of the same, stating the facts, which application was refused, is not required to again appeal to the Commissioner under this section, after he has paid under protest, before he can maintain a suit to recover his payment back as illegally imposed. Grier v. Tucker (C. C. 1907) 150 Fed. 658.

4. Statutory remedy as exclusive.—The statutory remedy is exclusive. Snyder v. Marks (1883) 3 Sup. Ct. 157, 158, 109 U. S. 189, 27 L. Ed. 901.

5. Compliance with statutes in general.—See, also, note under the preceding section.

A suit was brought more than 18 years afterwards to recover excess of tax paid through the collector's rating certain fractional parts of gallons of spirits as whole gallons. Prior to suit brought, plaintiff had made a claim for tax charged on spirits lost by evaporation while in the warehouse, but not for this alleged excess. Held, plaintiff not having complied with provisions of this and the two following sections as to the time of presenting his claim to the commissioner of internal revenue, his claim was barred. Stuart v. Barnes (C. C. 1890) 43 Fed. 281.

As the right to sue the United States through its collectors, to recover taxes alleged to have been illegally collected, is only a remedy given by statute, no such right exists, unless the conditions prescribed by this section and section 5950, post, are strictly complied with, namely, that an appeal must first be taken to the commissioner of internal revenue, and the suit must be brought within two years from the date of his decision. Commissioners of the Sinking Fund of Louisville v. Buckner (C. C. 1891) 48 Fed. 533.

That an action is brought under Tucker Act (ante, § 1136) to recover internal revenue taxes voluntarily paid does not change the rule that the taxes cannot be recovered unless this section and sections 5950, 5951, post, have been complied with. Farrell v. U. S. (D. C. 1909) 167 Fed. 639.

An assessment of a legacy tax under War Revenue Act June 13, 1898, c. 448, § 29, after the taking effect of the repealing act, is illegal, and a recovery of the tax voluntarily paid is authorized by these sections, so that the repealing act (Act June 27, 1902) was not necessary to enable the maintenance of an action therefor. Id.

Internal revenue taxes voluntarily paid cannot be recovered by suit, unless these sections have been complied with, though the suit is brought under the Tucker Act (Act March 3, 1887, c. 359). Id.

As to payments of legacy taxes under War Revenue Act June 13, 1898, c. 448, § 29, made after the passage of the act and after the repeal thereof went into effect, there can be no recovery unless this section and sections 5950–5951, post, are complied with. Id.

Under this section, section 5944, ante, and sections 5950, 5951, post, a corporate excise tax illegally collected could not be recovered back, where suit was not brought within two years. Public Service Ry. Co. v. Herold (D. C. 1915) 219 Fed. 301.

Under this section, section 5944, ante, and sections 5950, 5951, post, suit to recover corporate excise tax illegally collected could not be maintained more than two years after payment, though the claim was presented to and rejected by the commissioner of internal revenue after the expiration of the two years. Id.

Corporation taxes, assessed by the Commissioner of Internal Revenue, cannot be recovered, where the corporation has not complied with this section and sections 5950, 5951, post. Public Service Gas Co. v. Herold (D. C. 1915) 227 Fed. 496.

6. Necessity of appeal in general.—Act July 13, 1866, § 19 (14 Stat. 152), which declares that no suit shall be maintained in any court to recover back a tax illegally assessed or collected until after an appeal to the commissioner of internal revenue, operates on all suits brought subsequently to the time fixed by the act for it to take effect, and on suits brought in state courts as well as in federal. Collector of Internal Revenue v. Hubbard (1870) 79 U. S. (12 Wall.) 1, 20 L. Ed. 272.

Where a person illegally assessed for an income tax appeals to the commissioner of internal revenue, who orders a new assessment made, the former cannot recover back the money paid on the new assessment, when he neither brings suit therefor within six months after the decision on appeal, nor takes an appeal from the new assessment. Cheatham v. U. S. (1875) 92 U. S. 85, 23 L. Ed. 561.

A party who appeals from an assessment, where a new assessment is ordered, from which he does not appeal, but pays the sum assessed, has no

right of action, where he failed to sue within six months from the date of the commissioner's decision on appeal, and took no appeal from the second assessment. Id.

The inhibition of section 5947, ante, of suits to restrain assessment or collection of a tax, and provisions of this section and sections 5944, ante, and 5950, post, making an appeal to a commissioner of internal revenue after payment and refusal to refund prerequisite to a suit to recover taxes illegally collected, are applicable to taxes under the income tax section of the Tariff Act (Act Oct. 3, 1913, § 2, par. L). Dodge v. Osborn (1916) 36 S. Ct. 275.

Plaintiff, after the assessment of an illegal internal revenue tax, having applied to the internal revenue commissioner for abatement, held not bound to appeal to the commissioner after paying the tax, under this section. Weaver v. Ewers (1912) 195 Fed. 247, 115 C. C. A. 219, affirming judgment Ewers v. Weaver (C. C. 1910) 182 Fed. 713.

An appeal after payment of a tax is not necessary before commencing suit to recover the same, where an appeal had been taken from the illegal assessment. San Francisco Savings & Loan Soc. v. Cary (C. C. 1873) Fed. Cas. No. 12,317.

Failure of a purchaser of property leased for a distillery, with covenants to be subject to the lien of taxes and penalties, to appeal from an assessment thereon, precludes him, in a subsequent action against the collector, from showing that no tax or penalty was in fact due. Milan Distilling Co. v. Tillson (C. C. 1880) Fed. Cas. No. 9,539.

Under this section, where an appeal for a rebate of the tax, taken after its assessment, but before its payment, in accordance with the regulations of the department, has been adversely decided by the commissioner on the merits, a second appeal after payment of the tax is not required before bringing suit. Schwarzchild & Sulzberger Co. v. Rucker (C. C. 1906) 143 Fed. 656.

Where the period of fermentation has been fixed at 48 hours by the officers of the government upon survey, it is not a valid objection to the tax that the distillery uses a longer time in fermentation. The distiller's remedy is by appeal to the commissioner of internal revenue. U. S. v. Bicket (D. C. 1872) Fed. Cas. No. 14,590.

Suits against collectors of internal revenue for taxes illegally collected and paid into the treasury of the United States are absolutely prohibited, until the taxpayer shall have duly made an appeal to the commissioner of internal revenue in accordance with the provisions of the law, and the regulations of the secretary of the treasury, and until the appeal has been decided, unless the decision is postponed longer than six months, in which case he is at liberty to sue within one year from the time when his appeal was taken. Hubbard v. Kelley (1874) 8 W. Va. 46.

7. Appeal as condition precedent to trespass against collector.—An appeal to the commissioner of internal revenue, under Act July 13, 1866, § 19 (14 Stat. 152), from an assessment, is only a condition precedent to an action for the recovery of taxes paid, and not to an action against the collector for trespass, where such action is permissible. Erskine v. Hohnbach (1871) 81 U. S. (14 Wall.) 613, 614, 20 L. Ed. 745.

8. Effect of statute as to defense by one sued for tax.—The provision of Act July 13, 1866, that no suit shall be maintained for the recovery of any tax erroneously or illegally assessed until an appeal is first made to the commissioner of internal revenue, and a decision had, does not prevent the defendant in a suit brought by the government from setting up as a defense the erroneous assessment or illegality of the tax. Clinkenbeard v. U. S. (1874) 88 U. S. (21 Wall.) 65, 70, 22 L. Ed. 477.

9. Presentation of appeal.—The lodging of an appeal made out in due form with the proper collector for transmission to the commissioner in the usual course of business, under the requirements of the regulations of the secretary of the treasury, held in legal effect a presentation of the appeal. U. S. v. Real Estate Sav. Bank (1881) 104 U. S. 728, 734, 26 L. Ed. 908.

A written application to the commissioner of internal revenue to refund a sum expended in the voluntary purchase of revenue stamps from a collector, to be affixed to a conveyance, though it may be sufficient to justify favorable action by the commissioner, under section 5944, ante, is not the equivalent of an appeal to him from an adverse decision by the collector, under this section and sections 5950 and 5951, post. Chesebrough v. U. S. (1904) 24 Sup. Ct. 262, 265, 192 U. S. 253, 48 L. Ed. 432.

This statute is not merely a statute of limitations, but prescribes an absolute condition precedent, which is not waived by a failure to plead it, and without compliance with which a suit cannot be maintained; but where, before payment of the tax, a claim for its abatement was presented to the commissioner in accordance with the rules of the department, and rejected, the same was equivalent to an appeal, and an appeal after payment on the same grounds was not necessary to authorize a suit. De Bary v. Dunne (C. C. 1908) 162 Fed. 961.

Where a person alleged to have been wrongfully assessed for oleomargarine taxes applied pursuant to internal revenue form 47 for an abatement of the

assessment, which application was denied, but made no application pursuant to form 46 for a return of the moneys alleged to have been paid as such taxes under a protest, a suit brought against the collector to recover such taxes was premature. Hastings v. Herold (C. C. 1910) 184 Fed. 759.

10. Necessity of decision on merits.—Act July 13, 1866, c. 184, § 19, 14 Stat. 152, declared that no suit shall be brought to recover taxes illegally exacted until an appeal has been made to the commissioner, and decided by him, "unless such suit shall be brought within six months from the time of said decision"; provided that, if the commissioner delays his decision more than six months, suit may be brought at any time within twelve months from the date of the appeal. Held, that the decision contemplated by the statute was a decision on the merits, and not on the mere formal accuracy of the appeal; and where an appeal to the commissioner was dismissed for irregularity in the papers, and a second appeal was taken, the action could be brought within six months after the decision thereon. James v. Hicks (1884) 4 Sup. Ct. 6, 110 U. S. 272, 28 L. Ed. 144.

11. Delayed decision.—Under this section and section 5950, post, it was held that, on the expiration of six months after an appeal without its having been acted on, a right of action accrued, and became barred in two years thereafter. Christie-Street Commission Co. v. U. S. (C. C. 1903) 126 Fed. 991; Schwarzchild & Sulzberger Co. v. Rucker (C. C. 1906) 143 Fed. 656.

A person who, on the neglect of the commissioner to render a decision within six months, fails to bring suit within a year from the date of his appeal, is not thereby precluded from maintaining his action after a decision is actually rendered by the commission. James v. Hicks (1884) 4 Sup. Ct. 6, 7, 110 U. S. 272, 28 L. Ed. 144.

An action against an internal revenue officer for a trespass committed under color of his office cannot be brought until the six months specified in the act had expired. Coblens v. Abel (C. C. 1868) Fed. Cas. No. 2,926.

A claim for the refunding of taxes alleged to have been illegally collected was made to the commissioner of internal revenue upon form 47, prescribed by the department for claims "for the remission of taxes improperly assessed," instead of upon form 46, for claims "for taxes improperly paid," and was rejected. After a long delay, caused by loss of papers by the department, it was at length presented on form 46, supported by the proper affidavits. Held, that the claim was not in shape for decision on the merits until the last presentation, and, the decision being delayed more than six months, suit could be brought, notwithstanding that more than a year had elapsed since the first rejection, and that the commissioner refused to act on the ground that the first rejection was final. Hicks v. James' Adm'x (C. C. 1882) 48 Fed. 542.

12. Appeal as suspending limitations.—Where an appeal was not taken for more than two years after the decision, by the complainant's own negligence, the action was held barred. Braun v. Sauerwein (1869) 10 Wall. 218, 220, 19 L. Ed. 895.

The proviso of this section is permissive only, and does not compel a claimant to bring suit within two years and six months after taking appeal in any case, but that he may at his election await the decision of the commissioner, and, if adverse, bring suit within two years thereafter. Merck v. Treat (1909) 174 Fed. 388, 98 C. C. A. 606.

An appeal limiting the time to sue for a tax illegally collected dates from the filing of the application to refund in the office of the commissioner of internal revenue. Cotton Press Co. v. Collector (C. C. 1873) Fed. Cas. No. 3,271.

Where plaintiff appealed to the commissioner of internal revenue for redress because of taxes collected under duress under this section, the running of limitations in an action to recover the same is not suspended during the pendency of the appeal before the commissioner. Christie-Street Commission Co. v. U. S. (C. C. 1904) 129 Fed. 506, judgment affirmed (1905) 136 Fed. 326, 69 C. C. A. 464.

13. Pleading failure to take appeal.—The failure to take an appeal to the commissioner of internal revenue, as provided by statute, to be available in an action to recover a tax as illegally assessed, must be pleaded in abatement. Hendy v. Soule (C. C. 1868) Fed. Cas. No. 6,359.

14. Proof of appeal and decision thereon.—Due proof must be made of the commissioner's decision. A certificate indorsed on the appeal, "Examined and rejected," signed by one unknown to the court, with no evidence to show that the commissioner adopted it as his decision, is not due proof. Lauer v. U. S. (1869) 5 Ct. Cl. 447.

It being incumbent on the plaintiff, in an action to recover back taxes illegally collected from him by the United States internal revenue collector, to show that he has appealed to the commissioner of internal revenue, and that the appeal was decided against him, the plaintiff must produce a written appeal in evidence or an authentic copy thereof, or show good cause for its absence. Hubbard v. Kelley (1874) 8 W. Va. 46.

Before a taxpayer may maintain an

action against a collector of United States revenue to recover back illegal taxes paid by him he must show that he has complied with all the prerequisites and conditions prescribed by the statute, among which is the fact of the taking of an appeal to the commissioner of internal revenue, and that the same has been decided against him. Id.

15. Restraining assessment, payment, or collection of taxes.—Federal district court did not commit reversible error in passing on merits of controversy in supplemental bill to enjoin collection of surtaxes under income tax law 1913, on ground of its unconstitutionality, that the commissioner of internal revenue had ruled adversely upon plaintiff's protest and the taxes had been paid, notwithstanding failure of such bill to allege compliance with conditions imposed by this section and section 5944, ante, as prerequisites to such suit. Dodge v. Brady (1916) 36 S. Ct. 277.

Under this section and section 5947, ante, a stockholder of a corporation could not maintain a suit in equity to restrain the corporation from paying taxes assessed on its income under Act Aug. 5, 1909, c. 6, 36 Stat. 11. Straus v. Abrast Realty Co. (D. C. 1912) 200 Fed. 327.

A bill in equity will not lie to enjoin the assessment and collection by the commissioner of internal revenue of a surtax imposed upon the plaintiff's income under section 2, Act Oct. 3, 1913, as the plaintiffs have an adequate remedy at law under this section, section 5944, ante, and section 5950, post, and as section 5947, ante, expressly provides that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. Dodge v. Osborn (1915) 43 App. D. C. 144.

16. Suits against government.—This section, section 5444, ante, and sections 5450, 5451, post, held not inconsistent with Tucker Act March 3, 1887 (ante, § 991 [20]), and hence a federal district court had jurisdiction of an action against the United States to recover money paid on an erroneous internal revenue assessment. U. S. v. Finch (1912) 201 Fed. 95, 119 C. C. A. 433.

Act March 3, 1887, § 1 (ante, § 991 [20]), providing generally for the bringing of suits against the United States, and limiting such suits to six years after the right accrued, did not supersede this and the following section, specifically authorizing suits for the recovery of internal taxes paid, and claimed to have been erroneously or illegally assessed or collected, within two years after an appeal has been taken and determined by the department; and such suits are governed by the limitation contained in those sections, which is made one of the conditions of the right of action thereby given. Christie-Street Commission Co. v. U. S. (C. C. 1903) 126 Fed. 991.

Cited without definite application, Bergdoll v. Pollock (1877) 95 U. S. 337, 24 L. Ed. 512; Wright v. Blakeslee (1879) 101 U. S. 174, 179, 25 L. Ed. 1048; Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 673, 700, 157 U. S. 429, 39 L. Ed. 759 (dissenting opinion); Spreckels Sugar Refining Co. v. McClain (1904) 24 Sup. Ct. 376, 378, 192 U. S. 397, 48 L. Ed. 496; South Carolina v. U. S. (1905) 26 Sup. Ct. 110, 199 U. S. 437, 50 L. Ed. 261, 4 Ann. Cas. 737 (statement); U. S. v. Barnes (1912) 32 Sup. Ct. 117, 118, 222 U. S. 513, 56 L. Ed. 291; U. S. v. Shipley (1912) 197 Fed. 265, 116 C. C. A. 627; Armour v. Roberts (C. C. 1907) 151 Fed. 846; Central Trust Co. of New York v. Treat (C. C. 1911) 192 Fed. 942; Schafer v. Craft (D. C. 1906) 144 Fed. 907 (affirmed [1907] 153 Fed. 175, 82 C. C. A. 349).

§ 5950. (R. S. § 3227.) Limitation of suits for recovery of taxes wrongfully collected.

No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued: Provided, That actions for such claims which accrued prior to June six, eighteen hundred and seventy-two, may be brought within one year from said date; and that where any such claim was pending before the Commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section.

Act June 6, 1872, c. 315, § 44, 17 Stat. 257.

Notes of Decisions

See, also, notes under § 5949, ante.

Constitutionality.—There is no want of due process of law in this section and sections 5944, 5949, ante, making appeal to commissioner of internal revenue after payment and his refusal pre-

requisite to suit to recover taxes illegally assessed. Dodge v. Osborn (1916) 36 S. Ct. 275.

Limitations barring action in general.—Under this statute, held, that a remainderman, who, under protest, paid a succession tax properly assessed on the estate and the 50 per cent. penalty erroneously imposed, was entitled to two years from the decision of the commission in which to sue for its recovery. Wright v. Blakeslee (1879) 101 U. S. 174, 25 L. Ed. 1048.

A suit commenced June 15, 1875, to recover a certain tax and penalty collected, is not barred where the decision of the commissioner of internal revenue on appeal from an application to refund was rendered July 3, 1873. Id.

An action against the United States on a claim to recover back internal taxes illegally collected, which has been presented to but not approved by commissioner of internal revenue, is barred by this section, two years after the cause of action accrues. Christie-Street Commission Co. v. U. S. (1905) 136 Fed. 326, 69 C. C. A. 464.

Where plaintiff appeals to the commissioner of internal revenue for redress because of taxes collected by duress, statements by the officers of the government to the claimant, pending such appeal, that the claim would be allowed, or had been certified favorably to the auditing office, constitute no estoppel against the government, so as to avoid the operation of the statute of limitations. Christie-Street Commission Co. v. U. S. (C. C. 1904) 129 Fed. 506, judgment affirmed (1905) 136 Fed. 326, 69 C. C. A. 464.

The two-year limitation prescribed by this section for actions to recover taxes erroneously collected, does not govern, as it applies only when the gist of the claim is the wrongful act of the tax officer, and in this case the original wrong was cured by the action taken by the department to refund the money. Ray v. U. S. (D. C. 1892) 50 Fed. 166.

Repeal of limitations.—Act March 3, 1887, § 1, ante, § 991(20), providing generally for the bringing of suits against the United States, and limiting such suits to six years after the right accrued, did not supersede this section and section 5951, post, specifically authorizing suits for the recovery of internal taxes paid, and claimed to have been erroneously or illegally assessed or collected, within two years after an appeal has been taken and determined by the department; and such suits are governed by the limitation contained in those sections, which is made one of the conditions of the right of action thereby given. Christie-Street Commission Co. v. U. S. (C. C. 1903) 126 Fed. 991.

The limitation of two years prescribed by section 5950, post, for commencement of actions to recover back internal taxes illegally exacted is not repealed by section 991(20), ante, providing that no suits shall be allowed under that law unless they are brought within six years after the causes of action respectively accrue. Christie-Street Commission Co. v. U. S. (1905) 136 Fed. 326, 69 C. C. A. 464, affirming judgment (C. C. 1904) 129 Fed. 506.

"Claim" within meaning of statute.—Where the application for refunding of taxes is delivered to a collector or other local internal revenue officer, it is not a presentation of the claim to the commissioner such as is contemplated in the first proviso. (1873) 14 Op. Atty. Gen. 615.

Presentation of claim.—Under this section and sections 5944, 5949, ante, and 5951, post, suit to recover corporate excise tax illegally collected could not be maintained more than two years after payment, though the claim was presented to and rejected by the Commissioner of Internal Revenue after the expiration of the two years. Public Service Ry. Co. v. Herold (D. C. 1915) 219 Fed. 301.

An application filed with the Commissioner of Internal Revenue for the refunding of taxes alleged to have been erroneously or illegally assessed and collected, though informal or defective, may nevertheless be regarded as a "claim" within the meaning of the statute, so far at least as to be the foundation for an amendment. (1873) 14 Op. Atty. Gen. 615.

Demurrer raising bar of limitations.—In a suit to recover internal revenue taxes alleged to have been illegally collected, where the complaint shows that more than two years have elapsed, and it is therefore barred by this section, the bar may be raised by demurrer, since that section contains no exceptions. Commissioners of the Sinking Fund of Louisville v. Buckner (C. C. 1891) 48 Fed. 533.

Corporate tax.—The limitation for action to recover an illegally collected excise tax on a corporation as doing business is two years from its payment. Public Service Electric Co. v. Herold (D. C. 1915) 227 Fed. 491; Public Service Ry. Co. v. Moffett (D. C. 1915) 227 Fed. 494.

Under this section and section 5944, ante, and section 5951, post, a corporate excise tax illegally collected could not be recovered back, where suit was not brought within two years. Public Service Ry. Co. v. Herold (D. C. 1915) 219 Fed. 301.

Under this section and section 5949, ante, and section 5951, post, suit to recover corporate excise tax paid under protest, brought within two years after rejection of claims by Commissioner of Internal Revenue, held not barred by limitations. State Line & S. R. Co. v. Davis (D. C. 1915) 228 Fed. 246.

Income taxes.—The inhibition of section 5947, ante, of suits to restrain as-

sessment or collection of a tax, and provisions of this section and sections 5944, 5949, ante, making an appeal to a commissioner of internal revenue after payment and refusal to refund prerequisite to a suit to recover taxes illegally collected, are applicable to taxes under the income tax section of tariff act (Act Oct. 3, 1913, § 2, par. L). Dodge v. Osborn (1916) 36 Sup. Ct. 275.

A bill in equity will not lie to enjoin the assessment and collection by the Commissioner of Internal Revenue of a surtax imposed upon the plaintiff's income under section 2, Act Oct. 3, 1913, as the plaintiffs have an adequate remedy at law under this section and sections 5944, 5949, ante, and as section 5947, ante, expressly provides that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. Dodge v. Osborn (1915) 43 App. D. C. 144.

Cited without definite application, U. S. v. Real Estate Sav. Bank (1881) 104 U. S. 728, 732, 26 L. Ed. 908; South Carolina v. U. S. (1905) 26 Sup. Ct. 110, 199 U. S. 437, 50 L. Ed. 261, 4 Ann. Cas. 737 (statement); U. S. v. Barnes (1912) 32 Sup. Ct. 117, 222 U. S. 513, 56 L. Ed. 291; U. S. v. Shipley (1912) 197 Fed. 265, 116 C. C. A. 627; Same v. Bank of America (C. C. 1883) 15 Fed. 730; Armour v. Roberts (C. C. 1907) 151 Fed. 846.

§ 5951. (R. S. § 3228.) Claims for refundment; limitation.

All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: Provided, That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date.

Act June 6, 1872, c. 315, § 44, 17 Stat. 257.

By Act Sept. 8, 1916, c. 463, § 411, post, § 6346a, holders of stamps issued under Act Oct. 22, 1914, c. 331, are required to present them for redemption within two years.

Notes of Decisions

See, also, notes under § 5949, ante.

To what claims statute applies in general.—That limitation is intended to apply to the claims described in section 5944, ante, only. (1827) 15 Op. Atty. Gen. 427.

Claim for legacy taxes.—This section, limiting the time for presenting claims to recover internal revenue taxes illegally collected, has no application to a claim for the refunding of legacy taxes under Act June 27, 1902, § 3. U. S. v. Shipley (1912) 197 Fed. 265, 116 C. C. A. 627.

This section, limiting the time for presenting claims for the refunding of internal revenue taxes illegally collected, has no application to a claim for the refunding of legacy taxes paid on contingent interests, which did not become vested prior to July 1, 1902, which are required to be refunded by Act June 27, 1902, c. 1160, 32 Stat. 406, irrespective of their legality or whether they were voluntarily paid or not; and a failure to present the claim within the time limited by such section will not bar an action thereon. Thacher v. U. S. (C. C. 1906) 149 Fed. 902.

The provisions of the act of 1902 are special and apply to a particular class of obligations against the government, and, being special, these claims are not governed by the provisions of section 5951. (1907) 26 Op. Atty. Gen. 194.

Claim for stamp taxes.—Stamps or stamp duties come under the provisions of this section imposing a limitation on claims for the refunding of internal taxes, and hence claims for a refund of money paid for stamps must be presented to the Commissioner of Internal Revenue within two years from the time they have accrued, otherwise they will be barred. (1875) 14 Op. Atty. Gen. 513.

Where a trust-deed was executed to secure certain bonds and duly stamped and delivered, but the bonds not having been issued as contemplated, the deed was subsequently canceled and in lieu thereof a new trust-deed and bonds of another description were thereupon executed and delivered. Held that the case of the first-mentioned deed is within the provisions of R. S. § 3426, and presents a case for allowance by the Commissioner, unless barred by this section. Id.

The limitation in this section relative to claims for the refunding of internal revenue taxes has no application to claims for allowances for stamps under R. S. § 3426. Opinion of January 7,

1875, in 14 Op. 513, overruled. (1878) 15 Op. Atty. Gen. 427.

Claim for corporate tax.—See, also, note, post, as to "Presentation of claim."

Under this section and sections 5944, 5949, 5950, ante, a corporate excise tax illegally collected could not be recovered back, where suit was not brought within two years. Public Service Ry. Co. v. Herold (D. C. 1915) 219 Fed. 301.

Under this section and sections 5949 and 5950, ante, suit to recover corporate excise tax paid under protest, brought within two years after rejection of claims by Commissioner of Internal Revenue, held not barred by limitations. State Line & S. R. Co. v. Davis (D. C. 1915) 228 Fed. 246.

Claim by savings bank.—See, also, note, post, as to "Presentation of claim."

A suit cannot be maintained by a savings bank to recover taxes illegally collected unless claim for payment or refunding has been presented to the commissioner within two years after the claim accrued. Kings County Sav. Inst. v. Blair (1886) 6 Sup. Ct. 353, 356, 116 U. S. 200, 29 L. Ed. 657.

Set-off of claim.—Where internal revenue taxes were paid by a railroad company on dividends of its stock owned by a state, and no application has been made by the company within the time limited by statute for a refund, held, that the Commissioner of Internal Revenue has no authority to allow the amount so paid to be applied by way of set-off in discharge of a liability of the company for taxes arising upon a subsequent assessment. (1879) 16 Op. Atty. Gen. 249.

Presentation of claim.—See, also, note under § 5944, ante.

Under this section and sections 5944, 5949, 5950, ante, suit to recover corporate excise tax illegally collected could not be maintained more than two years after payment, though the claim was presented to and rejected by the commissioner of Internal Revenue after the expiration of the two years. Public Service Ry. Co. v. Herold (D. C. 1915) 219 Fed. 301.

The provision requiring appeals to be "presented to the Commissioner of Internal Revenue within two years" does not mean that the claim shall be served personally on the Commissioner. The appeal is presented within the intent of the statute when the papers are filed with the collector of the proper district as prescribed by the regulations of the department. Real Estate Savings Bank of Pittsburgh v. U. S. (1880) 16 Ct. Cl. 335.

Commissioner's determination as to due time.—An award of the commissioner cannot be impeached for error in the determination of any fact which it is his duty to determine. Whether the claim was presented to him in due time is such a fact. First Nat. Bank of Greencastle v. U. S. (1879) 15 Ct. Cl. 225.

Cited without definite application, Commissioners of Sinking Fund of Logan County, Ky., v. U. S. (1898) 18 Sup. Ct. 361, 169 U. S. 255, 42 L. Ed. 737; South Carolina v. U. S. (1905) 26 Sup. Ct. 110, 199 U. S. 437, 50 L. Ed. 261, 4 Ann. Cas. 737 (statement); U. S. v. Barnes (1912) 32 Sup. Ct. 117, 222 U. S. 513, 56 L. Ed. 291; Christie-Street Commission Co. v. U. S. (1905) 136 Fed. 326, 329, 69 C. C. A. 464; Commissioners of the Sinking Fund v. Buckner (C. C. 1891) 48 Fed. 533, 535.

§ 5952. (R. S. § 3229.) Compromises.

The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney-General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

Act July 20, 1868, c. 186, § 102, 15 Stat. 166.

This section is made applicable to special taxes imposed on producers and importers of opium and coca leaves, by Act Dec. 17, 1914, c. 1, § 7, post, § 6287m.

Notes of Decisions

1. Repeal of former law.
2. Power to compromise in general.
3. Disposition of pending litigation.
4. Cases included in general.
5. Embezzlement cases.
6. Violation of oleomargarine law.

7. Tax legally due.
8. Procedure in general.
9. Agreement for compromise.
10. Effect of agreement for delay to effect compromise.
11. Dismissal of proceedings.
12. Recovery of money deposited with collector.
13. Rights of informer.
14. Instruction as to compromise in criminal case.

1. Repeal of former law.—The provision in section 179 of the act of June 30, 1864, c. 173, as amended by the act of July 13, 1866, c. 184, for compromising internal revenue cases, is repealed by this section. (1871) 13 Op. Atty. Gen. 525.

2. Power to compromise in general.—Under this section the Commissioner of Internal Revenue has power to compromise cases arising under the internal revenue laws, before suit, with the advice of the Secretary of the Treasury; but after the commencement of a suit or proceeding in court, the recommendation of the Attorney General is also necessary. (1871) 13 Op. Atty. Gen. 479.

In passing upon cases submitted to him for compromise, under this section and section 6375, post, the Secretary of the Treasury, while he is not at liberty to act from motives merely of compassion or charity, may consider not only the pecuniary interests of the government, but take into view general considerations of justice and equity and of public policy. (1881) 17 Op. Atty. Gen. 213.

The Secretary of the Treasury has no power to compromise a suit brought against a collector of internal revenue for the recovery of taxes claimed to have been illegally collected. (1901) 23 Op. Atty. Gen. 507.

3. Disposition of pending litigation.—The power to compromise ceases as soon as the judgment in the suit or proceeding is rendered. (1871) 13 Op. Atty. Gen. 479.

Under the primary, broad, and general control by the Attorney General of suits in which the United States is interested, he is authorized to make such disposition of pending litigation, including the compromise of cases of forfeiture incurred under the revenue laws, as seems to him meet and proper. (1899) 22 Op. Atty. Gen. 491.

Except as modified by this section and section 6379, post, the power to determine whether a compromise should be made of pending litigation would seem to rest with the Attorney General, such suits being necessarily under his control and subject to his direction. (1901) 23 Op. Atty. Gen. 507.

4. Cases included in general.—Where an action is brought by the United States against delinquent corporations which have failed to file a return under Corporation Tax Act, § 38, section 6300 et seq., post, the verdict must specifically state the amount of the penalty not less than $1,000, after which the corporations' only remedy (other than appeal) is to apply for a compromise under this section and section 6375, post. U. S. v. Acorn Roofing Co. (D. C. 1912) 204 Fed. 157.

The words "all cases arising under the internal revenue laws," in the former section as first enacted, mean those cases wherein the taxpayer, and not the tax collector, is the party seeking a compromise. (1872) 14 Op. Atty. Gen. 8.

Where an assessor of internal revenue was indicted upon the provisions of section 10201, post, and of sections 97 and 98 of the act of July 20, 1868, ante, §§ 5888, 5889, for having entered into a corrupt arrangement with certain distillers to defraud the government, and before trial proposed terms of compromise to the Commissioner of Internal Revenue, under section 102 of the last-mentioned act, this section, it was held that the case did not come within the purview of the latter section. (1872) 14 Op. Atty. Gen. 43.

The penalty incurred under sections 20 and 21 of the act of February 8, 1875 (18 Stat. 311), for nonpayment of taxes due on the circulating notes issued by banks in Canada for circulation in Canada, but which have passed over the line and been received by banks in the United States and paid out by them within the United States, may be compromised under this section, by the Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury. (1897) 21 Op. Atty. Gen. 558.

The power given the Secretary by this section to compromise cases arising under the internal revenue laws, extends only to suits commenced by the government to recover taxes; while the ampler power of compromise given him by section 6375, post, is limited to claims in favor of the United States. (1901) 23 Op. Atty. Gen. 507.

The Secretary of the Treasury has no power to compromise a suit brought against a collector of internal revenue for the recovery of taxes claimed to have been illegally collected. Id.

5. Embezzlement cases.—The Commissioner of Internal Revenue is not authorized by this section to compromise cases in which internal revenue officers are charged with embezzlement under the sixteenth section of Act Aug. 6, 1846, c. 90, the provisions whereof are made applicable to such officers by Internal Revenue Law June 30, 1864, c. 173. (1872) 14 Op. Atty. Gen. 8.

6. Violation of oleomargarine law.—The officers of the Treasury Department are authorized, in accordance with the provisions of this section, to compromise a case involving a violation of

the "oleomargarine" statutes, upon terms which, in their judgment, are just and reasonable. (1907) 26 Op. Atty. Gen. 282.

7. Tax legally due.—The Commissioner of Internal Revenue has not authority, with the concurrence of the Attorney General and the Secretary of the Treasury, to compromise a tax legally due from a railroad company (the same being solvent) for a sum less than the amount of the tax. The authority to compromise conferred by this section does not permit the voluntary relinquishment of a part of a tax lawfully assessed upon and due from a solvent person or corporation. (1879) 16 Op. Atty. Gen. 249.

8. Procedure in general.—The course of proceeding to be observed in execution of this section considered and indicated. (1868) 12 Op. Atty. Gen. 472.

9. Agreement for compromise.—An agreement by a district attorney to release a surety on a stipulation for value on condition of his giving information against other persons is not valid without the concurrence of the commissioner of internal revenue, the secretary of the treasury, and the attorney general. U. S. v. Quantity of Distilled Spirits (D. C. 1870) Fed. Cas. No. 16,099.

Where a suit under the internal revenue laws is agreed to be dismissed upon payment of costs by the claimant and entry of certificate of probable cause of seizure, the same is an agreement for a compromise of the case within the meaning of this section, and cannot take effect without the approval of the Commissioner of Internal Revenue, the Secretary of the Treasury, and the Attorney General. (1868) 12 Op. Atty. Gen. 536.

10. Effect of agreement for delay to effect compromise.—While any considerable lapse of time between conviction and sentence is not favored by the court, an agreement to give the prisoner reasonable delay in order that he might endeavor to effect a compromise is far from being an inducement of such character as will justify the withdrawal of a plea of guilty. U. S. v. Bayaud (C. C. 1883) 23 Fed. 721, 723.

11. Dismissal of proceedings.—This section does not require that the Attorney General should approve the action of the Commissioner of Internal Revenue where he directs the unconditional dismissal of a judicial proceeding under the internal revenue laws. (1869) 12 Op. Atty. Gen. 552.

12. Recovery of money deposited with collector.—Where a party deposits money with a collector of internal revenue, with authority to apply it to a proposed compromise, of certain revenue demands then pending against the depositor, and the collector, after the proposed compromise has been rejected by the government, applies the money to an assessment for taxes and penalties against the depositor, and pays the money into the Treasury, the Court of Claims has jurisdiction of an action to recover it back. Boughton v. U. S. (1876) 12 Ct. Cl. 330.

13. Rights of informer.—Where a forfeiture is decreed in a suit for breach of internal revenue law, and defendant on a compromise pays a sum of money into court, the right of the informers is not affected by the fact that a part of the sum is designated to cover taxes. U. S. v. Krum (C. C. 1882) 10 Fed. 823.

14. Instruction as to compromise in criminal case.—Under this section accused on trial for selling liquor without paying the special tax held entitled to an instruction that, if he paid the tax and penalty in consideration of an agreement that he should not be prosecuted, he should be found not guilty. Willingham v. U. S. (1913) 208 Fed. 137, 127 C. C. A. 263.

Cited without definite application, U. S. v. Stanton (1895) 70 Fed. 890, 892, 17 C. C. A. 475.

§ 5953. (R. S. § 3230.) Discontinuances of criminal prosecutions.

No discontinuance or nolle prosequi of any prosecution under section three thousand two hundred and fifty-seven shall be allowed without the permission in writing of the Secretary of the Treasury and the Attorney-General.

Act March 31, 1868, c. 41, § 7, 15 Stat. 60.

R. S. § 3257, mentioned in this section, is set forth post, § 5993.

§ 5954. (R. S. § 3231.) Continuances of internal-revenue cases.

It shall be lawful for any court in which any suit or criminal proceeding arising under the internal-revenue laws may be pending, to continue the same at any stage thereof, for good cause shown on motion by the district attorney.

Act July 20, 1868, c. 186, § 102, 15 Stat. 166.

Cited without definite application, U. S. v. Stanton (1895) 70 Fed. 890, 892, 17 C. C. A. 475.

CHAPTER THREE

Special Taxes

Sec.
5955. Trade or business not to be carried on until tax paid.
5956. Trade or business to be registered.
5957. Persons in partnership at same place liable for only one tax.
5958. Payment of one special tax not to cover several places of business.
5959. When more than one pursuit is carried on in same place by same person at same time.
5960. When special tax to be due, how reckoned; returns.
5961. Stamps for special taxes.
5962. Special-tax stamp to be exhibited in place of business.
5963. List of special tax-payers to be exhibited in collector's office; certified copy.
5964. Death or removal after paying tax; business carried on without additional tax.
5965. Carrying on business without payment of special tax; penalties.
5966. Carrying on business without payment of special tax punishable; forfeitures.
5967. Carrying on business of manufacturer of, or dealer in, oleomargarine without payment of special tax; penalty.
5968. Carrying on business of manufacturer of, or dealer in, process or renovated butter or adulterated butter without payment of tax; penalty.
5969. Carrying on business of manufacturer of, or dealer in, filled cheese without payment of tax.
5970. Payment of special tax not to authorize violation of State laws, nor prohibit State taxation.
5971. Special taxes imposed on whom.
(1) Brewers.
(2) Manufacturers of stills; drawback on stills exported.
(3) Rectifiers.
(4) Retail liquor dealers.
Wholesale liquor dealers.
(5) Retail dealers in malt liquors.
Wholesale dealers in malt liquors; sales by creditors, executors, etc., or under process, etc.
(6) (Superseded in part, and remainder transferred.)
(7) (Superseded.)
(8) (Superseded in part, and remainder transferred.)
(9) (Superseded.)
(10) (Superseded.)
(11) (Superseded in part, and remainder transferred.)
5972. Manufacturers of wooden stills.
5973. Retail liquor dealers; wholesale liquor dealers; retail dealers in malt liquors; wholesale dealers in malt liquors.
5974. Distiller selling his own product; record of sales; transcript; forfeiture.
5975. Special tax not applied to vintners or apothecaries in certain cases, nor to manufacturing chemists, etc., for recovering tax-paid alcohol from dregs, etc.
5976. Retail liquor dealers, etc., on passenger trains, steamboats, or other vessels.
5977. Special taxes upon manufacturers of, or dealers in, oleomargarine.
5978. Special taxes upon manufacturers of, or dealers in, process or renovated butter or adulterated butter.
5979. Special taxes upon manufacturers of, or dealers in, filled cheese.
5980. Special taxes upon manufacturers or packers of mixed flour.
5980a. Corporation tax; amount; mode of assessment on insurance companies; computation of tax; exemption; credit to corporation paying other form of tax; exemption of corporations not doing business; tax on corporations organized in foreign countries; exemptions; credit in case of payment of other form of tax.
5980b. Tax on brokers.
5980c. Tax on pawnbrokers.
5980d. Tax on ship brokers.
5980e. Tax on custom house brokers.
5980f. Tax on theaters, museums, and concert halls.
5980g. Tax on circuses.
5980h. Tax on enumerated public exhibits.
5980i. Tax on bowling alleys and billiard rooms.
5980j. Tax on tobacco, cigar, and cigarette manufacturers; computation of amount; penalty for failure to pay tax imposed by this title.
5980k. Other laws made applicable to this title.
5980l. Repeal.
5980m. When act takes effect.

§ 5955. (R. S. § 3232.) Trade or business not to be carried on until tax paid.

No person shall be engaged in or carry on any trade or business hereinafter mentioned until he has paid a special tax therefor in the manner hereinafter provided.

Act July 13, 1866, c. 184, § 9, 14 Stat. 113.

R. S. §§ 3232–3241, 3243, so far as applicable, were made to extend to and include and apply to special taxes imposed by Act Aug. 2, 1886, c. 840, § 3, as amended by Act May 9, 1902, c. 784, § 2, on manufacturers of and dealers in oleomargarine, by provisions of that section set forth post, § 5977, and to special taxes imposed by Act May 9, 1902, c. 784, § 4, on manufacturers of and dealers in process or renovated butter or adulterated butter, by similar provisions of that section, set forth post, § 5967.

Notes of Decisions

See notes under § 5842, ante, and § 5977, post.

Constitutionality.—The recognition by the acts of Congress of the power and right of the states to tax, control, or regulate any business carried on within its limits does not preclude Congress from taxing such business for national purposes. In re License Tax Cases (1866) 72 U. S. (5 Wall.) 462, 18 L. Ed. 497.

Construction, operation, and validity of provisions in general.—The dispensing and selling agents of a state which, in the exercise of its sovereign power, has taken charge of the business of selling intoxicating liquors, are fairly within the scope of R. S. §§ 3232, 3244, 3140 (this compilation, §§ 5955, 5971, 5842), under which an excise tax is to be collected from all sellers of intoxicating liquors. State of South Carolina v. U. S. (1905) 26 Sup. Ct. 110, 199 U. S. 437, 50 L. Ed. 261, affirming judgment (1904) 39 Ct. Cl. 257.

The provisions imposing special taxes in lieu of requiring payment for licenses removes whatever ambiguity existed in the previous laws, and are in harmony with the constitution and public policy. License Tax Cases (1866) 5 Wall. 462, 464, 18 L. Ed. 497.

Revenue laws imposing license taxes on different kinds of business are to be liberally construed, to carry out the purposes of their enactment; their penal provisions not being penal in the sense that requires a rigidly strict construction. John J. Sesnon Co. v. U. S. (1910) 182 Fed. 573, 105 C. C. A. 111, writ of certiorari denied (1911) 31 Sup. Ct. 714, 220 U. S. 609, 55 L. Ed. 608.

Effect of license.—The licensing of a merchant under the United States revenue laws does not render him an "officer" of the United States, nor withdraw him from the taxing powers of the state. State v. Bell (1867) 61 N. C. 76.

Extension of provisions to oleomargarine tax.—The express extension of the provisions of this section and sections 5956–5964, 5970, post, which deal with special taxes, to the special tax on oleomargarine, made by Act Aug. 2, 1886, § 3, section 5977, post, imposing such tax, and not purporting to be complete in itself, is not an implied exclusion of the general provisions of section 5900, ante, for the entry by revenue officers of any building or place where any articles or objects subject to tax are made, produced, or kept, for the purpose of examining such articles or objects. U. S. v. Barnes (1912) 32 Sup. Ct. 117, 222 U. S. 513, 56 L. Ed. 291.

Use of the words "special tax."—The use of the words "special tax" for the word "license" was to guard against misconstruction of legislative intention and to prevent people from believing that they derived from the licenses obtained under internal revenue an authority for carrying on the licensed business independently of state regulation and control. The law of 1866 was enacted after arguments of the preceding term of court involving that question, and Congress imposed these special taxes with the distinct understanding that the several branches of business thus taxed were prohibited by state legislation. License Tax Cases (1866) 5 Wall. 462, 474, 18 L. Ed. 497.

Application to brewers.—Brewers are included within the prohibition of this section. U. S. v. Glab (1878) 99 U. S. 225, 25 L. Ed. 273.

Payment in advance.—The tax must be paid in advance. U. S. v. Clare (D. C. 1880) 2 Fed. 55, 57.

Decisions as to special taxes under former laws.—See In re Lindauer (C. C. 1870) Fed. Cas. No. 8,358; Salt Co. of Onondaga v. Wilkinson (C. C. 1870) Fed. Cas. No. 12,269; Yellow Jacket Silver Min. Co. v. Gage (C. C. 1871) Fed. Cas. No. 18,134; U. S. v. Colchester (D. C. 1865) Fed. Cas. No. 14,-831; Larned v. Andrews (1871) 106 Mass. 435, 8 Am. Rep. 346; Best v. Bauder (N. Y. 1864) 29 How. Prac. 489.

Cited without definite application. U. S. v. Kaufman (1877) 96 U. S. 567, 568, 24 L. Ed. 792; Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223; North Dakota ex rel. Flaherty v. Hanson (1910) 30 Sup. Ct. 179, 180, 215 U. S. 515, 54 L. Ed. 307; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Nelson (D. C. 1886) 29 Fed. 202, 208; Same v. Davis (D. C. 1889) 37 Fed. 468;

In re Kinney (D. C. 1900) 102 Fed. 468, 469; U. S. v. Hance (D. C. 1911) 184 Fed. 528, affirmed (1911) 191 Fed. 573, 112 C. C. A. 683, certiorari denied (1912) 32 Sup. Ct. 840, 225 U. S. 710, 56 L. Ed. 1268.

§ 5956. (R. S. § 3233.) Trade or business to be registered.

Every person engaged in any trade or business on which a special tax is imposed by law shall register with the collector of the district his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and their places of residence, shall be so registered.

Act July 13, 1866, c. 184, § 9, 14 Stat. 113. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401.

Notes of Decisions

See note under § 5955, ante.

Cited without definite application, U. S. v. Glab (1877) 99 U. S. 225, 226, 25 L. Ed. 273; Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223; North Dakota ex rel. Flaherty v. Hanson (1910) 30 Sup. Ct. 179, 180, 215 U. S. 515, 54 L. Ed. 307; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Davis (D. C. 1889) 37 Fed. 468.

§ 5957. (R. S. § 3234.) Persons in partnership at same place liable for only one tax.

Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax.

Act July 13, 1866, c. 184, § 9, 14 Stat. 115.

Notes of Decisions

See note under § 5955, ante.

Construction with section 5964.—Under this section and section 5964, post, providing that on the death of one who has paid the special tax his legal representatives may continue the business in the same place, and in the same manner, without payment of an additional tax, and also that the licensee may, on removal from the place mentioned in the license, continue the business at the place to which he removed without paying an additional tax, it was held that a member of a firm who has acquired all the interests of the other members in the firm assets, and succeeded to the business, may carry it on under a license issued to the firm, at a place other than the old place of business of the firm. U. S. v. Davis (D. C. 1889) 37 Fed. 468.

Cited without definite application, Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Elgin Churning Co. (C. C. 1910) 183 Fed. 878; In re Kinney (D. C. 1900) 102 Fed. 468, 469.

§ 5958. (R. S. § 3235.) Payment of one special tax not to cover several places of business.

The payment of the special tax imposed shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the collector's register; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as hereinafter provided, for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business.

Act July 13, 1866, c. 184, § 9, 14 Stat. 113.

Notes of Decisions

See note under § 5955, ante.

Cited without definite application, Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Elgin Churning Co. (C. C. 1910) 183 Fed. 878; Same v. Davis (D. C. 1889) 37 Fed. 468; In re Kinney (D. C. 1900) 102 Fed. 468, 469.

§ 5959. (R. S. § 3236.) When more than one pursuit is carried on in same place by same person at same time.

Whenever more than one of the pursuits or occupations herein-

after described are carried on in the same place by the same person at the same time, except as hereinafter provided, the tax shall be paid for each according to the rates severally prescribed.

Act July 13, 1866, c. 184, § 9, 14 Stat. 114.

Notes of Decisions

See note under § 5955, ante.

Pursuits or occupations referred to.—This section refers only to pursuits or occupations which cannot be carried on in the same place by the persons at the same time consistently with other requirements of the law. Ludloff v. U. S. 1883) 2 Sup. Ct. 475, 481, 108 U. S. 176, 27 L. Ed. 693.

Sale of cigars and tobacco.—There is nothing in the provision of this section which authorizes a manufacturer of cigars to sell, at the place of manufacture, from and out of boxes, though he has paid a special tax as a dealer in tobacco; nothing therein or in the provisions of R. S. § 3236, and section 3244, subds. 8, 10, and sections 3387, 3388, 3390, 3392, post, sections 5971, 6197, 6198, 6200, and 6202, authorizes such sale; but such sales being without the proper stamp and in the boxes of the merchant, constitute a removal of cigars from the place where they were manufactured, without the stamp or tax under R. S. §§ 3392, 3397, 3400, post, sections 6202, 6207, 6210. Ludloff v. U. S. (1883) 2 Sup. Ct. 475, 481, 108 U. S. 176, 27 L. Ed. 693.

It was held that a cigar manufacturer cannot sell cigars at retail at the place of manufacture, notwithstanding he has paid the special tax required of retail dealers, citing this section and R. S. §§ 3387, 3397, sections 6197 and 6207, post. Crisp v. Proud (C. C. 1878) Fed. Cas. No. 3,392.

Upon consideration of this section and of R. S. §§ 3244, 3362, 3363, 3387, 3390, and 3392, post, §§ 5971, 6169, 6170, 6197, 6200, 6202, it was held that the manufacture of cigars and tobacco and the sale of cigars and manufactured tobacco at retail cannot be lawfully carried on at the same time in the same place; that the manufacturer of these articles is not authorized to sell from broken packages under a retail dealer's license, at the place of manufacture. (1878) 16 Op. Atty. Gen. 89.

Cited without definite application, Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Elgin Churning Co. (C. C. 1910) 183 Fed. 878; Same v. Davis (D. C. 1889) 37 Fed. 468; In re Kinney (D. C. 1900) 102 Fed. 468, 469.

(R. S. § 3237. Superseded.)

This section made all special taxes due on the first Monday of May in each year, or on commencing any business on which a tax was imposed, and in the former case the tax should be reckoned for one year, and in the latter case it should be reckoned proportionately from the 1st of the month in which the liability to a special tax commenced to the 1st day of May following. It was superseded by Act Oct. 1, 1890, c. 1244, § 53, post, § 5960.

§ 5960. (Act Oct. 1, 1890, c. 1244, § 53.) When special tax to be due, how reckoned; returns.

That all special taxes shall become due on the first day of July, eighteen hundred and ninety-one, and on the first day of July in each year thereafter, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year; and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced to the first day of July following. * * And it shall be the duty of special tax payers to render their returns to the deputy collector at such times within the calendar month in which the special tax liability commenced as shall enable him to receive such returns, duly signed and verified, not later than the last day of the month, except in cases of sickness or absence, as provided for in section three thousand one hundred and seventy-six of the Revised Statutes. (26 Stat. 624.)

This section was part of the McKinley Tariff Act, cited above.

The first part of this section was similar to the language of R. S. § 3237, except as to the time that special taxes become due. The last sentence of the section was new legislation. The portion of the section omitted here provided for the payment of the special taxes from May 1 to July 1, 1891, and was temporary merely.

The special taxes imposed on manufacturers of and dealers in oleomargarine by Act Aug. 2, 1886, c. 840, were due and payable according to the provisions

of R. S. § 3237, by section 3 of said act, as amended by Act May 9, 1902, c. 784, § 2, post, § 5977.

The special taxes imposed on manufacturers of and dealers in filled cheese by Act June 6, 1896, c. 337, become due on July 1st in each year or on commencing business, by section 3 of said act, post, § 5979.

R. S. § 3176, mentioned in this section, is set forth ante, § 5899.

Notes of Decisions

See note under § 5955, ante.

Payment in advance.—The tax must be paid in advance. U. S. v. Clare (D. C. 1880) 2 Fed. 55, 56.

The special tax required from wholesale dealers in malt liquors, etc., must be paid in advance. U. S. v. Clure (Pa. 1880) 14 Phila. 543.

Cited without definite application, Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Elgin Churning Co. (C. C. 1910) 183 Fed. 878; Same v. Davis (D. C. 1889) 37 Fed. 468; Same v. Fifty-Nine Demijohns Aguadiente and Four Barrels of Cigarettes (D. C. 1889) 39 Fed. 401, 402; In re Kinney (D. C. 1900) 102 Fed. 468, 469.

§ 5961. (R. S. § 3238, as amended, Act Feb. 18, 1875, c. 80, § 1.) Stamps for special taxes.

All special taxes imposed by law, including the tax on stills or worms, shall be paid by stamps denoting the tax, and the Commissioner of Internal Revenue is required to procure appropriate stamps for the payment of such taxes; and the provisions of sections thirty-three hundred and twelve and thirty-four hundred and forty-six, and all other provisions of law relating to the preparation and issue of stamps for distilled spirits, fermented liquors, tobacco, and cigars, shall, so far as applicable, extend to and include such stamps for special taxes; and the Commissioner of Internal Revenue shall have authority to make all needful regulations relative thereto.

Act July 20, 1868, c. 186, §§ 26, 101, 15 Stat. 137, 165. Act Dec. 24, 1872, c. 13, § 3, 17 Stat. 402. Act Feb. 18, 1875, c. 80, § 1, 18 Stat. 319.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "thirty-three hundred and," the word "thirteen," and inserting in place thereof the word "twelve," as set forth here, by Act Feb. 18, 1875, c. 80, § 1, cited above.

R. S. §§ 3312, 3446, mentioned in this section, are set forth post, §§ 6094, 6343.

Notes of Decisions

See note under § 5955, ante.

Validity of instruction issued by commissioner of internal revenue.—An instruction issued by the commissioner of internal revenue, directing collectors and their deputies to refuse to produce, in criminal prosecutions of liquor dealers in the state courts, the returns made to the collectors, or the lists showing payments of federal liquor taxes, or to give information derived from official sources as to the fact of such payments, is valid, and in accordance with the federal laws. R. S. §§ 251, 321, ante, §§ 384, 492, this section, and sections 3240, 3244, post, sections 5963, 5971. In re Weeks (D. C. 1897) 82 Fed. 729.

Cited without definite application, U. S. v. Kaufman (1877) 96 U. S. 567, 568, 24 L. Ed. 792; Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Davis (D. C. 1889) 37 Fed. 468; In re Kinney (D. C. 1900) 102 Fed. 468, 469.

§ 5962. (R. S. § 3239, as amended, Act Feb. 27, 1877, c. 69, § 1.) Special-tax stamp to be exhibited in place of business.

Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, except tobacco peddlers, shall place and keep conspicuously in his establishment or place of business all stamps denoting the payment of said special tax; and any person who shall, through negligence, fail to so place and keep said stamps shall be liable to a penalty equal to the special tax for which his business rendered him liable, and the costs of prosecution; but in no case shall said penalty be less than ten dollars. And where the failure to comply with the foregoing provision of law shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed: Provided, That nothing in this sec-

tion shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession, or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof.

Act Dec. 24, 1872, c. 13, § 3, 17 Stat. 402. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "so place and keep said," the word "stamp," and inserting in place thereof the word "stamps," as set forth here, by Act Feb. 27, 1877, c. 69, cited above.

Special taxes on tobacco peddlers were abolished by Act Oct. 1, 1890, c. 1244, § 26, post, § 6177. And see, in this connection, § 6187, post.

Notes of Decisions

See notes under §§ 5955 and 5961, ante.

Payment of tax before pursuing business.—The tax must be paid before the business may be lawfully pursued. U. S. v. Clare (D. C. 1880) 2 Fed. 55, 56.

Copy of records as evidence.—A certified copy of the records in the office of the collector of internal revenue, relating to the issuance of liquor license, and kept pursuant to this section and section 5963, post, held admissible in evidence under Comp. Laws 1913, N. D. § 7917 et seq. and section 10128. State v. Kilmer (N. D. 1915) 153 N. W. 1089.

Collectors producing records and testifying.—Regulations of the treasury department prohibiting a collector of internal revenue from producing records in his office, or copies thereof, in a state court, are within the power conferred upon the secretary of the treasury by R. S. § 161, ante, § 235; and therefore an attempt of a state court to punish him for obeying such regulations will be in violation of his rights under the constitution and laws of the United States, against which he will be protected by the federal courts. Boske v. Comingore (1900) 20 Sup. Ct. 701, 706, 177 U. S. 459, 44 L. Ed. 840, affirming judgment In re Comingore (D. C. 1899) 96 Fed. 552.

Instructions from the commissioner of internal revenue not to produce for use in evidence in state courts the application or return made by one desiring to pay the taxes imposed by the federal statutes on persons engaged in the retail liquor business do not justify an internal revenue collector in refusing to produce such papers in evidence in obedience to a subpœna duces tecum issued by a state court. In re Hirsch (C. C. 1896) 74 Fed. 928, affirmed (1898) 87 Fed. 1005, 31 C. C. A. 350.

Under R. S. §§ 161, 251, 321, ante, §§ 235, 384, 492, a regulation promulgated by the commissioner of internal revenue, under the direction of the secretary of the treasury, prohibiting collectors from producing the records of their offices, or furnishing copies thereof, for the use of third persons, or for use as evidence in behalf of litigants in any court, is a valid and binding regulation; and neither a state nor a state court has authority to require a collector to violate it, or to punish him for contempt because of his refusal to produce such records, or to testify to their contents. In re Comingore (D. C. 1899) 96 Fed. 552, judgment affirmed Boske v. Comingore (1900) 20 Sup. Ct. 701, 177 U. S. 459, 44 L. Ed. 846.

A collector, or deputy collector, cannot be compelled to disclose, as a witness before the court or grand jury, names of persons in whose place of business special tax stamps are posted, or the places in which the same are posted; his information on the subject being obtained in an official capacity, and primarily from his office records, copies of which he is forbidden to furnish by lawful regulation of the department under section 384, ante, as against public policy. In re Lamberton (D. C. 1903) 124 Fed. 446.

Cited without definite application. Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223; North Dakota ex rel. Flaherty v. Hanson (1910) 30 Sup. Ct. 179, 180, 215 U. S. 515, 54 L. Ed. 307; Benbrook v. U. S. (1911) 186 Fed. 153, 108 C. C. A. 265; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Davis (D. C. 1889) 37 Fed. 468; In re Kinney (D. C. 1900) 102 Fed. 468, 469; Stegall v. Thurman (D. C. 1910) 175 Fed. 813.

§ 5963. (R. S. § 3240, as amended, Act June 21, 1906, c. 3509.) List of special tax-payers to be exhibited in collector's office; certified copy.

Each collector of internal revenue shall, under regulations of the Commissioner of Internal Revenue, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his

district, and shall state thereon the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality he shall furnish a certified copy thereof, as a public record, for which a fee of one dollar for each one hundred words or fraction thereof in the copy or copies so requested may be charged.

Act Dec. 24, 1872, c. 13, § 4, 17 Stat. 403. Act June 21, 1906, c. 3509, 34 Stat. 387.

This section, as enacted in the Revised Statutes, was amended by the addition, at the end of the section as originally enacted, of the provision beginning with the words "and upon application of any prosecuting officer," etc., to the end of the section as set forth here, by Act June 21, 1906, c. 3509, cited above.

This section is made applicable to the special taxes levied on producers, importers, etc., of opium or coca leaves or their compounds, by Act Dec. 17, 1914, c. 1, § 1, post, § 6287g.

Notes of Decisions

See notes under §§ 5955 and 5961, ante.

Statute as contemplating known places of business.—Refusal to furnish special revenue stamps within territory which has ceased to be Indian country may be based upon the fact that there are no counties nor legally organized towns whose limits are capable of definition, and therefore such license cannot specifically define and describe known places of doing business as contemplated by this section and section 5964, post. The Internal Revenue Department may decline to furnish special revenue stamps for the sale of intoxicating liquors within that territory until Congress shall have time to consider the subject. (1889) 19 Op. Atty. Gen. 306.

Requisites of record.—The record of special taxes which the collectors are required to make under this section should be in such form as to show clearly in each instance the business for which the special taxes are paid. The words should be written in full, not abbreviated. (1911) 28 Op. Atty. Gen. 561.

Judicial notice of record.—The courts will take judicial notice that the abbreviations "R. L. D.," as used in the records of the collector of internal revenue, mean "retail liquor dealer." Billingsley v. State (1910) 113 P. 241, 4 Okl. Cr. 597.

Copy of records as evidence.—See, also, notes under the preceding section.

A collector, or deputy collector, cannot be compelled to disclose, as a witness before the court or grand jury, names of persons in whose place of business special tax stamps are posted, or the places in which the same are posted; his information on the subject being obtained in an official capacity, and primarily from his office records, copies of which he is forbidden to furnish by lawful regulation of the department under section 384, ante, as against public policy. In re Lamberton (D. C. 1903) 124 Fed. 446.

That the certification is subsequent to commencement of the prosecution for violation of the liquor law is no ground of objection to a certified copy of the record of the internal revenue collector's office, as proof of payment by defendant of a retail liquor dealer's stamp tax for the place and period covered by the indictment, made by Acts Sp. Sess. Ala. 1909, p. 84, § 22½, prima facie evidence of sale of the prohibited liquor. Baker v. State (Ala. App. 1912) 59 South. 690.

In a prosecution for maintaining an unlawful drinking place, certified copy of the stub of internal revenue license and tax stamp, issued to accused, held admissible. Strange v. State (Ala. App. 1912) 59 South. 691.

A certified copy from the internal revenue records, showing that accused has paid a tax as a retail liquor dealer, is admissible, whether or not it is evidence of an application for a tax receipt required by the federal statute, so as to shift the burden of proof on defendant, under Acts Ga. 1911, p. 180. Daniel v. State (1912) 76 S. E. 162, 11 Ga. App. 799, following Huckabee v. State (1910) 67 S. E. 837, 7 Ga. App. 677, and Cassidy v. State (1911) 72 S. E. 939, 10 Ga. App. 123.

Entries in the record of the office of the United States Collector of Internal Revenue may be proved by examined copies made by a person not having the official custody of the records. State v. Schaeffer (1906) 86 P. 477, 74 Kan. 390.

A certified copy of the collector's book, showing that accused had paid the United States revenue tax for carrying on the business of a retail dealer in liquors was admissible, under Ky. St. § 1636 (Russell's St. § 95), declaring that all records, exemplifications of office books, kept in any office of the United States not appertaining to a court, shall be evidence, if attested by the keeper under the seal of his office, in a prosecution for having in possession liquor for purposes of sale in a local option district, in violation of Ky. St. § 2557b, subsec. 2 (Russell's St. § 3638). Anderson v. Commonwealth (1911) 136 S. W. 134, 143 Ky. 87, de-

nying rehearing (1911) 134 S. W. 477, 142 Ky. 446.

In a local option case prosecuted under Ky. St. § 2557b (Russell's St. §§ 3637-3640), making the sale or possession of intoxicating liquors in local option territory unlawful, a copy of an internal revenue license taken from the books of the collector, when certified by the collector, is competent evidence without further authentication. King v. Commonwealth (1911) 136 S. W. 147, 143 Ky. 125.

A copy of the internal revenue collector's "record of special taxpayers," consisting of various columns with appropriate headings, which, taken with the entries thereunder, inform one that a person of defendant's name and address paid a special tax of $20, as a retail dealer in malt liquors, will not be excluded on the ground that it is too abbreviated and indefinite to convey information to the jury. State v. Howard (1898) 40 A. 65, 91 Me. 396.

An examined copy of the part of the internal revenue collector's record of "special taxpayers" of the state in which defendant is prosecuted, relating to defendant and his business, is admissible in evidence, though a copy of the entire list of such taxpayers is inadmissible. Id.

Under Comp. Laws Mich. § 10,169, and in view of this section, a certified copy of an internal revenue license is admissible on a prosecution of a sale of intoxicants. People v. Lalonde (Mich. 1912) 137 N. W. 74.

Revisal 1905, N. C., §§ 1616, 1617, provide that copies of all official papers and records of any public office of the state or the United States shall be received in evidence when certified to be true copies. Held, in view of this section and the rules of the Department of Internal Revenue prohibiting its officers from giving oral testimony of the contents of public records in its offices, that the admission in evidence, on a trial for an unlawful sale of spirituous liquor, of a certified copy of the list of persons paying special taxes, was not an invasion of defendant's constitutional right to confront the witnesses against him. State v. Dowdy (1907) 58 S. E. 1002, 145 N. C. 432; Same v. Toler (1907) 58 S. E. 1005, 145 N. C. 440.

This section makes the matter certified to an official record of his office, for the purpose of the certificate, and, as such, the copy, properly certified, is made competent evidence by Revisal 1905, N. C., §§ 1616, 1617, providing that copies of all official papers and records of any public office of the state or the United States shall be received in evidence when certified to be true copies. Id.

A certified copy of the records in the office of the collector of internal revenue, relating to the issuance of liquor license, and kept pursuant to this section and section 5962, ante, held admissible in evidence under Comp. Laws N. D. 1913, § 7917 et seq. and section 10128. State v. Kilmer (N. D. 1915) 153 N. W. 1089.

Admission of a certified copy of the record in the United States internal revenue department showing payment by accused of a special tax as retail dealer in intoxicating liquors, payment of which is made prima facie evidence of violation of local option laws, is not in contravention of section 10 of the bill of rights providing that accused shall be entitled to meet witnesses face to face; the constitutional inhibition applying to parol evidence only. Folliard v. State (1911) 32 Ohio Cir. Ct. R. 481.

Under Gen. Code Ohio, § 11500, making copies of certain records in the executive departments competent evidence, a certified copy of the internal revenue department showing payment of a retail dealer's liquor tax is the best evidence of the fact of payment provided for in Gen. Code, § 6100, especially since under the rules of the internal revenue department the original records are not permitted to be taken from the office of the collector. Id.

A certified copy of the record of the collector of internal revenue made by the deputy collector under the seal of the collector, showing payment of special tax required of liquor dealers by the laws of the United States, is admissible in a prosecution for violating the liquor law. Billingsley v. State (1910) 113 P. 241, 4 Okl. Cr. 597.

An officer in making a certified copy of a record in his possession should not testify in his certificate to the meaning of abbreviations in such record; but, where he does, and the abbreviations are such as the court will take judicial notice of their meaning, and the meaning of the terms given by the officer is in accordance with the court's judicial notice, the fact that the explanation is contained in the certificate is no ground for exclusion. Id.

A certified copy of the record of the United States internal revenue collector, showing the payment of a special revenue tax as a retail liquor dealer, is admissible. Hargrove v. State (1913) 129 P. 74, 8 Okl. Cr. 487, following Billingsley v. Same (1910) 113 P. 241, 4 Okl. Cr. 597.

Where, in a prosecution for violating the local option law, a witness testifies that he examined the books of the United States internal revenue collector for the district, and made a correct copy of an entry therein with reference to accused, showing, among other things, under the caption "Business," the initials "R. L. D. 4," it is proper to receive the copy in evidence, notwithstanding an objection that it is not certified, that there is no proof whether the original book was correctly copied, and that the initials are unintelligible;

the witness stating that he knows, from having engaged in the business once himself, that the initials mean "retail liquor dealer." Terry v. State (Tex. Cr. App. 1904) 79 S. W. 319.

The issuance to accused of an internal revenue license may be proved by an examined copy of the proper record. Broadnax v. State (Tex. Cr. App. 1912) 150 S. W. 1168.

Bill of Rights, Va. Const. art. 1, § 8 (Code 1904, p. ccix), guaranteeing the right of accused to be confronted with the accusers and witnesses, does not exclude proper documentary evidence, and Acts Va. 1901–02, p. 601, c. 516, and Act March 15, 1906 (Acts 1906, p. 411, c. 236), relating to the illegal sale of intoxicating liquors, are not unconstitutional on the ground that proof that accused held a United States license as a retail liquor dealer shall be presumptive proof of his guilt, which proof may be furnished by a copy of the record in the office of a United States internal revenue collector. Runde v. Commonwealth (Va. 1908) 61 S. E. 792.

Sworn letter from collector as evidence.—Notwithstanding Gen. & Loc. Acts Sp. Sess. Ala. 1909, pp. 84, 89, §§ 22½, 29, and Code Ala. 1907, § 7383, a sworn letter from the United States internal revenue collector to the sheriff reciting that accused had secured a United States internal revenue liquor license is inadmissible against accused. Rose v. State (Ala. App. 1912) 58 South. 680.

Cited without definite application, North Dakota ex rel. Flaherty v. Hanson (1910) 30 Sup. Ct. 179, 180, 215 U. S. 515. 54 L. Ed. 307; In re Hirsch (C. C. 1896) 74 Fed. 928, 932, 933 (affirmed [1898] 87 Fed. 1005, 31 C. C. A. 350); Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Elgin Churning Co. (C. C. 1910) 183 Fed. 878.

§ 5964. (R. S. § 3241.) Death or removal after paying tax; business carried on without additional tax.

When any person who has paid the special tax for any trade or business dies, his wife or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house and upon the same premises, without the payment of any additional tax. And when any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the collector's register at the place to which he removes, without the payment of any additional tax: Provided, That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the collector, under regulations to be prescribed by the Commissioner of Internal Revenue.

Act July 13, 1866, c. 184, § 9, 14 Stat. 114.

Special taxes do not accrue on sales of liquors received by an executor, administrator, or other fiduciary, when such liquors are sold in one parcel only, or at a public auction in parcels of not less than twenty wine gallons, by amendment of R. S. § 3244, by Act March 1, 1879, c. 125, § 4, incorporated into that section as set forth post, § 5971.

Notes of Decisions

See, also, notes under §§ 5955, 5957, and 5963, ante.

Cited without definite application, U. S. v. Glab (1878) 99 U. S. 225, 228, 25 L. Ed. 273; Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223; U. S. v. Elgin Churning Co. (C. C. 1910) 183 Fed. 878; Same v. Davis (D. C. 1889) 37 Fed. 468; In re Kinney (D. C. 1900) 102 Fed. 468, 469.

§ 5965. (R. S. § 3242.) Carrying on business without payment of special tax; penalties.

Every person who carries on the business of a rectifier, wholesale liquor-dealer, retail liquor-dealer, or manufacturer of stills, without having paid the special tax as required by law, shall, for every such offense, be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years. And all distilled spirits or wines, and all apparatus fit or intended to be used for the distillation or rectifica-

tion of spirits or the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the rectifying establishment, or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises, shall be forfeited to the United States. [Every person who carries on the business of a manufacturer of tobacco, snuff, or cigars, dealer in manufactured tobacco, dealer in leaf-tobacco, or retail dealer in leaf-tobacco, without having paid a special tax therefor, as provided by law, shall, besides being liable to the payment of the tax, be fined not more than five hundred dollars or be imprisoned not more than one year, or both, at the discretion of the court.] And every person who carries on the business of a brewer or wholesale or retail dealer in malt liquors, without having paid a special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than ten dollars nor more than five hundred dollars.

Act March 2, 1867, c. 169, § 9, 14 Stat. 473. Act July 20, 1868, c. 186, § 44, 15 Stat. 142. Act June 6, 1872, c. 315, §§ 12, 32, 17 Stat. 240, 255.

More comprehensive provisions relating to the subject of this section were made by Act Feb. 8, 1875, c. 36, § 16, post, § 5966.

The words of this section, "Every person who carries on the business of a manufacturer of tobacco," etc., inclosed in brackets, were superseded by the abolition of special taxes upon manufacturers of tobacco, snuff, and cigars and upon dealers and retail dealers in leaf tobacco and dealers in manufactured tobacco by Act Oct. 1, 1890, c. 1244, § 26, post, § 6177. This tax was restored by Act Oct. 22, 1914, c. 331, § 4, but the latter act was repealed by Act Sept. 8, 1916, c. 463, § 408, set forth post, § 5980j; but special penal provisions are contained in both of these acts.

Notes of Decisions

1. Constitutionality of former penal statute.
2. Violation of statute in general.
3. Intent.
4. Payment of tax.
5. Wholesale dealer.
6. Who are retailers in general.
7. Officer in charge of post exchange.
8. "Locker club."
9. Club janitor.
10. Partnership for the sale of liquor.
11. Common carriers.
12. Physician prescribing liquor.
13. Sale or use by druggist or apothecary.
14. Prosecution and punishment.
15. Forfeiture.

See notes under section 6021, post.

1. Constitutionality of former penal statute.—Act June 30, 1864 (13 Stat. 223), providing that no persons should be engaged in certain occupations without obtaining licenses from the United States, and imposing penalties for not taking out and paying them, is not unconstitutional. License Tax Cases (1866) 72 U. S. (5 Wall.) 462, 18 L. Ed. 497.

2. Violation of statute in general.—One who has paid a special tax entitling him to retail liquor at his regular place of business does not violate this section by delivering liquor to a customer at the latter's residence, though the sale be completed there. Benbrook v. U. S. (1911) 186 Fed. 153, 108 C. C. A. 265.

A retail liquor dealer who has his internal revenue tax paid stamp duly posted in his place of business is not subject to prosecution for carrying on business without paying the special tax therefor because of the shipment of a quantity of liquor from his stock on an order received by mail by an express company C. O. D. to the purchaser at another place. In such case the sale is completed, and the property passes when the goods are delivered to the carrier; the collection and transmission of the price being merely an incident of the express business. Jones v. U. S. (1909) 170 Fed. 1, 95 C. C. A. 213, 24 L. R. A. (N. S.) 143.

To convict of retailing liquor without payment of the special tax, defendant must be shown to have held himself out publicly as following the business, as one of his means of livelihood. U. S. v. Logan (C. C. 1867) Fed. Cas. No. 15,624.

A person is not relieved from the consequences of a violation of law by the neglect of a revenue officer to perform a duty required of him by law. U. S. v. Devlin (C. C. 1868) Fed. Cas. No. 14,953.

A sale of whisky in small quantities on several occasions may be sufficient to warrant a conviction for selling by retail without a license, though defendant did not keep a shop or store, or did not carry on the business for a livelihood. U. S. v. Harbison (C. C. 1871) Fed. Cas. No. 15,300.

Selling an occasional drink from a bottle, not in a barroom, with no intention of defrauding the revenues, is not carrying on the business of a retail liquor dealer, within this section. U. S. v. Jackson (C. C. 1875) Fed. Cas. No. 15,455.

If a party having a license to retail liquors sells or offers to sell after his license expires, it is a violation of the law for which he is liable. When the period stated in a license issued to exercise a business for a specific time expires, the license expires, no matter what stock he may still have on hand. U. S. v. Angell (C. C. 1881) 11 Fed. 34.

A grocer who, without obtaining a license for selling liquor, purchases a barrel of whisky for a customer, and enters on his books a charge against the customer for the price at which it was actually obtained from the liquor dealer, does not transgress the spirit of the revenue laws. U. S. v. Howell (C. C. 1884) 20 Fed. 718, 719.

The fact that one is a grocer, rather than in any other line of business, should not raise a presumption of wrongdoing against him, in case of his purchasing a barrel of whisky to oblige a customer, and his entering on his books a charge therefor. Id.

A failure to take out a license as required by the internal revenue law is an indictable offense. U. S. v. Chapel (D. C. 1863) Fed. Cas. No. 14,781.

A sale of intoxicating liquors without a license is a violation of Act June 30, 1864, § 73, although the person intended to give the proceeds to a charitable use. U. S. v. Dodge (D. C. 1866) Fed. Cas. No. 14,974.

Any person who carries on the business of a brewer, or wholesale or retail dealer in malt liquors, must first pay a special tax therefor. U. S. v. Clare (D. C. 1880) 2 Fed. 55, 57.

Where a person who has secured a license to retail liquors at one town receives an order for a certain amount of designated liquors from a person residing at another town or place, and he fills such order by taking or sending the liquor desired to such party, and collects the price therefor at the time of delivery, he is guilty of a violation of the revenue laws, prohibiting the sale of liquor without license. U. S. v. Cline (D. C. 1885) 26 Fed. 515.

Supplying a friend as a matter of accommodation merely, from liquor on hand for private use, is not carrying on the business, although money is received for it. U. S. v. Rennecke (D. C. 1886) 28 Fed. 847.

If persons dealing in liquor have paid the special retail tax at the distillery, they may receive and fill orders, and send the liquor to persons residing at a distance, but cannot make sales in small quantities from barrels to persons along the road, who pay them on receipt of the liquor. U. S. v. Durham (D. C. 1888) 33 Fed. 834.

One may be convicted of carrying on the business of a retail liquor dealer without payment of the required tax, in violation of this section, though the article is put up in bottles and labeled as an appetizer, and he did not know its nature when he bought it, it in fact containing a large per cent. of alcohol, and nothing of a curative character, and the circumstances of purchasers from him being such as to show that his customers are buying it merely as an intoxicant. U. S. v. Bray (D. C. 1902) 113 Fed. 1008.

Where a seller accepts an order for goods at its place of business, by delivering the goods to a carrier to be transported and delivered to the purchaser, at another place, on payment of the price, in accordance with the terms of the order, the sale is made and the title passes at the time and place of such delivery to the carrier; and the seller is not liable to indictment for carrying on the business of retail liquor dealer in the county where the purchaser lives without having paid the special tax required by the revenue act. U. S. v. Orene Parker Co. (D. C. 1902) 121 Fed. 596.

While the cardinal purpose of the provisions of the internal revenue law imposing special taxes on dealers in liquors is the raising of revenue for the United States, the federal courts may properly, in the exercise of the powers vested in them, rigidly enforce the penalties provided for a violation of such law, for the secondary purpose of aiding in the enforcement of the laws of a state regulating or prohibiting the sale of liquors. In re Charge to Grand Jury (D. C. 1908) 162 Fed. 736.

S., who owned a distillery and a quantity of whisky, sold the same to R., taking in payment a promissory note, which he had discounted at a bank. S. had no license to sell whisky, nor were the barrels, when sold, marked as required by the United States laws. The bank brought suit against R. on the note, who contended that it was void because of these violations of the law by S. Held, that it was not void, as the United States statutes did not prohibit the sale of whisky, but only imposed a penalty for their violation. Rahter v. Lancaster Bank (1880) 92 Pa. 393, distinguishing Holt v. Green (1873) 73 Pa. (23 P. F. Smith) 198, 13 Am. Dec. 737.

3. **Intent.**—An intent to defraud forms no part of the offense of the omission to pay the special tax imposed by Act June 20, 1868, § 44. U. S. v. Rectifying Establishment (D. C. 1870) Fed. Cas. No. 16,131.

Intent to defraud the government need not be proved to sustain a conviction for selling intoxicating liquor without a license. U. S. v. Barnhardt (D. C. 1874) Fed. Cas. No. 14,526.

To constitute the offense of carrying on the business of a retail liquor dealer without having paid the special tax, the accused must have procured the liquor sold with intent to retail it, or, having it on hand, formed the intent to retail it, and carried out that intent by one or more acts. It is not enough that, having the liquor on hand for his own

use, he let others have it as a matter of kindness or neighborly feeling, although he took money from them for the accommodation. U. S. v. Bonham (D. C. 1887) 31 Fed. 808.

4. Payment of tax.—Where a person has complied with section 24, Act July 13, 1866, as to giving notice, bond, etc., he is not liable to indictment for carrying on the business within the 10 days after the receipt by the collector of the assessment list without having paid the special tax. U. S. v. Shea (C. C. 1867) Fed. Cas. No. 16,269.

Under the revenue law (14 Stat. 112) a party is liable for carrying on a trade, business, or profession without payment of a special tax imposed by law, not only for the amount of the tax, but also to imprisonment for a term not exceeding two years, or a fine not exceeding $500, or both, and the payment of the tax will not relieve from punishment by fine and imprisonment. U. S. v. Angell (C. C. 1881) 11 Fed. 34.

The payment of the tax prescribed in Act July 20, 1868, § 59, is not a condition precedent to commencing business, and the penalty is not incurred until after assessment, demand, and refusal. U. S. v. Thirty-Five Barrels of High Wines (D. C. 1869) Fed. Cas. No. 16,460.

Distilled spirits and wines cannot lawfully be sold in any quantity, or for any purpose, by any person who has not paid the special tax required by law. U. S. v. Stafford (D. C. 1883) 20 Fed. 720.

5. Wholesale dealer.—See, also, notes under § 5971, post.

A sale of a single lot of spirits which have been taken for a debt, in quantities of not less than five gallons at one time, does not make the person a wholesale liquor dealer. U. S. v. Feigelstock (C. C. 1877) Fed. Cas. No. 15,084.

6. Who are retailers in general.—See, also, notes under § 5971, post.

One is engaged in the business of a retail liquor dealer, within the meaning of this section, if he has liquor on hand to be sold to any one who applies for it. U. S. v. Rennecke (D. C. 1886) 28 Fed. 847.

Defendant was engaged in procuring and furnishing to any one who would patronize him liquors in quantities less than five gallons. He testified that he received orders, requiring the person ordering to pay 10 cents down for a bottle of beer, and, when the beer was delivered, an extra 15 cents as remuneration for going to a neighboring state to procure it. But the evidence failed to show that defendant bought specific quantities of liquor to correspond with special orders, but showed that he bought beer by the case, and paid for it, and sold it to any one desiring it. Held, that defendant was a "dealer," within this section, requiring persons carrying on the business of retail liquor dealer to pay a special tax. U. S. v. Allen (D. C. 1889) 38 Fed. 736.

Where a licensed retail liquor dealer in one town receives orders from residents of other towns and fills the same by sending or taking the liquor to such persons, and collects the price at the time of delivery, he violates the revenue laws prohibiting sale without license. U. S. v. Shriver (D. C. 1885) 23 Fed. 134; U. S. v. Cline (D. C. 1885) 26 Fed. 515.

7. Officer in charge of post exchange.—An officer in charge of a post exchange is not a retail dealer in liquors. Dugan v. U. S. (1899) 34 Ct. Cl. 458.

8. "Locker club."—Under the statute law of Georgia which makes it unlawful for any person to sell or barter either directly or indirectly, or to keep or furnish at any public place, or to keep on hand at any place of business, intoxicating liquors, a municipal corporation cannot lawfully license or charter a so-called "locker club" which, in fact, sells or furnishes liquors to its members, and such illegal charter is no protection to its members, each one of whom, who by his money, name, or patronage contributes to its support and maintenance, is a retail liquor dealer within the internal revenue law of the United States, subject to special tax as such and to the penalty imposed for carrying on the business without payment of such tax where a single tax stamp only is taken out in the name of the club. In re Charge to Grand Jury (D. C. 1908) 162 Fed. 736.

9. Club janitor.—Sales of liquors belonging to a social club, by the janitor thereof to the individual members, the money being deposited in the treasury of the club, makes the janitor a retail liquor dealer, and liable to indictment, where the special tax is not paid. U. S. v. Woods (C. C. 1878) Fed. Cas. No. 16,759.

10. Partnership for the sale of liquor.—Where a license is issued to a firm, the continuing partner, on the dissolution of the firm, may carry on the business until the end of the year. U. S. v. Glab (C. C. 1876) Fed. Cas. No. 15,213; Same v. Daniels (D. C. 1874) Fed. Cas. No. 14,916.

An association whose initiation fees were used to buy a stock of liquors which were dealt out to members only on payment by the drink, at cost price, is a partnership for the sale of liquors at retail, and each member thereof is guilty of violating the statute, where the special tax is not paid. U. S. v. Roliger (D. C. 1882) Fed. Cas. No. 16,190a.

11. Common carriers.—A licensed liquor seller received orders from customers living in a place where he was not authorized to sell. He filled such orders by separating the liquor from the stock in his place of business, and delivering the packages, marked with the customers' names, to a private carrier, to be carried to the customers, and to be delivered at their place of residence, on payment of the price. Held, that the sales were completed in the seller's place of business, where he was licensed to sell, and hence the carrier was not liable for retailing liquor without a license. U. S. v. Lackey (D. C. 1903) 120 Fed. 577.

On an indictment charging a common carrier with carrying on the business of a retail liquor dealer without a license by receiving liquors from a liquor company without the state, carrying them to the consignee C. O. D., receiving the money, and carrying it to the liquor company, it was immaterial that no bills or invoices accompanied the shipment. U. S. v. Adams Exp. Co. (D. C. 1902) 119 Fed. 240.

The "commerce clause" of the constitution was not involved; the only question being whether defendant sold the liquors. Id.

The title to the liquors passed to the consignee on delivery thereof by the liquor company to the carrier, and therefore the carrier acted as the vendee in carrying and agent of the vendor in collecting, and was not guilty of a sale. Id.

12. Physician prescribing liquor.—A practicing physician, living in the country, who, when he prescribes whisky for his patients, furnishes the liquor himself, charging the usual price, without having paid the special tax, is guilty of a violation of this section, requiring payment of a special tax. U. S. v. Smith (D. C. 1891) 45 Fed. 115.

13. Sale on use by druggist or apothecary.—See, also, § 5975, and note thereunder.

One who sells a medicinal preparation, knowing that it contains an intoxicating quality, to be used as a beverage, or with the knowledge that it was purchased to be used as a beverage, is a retail liquor dealer, within the meaning of the United States statutes providing for the punishment of persons carrying on the business of retail liquor dealers without payment of the special tax. U. S. v. Starnes (D. C. 1889) 37 Fed. 665.

Where the dealer, after having sold such preparation to a customer, who, in his presence, or with his knowledge, used it as a beverage, continues to sell it to the customer, the jury may find him guilty of such offense. Id.

So, also, if the preparation is but a disguised form of spirituous liquors, intended for use as a beverage. Id.

An apothecary, who bona fide uses spirituous liquors in the preparation of a medicine, to be used as such, and not as a beverage, does not violate this section by not paying the special tax required of a retail liquor dealer. U. S. v. Calhoun (D. C. 1889) 39 Fed. 604.

A druggist can use alcohol in the making of a toilet preparation, such as cologne, and he can sell it as cologne for toilet purposes; but if he puts into alcohol something else, for the mere purpose of modifying its character, as by placing a little bergamot, or some of the ingredients of cologne, into alcohol, and sells it for mechanical purposes, he is liable. U. S. v. White (D. C. 1890) 42 Fed. 138.

A druggist is liable criminally for unauthorized sales of liquor by his clerk without the payment of the special tax if the sales made by the clerk were made within the scope of the authority delegated to him by the druggist, or the authority which may fairly be presumed from the instructions of the druggist, or the course of dealing by him, with reference to such matters. Id.

14. Prosecution and punishment.—Act March 1, 1889, establishing a United States court in the Indian Territory, and giving exclusive jurisdiction of offenses "not punishable by death or by imprisonment at hard labor," did not give it jurisdiction of the offense of retailing liquors without a license, made punishable, under R. S. § 2139, and this section, by imprisonment for "not less than six months nor more than two years," since, under R. S. § 5541, post, § 10527, a punishment which a statute prescribes shall be by imprisonment merely, may, if it be for more than one year, be executed in a state prison, the rules of which prescribe hard labor. In re Mills (1889) 10 Sup. Ct. 762, 763, 135 U. S. 263, 34 L. Ed. 107.

An indictment charging that on a given day at a specified place within the jurisdiction of the court the defendant "did willfully, unlawfully, and feloniously carry on the business of a retail liquor dealer without having paid the special tax therefor, as required by law," sufficiently charges the statutory offense. Hodge v. U. S. (1911) 191 Fed. 165, 111 C. C. A. 643.

An allegation that intoxicating liquor has been unlawfully sold imports payment of the price therefor. Booth v. U. S. (1912) 197 Fed. 283, 116 C. C. A. 645.

In a prosecution of a foreign corporation for engaging as a wholesale dealer in malt liquors in North Dakota without paying the special tax, evidence that the acts of defendant's agents which were the basis of the prosecution were without defendant's knowledge or consent and in direct violation of the agent's instruction was admissible, and, if found true, constituted a defense. John Gund Brewing Co. v. U. S. (1913) 204 Fed. 17, 122 C. C. A. 331, opinion

modified (1913) 206 Fed. 386, 124 C. C. A. 268.

An indictment charging that defendant engaged in the wholesale liquor business in North Dakota without paying the tax imposed was not demurrable because it did not describe the tax as a "special tax." Id.

An indictment charging in a single count a conspiracy to evade payment of a special tax on wholesale liquor dealers imposed by this section, and also to violate Penal Code, § 239, post, § 10409, prohibiting C. O. D. shipments, held duplicitous. Id.

On trial for carrying on business of wholesale liquor dealer in 1910 without paying tax, evidence of sales of liquor in 1909 held erroneously admitted. Day v. U. S. (1915) 220 Fed. 818, 136 C. C. A. 406.

Defendant, indicted for carrying on business without a license, and without having paid the special tax, and for failure to keep books required by law, has the burden of showing that he had a license, paid the special tax, and kept the books. U. S. v. Devlin (C. C. 1868) Fed. Cases Nos. 14,953, 14,955.

An indictment which showed the business to have been begun under the old law, and continued under a new law, which substituted special taxes for licenses, should negative the payment of the license fee, or of the additional fee, as well as of the special tax. U. S. v. Fox (C. C. 1868) Fed. Cas. No. 15,156.

A receipt for a license tax is not retroactive, and cannot be admitted in evidence on a charge for selling spirituous liquors by retail during a period of time prior to its date. U. S. v. Angell (C. C. 1881) 11 Fed. 34.

The offenses of violating the internal revenue laws, under this section and section 5971, post, are punishable by a fine of not less than $1,000, nor more than $5,000, and imprisonment not less than six months, nor more than two years. Sections 10523, 10527, and 10528, post, provide that a sentence of the United States courts to imprisonment for more than one year, or to imprisonment at hard labor, may be ordered to be executed in a state prison or penitentiary. Held, that the punishment which may be imposed for these offenses is "infamous," and the prosecution must be by indictment or presentment of the grand jury, and not by information. U. S. v. Johannesen (C. C. 1888) 35 Fed. 411.

An indictment which charges defendant with carrying on the business of a wholesale liquor dealer without the payment of a special tax therefor, at a certain place, continuously between certain dates, is sufficient without stating the means or circumstances by which he became such dealer. U. S. v. Page (D. C. 1873) Fed. Cas. No. 15,988.

Evidence of a single act of selling may be sufficient for conviction. The absence of a bar and other appliances should not weigh much in defense. U. S. v. Rennecke (D. C. 1886) 28 Fed. 847.

The presumption that a wife who, on her husband's premises, and in his presence, and with his knowledge, makes illegal sales at retail of intoxicating liquors, does so as his agent, does not attach to such sales so made by a woman living with a man as his concubine; and, to authorize the conviction of the man for such sales by the concubine, the jury must be satisfied, from the evidence, that she was acting as the agent of the accused when she made the sales. U. S. v. Bonham (D. C. 1887) 31 Fed. 808.

15. Forfeiture.—Under Acts June 30, 1864, § 48, July 13, 1866, § 9, March 31, 1868, § 5, July 20, 1868, §§ 19, 22, 44, and June 6, 1872, § 12, no proof is required of the actual complicity of the owner of the property to be forfeited in the fraud or other thing which causes the forfeiture. U. S. v. Distillery at Spring Valley (C. C. 1873) Fed. Cas. No. 14,963.

An information of forfeiture for violation of Act July 20, 1868, § 44, need not aver that the special tax was assessed, or that payment was demanded and refused, or neglected to be paid, but only that the business was carried on without payment of such tax. U. S. v. Rectifying Establishment (D. C. 1870) Fed. Cas. No. 16,131.

Wine and distilled spirits owned by a wholesale liquor dealer are not forfeited by reason of his not having paid the special tax, under Act July 20, 1868, § 44. Two Thousand Bottles of Liquors (D. C. 1871) Fed. Cas. No. 14,302.

The state and federal courts have concurrent jurisdiction of actions to enforce forfeitures arising under Act 1813, c. 38, requiring "retailers of wines, spirituous liquors, and foreign merchandise, to take out license," etc. Hartley v. U. S. (1816) 4 Tenn. (3 Hayw.) 45.

Cited without definite application, North Dakota ex rel. Flaherty v. Hanson (1910) 30 Sup. Ct. 179, 180, 215 U. S. 515, 54 L. Ed. 307; Powers v. U. S. (1912) 32 Sup. Ct. 281, 282, 223 U. S. 303, 56 L. Ed. 448; Quinn v. Dimond (1896) 72 Fed. 993, 994, 19 C. C. A. 336; Foster v. U. S. (1911) 188 Fed. 305, 110 C. C. A. 283 (denied [1911] 192 Fed. 1022, 112 C. C. A. 665); U. S. v. Strickland (C. C. 1885) 25 Fed. 469; Same v. Schneider (C. C. 1888) 35 Fed. 107, 108; In re Commissioners of Circuit Court (C. C. 1894) 65 Fed. 314, 316; In re Christian (C. C. 1897) 82 Fed. 199, 202; U. S. v. Davis (D. C. 1889) 37 Fed. 468; Same v. Morfew (D. C. 1905) 136 Fed. 491, 492.

§ 5966. (Act Feb. 8, 1875, c. 36, § 16.) Carrying on business without payment of special tax punishable; forfeitures.

Any person who shall carry on the business of a rectifier, wholesale liquor-dealer, retail liquor-dealer, wholesale dealer in malt-liquors, retail dealer in malt-liquors, or manufacturer of stills, without having paid the special tax as required by law, or who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense be fined not less than one hundred dollars nor more than five thousand dollars and imprisoned not less than thirty days nor more than two years. And all distilled spirits or wines, and all stills or other apparatus, fit or intending to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in any building, room, yard, inclosures connected therewith, and used with or constituting a part of the premises; and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or enclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery which shall be found in any such building, yard, or enclosure, and all the right, title, and interest, of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States. (18 Stat. 310.)

This section was part of an act to amend existing customs and internal-revenue laws, cited above.

Similar provisions for the punishment of carrying on the business of distiller without giving bond were made by R. S. § 3281, post, § 6021.

Notes of Decisions

See notes under the preceding section.

See, also, § 602, post, and notes thereunder.

Construction in general.—Statutes to prevent fraud on the revenue such as the above are enacted for the public good, and, though they impose penalties, they are not to be construed strictly in favor of the defendant like penal laws generally, but are to be so construed as to carry out the intention of the legislature. U. S. v. Stowell (1890) 10 Sup. Ct. 244, 246, 133 U. S. 1, 33 L. Ed. 555.

Property subject to forfeiture.—The interest of a prior mortgagee of the land, without whose knowledge the act was committed, held not subject to forfeiture. U. S. v. Stowell (1890) 10 Sup. Ct. 244, 133 U. S. 1, 33 L. Ed. 555.

The forfeiture takes effect on the commission of the act, and the condemnation relates back, and avoids all intermediate sales, even to purchasers in good faith. Id.

Personalty sold by distiller, before commission of offense, but left in his possession and found on premises at the time of seizure, is subject to forfeiture, though owner had no knowledge of unlawful acts. Id.

Boilers, engines, pumps, vats, and tanks, which were in lawful use as part of a brewery before an illicit still was set up on the premises, constitute a part of the land while annexed thereto, and are covered by a mortgage thereon, and hence are not subject to forfeiture for a violation of the revenue laws by the mortgagor. Id.

Indictment for offense.—An indictment under this section is sufficient which charges, in the language of the statute, that defendant, at a time and place stated, did willfully, unlawfully, and feloniously "carry on the business of a retail liquor dealer, without having paid the special tax therefor as required by law," without more particularly defining the offense. Ledbetter v. U. S. (1898) 18 Sup. Ct. 774, 775, 170 U. S. 606, 42 L. Ed. 1162.

Evidence of offense.—In a prosecution for carrying on the business of a malt

retail liquor dealer, without having paid the special tax therefor, evidence that at the time of the alleged offense defendant was also the keeper of a bawdy-house was inadmissible. Taliaferro v. U. S. (1914) 213 Fed. 25, 129 C. C. A. 611.

Trial by jury.—Defendants were indicted for unlawfully carrying on the business of a rectifier without having paid the special tax required by law, in violation of this section, for which defendants might have been fined $500 and imprisoned for two years. The second count was for the unlawful rectifying in violation of section 6099, post, for which a punishment of not less than $1,000 nor more than $5,000 fine, and imprisonment for not less than six months nor more than two years, might be imposed. The third count was for omitting to put up signs as required by section 6019, post, the punishment for which was a fine of $500. And the fourth count was for violating section 6107, post, prohibiting the changing of stamps and shifting of distilled spirits, under which the maximum punishment is a fine of $1,000 and imprisonment for a year. Held, that such offenses involving imprisonment were crimes for which accused could only be punished after a conviction by a jury under Const. art. 3, § 2, providing that the trial of all crimes except in the case of impeachment shall be by jury. Low v. U. S. (1909) 169 Fed. 86, 94 C. C. A. 1.

Cited without definite application, U. S. v. Dominici (1897) 78 Fed. 334, 336, 24 C. C. A. 116; Same v. Stubblefield (C. C. 1889) 40 Fed. 454; Same v. Ridenour (D. C. 1902) 119 Fed. 411, 414.

§ 5967. (Act Aug. 2, 1886, c. 840, § 4.) Carrying on business of manufacturer of, or dealer in, oleomargarine without payment of special tax; penalty.

Every person who carries on the business of a manufacturer of oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than one thousand and not more than five thousand dollars; and every person who carries on the business of a wholesale dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than five hundred nor more than two thousand dollars; and every person who carries on the business of a retail dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than fifty nor more than five hundred dollars for each and every offense. (24 Stat. 209.)

This section was part of the Oleomargarine Act of Aug. 2, 1886, cited above. The special tax mentioned in this section was imposed by section 3 of this act, post, § 5977. Other provisions of this act are set forth post, §§ 6215–6232.

Notes of Decisions

See notes under § 5977, post.

Carrying on business of retailer without paying tax.—A person having a license to carry on the business of a retail dealer in oleomargarine in the town of W., which does not specify the street or number at which the business is to be carried on, and who has paid the tax, and who peddles oleomargarine at retail, from a wagon, through the streets, is not carrying on the business of a retail dealer, without having paid the special tax. U. S. v. Dubé (D. C. 1889) 40 Fed. 576.

Prosecution under statute—How instituted.—Though a violation of this section is not in terms made a misdemeanor, violations are in the nature of criminal offenses, and may be prosecuted by information or indictment. U. S. v. Joyce (D. C. 1905) 138 Fed. 455.

—— **Indictment.**—An indictment in the language of this section, charging that the defendant at a certain time and place did unlawfully "carry on the business of a manufacturer of oleomargarine without having first then and there paid the special tax therefor as required by law," states all the elements of the offense and is sufficiently specific in the absence of a motion for a bill of particulars showing whether the defendant is charged with being a manufacturer in the ordinary sense under the original act or as defined in the amendment of May 9, 1902. c. 784, § 2, 32 Stat. 194, post, § 5977. Morris v. U. S. (1908) 161 Fed. 672, 88 C. C. A. 532, judgment reversed on rehearing (1909) 168 Fed. 682, 94 C. C. A. 168, writ of certiorari denied (1909) 29 Sup. Ct. 704, 214 U. S. 527, 53 L. Ed. 1068.

The offenses created by Oleomargarine Act Aug. 2, 1886, c. 840, 24 Stat. 209, were unknown to the common law, and are all merely statutory misdemeanors and of the same class regardless of the various penalties prescribed, and charges under its different provi-

sions may be joined in the same indictment under R. S. § 1024, section 1690, ante. Id.

An indictment for carrying on the business of a manufacturer of oleomargarine without having paid the special tax therefor, based on the amendment to section 5977, post, which provides that any person that sells, vends, or furnishes oleomargarine for the use and consumption of others "except to his own family table without compensation," and who shall color the same to resemble butter, shall be deemed a manufacturer, need not negative such exception which is in fact mere surplusage, since it does not exempt from the operation of the statute anything which would otherwise be within it. Id.

An indictment, charging the defendant generally in the language of the statute with carrying on the business of a manufacturer of oleomargarine without having paid the special tax required by section 5977, post, is sufficient, and need not set out a statement of the facts which constitute the defendant a manufacturer. Hart v. U. S. (1910) 183 Fed. 368, 105 C. C. A. 588, writ of certiorari denied (1911) 31 Sup. Ct. 714, 220 U. S. 609, 55 L. Ed. 608.

Section 5977, post, provides that manufacturers of oleomargarine shall pay $600, and that any person manufacturing oleomargarine for sale shall be deemed a manufacturer, and any person that sells, vends, or furnishes oleomargarine for use and consumption of others than his own family table without compensation, who shall add to such oleomargarine any artificial coloration that causes it to look like butter, shall also be a manufacturer of oleomargarine, subject to the provisions of the act. Held, that the statute created two classes of manufacturers, one manufacturing oleomargarine itself for sale, and the other those selling oleomargarine for consumption after adding artificial coloration; and hence an indictment against an alleged member of the second class for selling oleomargarine on which the tax was not paid was not defective for failure to contain the averment, applicable only to original manufacture, that the oleomargarine on which the tax was not paid was intended for sale. Enders v. U. S. (1911) 187 Fed. 754, 109 C. C. A. 502, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

Where a person is indicted for the unlawful sale of oleomargarine, in violation of the statute, it is sufficient to charge in the words of the act that the defendant was carrying on the business of a wholesale or of a retail dealer, as the case may be, without having paid the tax required by law. U. S. v. Joyce (D. C. 1905) 138 Fed. 457.

An indictment in the words of the statute charging defendant with knowingly, willfully, and unlawfully carrying on the business of a wholesale dealer in oleomargarine without having paid the special tax therefor as required by law is not objectionable for failure to negative that defendant was a manufacturer selling his own product in stamped packages at the place of manufacture, within the exception of the statute. Id.

An indictment in the words of the statute charging defendant with knowingly, willfully, and unlawfully carrying on the business of wholesale dealer in oleomargarine without having paid the special tax therefor as required by law is not objectionable for indefiniteness. Id.

—— **Evidence.**—In a prosecution for carrying on a business without having paid the internal revenue tax required by statute it is sufficient for the government to prove that defendant carried on the business at a certain time and place, and payment of the tax is a matter of defense, which if relied on must be proved by defendant. Morris v. U. S. (1908) 161 Fed. 672, 88 C. C. A. 532, judgment reversed on rehearing (1909) 168 Fed. 682, 94 C. C. A. 168, writ of certiorari denied (1909) 29 Sup. Ct. 704, 214 U. S. 527, 53 L. Ed. 1068.

Evidence held sufficient to warrant a conviction of defendants as manufacturers of oleomargarine for mixing coloring matter therewith to represent butter without having paid the federal tax and obtained the required license, and for selling, vending, or furnishing oleomargarine for use and consumption of others. Vermont v. U. S. (1909) 174 Fed. 792, 98 C. C. A. 500, writ of certiorari denied (1910) 30 Sup. Ct. 695, 217 U. S. 605, 54 L. Ed. 899.

Rulings on evidence in a prosecution under this section held not erroneous. Wesoky v. U. S. (1910) 175 Fed. 333, 99 C. C. A. 121.

Other statutes applying to collection of tax.—Section 5900, ante, and section 6364, post, relative to inspection and search warrants to prevent frauds against the internal revenue laws, apply to the collection of special taxes imposed by the Oleomargarine Act. Kercheval v. Allen (1915) 220 Fed. 262, 135 C. C. A. 1.

Cited without definite application, McCray v. U. S. (1904) 24 Sup. Ct. 769, 771, 195 U. S. 27, 49 L. Ed. 78, 1 Ann. Cas. 561; Schick v. Same (1904) 24 Sup. Ct. 826, 829, 195 U. S. 65, 49 L. Ed. 99, 1 Ann. Cas. 585; Schafer v. Craft (D. C. 1906) 144 Fed. 907, affirmed (1907) 153 Fed. 175, 82 C. C. A. 349.

§ 5968. (Act May 9, 1902, c. 784, § 4.) Carrying on business of manufacturer of, or dealer in, process or renovated butter or adulterated butter without payment of tax; penalty.

Every person who carries on the business of a manufacturer of process or renovated butter or adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than one thousand and not more than five thousand dollars; and every person who carries on the business of a dealer in adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than fifty nor more than five hundred dollars for each offense. (32 Stat. 194.)

These were provisions of section 4 of the Oleomargarine Act of May 9, 1902, cited above. The tax mentioned in this section was imposed by other provisions of this act, set forth post, § 5978. Provisions relating to the tax on process butter, etc., are set forth post, §§ 6237, 6238.

Cited without definite application, Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595.

§ 5969. (Act June 6, 1896, c. 337, § 4.) Carrying on business of manufacturer of, or dealer in, filled cheese without payment of tax.

Every person, firm, or corporation who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than four hundred dollars and not more than three thousand dollars; and every person, firm, or corporation who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than two hundred and fifty dollars nor more than one thousand dollars; and every person, firm, or corporation who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable for the payment of the tax, be fined not less than forty nor more than five hundred dollars for each and every offense. (29 Stat. 254.)

This section was part of the Filled Cheese Act, cited above. The special tax mentioned in this section was imposed by section 3 of this act, post, § 5979. Other sections of this act, relating to the tax on filled cheese, are set forth post, §§ 6248–6250.

§ 5970. (R. S. § 3243.) Payment of special tax not to authorize violation of State laws, nor prohibit State taxation.

The payment of any tax imposed by the internal-revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

Act July 13, 1866, c. 184, § 9, 14 Stat. 122. Act July 20, 1868, c. 186, § 59, 15 Stat. 151.

Notes of Decisions

See notes under §§ 5955 and 5965, ante, and § 5977, post.

Violation of state laws in general.—A license granted by the United States, under the internal revenue act of July 1, 1862, to carry on the business of a liquor dealer in a particular state named, does not, although it has been granted in consideration of a fee paid, give the licensee power to carry on the business in violation of the state laws. McGuire v. Commonwealth (1865) 70 U. S. (3 Wall.) 387, 18 L. Ed. 226; In re Jordan (D. C. 1892) 49 Fed.

238; Pierson v. State (1882) 39 Ark. 219; Block v. Town of Jacksonville (1865) 36 Ill. 301; State v. McCleary (1864) 17 Iowa, 44; Same v. Carney (1866) 20 Iowa, 82; Same v. Stulz, Id. 488; Same v. Baughman, Id. 497; Stommel v. Timbrel (1892) 84 Iowa, 336, 51 N. W. 159; Commonwealth v. Thorniley (1863) 88 Mass. (6 Allen) 445; Same v. O'Donnell (1864) 90 Mass. (8 Allen) 548; Same v. Holbrook (1865) 92 Mass. (10 Allen) 200; Same v. Keenan (1865) 93 Mass. (11 Allen) 262; Same v. McNamee (1873) 113 Mass. 12; Same v. Sanborn (1874) 116 Mass. 61; State v. Funk (1880) 27 Minn. 318, 7 N. W. 359; State v. Downs (1895) 116 N. C. 1064, 21 S. E. 689.

Recognition by act of congress of the power and right of the states to tax, control, or regulate any business carried on within its limits is entirely consistent with an intention on the part of congress to tax such business for national purposes. License Tax Cases (1886) 5 Wall. 462, 474, 18 L. Ed. 497.

The United States is not concerned in the enforcement of local regulations governing the selling of liquor; it being the policy of the government to collect its special taxes rather than to inflict punishment for technical violations of the revenue laws. Willingham v. U. S. (C. C. A. 1913) 208 Fed. 137.

While the cardinal purpose of the provisions of the internal revenue law imposing special taxes on dealers in liquors is the raising of revenue for the United States, the federal courts may properly, in the exercise of the powers vested in them, rigidly enforce the penalties provided for a violation of such law, for the secondary purpose of aiding in the enforcement of the laws of a state regulating or prohibiting the sale of liquors. In re Charge to Grand Jury (D. C. 1908) 162 Fed. 736.

A federal license, being merely a form of taxation, does not authorize the holder to sell liquor without a license required by state laws; the statute authorizing the issuance of federal licenses so providing. Combast v. Commonwealth (Ky. 1910) 125 S. W. 1092.

Local option and prohibition.—The payment of the tax imposed upon retail liquor dealers by the statutes of the United States in no wise entitles the dealer to protection against a state prohibitory law. In re Jordan (D. C. 1892) 49 Fed. 238.

Laws N. D. 1887, c. 70, known as the "Local Option Act," regulating the sale of intoxicating liquors, is a valid exercise of police power, not contrary to the revenue laws of the United States granting licenses for such sales. Territory v. O'Connor (Dak. 1888) 37 N. W. 765; Minnehaha County v. Champion, Id. 766.

The local option law (Laws Dak. 1887–88, c. 70), does not conflict with the federal revenue laws granting a license to liquor sellers, as the revenue laws are merely to provide revenue, and the license granted thereunder is a receipt for the tax, and not a permit to sell liquors. Territory v. O'Connor (1889) 5 Dak. 397, 41 N. W. 746, 3 L. R. A. 355.

The prohibitory liquor law is not in conflict with Act July 16, 1862, entitled "An act to provide internal revenue." State v. Carney (1866) 20 Iowa, 82; Same v. Baughman, Id. 497.

Payment of the United States excise tax and a license from the United States internal revenue collector will not justify the sale of intoxicating liquors of domestic manufacture in this state in violation of its laws. State v. Delano (1867) 54 Me. 501.

Sales by licensed distiller.—That one is a licensed distiller under the laws of the United States, and the whisky sold of his own manufacture, affords no immunity for a sale contrary to state law. State v. Hazell (1888) 100 N. C. 471, 6 S. E. 404.

Doing business as wholesaler.—A license by the United States under the Internal Revenue Act of July 1, 1862, to carry on the business of wholesale liquor dealer does not give the licensee power to carry on the business in violation of the state laws, though the license was granted in consideration of a fee paid. McGuire v. Massachusetts (1865) 3 Wall. 387, 395, 18 L. Ed. 226.

Sale of liquor on board steamer.—This section provides that the holders of special tax stamps for the sale of liquor shall not be exempt from any penalty imposed by state laws for carrying on the sale in the state. Held, that such holder on board a steamer within the state limits was subject to the state license law. Commonwealth v. Sheckels (1883) 78 Va. 36.

Sale of liquors in Alaska.—The payment of the special tax levied by the general government on the business of retailing liquors is no defense to a prosecution for illegally selling liquors in Alaska. Endleman v. U. S. (1898) 86 Fed. 456, 30 C. C. A. 186.

The payment by defendant of the tax imposed by the internal revenue laws of the United States, and the issuance to him of an internal revenue license thereunder, is no defense to an indictment under Act May 17, 1884, § 14 (23 Stat. 24), prohibiting the importation, manufacture, and sale of intoxicating liquors in Alaska. U. S. v. Ash (D. C. 1896) 75 Fed. 651.

Recovery on contracts violating state laws.—Where a state statute prohibits the sale, the seller cannot recover the contract price, where the contract is made and completed within the state,

though he holds a license to sell under the internal revenue act. Daniels v. McCabe (C. C. 1868) Fed. Cas. No. 3,567.

Manufacture and sale of cigarettes.—In view of this section, section 6202, taxing cigarettes, and prescribing the form of putting them up, and of stamping them, is not a recognition of them as a legitimate article of commerce. Austin v. State (1898) 48 S. W. 305, 101 Tenn. 563, 50 L. R. A. 478, 70 Am. St. Rep. 703, affirmed (1900) 21 Sup. Ct. 132, 179 U. S. 343, 45 L. Ed. 224.

Manufacture and sale of oleomargarine.—Section 5977, post, imposes special taxes on manufactures of oleomargarine, and wholesale and retail dealers therein. Section 5977, post, also, declares that sections 5955–5959, 5961–5964, ante, and this section are, so far as applicable, made to extend to and include such taxes, and the persons on whom they are imposed. Held, in view of this section, that post, § 5977, was not intended to interfere with the exercise by the states of any authority they can rightfully exercise over the sale of oleomargarine therein. Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223.

Cited without definite application, Schollenberger v. Pennsylvania (1898) 18 Sup. Ct. 757, 171 U. S. 1, 43 L. Ed. 49; Austin v. Tennessee (1900) 21 Sup. Ct. 132, 139, 179 U. S. 343, 45 L. Ed. 224; North Dakota ex rel. Flaherty v. Hanson (1910) 30 Sup. Ct. 179, 180, 215 U. S. 515, 54 L. Ed. 307; Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; In re Hirsch (C. C. 1896) 74 Fed. 928, 931 (affirmed [1898] 87 Fed. 1005, 31 C. C. A. 350); Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Elgin Churning Co. (C. C. 1910) 183 Fed. 878; In re Comingore (D. C. 1895) 96 Fed. 552, 555, 561 (affirmed [1900] 20 Sup. Ct. 701, 177 U. S. 459, 44 L. Ed. 846); In re Kinney (D. C. 1900) 102 Fed. 468, 469.

§ 5971. (R. S. § 3244, as amended, Act Feb. 18, 1875, c. 80, § 1, and Act March 1, 1879, c. 125, §§ 4, 10.) Special taxes imposed on whom.

Special taxes are imposed as follows:

(1) Brewers.

First. Brewers shall pay one hundred dollars. Every person who manufactures fermented liquors of any name or description for sale, from malt, wholly or in part, or from any substitute therefor, shall be deemed a brewer: Provided, That any person who manufactures less than five hundred barrels a year shall pay the sum of fifty dollars.

Act July 13, 1866, c. 184, § 9, 14 Stat. 117. Act July 14, 1870, c. 255, § 1, 16 Stat. 256.

The quantity of malt liquors purchased by a brewer from another brewer under the provisions of R. S. § 3349, post, § 6156, was to be included in calculating the liability to brewer's special tax of both the brewer who manufactures and sells and the brewer who purchases by Act Feb. 8, 1875, c. 36, § 18, as amended by Act March 1, 1879, c. 125, § 4, post, § 5973.

Notes of Decisions

See, also, notes under § 5955, ante.

Review in case involving question under statute.—In an action to recover the amount of internal revenue taxes which plaintiff was required to pay as a brewer and for beer stamps, tried by stipulation without a jury, it was stipulated that plaintiff manufactured a beverage from ingredients and in a manner stated, but it was a disputed question, upon which testimony was taken, whether such beverage was a "fermented liquor manufactured from malt, wholly or in part, or from any substitute therefor," within the meaning of section 5971, which rendered plaintiff liable for special tax as a brewer, and which was subject to tax under section 6143. Held, that requests to the court to hold as propositions of law on the facts stipulated that plaintiff was not a brewer, and the beverage was not subject to tax under the statute, conceding the practice of requiring findings upon propositions of law in such cases to be permissible, involved a finding of the disputed question of fact whether the beverage was a fermented liquor, and, as such requests were not based on all the evidence, so as to be treated as a motion for judgment as matter of law on the entire case, the ruling of the court thereon was not reviewable on a writ of error. Davis v. Daugherty (1901) 105 Fed. 769, 45 C. C. A. 39.

(2) Manufacturers of stills; drawback on stills exported.

Second. Manufacturers of stills shall each pay fifty dollars, and twenty dollars for each still or worm for distilling made by him. Any person who manufactures any still or worm to be used in distilling shall be deemed a manufacturer of stills. Upon all stills

manufactured for export, and actually exported, there shall be allowed a drawback, where the tax thereon has been paid, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

Act July 20, 1868, c. 186, § 59, 15 Stat. 151. Act March 1, 1879, c. 125, § 10, 20 Stat. 342.

This subsection, as enacted in the Revised Statutes, was amended by adding at the end of the subsection as originally enacted the provision beginning with the words "Upon all stills manufactured for export," etc., to the end of the subsection, as set forth here, by Act March 1, 1879, c. 125, § 10, cited above.

Manufacturers of wooden stills for their own use were not subject to this special tax, by Act May 28, 1880, c. 108, § 18, post, § 5972.

The special tax on the manufacture of stills was made inapplicable to stills used in distilling alcohol for denaturation, by a provision of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, N, subsec. 2, post, § 6137.

(3) Rectifiers.

Third. Rectifiers of distilled spirits shall pay two hundred dollars. Every person who rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash, through continuous closed vessels and pipes, until the manufacture thereof is complete, and every wholesale or retail liquor-dealer who has in his possession any still or leach-tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, and every person who, without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine, or other liquor with any materials, manufacture any spurious, imitation, or compound liquors for sale, under the name of whisky, brandy, gin, rum, wine, spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and as being engaged in the business of rectifying: Provided, That any person who rectifies, purifies, refines, or manufactures as aforesaid less than five hundred barrels a year, counting forty gallons of proof spirits to the barrel, shall pay one hundred dollars. And provided, That nothing in this section shall be held to prohibit the purifying or refining of spirits in the course of original and continuous distillation through any material which will not remain incorporated with such spirits when the manufacture thereof is complete: And provided further, That no officer shall collect any special tax for rectifying distilled spirits on any premises distant less than six hundred feet in a direct line from any distillery. And every officer who collects any special tax in violation of this proviso shall be liable to a penalty of five thousand dollars for each offense.

Act July 20, 1868, c. 186, §§ 11, 59, 15 Stat. 130, 150. Act April 10, 1869, c. 18, § 1, 16 Stat. 41, 42. Act June 6, 1872, c. 315, §§ 12, 13, 17 Stat. 239, 244. Act Dec. 24, 1872, c. 13, 17 Stat. 401–403. Act Feb. 18, 1875, c. 80, 18 Stat. 319. Act March 1, 1879, c. 125, § 4, 20 Stat. 333.

This subsection, as enacted in the Revised Statutes, was amended by striking out, in the last proviso, after the words "tax in violation of this," the word "section," and inserting in the place thereof the word "proviso," by Act Feb. 18, 1875, c. 80, cited above. It was further amended by inserting the first proviso, as set forth here, by Act March 1, 1879, c. 125, § 4, last cited above.

These provisions were made inapplicable to the blending of fortified wines by a provision of Act June 7, 1906, c. 3046, § 6, post, § 6122, and by Act Sept. 8, 1916, c. 463, § 402(f), post, § 6114c.

Notes of Decisions

Rectification defined.—Rectification of distilled spirits, in the legal sense, means any process exclusive of original and continuous distillation from mash, wort, or wash through continuous closed vessels and pipes until the manufacture thereof is complete, by which the spirits are separated from the substance with which they are mixed or combined, and a rectifier may take the raw spirit of the distiller, and by repeated processes of distillation separate the spirits from the oils and impurities left in it by the distiller, or he may take the refuse material of the manufacturer of an extract saturated with alcohol, and by distillation separate the spirit from that material. Henry K. Wampole & Co. v. U. S. (1911) 191 Fed. 573, 112 C. C. A. 633, certiorari denied (1912)

32 Sup. Ct. 840, 225 U. S. 710, 56 L. Ed. 1268.

Rectifiers.—Flavoring extracts, composed of from 40 to 50 per cent. alcohol, 3 per cent. flavoring principle, and water, the quantity of alcohol being no greater than is required to hold the flavoring principle in solution, which are not made, nor used, nor capable of being used, as a beverage, but which are chiefly used in flavoring soda water syrups, the quantity of extract used in each glass of the beverage being about 3 or 4 drops, are not "beverages," nor "liquors," within the meaning of the statute, and the manufacturer is not subject to special tax as a rectifier or wholesale or retail dealer in liquors. Allen v. Liquid Carbonic Co. (1909) 170 Fed. 315, 95 C. C. A. 11.

A manufacturer of vanilla or ginger extract by mixing the comminuted vanilla beans or ginger root with alcohol in a percolator, and who afterward recovers a part of the alcohol remaining in the mixture for reuse by distillation, is a "rectifier of distilled spirits" and subject to the special tax. Henry K. Wampole & Co. v. U. S. (1911) 191 Fed. 573, 112 C. C. A. 633, affirming judgments U. S. v. Hance (D. C. 1911) 184 Fed. 528, and Same v. Smith, Kline & French Co. (D. C. 1911) Id. 532, and writ of certiorari denied Hance v. U. S. (1912) 32 S. Ct. 840, 225 U. S. 710, 56 L. Ed. 1268.

Under the provision declaring that "every person who without rectifying, purifying or refining distilled spirits shall, by mixing such spirits, wine or other liquor with any materials, manufacture any spurious, imitation or compound liquors for sale under the name of whisky, * * * cordials, or wine bitters, or any other name, shall be regarded as a rectifier and as being engaged in the business of rectifying," a retail liquor dealer, who mixes whisky with water and sugar, or water and blackberry juice, and keeps the same in stock for sale, is a rectifier, and subject to special tax as such. Michel v. Nunn (C. C. 1900) 101 Fed. 423.

The statute, in defining rectifiers, includes "every person who, without rectifying, purifying or refining distilled spirits, shall, by mixing such spirits, wine or other liquors with any materials manufacture any spurious imitation or compound liquors for sale under the name of whisky, brandy * * * or any other name." Held, that in view of such statutory recognition of the manufacture of "imitation whisky," etc., and of the process of such manufacture, the regulation by the Commissioner of Internal Revenue which directs that "alcohol, commercial alcohol or high wines which have been manipulated, * * * so as to resemble some particular kind of potable spirits, will be marked with the name of such spirits preceded by the word 'Imitation,' as for example 'Imitation Whisky,' " is a proper and reasonable regulation, having also in view the provisions of Food & Drugs Act June 30, 1906, post, § 8717 et seq., notwithstanding the fact that such compounds may have been previously sold in the trade under the name of the liquors they imitate. Woolner & Co. v. Rennick (C. C. 1908) 170 Fed. 662.

Defendant manufactured a ginger ale paste used for making ginger ale. The paste was manufactured by placing a quantity of ginger in a percolator and adding alcohol. The oleoresin thus obtained from the ginger containing unnecessary alcohol was distilled and the alcohol separated. This alcohol was of a low grade and was charged with ginger essence so as not to be commercially salable and could not be used except in repeating the process of extracting oleoresin from ginger root and in the manufacture of flavors. Held, that defendant in so distilling the alcohol was engaged in the business of rectifying, purifying, and refining distilled spirits within the statute, imposing an internal revenue tax on every person so engaged. U. S. v. S. Twitchell Co. (D. C. 1911) 184 Fed. 525.

The phrase "through continuous closed vessels and pipes until the manufacture thereof is complete" refers to the exception, to wit, "other than by original and continuous distillation from mash, wort or wash through continuous vessels and pipes until the manufacture is complete," and not to "every person who rectifies, purifies or refines distilled spirits or wines by any process." Id.

(4) Retail liquor dealers.

Fourth. Retail dealers in liquors shall pay twenty-five dollars. Every person who sells, or offers for sale foreign or domestic distilled spirits or wines, in less quantities than five wine gallons at the same time, shall be regarded as a retail dealer in liquors.

Act July 20, 1868, c. 186, §§ 1, 2, 15 Stat. 125. Act April 10, 1869, c. 18, § 1, 16 Stat. 42.

This paragraph was modified by a more comprehensive definition of retail liquor dealers, so as to include malt liquors in the liquors such dealers sell or offer for sale, by Act Feb. 8, 1875, c. 36, § 18, as amended by Act March 1, 1879, c. 125, § 4, post, § 5973.

Notes of Decisions

See note under § 5842, ante.

Retail dealers in general.—Defendant, a wholesale liquor dealer in San Francisco, maintained a branch house in Portland, bearing his sign, and where presumably samples of his trade were kept,

and where the public were invited to purchase. The manager thereof was a "salesman" who was required to sell judiciously, the right to cancel his contracts being reserved to his principal, who filled all orders, and, without prepaying the freight, delivered the goods to a carrier at San Francisco, consigned to purchasers in various parts of the agent's territory. Held, that the sales were made wholly at San Francisco, notwithstanding the agent may have been authorized to make binding contracts and collected the purchase money, and defendant was not subject, under the statute, to the internal revenue tax, as an Oregon liquor dealer, though his method of transacting business may have been devised purposely to evade such tax. U. S. v. Chevallier (1901) 107 Fed. 434, 46 C. C. A. 402, affirming judgment (C. C. 1900) 102 Fed. 125.

Where defendant purchased rum in his own name, and had the same billed to him in his own name, and dealt it out from time to time as called for, he is a retail dealer in liquor, notwithstanding the money for the purchase of said liquor was advanced to him by others, and he procured and dealt out the liquor without profit to himself. U. S. v. Angell (C. C. 1881) 11 Fed. 34.

A single sale of spirituous liquors makes the seller a retail dealer. U. S. v. Barnhardt (D. C. 1874) Fed. Cas. No. 14,526.

Where packages contain distilled spirits in a form to be got at by squeezing, suction, or any other process, and the spirits, and not the fruit or other ingredients contained in the packages, are the inducements to their sale, purchase, and use, one selling such packages must pay a special tax as liquor dealer. U. S. v. Stafford (D. C. 1883) 20 Fed. 720.

A party having paid special tax as retail liquor dealer at a particular town, who fills orders received by mail to ship liquors in retail quantities to another town, there to be delivered to the party so ordering upon payment of the price of the liquor, together with the express charges, is liable to the payment of special tax as retail liquor dealer at the place where such delivery is made. U. S. v. Shriver (D. C. 1885) 23 Fed. 134.

When one has procured spirituous liquor with the intent to sell it out again in small quantities to any one who may apply for it or, having it on hand, determines to sell it out to any one who may apply for it, he is a retail liquor dealer, and must pay the special tax. U. S. v. Rennecke (D. C. 1886) 28 Fed. 847, 848.

Distilled spirits or wines.—Flavoring extracts, composed of from 40 to 50 per cent. alcohol, 3 per cent. flavoring principle, and water, the quantity of alcohol being no greater than is required to hold the flavoring principle in solution, which are not made, nor used, nor capable of being used, as a beverage, but which are chiefly used in flavoring soda water syrups, the quantity of extract used in each glass of the beverage being about 3 or 4 drops, are not "beverages," nor "liquors," within the meaning of the statute, and the manufacturer is not subject to special tax as a rectifier or wholesale or retail dealer in liquors. Allen v. Liquid Carbonic Co. (1909) 170 Fed. 315, 95 C. C. A. 11.

Distilled spirits and wines cannot lawfully be sold in any quantity by any person for any purpose, without payment of the special tax. Where packages contain distilled spirits in a form to be got at by suction or any other process, and the spirits, and not the other ingredients contained in the packages, is the inducement to their sale and purchase, one selling such packages must pay a special tax as a liquor dealer. U. S. v. Stafford (D. C. 1883) 20 Fed. 720, 721.

"Lemon Ginger" and "Empire Tonic Bitters" are sold by the bottle as medicinal preparations, and are believed to possess curative properties. They consist of about one-third alcohol, and the residue of distilled water and extracts from herbs, etc., and the quantity of alcohol is not greater than is necessary to extract and retain the virtues from the herbs, and is less than is contained in some ordinary tinctures. Held, that they are medicinal preparations and dealers in them are not liquor dealers, within the meaning of the statute defining a liquor dealer as one who sells "distilled spirits or wines," though they are intoxicating, if used immoderately. U. S. v. Stubblefield (D. C. 1889) 40 Fed. 454.

Alcoholic beverages in which the essential ingredient is distilled spirits, disguised by aromatic or other drugs, which are commonly bought and sold as intoxicating beverages, are not to be classed as patent or proprietary medicines, though named as such, so as to relieve dealers selling the same at retail from the retail liquor dealer's special tax. U. S. v. Wilson (D. C. 1895) 69 Fed. 144.

"Domestic distilled spirits," as used in the law requiring retail liquor dealers to pay a special tax, does not include patent or proprietary medicines manufactured and sold in good faith for curative or health-imparting properties, though they contain a large per cent. of distilled spirits as an essential ingredient, and though men with strong appetites for drink occasionally buy such preparations for the purpose of becoming drunk. Id.

Under this subdivision, and section 5982, post, it was held that, where a druggist, without paying the internal revenue tax imposed on retail liquor dealers, sold a medicinal preparation which was 88 per cent. proof spirits, more than sufficient to preserve the medicinal properties of any herbs, roots, or drugs contained therein, he was a

retail liquor dealer within the statute. U. S. v. Morfew (D. C. 1905) 136 Fed. 491.

Association or club as subject to tax.—See, also, notes under section 5965, ante.

An incorporated social club, which purchases a stock of liquors, and supplies the same to individual members for their consumption in its club rooms on their orders, and receives payment from them therefor, is a retail dealer in liquors. U. S. v. Alexis Club (D. C. 1899) 98 Fed. 725.

State dispensary agents.—State dispensary agents held liable to pay the special taxes. State of South Carolina v. U. S. (1904) 39 Ct. Cl. 257.

Doctors and druggists.—The law does not treat distilled spirits as a drug or medicine, and doctors and druggists are not privileged to sell it as such without first paying the special tax required of dealers in liquor. U. S. v. Stafford (D. C. 1883) 20 Fed. 720.

Dealers in Indian country and Alaska.—The opinion of the Attorney General of May 15, 1889 (19 Op. 306), does not conflict with the collection of the special tax on retail liquor dealers in the Indian country and Alaska under the statute. (1894) 21 Op. Atty. Gen. 25.

Wholesale liquor dealers.

Wholesale liquor-dealers shall pay one hundred dollars. Every person who sells or offers for sale foreign or domestic distilled spirits or wines, in quantities of not less than five wine gallons at the same time, shall be regarded as a wholesale liquor-dealer. But no distiller who has given the required bond, and who sells only distilled spirits of his own production at the place of manufacture, in the original packages to which the tax-stamps are affixed, shall be required to pay the special tax of a wholesale liquor-dealer on account of such sales.

Act July 20, 1868, c. 186, §§ 1, 2, 15 Stat. 125. Act July 20, 1868, c. 186, § 59, 15 Stat. 150. Act June 6, 1872, c. 315, § 13, 17 Stat. 244.

This paragraph was modified by a more comprehensive definition of wholesale liquor dealers, so as to include malt liquors in the liquors such dealers sell or offer for sale, by Act Feb. 8, 1875, c. 36, § 18, as amended by Act March 1, 1879, c. 125, § 4, set forth post, § 5973.

The provision authorizing distillers to sell their own production, contained in the last sentence of this paragraph, was repeated, with a proviso requiring such distillers to keep books showing the date when the spirits were sent out, the serial numbers of the packages, and the like, and to make a transcript of such books, in Act Aug. 27, 1894, c. 349, § 62, post, § 5974.

Notes of Decisions

Wholesale dealers in general.—See notes, ante, as to "Distilled spirits or wines."

See, also, notes under § 5965, ante.

Under this subdivision it was held that, where an indictment charged defendant as a wholesale liquor dealer with sending out two casks of distilled spirits without making the required entries in his record book, required to be kept by section 6100, post, the indictment sufficiently charged that the casks contained each not less than five wine gallons. Williams v. U. S. (1907) 158 Fed. 30, 88 C. C. A. 296, reversing judgment (Okl. 1906) 87 Pac. 647.

Where a wholesale liquor firm, having an office in New York, where it pays the internal revenue tax required of such dealers, accepts orders at such office, and directs the delivery of the goods thereon from a public warehouse in New Orleans, in which they are stored, such sales are made in New York, and not in New Orleans, and do not render the firm subject to a second tax as a dealer at New Orleans. De Bary v. Souer (1900) 101 Fed. 425, 41 C. C. A. 417.

Commission merchants who, at the request of foreign correspondents, occasionally purchase liquors in quantity, and take charge of shipping the same, and either charge the costs and their commissions upon their books to the account of such correspondents, or draw upon them for the full amount of the purchase price with costs and commissions, are "wholesale liquor dealers," and liable, as such, to the special tax. Morrow, District Judge, dissenting. Quinn v. Dimond (1896) 72 Fed. 993, 19 C. C. A. 336.

Agents who sell by sample from their place of business all the goods of a manufacturing company, from whose factory the goods are delivered, are not liable to a special tax as wholesale dealers. Acts June 30, 1864; July 13, 1866. Tucker v. Slack (C. C. 1875) Fed. Cas. No. 14,226.

A wholesale and retail liquor dealer who pays special tax as such at his place of business cannot be subjected to the payment of a second tax in another district because he there maintains an office in his own name, in charge of an agent who is authorized to, and does, take orders for liquors, where such orders are forwarded to his principal for acceptance, and, if accepted, the liquors are shipped thereon by the principal

direct to the purchaser; the agent having no authority to bind his principal by sales, and no liquors in his possession. In such case the sales are made at the place of business of the principal. U. S. v. Chevallier (C. C. 1900) 102 Fed. 125, judgment affirmed (1901) 107 Fed. 434, 46 C. C. A. 402.

Plaintiffs, who were wholesale liquor dealers in New York City, paid the special internal revenue tax there and kept imported wines on storage with McC. & Co., at Portland, from which jobbers in that city and vicinity were supplied. Plaintiffs delivered to McC. & Co. a list of dealers to whom they were authorized to deliver wines from the stock on storage when requested to do so by such dealers, not exceeding a certain number of cases in any one month. The persons or firms on such credit list, when desiring to purchase wines of plaintiff, delivered to McC. & Co. a written order for the number of cases desired, and if the maximum limit to which the purchaser was entitled for the current month had not been exceeded McC. & Co. immediately delivered the goods without consulting plaintiffs, and reported the sale to them at New York, from whence an invoice for the goods at the current price would be shipped to the buyer and the price remitted to plaintiffs in New York. There was no contract that the accredited purchasers should buy any particular quantity per month, or any at all. Held, that sales made under such arrangements were made in Portland, and not in New York, and that plaintiff was therefore subject to the payment of a federal wholesale liquor dealer's tax in Oregon. De Bary v. Dunne (C. C. 1909) 172 Fed. 940.

Meaning of "five gallons."—The words "five gallons," as used in Act April 10, 1869, § 44, defining what constitutes a wholesale dealer refers to "wine" gallons and not to "proof" gallons. In re Wangerien (D. C. 1870) Fed. Cas. No. 17,141.

Distiller as dealer.—A seller of liquors manufactured by him in his own distillery need not obtain the license required by the act of congress, as he is not a dealer within the act. Rahter v. First Nat. Bank of Lancaster (1880) 92 Pa. 393.

(5) Retail dealers in malt liquors.

Fifth. Retail dealers in malt liquors shall pay twenty dollars. Every person who sells or offers for sale malt liquors in quantities of five gallons or less at one time, but who does not deal in spirituous liquors, shall be regarded as a retail dealer in malt liquors.

Act July 20, 1868, c. 186, § 59, 15 Stat. 151. Act April 10, 1869, c. 18, § 1, 16 Stat. 42. Act June 6, 1872, c. 315, § 13, 17 Stat. 244.

This paragraph was modified by a change in the definition of retail dealers in malt liquors by Act Feb. 8, 1875, c. 36, § 18, as amended by Act March 1, 1879, c. 125, § 4, post, § 5973.

Notes of Decisions

See notes under § 5973, post.

Tax dependent on ownership of liquor.—To render one who "sells or offers for sale" malt liquors subject to special tax as a dealer in malt liquors, his ownership of such liquors is not essential. Western Express Co. v. U. S. (1905) 141 Fed. 28, 72 C. C. A. 516.

Clerk of owner of saloon as amenable for tax.—This statute attaches to one the office of a dealer when he sells or offers for sale malt liquors, and the clerk of the owner of a saloon selling liquor for his employer who has no license is amenable to indictment, or for the revenue tax. Western Express Co. v. U. S. (1905) 141 Fed. 28, 72 C. C. A. 516.

Express company.—The local agents of an express company in a prohibition state took orders from persons desiring beer and forwarded the same to breweries in another state. The breweries delivered the beer to the company for shipment to the agent who sent the order charging the price to the company, and having no knowledge of the local customer. On its receipt the agent stored the beer in the company's warehouse until it was called for, and then delivered it to the customer, collecting the price and the express charges, and accounting to the company for the same. He sometimes also sent orders which had not been requested, and delivered the beer to persons who thereafter applied for it. No receipts were taken from persons to whom beer was delivered, and their names did not appear on the company's books. When beer was not called for it was returned to the breweries, and the company given credit therefor. The company received nothing except the usual charges for transportation. Held, that the company was not merely a carrier nor a commercial broker in the transaction, but was, in effect, a commission merchant, and as such was subject to special tax under the statute as a dealer in malt liquors at each of the agencies where such business was carried on. Western Express Co. v. U. S. (1905) 141 Fed. 28, 72 C. C. A. 516.

Wholesale dealers in malt liquors; sales by creditors, executors, etc., or under process, etc.

Wholesale dealers in malt liquors shall pay fifty dollars. Every person who sells or offers for sale malt liquors in larger quantities than five gallons at one time, but who does not deal in spirituous liquors, shall be regarded as a wholesale dealer in malt liquors: Provided, That no brewer shall be required to pay a special tax as a wholesale dealer by reason of selling in the original stamped packages, whether at the place of manufacture or otherwise, malt liquors manufactured by him. But no special tax shall be held to accrue on a sale of distilled spirits, wines, or malt liquors made by a person who is not otherwise a dealer in liquors, where such spirits, wines, or liquors have been received by the person so selling as security for or in payment of a debt, or as executor, administrator, or other fiduciary, or have been levied on by any officer, under order or process of any court or magistrate, and where such spirits are sold by such person in one parcel only, or at public auction in parcels not less than twenty wine-gallons, nor shall such tax be held to accrue on a sale made by a retiring partner, or the representatives of a deceased partner to the incoming, remaining, or surviving partner or partners of a firm; nor shall the special tax of a wholesale liquor-dealer or wholesale dealer in malt liquors be held to apply to a retail dealer in liquors or a retail dealer in malt liquors, because of such retail dealer selling out his entire stock of liquors in one parcel, or in parcels embracing not less than his entire stock of distilled spirits, of wines, or of malt liquors; and section thirty-three hundred and nineteen of the Revised Statutes shall not be held to prohibit a rectifier or liquor-dealer from purchasing, in quantities greater that twenty wine-gallons, the distilled spirits sold in one parcel as aforesaid.

Act June 6, 1872, c. 315, §§ 13, 17, 17 Stat. 244, 245. Act March 1, 1879, c. 125, § 4, 20 Stat. 333.

This paragraph, as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the provisions beginning with the words "But no special tax shall be held to accrue," etc., to the end of the paragraph, as set forth here, by Act March 1, 1879, c. 125, § 4, cited above.

The paragraph was modified by a change in the definition of wholesale dealers in malt liquors by Act Feb. 8, 1875, c. 36, § 18, as amended by Act March 1, 1879, c. 125, § 4, post, § 5973.

R. S. § 3319, mentioned in this paragraph, is set forth post, § 6101.

Notes of Decisions

Wholesale dealers in general.—If the quantity of malt liquors sold at one time exceeds five gallons, the vender is a "wholesale dealer," although the same is not contained in one package. U. S. v. Clare (D. C. 1880) 2 Fed. 55, 57.

The special tax required from wholesale dealers in malt liquors, etc., must be paid in advance. U. S. v. Clure (Pa. 1880) 14 Phila. 543.

Brewers as dealers.—Brewers selling elsewhere than at the place of manufacture are liable to taxation as wholesale dealers. Act July 20, 1868, § 59; Act April 10, 1869. Underhill v. Pleasonton (C. C. 1871) Fed. Cas. No. 14,337.

Union of retail dealers.—Where retail liquor dealers organize under the style of a "Protection Union," and purchase beer through the "Union," saving two dollars a barrel, they become wholesale dealers, and must take out a license as such. U. S. v. Kallstrom (D. C. 1887) 30 Fed. 184.

Sixth. (Superseded in part, and remainder transferred.)

This subsection imposed a tax of twenty-five dollars a year upon dealers in leaf tobacco, except retail dealers, and defined dealers in leaf tobacco. It was amended by Act March 1, 1879, c. 125, § 14, 20 Stat. 343, by the enactment of a more comprehensive definition. The tax was reduced to twelve dollars a year by Act March 3, 1883, c. 121, § 2, 22 Stat. 488. The tax was abolished, and such dealers were required to register by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, post, § 6177.

The definition of dealers in leaf tobacco by this subsection is set forth post, § 6176.

The special taxes imposed on dealers in leaf tobacco and on dealers in and

manufacturers of tobacco and manufacturers of cigars by the War Revenue Act of June 13, 1898, c. 448, § 4, 30 Stat. 450, and on bankers, brokers, pawnbrokers, customs-house brokers, proprietors of theaters, museums, and concert halls, proprietors of circuses, proprietors of unenumerated exhibitions, and proprietors of bowling alleys and billiard rooms, by section 2 of the same act, were abrogated, by the repeal of those sections by Act April 12, 1902, c. 500, §§ 2, 5, 32 Stat. 96, 97. The tax was again imposed by Act Oct. 22, 1914, c. 331, §§ 3, 4, 38 Stat. 750–753, which was in turn repealed by Act Sept. 8, 1916, c. 463, § 410, post, § 5980*l*, and a new tax levied, the provisions for which is set forth post, §§ 5980b–5980k, 5980m, 6346a.

Dealers in leaf tobacco were made subject to all the provisions of this section, as amended in 1879 and also in 1883, and to the provisions of certain other sections of the Revised Statutes, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 35, set forth post, § 6175.

Seventh. (Superseded.)

This subsection imposed a tax of $500 a year, with an additional tax of 50 cents for every dollar of the annual sales exceeding $1,000, upon retail dealers in leaf tobacco, and defined such dealers. The tax was reduced to $250 a year, with an additional tax of 30 cents for each dollar of the amount of monthly sales in excess of the rate of $500 a year, by Act March 3, 1883, c. 121, § 2, 22 Stat. 488. The tax was abolished, and such dealers were required to register, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, set forth post, § 6177. A tax was imposed by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 752, but that act was repealed by Act Sept. 8, 1916, c. 463, § 410, post, § 5980*l*.

The definition of retail dealers in leaf tobacco by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 35, is set forth post, § 6175.

Eighth. (Superseded in part, and remainder transferred.)

This subsection imposed a tax of $5 a year upon dealers in tobacco, and defined such dealers. The tax was reduced to $2.40 a year by Act March 3, 1883, c. 121, § 2, 22 Stat. 488. The tax was abolished, and such dealers were required to register, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, set forth post, § 6177.

The special taxes imposed upon dealers in tobacco by the War Revenue Act of June 13, 1898, c. 448, § 4, 30 Stat. 450, were repealed by Act April 12, 1902, c. 500, § 5, 32 Stat. 97.

Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 752, imposed a tax on dealers in tobacco, but that act is repealed by Act Sept. 8, 1916, c. 463, § 410, post, § 5980*l*.

The definition of dealers in tobacco by this subsection is set forth post, § 6176.

Notes of Decisions

See Jones v. Van Benthuysen (1880) 103 U. S. 87, 26 L. Ed. 477; Ludloff v. U. S. (1883) 2 Sup. Ct. 475, 481, 108 U. S. 176, 27 L. Ed. 693; Jones v. Van Benthuysen (1884) 6 Sup. Ct. 128, 115 U. S. 464, 29 L. Ed. 446; Seeberger v. Castro (1894) 14 Sup. Ct. 766, 767, 153 U. S. 32, 38 L. Ed. 624; U. S. v. Vinson (D. C. 1881) 8 Fed. 507.

Ninth. (Superseded.)

This subsection imposed a tax of ten dollars a year upon manufacturers of tobacco, and defined such manufacturers. The tax was reduced to six dollars a year by Act March 3, 1883, c. 121, § 2, 22 Stat. 488. The tax was abolished, and such manufacturers were required to register, by Act Oct. 1, 1890, c. 1244, § 26, set forth post, § 6177.

Tobacco manufacturers were defined by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 69, post, § 6162.

The special taxes imposed upon manufacturers of tobacco by the War Revenue Act of June 13, 1898, c. 448, § 4, 30 Stat. 450, were repealed by Act April 12, 1902, c. 500, § 5, 32 Stat. 97. It was revived by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 752, which act is repealed and supplanted by Act Sept. 8, 1916, c. 463, §§ 408–410, set forth post, §§ 5980j–5980*l*.

Notes of Decisions

See § 5980j, post, and notes thereunder.

Tenth. (Superseded.)

This subsection imposed a tax of ten dollars a year upon manufacturers of cigars, and defined such manufacturers, and required cigar makers, as defined, to register their names and addresses with the collectors. The tax was reduced to six dollars a year by Act March 3, 1883, c. 121, § 2, 22 Stat. 488. The tax

was abolished, and such manufacturers were required to register, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, post, § 6177.

The special taxes imposed upon manufacturers of cigars by the War Revenue Act of June 13, 1898, c. 448, § 4, 30 Stat. 450, were repealed by Act April 12, 1902, c. 500, § 5, 32 Stat. 97. The tax was revived by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 752, 753, which act was repealed and supplanted by Act Sept. 8, 1916, c. 463, §§ 408–410, 39 Stat., set forth post, §§ 5980j–5980l.

The definition of manufacturers of tobacco by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 69, is set forth post, § 6162.

Notes of Decisions

See § 5980j, post, and notes thereunder.

Eleventh. (Superseded in part, and remainder transferred.)

This subsection defined and classified peddlers of tobacco, and imposed an annual tax of $50 upon peddlers of the first class, $25 upon peddlers of the second class, $15 upon peddlers of the third class, and $10 upon peddlers of the fourth class. The tax was reduced to $30 upon peddlers of the first class, $15 upon peddlers of the second class, $7.50 upon peddlers of the third class, and $3.60 upon peddlers of the fourth class, by Act March 3, 1883, c. 121, § 2, 22 Stat. 488. The tax was abolished, and such peddlers were required to register, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, post, § 6177.

The definition of peddlers of tobacco by this section is set forth post, § 6187.

Provisions declaring that nothing in this chapter should exempt retail dealers in liquors, in malt liquors, and in tobacco, upon trains and vessels, from the payment of the special taxes, were made by Res. May 8, 1876, No. 10, post, § 5976.

Special taxes were imposed upon manufacturers of, and wholesale and retail dealers in, oleomargarine, by Act Aug. 2, 1886, c. 840, § 3, post, § 5977: and upon manufacturers of and dealers in process, etc., butter, by Act May 9, 1902, c. 784, § 4, post, § 5978.

Special taxes were imposed upon manufacturers of, and wholesale and retail dealers in, filled cheese, by Act June 6, 1896, c. 337, § 3, post, § 5979.

Special taxes were imposed upon manufacturers and packers of mixed flour by Act June 13, 1898, c. 448, § 36, post, § 5980.

DECISIONS RELATING TO SECTION IN GENERAL

In general.—See Ludloff v. U. S. (1883) 2 Sup. Ct. 475, 481, 108 U. S. 176, 27 L. Ed. 693; Seeberger v. Castro (1894) 14 Sup. Ct. 766, 767, 153 U. S. 32, 38 L. Ed. 624; U. S. v. Vinson (D. C. 1881) 8 Fed. 507.

See notes under §§ 5959 and 5961, ante.

See Ludloff v. U. S. (1883) 2 Sup. Ct. 475, 481, 108 U. S. 176, 27 L. Ed. 693.

Construction with other statutes.—The term "cask" is generally understood to be a receptacle for liquids, either larger or smaller than the usual barrel, and, as employed in the statute respecting the manufacture and sale of spirituous liquors, pertaining to wholesale dealers, has a well-recognized import as a vessel containing not less than 20, 10, or 5 gallons wine measure, as provided by this section and sections 6028 and 6104, post. Williams v. U. S. (1907) 158 Fed. 30, 88 C. C. A. 296, reversing judgment (Okl. 1906) 87 Pac. 647.

"Malt liquors" and "spirituous liquors" distinguished.—Provisions of this section seem to plainly distinguish "malt liquors," the product of fermentation, from "spirituous liquors," the result of distillation. Sarlls v. U. S. (1894) 14 Sup. Ct. 720, 721, 152 U. S. 570, 38 L. Ed. 556.

Person carrying on business to pay tax.—Any person who carries on the business of a brewer, or wholesale or retail dealer in malt liquors, must first pay a special tax therefor. U. S. v. Clare (D. C. 1880) 2 Fed. 55, 57.

Prosecution for violation of statute.—See, also, notes under § 5965, ante.

The offenses of violating the internal revenue laws, under section 5965, ante, and this section are punishable by a fine of not less than $1,000, nor more than $5,000, and imprisonment not less than six months, nor more than two years. Sections 10523, 10527, and 10528, post, provide that a sentence of the United States courts to imprisonment for more than one year, or to imprisonment at hard labor, may be ordered to be executed in a state prison or penitentiary. Held, that the punishment which may be imposed for these offenses is "infamous," and the prosecution must be by indictment or presentment of the grand jury, and not by information. U. S. v. Johannesen (C. C. 1888) 35 Fed. 411.

Cited without definite application. U. S. v. Kaufman (1877) 96 U. S. 567, 568, 24 L. Ed. 792; Solomons v. U. S. (1890) 11 Sup. Ct. 88, 89, 137 U. S. 342, 34 L. Ed. 667; North Dakota ex rel. Flaherty v. Hanson (1910) 30 Sup.

Ct. 179, 180, 215 U. S. 515, 54 L. Ed. 307; U. S. v. Dominici (1897) 78 Fed. 334, 336, 24 C. C. A. 116; Davis v. Daugherty (1901) 105 Fed. 769, 45 C. C. A. 39; U. S. v. Schneider (C. C. 1888) 35 Fed. 107, 108; Same v. Giller (C. C. 1892) 54 Fed. 656, 658; In re Commissioners of Circuit Court (C. C. 1894) 65 Fed. 314, 316; U. S. v. Cota (D. C. 1883) 17 Fed. 734; Same v. Nelson (D. C. 1886) 29 Fed. 202, 208; In re Lamberton (D. C. 1903) 124 Fed. 446; U. S. v. Three Packages of Distilled Spirits (D. C. 1907) 152 Fed. 580.

§ 5972. (Act May 28, 1880, c. 108, § 18.) Manufacturers of wooden stills.

Subsection second of section thirty-two hundred and forty-four shall not apply to distillers in registered distilleries who manufacture for their own use wooden stills, but each of said distillers shall give notice to the collector of the district in which his distillery is located of each still manufactured before the same is used. (21 Stat. 149.)

This section was part of an act to amend the laws in relation to internal revenue, cited above.

R. S. § 3244, subsec. 2, mentioned in this act, imposing special taxes upon manufacturers of stills, is set forth ante, § 5971 (2).

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 5973. (Act Feb. 8, 1875, c. 36, § 18, as amended, Act March 1, 1879, c. 125, § 4.) Retail liquor dealers; wholesale liquor dealers; retail dealers in malt liquors; wholesale dealers in malt liquors.

That retail dealers in liquors shall pay twenty-five dollars. Every person who sells, or offers for sale, foreign or domestic distilled spirits wines, or malt liquors, otherwise than as hereinafter provided, in less quantities than five wine-gallons at the same time, shall be regarded as a retail dealer in liquors. Wholesale liquor-dealers shall each pay one hundred dollars. Every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors, otherwise than as hereinafter provided, in quantities of not less than five wine-gallons at the same time, shall be regarded as a wholesale liquor-dealer. But no distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture in the original packages to which the tax-stamps are affixed, shall be required to pay the special tax of a wholesale liquor-dealer on account of such sales. Retail dealers in malt liquors shall pay twenty dollars. Every person who sells, or offers for sale, malt liquors in less quantities than five gallons at one time, but who does not deal in spirituous liquors, shall be regarded as a retail dealer in malt liquors. Wholesale dealers in malt liquors shall pay fifty dollars. Every person who sells, or offers for sale, malt liquors in quantities of not less than five gallons at one time, but who does not deal in spirituous liquors at wholesale, shall be regarded as a wholesale dealer in malt liquors: Provided, That no brewer shall be required to pay a special tax as a dealer by reason of selling in the original stamped packages whether at the place of manufacture or elsewhere, malt liquors manufactured by him, or purchased and procured by him in his own casks or vessels, under the provisions of section thirty-three hundred and forty-nine of the Revised Statutes; but the quantity of malt liquors so purchased shall be included in calculating the liability to brewer's special tax of both the brewer who manufactures and sells the same and the brewer who purchases the same: And it is hereby provided, That no further collection of special tax as retail dealers in malt liquors shall be made from brewers for selling malt liquors of their own manufacture in the original stamped eighth-barrel package. (18 Stat. 311. 20 Stat. 333.)

These provisions were part of section 18 of an act entitled "An act to amend the laws relating to internal revenue," cited above.

This section, as originally enacted, in Act Feb. 8, 1875, c. 36, § 18, cited

above, was amended by inserting, before the words "shall be regarded as wholesale dealer in malt liquors," the words "at wholesale," and by adding, after the word "him," the words "or purchased and procured by him in his own casks," etc., to the end of the section, as set forth here, by Act March 1, 1879, c. 125, § 4, last cited above.

A further proviso, annexed to the section as so amended, for remission of certain assessments of additional special tax previously made and for refunding such assessments if paid, are omitted as temporary merely, and executed.

This section modified R. S. § 3244, subsecs. 4, 5, ante, § 5971.

Notes of Decisions

Retail dealers.—An incorporated benevolent association, which sells to its members, for five cents each, tickets entitling the holder to a glass of beer or other refreshment from the association, at a picnic, or to participate in some amusement, at his option, is a dealer in malt liquors, within Act March 1, 1879, § 18, which defines such dealer to be one who sells or offers for sale in less quantities than five gallons at one time, but who does not deal in spirituous liquors. U. S. v. Giller (C. C. 1892) 54 Fed. 656.

An unincorporated social or literary club, which sells checks to its members, which it takes in exchange for glasses of beer, is a dealer, and liable to taxation under Act 1875, c. 36, § 18. U. S. v. Wittig (D. C. 1876) Fed. Cas. No. 16,748.

An officer in charge of a post exchange is not a retail dealer in liquors, within Internal Revenue Act March 1, 1879, enacting that persons selling or offering to sell liquors, otherwise than as hereinafter provided, in less quantities than five gallons, shall be regarded as retail dealers. Dugan v. U. S. (1899) 34 Ct. Cl. 458.

§ 5974. (Act Aug. 27, 1894, c. 349, § 62.) Distiller selling his own product; record of sales; transcript; forfeiture.

No distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture, or at the place of storage in bond, in the original packages to which the tax-paid stamps are affixed, shall be required to pay the special tax of a wholesale liquor dealer on account of such sales: Provided, That he shall be required to keep the book prescribed by section thirty-three hundred and eighteen of the Revised Statutes of the United States, or so much as shall show the date when he sent out any spirits, the serial numbers of the packages containing same, the kind and quality of the spirits in wine gallons and taxable gallons, the serial numbers of the stamps on the packages, and the name and residence of the person to whom sent; and the provisions of section five of an Act entitled "An Act to amend the laws relating to internal revenue," approved March fifth, eighteen hundred and seventy-nine, as to transcripts, shall apply to such books. Any failure, by reason of refusal or willful neglect, to furnish the transcript by him shall subject the spirits owned or distilled by him to forfeiture. (28 Stat. 567.)

This section was part of the Wilson Tariff Act, cited above.

The reference in this section to the provisions of an act approved March 5, 1879, was intended, apparently, to be to the provisions of Act March 1, 1879, c. 125, § 5, amending R. S. § 3318, and incorporated into that section, as set forth post, § 6100.

Notes of Decisions

See §§ 5983 and 6100, and notes thereunder.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

(R. S. § 3245. Temporary.)

This section provided that the special tax paid by distillers prior to August 1, 1872, not exhausted by the quantity of spirits distilled, should be refunded. It is omitted as temporary merely and executed.

§ 5975. (R. S. § 3246, as amended, Act March 1, 1879, ch. 125, § 5, and Act March 3, 1915, c. 78.) Special tax not applied to vintners or apothecaries in certain cases, nor to manufacturing chemists, etc., for recovering tax-paid alcohol from dregs, etc.

Nothing in this chapter shall be construed to impose a special

tax upon vintners who sell wine of their own growth, or manufacturers who sell wine produced from grapes grown by others, at the place where the same is made or at the general business office of such vintner or manufacturer: Provided, That no vintner or manufacturer shall have more than one office for the sale of such wine that shall be exempt from special tax under this Act; nor shall any special tax be imposed upon apothecaries as to wines or spirituous liquors which they use exclusively in the preparation or making-up of medicines.

Nor shall any special tax be imposed upon manufacturing chemists or flavoring extract manufacturers for recovering tax-paid alcohol or spirituous liquors from dregs or marc of percolation or extraction if said recovered alcohol or spirituous liquors be again used in the manufacture of flavoring extracts. (38 Stat. 893.)

Act July 13, 1866, c. 184, § 9, 14 Stat. 122. Act March 1, 1879, c. 125, § 5, 20 Stat. 334. Act March 3, 1915, c. 78, 38 Stat. 893.

This section, as enacted in the Revised Statutes, was as follows:

"Nothing in this chapter shall be construed to impose a special tax upon vintners who sell wine of their own growth at the place where the same is made; or upon apothecaries, as to wines or spirituous liquors which they use exclusively in the preparation or making up of medicines."

It was amended by Act March 1, 1879, c. 125, § 5, cited above. As so amended it read as above down to and including the word "medicines."

Notes of Decisions

Exemption of apothecaries.—Manufacturers of vanilla or ginger extract by mixing the comminuted vanilla beans or ginger root with alcohol in a percolator, and who afterwards recover a part of the alcohol remaining in the mixture for re-use by distillation, are not exempt from the tax as apothecaries. Henry K. Wampole & Co. v. U. S. (1911) 191 Fed. 573, 112 C. C. A. 633, affirming judgment U. S. v. Hance (D. C. 1911) 184 Fed. 528, and Same v. Smith, Kline & French Co. (D. C. 1911) 184 Fed. 532, and writ of certiorari denied Hance v. U. S. (1912) 32 Sup. Ct. 840, 225 U. S. 710, 56 L. Ed. 1268.

A distiller of alcohol from oleoresin, obtained from ginger root in the manufacture of a ginger ale paste, which alcohol so obtained was again used in obtaining ginger extract by percolation, was not engaged in business as an "apothecary" and was not exempt from liability for internal revenue taxation as a rectifier, purifier, or refiner of distilled spirits by this section. U. S. v. S. Twitchell Co. (D. C. 1911) 184 Fed. 525.

Cited without definite application, U. S. v. Smith (D. C. 1891) 45 Fed. 115.

§ 5976. (Res. May 8, 1876, No. 10.) Retail liquor dealers, etc., on passenger trains, steamboats, or other vessels.

Nothing contained in chapter three of title thirty-five of the Revised Statutes shall prevent the issue, under such regulations as the Commissioner of Internal Revenue may prescribe, of special-tax stamps to persons carrying on the business of retail dealers in liquors, retail dealers in malt liquors, or dealers in tobacco, upon passenger railroad-trains or upon steamboats or other vessels engaged in the business of carrying passengers. (19 Stat. 213.)

Special taxes upon dealers in tobacco were repealed by Act Oct. 1, 1890, c. 1244, § 26, post, § 6177. A tax was imposed on such dealers by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 752, but such act was repealed by Act Sept. 8, 1916, c. 463, § 410, set forth post, § 5980*l*.

§ 5977. (Act Aug. 2, 1886, c. 840, § 3, as amended, Act May 9, 1902, c. 784, § 2.) Special taxes upon manufacturers of, or dealers in, oleomargarine.

Special taxes are imposed as follows:

Manufacturers of oleomargarine shall pay six hundred dollars. Every person who manufactures oleomargarine for sale shall be deemed a manufacturer of oleomargarine.

And any person that sells, vends, or furnishes oleomargarine for the use and consumption of others, except to his own family table

without compensation, who shall add to or mix with such oleomargarine any artificial coloration that causes it to look like butter of any shade of yellow shall also be held to be a manufacturer of oleomargarine within the meaning of said Act, and subject to the provisions thereof.

Wholesale dealers in oleomargarine shall pay four hundred and eighty dollars. Every person who sells or offers for sale oleomargarine in the original manufacturer's packages shall be deemed a wholesale dealer in oleomargarine. But any manufacturer of oleomargarine who has given the required bond and paid the required special tax, and who sells only oleomargarine of his own production, at the place of manufacture, in the original packages to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in oleomargarine on account of such sales.

Retail dealers in oleomargarine shall pay forty-eight dollars. Every person who sells oleomargarine in less quantities than ten pounds at one time shall be regarded as a retail dealer in oleomargarine.

And sections thirty-two hundred and thirty-two, thirty-two hundred and thirty-three, thirty-two hundred and thirty-four, thirty-two hundred and thirty-five, thirty-two hundred and thirty-six, thirty-two hundred and thirty-seven, thirty-two hundred and thirty-eight, thirty-two hundred and thirty-nine, thirty-two hundred and forty, thirty-two hundred and forty-one, and thirty-two hundred and forty-three of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special taxes imposed by this section, and to the persons upon whom they are imposed: Provided, That in case any manufacturer of oleomargarine commences business subsequent to the thirtieth day of June in any year, the special tax shall be reckoned from the first day of July in that year, and shall be five hundred dollars.

Provided further, That wholesale dealers who vend no other oleomargarine or butterine except that upon which a tax of one-fourth of one per cent per pound is imposed by this Act, as amended, shall pay two hundred dollars; and such retail dealers as vend no other oleomargarine or butterine except that upon which is imposed by this Act, as amended, a tax of one-fourth of one cent per pound shall pay six dollars. (24 Stat. 209. 32 Stat. 194.)

This section, as enacted in the Oleomargarine Act of Aug. 2, 1886, c. 840, § 3, cited above, was amended by adding to the first clause thereof, after the word "oleomargarine," at the end of said clause, the words "And any person that sells, vends or furnishes oleomargarine," etc., ending with the words "subject to the provisions thereof," and by adding at the end of the section a new proviso, as set forth here, by Act May 9, 1902, c. 784, § 2, last cited above.

Special taxes were imposed also on manufacturers of and dealers in process or renovated butter or adulterated butter by Act May 9, 1902, c. 784, § 4, set forth post, § 5978.

Wholesale dealers were required to keep books and make returns, as prescribed by the Commissioner of Internal Revenue, by Act May 9, 1902, c. 784, § 6, set forth post, § 6241.

All special taxes become due July 1st in each year, or on commencing the business, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 53, ante, § 5960.

R. S. §§ 3232–3241, 3243, mentioned in this section, are set forth ante, §§ 5955–5959, 5961–5964, 5970.

Notes of Decisions

See notes under § 5967, ante, and § 6218, post.

Constitutionality.—Under this section and section 6218, post, persons selling oleomargarine at retail in original packages in quantities greater than 10 pounds violate the law. Ripper v. U. S. (1910) 178 Fed. 24, 101 C. C. A. 152, rehearing denied (1910) 179 Fed. 497, 103 C. C. A. 478.

Act Aug. 2, 1886, c. 840, 24 Stat. 210, imposing a tax on manufacturers and dealers in oleomargarine, and regulating the sale of such article, having

for its primary object the raising of revenue, and not protection to purchasers, is not unconstitutional, as being an infringement upon the police powers of the states. U. S. v. Dougherty (D. C. 1900) 101 Fed. 439, judgment affirmed Dougherty v. U. S. (1901) 108 Fed. 56, 47 C. C. A. 195, writ of certiorari denied (1901) 21 Sup. Ct. 926, 181 U. S. 622, 45 L. Ed. 1033.

Construction and operation of statute in general.—Section 5970, ante, provides that the payment of any tax imposed by the internal revenue laws for carrying on any business shall not exempt any person from any penalty provided by the laws of a state for carrying on the same within such state, or authorize such business contrary to the laws of such state, or in places prohibited by municipal law, nor prohibit any state from placing a tax on the same business. Held, in view of section 5970, ante, that this section was not intended to interfere with the exercise by the states of any authority they can rightfully exercise over the sale of oleomargarine therein. Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223.

This section relates only to the adding to or mixing of artificial coloration with oleomargarine after its manufacture, and does not support the proposition that where, in the process of manufacture, oleomargarine becomes artificially colored, it must be treated as free from artificial coloration. McCray v. U. S. (1904) 24 Sup. Ct. 769, 774, 195 U. S. 27, 49 L. Ed. 78, 1 Ann. Cas. 561.

An indictment against officers, agents, and employés of a corporation for violating section 6229, post, held insufficient notwithstanding this section. U. S. v. Orr (D. C. 1915) 223 Fed. 222.

Application of general revenue law.—The express extension of the provisions of sections 5955–5964, 5970, ante, which deal with special taxes, to the special tax on oleomargarine made by this section, imposing such tax, and not purporting to be complete in itself, is not an implied exclusion of the general provisions of section 5900, ante, for the entry by revenue officers of any building or place where any articles or objects subject to tax are made, produced, or kept, for the purpose of examining such articles or objects. U. S. v. Barnes (1912) 32 Sup. Ct. 117, 222 U. S. 513, 56 L. Ed. 291.

The provisions of the general internal revenue legislation do not apply to Oleomargarine Act Aug. 2, 1886, c. 840, 24 Stat. 209, except those sections expressly made applicable by this section; and one assessed with a special tax as a dealer under such law, who, before paying the tax at the suggestion of the collector, made application to the Commissioner for an abatement of the same, stating the facts, which application was refused, is not required to again appeal to the Commissioner under section 5949, ante, after he has paid under protest, before he can maintain a suit to recover his payment back as illegally imposed. Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513.

The act of Aug. 2, 1886, and the sections of the Revised Statutes adopted by it and made applicable mean that oleomargarine shall only be sold in the manner and according to the regulations prescribed. Ripper v. U. S. (1910) 178 Fed. 24, 101 C. C. A. 152, rehearing denied (1910) 179 Fed. 497, 103 C. C. A. 478.

Manufacturers.—The words "any person" are not limited to licensed wholesale or retail dealers in oleomargarine, but are comprehensive enough to embrace any or all persons, whether licensed dealers or not, selling, vending, or furnishing oleomargarine to which he has added coloring matter to represent butter. Vermont v. U. S. (1909) 174 Fed. 792, 98 C. C. A. 500, writ of certiorari denied (1910) 30 Sup. Ct. 695, 217 U. S. 605, 54 L. Ed. 899.

The actual selling, vending, or furnishing of oleomargarine for use and consumption by others is not one of the necessary components of a manufacturer as contemplated by the statute, so as to require proof of actual selling, vending, or furnishing of some of the product to constitute the offense; the term "manufacturer" as used being construed to mean one engaged in the business of selling, vending, or furnishing oleomargarine for consumption of others. Id.

See, also, notes under § 5967, ante.

Retail dealers.—A retail dealer is liable to the tax, though he honestly believed that what he bought and sold was butter. Eagle v. Nowlin (D. C. 1899) 94 Fed. 646.

Wholesale dealers.—Plaintiff was a retail grocer, who prior to the passage of Act Aug. 2, 1886, c. 840, 24 Stat. 209, had sold oleomargarine. After that he ceased handling it; but, having two or three customers who desired it, at their request and for their accommodation he sent orders in their respective names to the manufacturer for 10-pound packages at a time, to be shipped to each customer in his care. The manufacturer shipped the same to its local branch house, addressed and billed to the customers. The branch house, which did not deliver to retail customers, left the packages at plaintiff's store, and he delivered the same, with other groceries. The customers returned the bills to him, and he remitted for the same to the manufacturer each month, charging the customers with the cash so sent. There was no fraud nor attempt at concealment, and plaintiff made no profit whatever on the transactions. Held, that such transactions were not sales of the article by plaintiff, and did not render him subject to tax as

a wholesale dealer. Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658.

Facts held insufficient to constitute plaintiff a wholesale dealer in oleomargarine, so as to authorize assessment of an internal revenue tax against him as such. Weaver v. Ewers (1912) 195 Fed. 247, 115 C. C. A. 219, affirming judgment Ewers v. Weaver (C. C. 1910) 182 Fed. 713.

A merchant does not become a dealer in oleomargarine, and subject to special tax as such, by permitting packages ordered by an hotel keeper from a wholesale house, through its salesman, to be shipped in his name, simply as an accommodation, and as a guaranty that the price would be paid, where he had no part in making the sales, and received no profit thereon. Hartzell v. U. S. (D. C. 1897) 83 Fed. 1002.

A firm otherwise engaged only in retailing held, under this section, a wholesale dealer in oleomargarine, for purpose of internal revenue, where it buys the amount desired by it and another such firm, and lets the other have part at the same price. Mitchell v. Cole (D. C. 1915) 226 Fed. 824.

Indictment.—An indictment in the language of section 5967, ante, charging that the defendant at a certain time and place did unlawfully "carry on the business of a manufacturer of oleomargarine without having first then and there paid the special tax therefor as required by law," states all the elements of the offense, and is sufficiently specific in the absence of a motion for a bill of particulars showing whether the defendant is charged with being a manufacturer in the ordinary sense under the original act or as defined in this section. Morris v. U. S. (1908) 161 Fed. 672, 88 C. C. A. 532, judgment reversed on rehearing (1909) 168 Fed. 682, 94 C. C. A. 168, and writ of certiorari denied (1909) 29 Sup. Ct. 704, 214 U. S. 527, 53 L. Ed. 1068.

An indictment for carrying on the business of a manufacturer of oleomargarine without having paid the special tax therefor, based on this section which provides that any person that sells, vends, or furnishes oleomargarine for the use and consumption of others "except to his own family table without compensation," and who shall color the same to resemble butter, shall be deemed a manufacturer, need not negative such exception which is in fact mere surplusage, since it does not exempt from the operation of the statute anything which would otherwise be within it. Id.

An indictment charging the defendant generally in the language of the statute with carrying on the business of a manufacturer of oleomargarine without having paid the special tax required by this section is sufficient, and need not set out a statement of the facts which constitute the defendant a manufacturer. Hart v. U. S. (1910) 183 Fed. 368, 105 C. C. A. 588, writ of certiorari denied (1911) 31 Sup. Ct. 714, 220 U. S. 609, 55 L. Ed. 608.

An indictment in the words of the statute charging defendant with knowingly, willfully, and unlawfully carrying on the business of a wholesale dealer in oleomargarine without having paid the special tax therefor as required by law is not objectionable for failure to negative that defendant was a manufacturer selling his own product in stamped packages at the place of manufacture, within the exception of the statute. U. S. v. Joyce (D. C. 1905) 138 Fed. 455.

See, also, notes under § 5967, ante.

Evidence in prosecutions under statute.—Evidence held sufficient to warrant a conviction of defendants as manufacturers of oleomargarine for mixing coloring matter therewith to represent butter without having paid the federal tax and obtained the required license, and for selling, vending, or furnishing oleomargarine for use and consumption of others. Vermont v. U. S. (1909) 174 Fed. 792, 98 C. C. A. 500, writ of certiorari denied (1910) 30 Sup. Ct. 695, 217 U. S. 605, 54 L. Ed. 899.

Rulings on evidence in a prosecution under this section held not erroneous. Wesoky v. U. S. (1910) 175 Fed. 333, 99 C. C. A. 121.

Other statutes applying to collection of tax.—Section 5900, ante, and section 6364, post, relative to inspection and search warrants to prevent frauds against the internal revenue laws, apply to the collection of special taxes imposed by the Oleomargarine Act. Kercheval v. Allen (1915) 220 Fed. 262, 135 C. C. A. 1.

Cited without definite application, Cornell v. Coyne (1904) 24 Sup. Ct. 383, 386, 192 U. S. 418, 48 L. Ed. 504; Hartman v. U. S. (1909) 168 Fed. 30, 94 C. C. A. 124; Hastings v. Herold (C. C. 1910) 184 Fed. 759; In re Kinney (D. C. 1900) 102 Fed. 468, 469.

§ 5978. (Act May 9, 1902, c. 784, § 4.) Special taxes upon manufacturers of, or dealers in, process or renovated butter or adulterated butter.

Special taxes are imposed as follows:

Manufacturers of process or renovated butter shall pay fifty dollars per year and manufacturers of adulterated butter shall pay six hundred dollars per year. Every person who engages in the production of

process or renovated butter or adulterated butter as a business shall be considered to be a manufacturer thereof.

Wholesale dealers in adulterated butter shall pay a tax of four hundred and eighty dollars per annum, and retail dealers in adulterated butter shall pay a tax of forty-eight dollars per annum. Every person who sells adulterated butter in less quantities than ten pounds at one time shall be regarded as a retail dealer in adulterated butter.

Every person who sells adulterated butter shall be regarded as a dealer in adulterated butter. And sections thirty-two hundred and thirty-two, thirty-two hundred and thirty-three, thirty-two hundred and thirty-four, thirty-two hundred and thirty-five, thirty-two hundred and thirty-six, thirty-two hundred and thirty-seven, thirty-two hundred and thirty-eight, thirty-two hundred and thirty-nine, thirty-two hundred and forty, thirty-two hundred and forty-one, and thirty-two hundred and forty-three of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special taxes imposed by this section and to the person upon whom they are imposed. (32 Stat. 194.)

These were provisions of section 4 of the Oleomargarine Act of 1902, cited above.

Other provisions of that act, relating to tax on oleomargarine, process butter, etc., are set forth post, §§ 6233–6239, 6241.

R. S. §§ 3232–3241, 3243, mentioned in this section, are set forth ante, §§ 5955–5959, 5961–5964, 5970.

Notes of Decisions

Tax as dependent on "knowingly" engaging in business.—A dealer in adulterated butter is liable to the tax imposed whether he "knowingly" engaged in the business or not. C. H. Lawrence & Co. v. Seyburn (1913) 202 Fed. 913, 121 C. C. A. 271.

Cited without definite application, Coopersville Co-operation Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595.

§ 5979. (Act June 6, 1896, c. 337, § 3.) Special taxes upon manufacturers of, or dealers in, filled cheese.

Special taxes are imposed as follows:

Manufacturers of filled cheese shall pay four hundred dollars for each and every factory per annum. Every person, firm, or corporation who manufactures filled cheese for sale shall be deemed a manufacturer of filled cheese.

Wholesale dealers in filled cheese shall pay two hundred and fifty dollars per annum. Every person, firm, or corporation who sells or offers for sale filled cheese in the original manufacturer's packages for resale, or to retail dealers as hereinafter defined, shall be deemed a wholesale dealer in filled cheese.

But any manufacturer of filled cheese who has given the required bond and paid the required special tax, and who sells only filled cheese of his own production, at the place of manufacture, in the original packages, to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in filled cheese on account of such sales.

Retail dealers in filled cheese shall pay twelve dollars per annum. Every person who sells filled cheese at retail, not for resale, and for actual consumption, shall be regarded as a retail dealer in filled cheese, and sections thirty-two hundred and thirty-two, thirty-two hundred and thirty-three, thirty-two hundred and thirty-four, thirty-two hundred and thirty-five, thirty-two hundred and thirty-six, thirty-two hundred and thirty-seven, thirty-two hundred and thirty-eight, thirty-two hundred and thirty-nine, thirty-two hundred and forty, thirty-two hundred and forty-one, thirty-two hundred and forty-three of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special taxes imposed

by this section and to the persons, firms, or corporations upon whom they are imposed: Provided, That all special taxes under this Act shall become due on the first day of July in every year, or on commencing any manufacture, trade, or business on which said tax is imposed. In the latter case the tax shall be reckoned proportionately from the first day of the month in which the liability to the special tax commences to the first day of July following. (29 Stat. 253.)

This section was part of the Filled Cheese Act, cited above.

Other sections of the act, relating to the tax on filled cheese, etc., are set forth post, §§ 6242–6257.

R. S. §§ 3232–3241, 3243, mentioned in this section, are set forth ante, §§ 5955–5959, 5961–5964, 5970.

All special taxes become due July 1st in each year, or on commencing the business, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 53, ante, § 5960.

§ 5980. (Act June 13, 1898, c. 448, § 36.) Special taxes upon manufacturers or packers of mixed flour.

Every person, firm, or corporation, before engaging in the business of making, packing, or repacking mixed flour, shall pay a special tax at the rate of twelve dollars per annum, the same to be paid and posted in accordance with the provisions of sections thirty-two hundred and forty-two and thirty-two hundred and thirty-nine of the Revised Statutes, and subject to the fines and penalties therein imposed for any violation thereof. (30 Stat. 467.)

This was a provision of the War Revenue Act of June 13, 1898, c. 448, § 36, cited above.

Other provisions of this act, relating to the tax on mixed flour, are set forth post, §§ 6258–6270.

Special tax stamps were required to be exhibited in the taxpayer's place of business, by R. S. § 3239, ante, § 5962.

Carrying on business without payment of the special tax was punishable by R. S. § 3242, ante, § 5965.

All special taxes become due July 1st in each year, or on commencing the business, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 53, ante, § 5960.

§ 5980a. (Act Sept. 8, 1916, c. 463, § 407 [1].) Corporation tax; amount; mode of assessment on insurance companies; computation of tax; exemption; credit to corporation paying other form of tax; exemption of corporations not doing business; tax on corporations organized in foreign countries; exemptions; credit in case of payment of other form of tax.

That on and after January first, nineteen hundred and seventeen, special taxes shall be, and hereby are, imposed annually, as follows, that is to say:

Every corporation, joint-stock company or association, now or hereafter organized in the United States for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States, or any State or Territory of the United States, shall pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint-stock company or association, or insurance company, equivalent to 50 cents for each $1,000 of the fair value of its capital stock and in estimating the value of capital stock the surplus and undivided profits shall be included: Provided, That in the case of insurance companies such deposits and reserve funds as they are required by law or contract to maintain or hold for the protection of or payment to or apportionment among policyholders shall not be included. The amount of such annual tax shall in all cases be computed on the basis of the fair average value of the capital stock for the preceding year: Provided, That for the purpose of this tax an exemption of $99,000 shall be allowed from the capital stock as defined in this paragraph of

each corporation, joint-stock company or association, or insurance company: Provided further, That a corporation, joint-stock company or association, or insurance company, actually paying the tax imposed by section three hundred and one of Title III of this Act shall be entitled to a credit as against the tax imposed by this paragraph equal to the amount of the tax so actually paid: And provided further, That this tax shall not be imposed upon any corporation, joint-stock company or association, or insurance company not engaged in business during the preceding taxable year, or which is exempt under the provisions of section eleven, Title I, of this Act.

Every corporation, joint-stock company or association, or insurance company, now or hereafter organized for profit under the laws of any foreign country and engaged in business in the United States shall pay annually a special excise tax with respect to the carrying on or doing business in the United States by such corporation, joint-stock company or association, or insurance company, equivalent to 50 cents for each $1,000 of the capital actually invested in the transaction of its business in the United States: Provided, That in the case of insurance companies such deposits or reserve funds as they are required by law or contract to maintain or hold in the United States for the protection of or payment to or apportionment among policyholders, shall not be included. The amount of such annual tax shall in all cases be computed on the basis of the average amount of capital so invested during the preceding year: Provided, That for the purpose of this tax an exemption from the amount of capital so invested shall be allowed equal to such proportion of $99,000 as the amount so invested bears to the total amount invested in the transaction of business in the United States or elsewhere: Provided, further, That this exemption shall be allowed only if such corporation, joint-stock company or association, or insurance company makes return to the Commissioner of Internal Revenue, under regulations prescribed by him, with the approval of the Secretary of the Treasury, of the amount of capital invested in the transaction of business outside the United States: And provided further, That a corporation, joint-stock company or association, or insurance company actually paying the tax imposed by section three hundred and one of Title III of this act, shall be entitled to a credit as against the tax imposed by this paragraph equal to the amount of the tax so actually paid: And provided further, That this tax shall not be imposed upon any corporation, joint-stock company or association, or insurance company not engaged in business during the preceding taxable year, or which is exempt under the provisions of section eleven, Title I, of this Act. (39 Stat. 789.)

Title III, referred to above, is set forth post, §§ 6336¼a–6336¼m.

Title I, referred to above, is set forth post, §§ 5887, 5895, 5896, 5899, 5948, 6336a–6336m.

Act Oct. 22, 1914, c. 331, § 3, dealt with the subject-matter of this section, and sections 5980b–5980i, post. That act is repealed by Act Sept. 8, 1916, c. 463, § 410, set forth post, § 5980*l*, except that said section 3 is to remain in force till January 1, 1917.

Act Oct. 3, 1913, c. 16, § IV, subd. S, repeals Act Aug. 5, 1909, c. 6, §§ 1–41, leaving section 38 thereof, imposing a special excise tax on corporations, in operation for a limited time. The limitation on such repealing clause is superseded by that part of Act Sept. 8, 1916, c. 463, set forth herein as sections 5980a–5980i.

Act Oct. 22, 1914, c. 331, § 3(1), imposes a special tax on bankers, and reads as follows:

"On and after November first, nineteen hundred and fourteen, special taxes shall be, and hereby are, imposed annually as follows, that is to say: First. Bankers shall pay $1 for each $1,000 of capital used or employed, and in estimating capital surplus and undivided profits shall be included. The

amount of such annual tax shall in all cases be computed on the basis of the capital, surplus, and undivided profits for the preceding fiscal year. Every person, firm, or company, and every incorporated or other bank, having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or sale, shall be a banker under this Act: Provided, That any postal savings bank, or savings bank having no capital stock, and whose business is confined to receiving deposits and loaning or investing the same for the benefit of its depositors, and which does no other business of banking, shall not be subject to this tax." This provision is expressly repealed by Act Sept. 8, 1916, c. 463, § 410, set forth post, § 5980*l* such repeal to take effect January 1, 1917.

All administrative or special provisions of law are made part of Title IV of Act Sept. 8, 1916, c. 331, under which the above provision appears, by section 409 of such title, set forth post, § 5980k.

Section 900 of Act Sept. 8, 1916, c. 463, set forth post, § 6371a, provides that an adjudication of the invalidity of a part of the act shall not invalidate the rest of the act.

Section 902 of such act, set forth post, § 6371b, provides that it shall take effect on the day after its passage unless otherwise provided, and repeals all inconsistent acts.

Notes of Decisions

For decisions based on superseded Act August 5, 1909, imposing an excise tax computed on net income, see notes under §§ 6300–6309, post.

§ 5980b. (Act Sept. 8, 1916, c. 463, § 407 [2].) Tax on brokers.

Second. Brokers shall pay $30. Every person, firm, or company, whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities, for others, shall be regarded as a broker. (39 Stat. 790.)

Act Oct. 22, 1914, c. 331, § 3(2), repealed as stated in the note to § 5980a, ante, was in the same language as above, except that it contained the words "themselves or" before the word "others," and also contained the following proviso: "Provided, That any person having paid the special tax as a banker shall not be required to pay the special tax as a broker."

BROKERS UNDER FORMER REVENUE LAWS

Brokers under former law in general.—Under the internal revenue act of June 30, 1864, as amended by the act of March 3, 1865, the sales of stocks, bonds, and securities made by "brokers" for themselves were subject to the same duties as those made by them for others. U. S. v. Cutting (1865) 70 U. S. (3 Wall.) 441, 18 L. Ed. 241.

Under the internal revenue act as amended, extending the definition of "brokers" so as to make it include persons selling securities "for themselves or others," bankers, who sell the federal securities not otherwise than for the United States and for themselves, and who, therefore, do not sell them for others or for a commission, are not liable to pay the duties imposed upon "brokers and bankers doing business as brokers." U. S. v. Fisk (1865) 70 U. S. (3 Wall.) 445, 18 L. Ed. 243, affirming (C. C. 1865) Fed. Cas. No. 15,104.

The provision in Act March 3, 1865, extending the definition of "brokers" given in Act June 30, 1864, § 79, subd. 9, does not apply to section 99 of the act of 1864. U. S. v. Fisk (C. C. 1865) Fed. Cas. No. 15,104.

A person purchasing stock for others in his own name, advancing his own money, and holding the stock as security, is liable to a tax as a broker. Clark v. Gilbert (C. C. 1866) Fed. Cas. No. 2,822.

Definition of broker under the internal revenue tax acts. Peabody v. Gilbert (C. C. 1866) Fed. Cas. No. 10,868.

A farmer occasionally buying and selling stock in connection with his *main* pursuit is not within the statute. U. S. v. Kenton (C. C. 1867) Fed. Cas. No. 15,526.

Taxation of brokers under Acts June 30, 1864, and March 3, 1865. Northrup v. Shook (C. C. 1872) Fed. Cas. No. 10,329.

Produce broker.—A person whose occupation is to sell agricultural produce in public market is liable to a tax as a "produce broker" (Act 1866, § 79), though the produce is raised by himself upon his farm. U. S. v. Simons (D. C. 1870) Fed. Cas. No. 16,291.

Real estate agents.—A real estate agent, doing nothing by way of negotiating "purchase or sale of securities," is not required by the United States revenue laws to pay a tax. Rounds v. Allee (1902) 89 N. W. 1098, 116 Iowa, 345.

The fact that a real estate agent has taken out no license under the internal revenue laws will not affect his right to recover compensation. Ruckman v. Bergholz (1874) 37 N. J. Law (8 Vroom) 437.

Bankers.—A person having a license of a banker, who receives stocks, etc., and sells them, charging as a banker, is not liable to the tax imposed upon brokers by Act June 30, 1864, § 99. Clark v. Gilbert (C. C. 1866) Fed. Cas. No. 2,822.

Taxation of bankers as doing business as brokers under Acts June 30, 1864, and March 3, 1865. Northrup v. Shook (C. C. 1872) Fed. Cas. No. 10,329.

Express companies.—Express companies issuing money orders and travelers' checks are not taxable as brokers under the war revenue act of June 13, 1898 (30 Stat. 448). (1900) 23 Op. Atty. Gen. 139.

Money orders and travelers' checks as at present issued by certain express companies do not come within the legal definition of bills of exchange or checks, but possess more of the characteristics of promissory notes. Id.

The issuing of these orders by express companies upon themselves is not a sale of promissory notes. It is merely an incident to their business as carriers, and does not constitute them brokers. Id.

§ 5980c. (Act Sept. 8, 1916, c. 463, § 407 [3].) Tax on pawnbrokers.

Third. Pawnbrokers shall pay $50. Every person, firm, or company whose business or occupation it is to take or receive, by way of pledge, pawn, or exchange, any goods, wares, or merchandise, or any kind of personal property whatever, as security for the repayment of money loaned thereon, shall be deemed a pawnbroker. (39 Stat. 790.)

Act Oct. 22, 1914, c. 331, § 3(3), repealed as stated in the note under § 5980a, ante, is in the identical language of the above provision.

§ 5980d. (Act Sept. 8, 1916, c. 463, § 407 [4].) Tax on ship brokers.

Fourth. Ship brokers shall pay $20. Every person, firm, or company whose business it is as a broker to negotiate freights and other business for the owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels, shall be regarded as a ship broker under this section. (39 Stat. 791.)

Act Oct. 22, 1914, c. 331, § 3(4), repealed as stated in the note to § 5980a, ante, provided as follows: "Fourth. Commercial brokers shall pay $20. Every person, firm, or company whose business it is as a broker to negotiate sales or purchases of goods, wares, produce, or merchandise, or to negotiate freights and other business for the owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels, shall be regarded as a commercial broker under this Act."

Commercial Brokers under Former Revenue Laws

Who were "commercial brokers" under former law.—Persons who sell goods in their own name, at their own store, on commission, and have possession of the goods as soon as the sales are made, and deliver them to their customers, are not "commercial brokers," within Act June 30, 1864, § 79, cl. 14, as amended by Act July 13, 1866, defining such brokers as persons who negotiate sales or purchases of goods, wares, or merchandise. Slack v. Tucker (1874) 90 U. S. (23 Wall.) 321, 23 L. Ed. 143.

Right to compensation under former law.—To entitle a plaintiff to recover compensation for "negotiating freights for the owners of vessels," within Act June 30, 1864, c. 173, § 79, cl. 14, defining such person as a commercial broker, and requiring him to pay $20 for a license, and making it highly penal to carry on such business without a license, plaintiff must prove that he was licensed as a commercial broker. There can be no recovery for acts done in direct contravention of an express statute. Harding v. Hagar (1872) 60 Me. 340.

A commercial broker cannot recover commissions, unless he has taken out a license as required by internal revenue laws. Holt v. Green (1873) 73 Pa. (23 P. F. Smith) 198, 13 Am. Rep. 737.

Violations of law.—A person is not liable for a fine for pursuing the business of a cattle broker without a license, unless it appear that he dealt in cattle or hogs as his principal business. U. S. v. Kenton (C. C. 1867) Fed. Cas. No. 15,526.

§ 5980e. (Act Sept. 8, 1916, c. 463, § 407 [5].) Tax on custom house brokers.

Fifth. Customhouse brokers shall pay $10. Every person, firm,

or company whose occupation it is, as the agent of others, to arrange entries and other customhouse papers, or transact business at any port of entry relating to the importation or exportation of goods, wares, or merchandise, shall be regarded as a customhouse broker. (39 Stat. 791.)

Act Oct. 22, 1914, c. 331, § 3(5), repealed as stated in the note to § 5980a, ante, was in the exact language of the above provision.

§ 5980f. (Act Sept. 8, 1916, c. 463, § 407 [6].) Tax on theaters, museums, and concert halls.

Sixth. Proprietors of theaters, museums, and concert halls, where a charge for admission is made, having a seating capacity of not more than two hundred and fifty, shall pay $25; having a seating capacity of more than two hundred and fifty and not exceeding five hundred, shall pay $50; having a seating capacity exceeding five hundred and not exceeding eight hundred, shall pay $75; having a seating capacity of more than eight hundred, shall pay $100. Every edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance money is received, not including halls or armories rented or used occasionally for concerts or theatrical representations, shall be regarded as a theater: Provided, That in cities, towns, or villages of five thousand inhabitants or less the amount of such payment shall be one-half of that above stated: Provided further, That whenever any such edifice is under lease at the passage of this Act, the tax shall be paid by the lessee, unless otherwise stipulated between the parties to said lease. (39 Stat. 791.)

Act Oct. 22, 1914, c. 331, § 3(6), repealed as stated in the notes to § 5980a, ante, was in the exact language of the above provision, except that it did not contain the first proviso.

§ 5980g. (Act Sept. 8, 1916, c. 463, § 407 [7].) Tax on circuses.

Seventh. The proprietor or proprietors of circuses shall pay $100. Every building, space, tent, or area where feats of horsemanship or acrobatic sports or theatrical performances not otherwise provided for in this section are exhibited shall be regarded as a circus: Provided, That no special tax paid in one State, Territory, or the District of Columbia shall exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be imposed for exhibitions within any one State, Territory, or District. (39 Stat. 791.)

Act Oct. 22, 1914, c. 331, § 3(7), repealed as stated in the notes to § 5980a, ante, is identical in substance with the above provision.

§ 5980h. (Act Sept. 8, 1916, c. 463, § 407 [8].) Tax on enumerated public exhibits.

Eighth. Proprietors or agents of all other public exhibitions or shows for money not enumerated in this section shall pay $10: Provided, That a special tax paid in one State, Territory, or the District of Columbia shall not exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be required for exhibitions within any one State, Territory, or the District of Columbia: Provided further, That this paragraph shall not apply to Chautauquas, lecture lyceums, agricultural or industrial fairs, or exhibitions held under the auspices of religious or charitable associations: Provided further, That an aggregation of entertainments, known as a street fair, shall not pay a larger tax than $100 in any State, Territory, or in the District of Columbia. (39 Stat. 791.)

Act Oct. 22, 1914, c. 331, § 3(8), repealed as stated in the notes under § 5980a, ante, was identical in language with the above provision, except that it did not contain the second proviso.

§ 5980i. (Act Sept. 8, 1916, c. 463, § 407 [9].) Tax on bowling alleys and billiard rooms.

Ninth. Proprietors of bowling alleys and billiard rooms shall pay $5 for each alley or table. Every building or place where bowls are thrown or where games of billiards or pool are played, except in private homes, shall be regarded as a bowling alley or a billiard room, respectively. (39 Stat. 791.)

Act Oct. 22, 1914, c. 331, § 3(9), repealed as stated in notes under § 5980a, ante, was in the language of this section, except that it used the words "and that are open to the public with or without price" in the place of the words "except in private homes."

Act Oct. 22, 1914, c. 331, § 3(10), repealed as stated in the notes to § 5980a, ante, provided as follows:

"Tenth. Commission merchants shall pay $20. Every person, firm, or company whose business or occupation it is to receive into his or its possession any goods, wares, or merchandise to sell the same on commission shall be regarded as a commission merchant: Provided, That any person having paid the special tax as a commercial broker shall not be required to pay the special tax as a commission merchant: Provided further, That this provision shall not apply to commission houses run upon a cooperative plan."

OWNERS OF BOWLING ALLEYS AND BILLIARD ROOMS UNDER FORMER REVENUE LAWS

Liability to tax under former law.—A person in possession and control of a billiard table in a place open to the public is liable prima facie to pay the special tax, though the general property and ultimate control of the table or place are in another. U. S. v. Howard (D. C. 1871) Fed. Cas. No. 15,402.

Indictments.—An allegation that defendant carried on the business of keeping a billiard table in a particular building is a sufficient allegation that he kept a billiard room, and was the proprietor thereof. U. S. v. Howard (D. C. 1871) Fed. Cas. No. 15,402.

§ 5980j. (Act Sept. 8, 1916, c. 463, § 408.) Tax on tobacco, cigar, and cigarette manufacturers; computation of amount; penalty for failure to pay tax imposed by this title.

That on and after January first, nineteen hundred and seventeen, special taxes on tobacco, cigar, and cigarette manufacturers shall be, and hereby are, imposed annually as follows, the amount of such annual taxes to be computed in all cases on the basis of the annual sales for the preceding fiscal year:

Manufacturers of tobacco whose annual sales do not exceed fifty thousand pounds shall each pay $3;

Manufacturers of tobacco whose annual sales exceed fifty thousand and do not exceed one hundred thousand pounds shall each pay $6;

Manufacturers of tobacco whose annual sales exceed one hundred thousand and do not exceed two hundred thousand pounds shall each pay $12;

Manufacturers of tobacco whose annual sales exceed two hundred thousand pounds shall each pay at the rate of 8 cents per thousand pounds, or fraction thereof;

Manufacturers of cigars whose annual sales do not exceed fifty thousand cigars shall each pay $2;

Manufacturers of cigars whose annual sales exceed fifty thousand and do not exceed one hundred thousand cigars shall each pay $3;

Manufacturers of cigars whose annual sales exceed one hundred thousand and do not exceed two hundred thousand cigars shall each pay $6;

Manufacturers of cigars whose annual sales exceed two hundred thousand and do not exceed four hundred thousand cigars shall each pay $12;

Manufacturers of cigars whose annual sales exceed four hundred thousand cigars shall each pay at the rate of 5 cents per thousand cigars, or fraction thereof;

Manufacturers of cigarettes, including small cigars weighing not more than three pounds per thousand, shall each pay at the rate of 3 cents for every ten thousand cigarettes, or fraction thereof.

In arriving at the amount of special tax to be paid under this section, and in the levy and collection of such tax, each person, firm, or corporation engaged in the manufacture of more than one of the classes of articles specified in this section shall be considered and deemed a manufacturer of each class separately.

Every person who carries on any business or occupation for which special taxes are imposed by this title, without having paid the special tax therein provided, shall, besides being liable to the payment of such special tax, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than $500, or be imprisoned not more than six months, or both, in the discretion of the court. (39 Stat. 791.)

This was a provision of "An act to increase the revenue, and for other purposes." By section 410 of the act, post, § 5980*l*, Act Oct. 22, 1914, c. 331, § 4, is repealed, such repeal to become effective January 1, 1917. Act Oct. 22, 1914, c. 331, § 4, read as follows:

"On and after November first, nineteen hundred and fourteen, special taxes on tobacco dealers and manufacturers shall be and hereby are imposed annually as follows, the amount of such annual taxes to be computed in all cases on the basis of the annual sales for the preceding fiscal year:

"Dealers in leaf tobacco whose annual sales or transfers do not exceed fifty thousand pounds shall each pay $6. Dealers in leaf tobacco whose annual sales or transfers exceed fifty thousand and do not exceed one hundred thousand pounds shall pay $12, and if their annual sales or transfers exceed one hundred thousand pounds shall pay $24: Provided, That dealers in leaf tobacco whose annual sales or transfers do not exceed one thousand pounds shall be exempt from the tax herein imposed on dealers in leaf tobacco.

"Dealers in tobacco, not specially provided for in this section, whose annual receipts from the sale of tobacco exceed $200, shall each pay $4.80 for each store, shop, or other place in which tobacco in any form is sold.

"Every person whose business it is to sell, or offer for sale, manufactured tobacco, snuff, cigars, or cigarettes shall be regarded as a dealer in tobacco: Provided, That no manufacturer of tobacco, snuff, cigars, or cigarettes shall be required to pay a special tax as a dealer in manufactured tobacco, snuff, cigars, or cigarettes for selling his own products at the place of manufacture.

"Manufacturers of tobacco whose annual sales do not exceed one hundred thousand pounds shall each pay $6.

"Manufacturers of tobacco whose annual sales exceed one hundred thousand and do not exceed two hundred thousand pounds shall each pay $12.

"Manufacturers of tobacco whose annual sales exceed two hundred thousand and do not exceed four hundred thousand pounds shall each pay $24.

"Manufacturers of tobacco whose annual sales exceed four hundred thousand and do not exceed one million pounds shall each pay $60.

"Manufacturers of tobacco whose annual sales exceed one million and do not exceed five million pounds shall each pay $300.

"Manufacturers of tobacco whose annual sales exceed five million and do not exceed ten million pounds shall each pay $600.

"Manufacturers of tobacco whose annual sales exceed ten million and do not exceed twenty million pounds shall each pay $1,200.

"Manufacturers of tobacco whose annual sales exceed twenty million pounds shall each pay $2,496.

"Manufacturers of cigars whose annual sales do not exceed one hundred thousand cigars shall each pay $3.

"Manufacturers of cigars whose annual sales exceed one hundred thousand and do not exceed two hundred thousand cigars shall each pay $6.

"Manufacturers of cigars whose annual sales exceed two hundred thousand and do not exceed four hundred thousand cigars shall each pay $12.

"Manufacturers of cigars whose annual sales exceed four hundred thousand and do not exceed one million cigars shall each pay $30.

"Manufacturers of cigars whose annual sales exceed one million and do not exceed five million cigars shall each pay $150.

"Manufacturers of cigars whose annual sales exceed five million and do not exceed twenty million cigars shall each pay $600.

"Manufacturers of cigars whose annual sales exceed twenty million and do not exceed forty million cigars shall each pay $1,200.

"Manufacturers of cigars whose annual sales exceed forty million cigars shall each pay $2,496.

"Manufacturers of cigarettes whose annual sales do not exceed one million cigarettes shall each pay $12.

"Manufacturers of cigarettes whose annual sales exceed one million and do not exceed two million cigarettes shall each pay $24.

"Manufacturers of cigarettes whose annual sales exceed two million and do not exceed five million cigarettes shall each pay $60.

"Manufacturers of cigarettes whose annual sales exceed five million and do not exceed ten million cigarettes shall each pay $120.

"Manufacturers of cigarettes whose annual sales exceed ten million and do not exceed fifty million cigarettes shall each pay $600.

"Manufacturers of cigarettes whose annual sales exceed fifty million and do not exceed one hundred million cigarettes shall each pay $1,200.

"Manufacturers of cigarettes whose annual sales exceed one hundred million cigarettes shall each pay $2,496.

"In arriving at the amount of license tax to be paid hereunder, and in the levy and collection of such tax, each person, firm, or corporation engaged in the manufacture of cigars, cigarettes (including little cigars), or tobacco shall be considered and deemed a single manufacturer.

"And every person who carries on any business or occupation for which special taxes are imposed by this Act, without having paid the special tax herein provided, shall, besides being liable to the payment of such special tax, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than $500, or be imprisoned not more than six months, or both, at the discretion of the court: Provided, That the special taxes imposed by this Act and payable during the special tax year ending June thirtieth, nineteen hundred and sixteen, shall be collected and paid proportionately for the period during which such taxes shall remain in force during said year."

Act June 13, 1898, c. 448, § 4, 30 Stat. 450, imposed a special tax on dealers in and manufacturers of tobacco and cigars. This act was repealed by Act April 12, 1902, c. 500, § 5, 32 Stat. 97.

R. S. § 3244, post, § 6176, imposed a special tax on dealers in tobacco. That section was amended by Act March 1, 1879, c. 125, § 14, 20 Stat. 343, and by Act March 3, 1883, c. 121, 22 Stat. 488. The special tax provisions were repealed by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, post, § 6177.

By section 409 of Act Sept. 8, 1916, c. 463, set forth post, § 5980k, all administrative provisions of law, so far as applicable, are made applicable in the enforcement of the tax hereby imposed.

R. S. § 3367, set forth post, § 6173a, makes it an offense to purchase or receive manufactured tobacco or snuff from any manufacturer who has not paid the special tax.

R. S. § 3372, set forth post, § 6181, imposes a penalty on manufacturers of tobacco for removing stamps from tobacco, or selling tobacco without having paid the special tax.

R. S. § 3400, set forth post, § 6210, provides for a forfeiture for removal or sale of cigars without payment of the special tax.

R. S. § 3405, set forth post, § 6213a, imposes a penalty on buyers of cigars from a manufacturer who has not paid the special tax.

Dealers in Tobaccos under Former Revenue Laws

Dealers in general.—Employers who buy tobacco and deal it out to their employés at cost, charging them with its cash cost when thus delivered, were subject to the special tax required to be paid, under R. S. § 3244, by those "whose business it is to sell or offer for sale manufactured tobacco." U. S. v. Vinson (D. C. 1881) 8 Fed. 507.

A single sale of all the merchandise which a person has on hand, who is going out of a business formerly carried on by him, does not constitute the seller a "dealer" within the meaning of the revenue laws of the United States, which require a license for making sales. Goodwin v. Clark (1876) 65 Me. 280.

Incorporated club.—An incorporated club may recover the price of cigars sold without a United States license; for, the sale of cigars not being prohibited, the selling without government license does not make the sale unlawful. Carteret Club of Elizabeth v. Florence (1880) 3 N. J. Law, 208.

Commission merchant.—A commission merchant engaged in the sale of manufactured tobacco is not liable to be taxed for the revenue stamps required to be affixed to the tobacco before the removal thereof from a bonded warehouse, unless they were at the time of such sale so affixed, whereby they entered into the value of the tobacco and formed a part of the price thereof. Jones v. Van Benthuysen (1880) 103 U. S. 87, 26 L. Ed. 477; Id. (1885) 115 U. S. 464, 6 Sup. Ct. 128, 29 L. Ed. 446.

Dealer in manufactured tobacco.—R. S. § 3244, had no other effect than not to require that a manufacturer who sells any tobaccos at the place of manufacture, in a manner consistent with other provisions of the law, shall pay a special tax as a dealer in manufactured to-

bacco. It related solely to the exaction of a tax, and not to the conferring of authority to sell. Ludloff v. U. S. (1883) 2 Sup. Ct. 475, 481, 108 U. S. 176, 27 L. Ed. 693.

Violation of statute in general.—The propriety of submitting to the jury the question whether an alleged sale of goods by a vendor to his brother was fraudulent as to creditors was not obviated by the fact, if it existed, that the sale of cigars (which were among the goods) was made in violation of the United States revenue laws, since the sale embraced property not covered by those laws. Wessels v. Beeman (1887) 66 Mich. 343, 33 N. W. 510.

Indictment or information.—As all persons dealing in tobacco are not liable to the special tax, an indictment must show that defendant was such a dealer as is required to pay the tax. U. S. v. Howard (D. C. 1871) Fed. Cas. No. 15,402..

The same rule applies in charging the same offense against a retail dealer. Id.

An affidavit stating that a party "sold tobacco" will not support an information charging the accused with carrying on the business of a retail dealer in tobacco without paying the special tax. U. S. v. Strickland (D. C. 1885) 25 Fed. 469.

§ 5980k. (Act Sept. 8, 1916, c. 463, § 409.) Other laws made applicable to this title.

That all administrative or special provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this title, and every person, firm, company, corporation, or association liable to any tax imposed by this title, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe. (39 Stat. 792.)

The above provision constitutes section 409 of "An act to increase the revenue, and for other purposes." It appears under the title heading. "Title IV—Miscellaneous Taxes." The various provisions of such title are set forth ante, §§ 5877a, 5980a–5980j, and post, §§ 5980*l*, 5980m, 5990, 6002, 6070a, 6110a, 6110b–6112, 6114–6114e, 6127a, 6144a, 6161.

§ 5980*l*. (Act Sept. 8, 1916, c. 463, § 410.) Repeal.

That the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue, and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," are hereby repealed, except sections three and four of such Act as so extended, which sections shall remain in force till January first, nineteen hundred and seventeen, and except that the provisions of the said Act shall remain in force for the assessment and collection of all special taxes imposed by sections three and four thereof, or by such sections as extended by said joint resolution, for any year or part thereof ending prior to January first, nineteen hundred and seventeen, and of all other taxes imposed by such Act, or by such Act as so extended, accrued prior to the taking effect of this title, and for the imposition and collection of all penalties or forfeitures which have accrued or may accrue in relation to any of such taxes. (39 Stat. 792.)

The above repealing provision appears in "An act to increase the revenue, and for other purposes," cited above, as section 410 of title 4, which is headed, "Miscellaneous Taxes." The positions in this compilation of the various provisions of title 4 is stated in the notes to the preceding section. The effect of the repealing clause is discussed in the notes to §§ 6115, 6119, 6122.

Res. Dec. 17, 1915, No. 4, referred to read as follows: "The provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen (Statutes at Large, volume thirty-eight, pages seven hundred and forty-five to

seven hundred and sixty-four, inclusive), are continued in full force and effect until and including December thirty-first, nineteen hundred and sixteen."

Sections 3 and 4, referred to, correspond to sections 407 and 408 of Act Sept. 8, 1916, c. 463, and are set forth ante, §§ 5980a–5980j.

§ 5980m. (Act Sept. 8, 1916, c. 463, § 412.) When act takes effect. That the provisions of this title shall take effect on the day following the passage of this Act, except where otherwise in this title provided. (39 Stat. 793.)

This was a provision of "An act to increase the revenue, and for other purposes," cited above, which appeared under title 4 of such act, headed "Miscellaneous Taxes." The other provisions of this title are set forth herein as sections 5877a, 5980a–5980*l*, 5990, 6002, 6070a, 6110a–6112, 6114–6114e, 6127a, 6161, 6346a.

CHAPTER FOUR

Distilled Spirits and Wines

Sec.
5981. Distiller, definition of.
5982. Distilled spirits, definition of.
5983. Standard of proof-spirits; prevention of frauds.
5984. Gallon as used in sales, definition of.
5985. Tax on distilled spirits.
5986. Tax on distilled spirits; stamps; time for payment of tax; deposit in warehouse.
5987. Adding substances to create fictitious proof; penalty.
5988. Tax on spirits removed without deposit in warehouse.
5989. Products of distillation containing spirits.
5990. Brandy made from apples, peaches, grapes, etc.
5991. Small distilleries may be exempted from certain requirements.
5992. Evading tax; penalty.
5993. Distiller defrauding or attempting to defraud United States of tax on spirits.
5994. Registry of stills, etc.
5995. Notice of intention to carry on business of distiller or rectifier.
5996. Notice by rectifier of intention to rectify, etc.; gauging; returns.
5997. Distiller to give bond.
5998. Bond not to be approved until law complied with.
5999. Distiller must be owner in fee-simple, or have written consent of owner, etc.
6000. Refusal of bond from person previously convicted.
6001. Plan of distillery.
6002. Surveys of distilleries.
6003. Notice by manufacturer of a still; penalty for setting up still without permit.
6004. Distilling on certain premises prohibited; penalty.
6005. Receiving-cisterns in distilleries.
6006. Breaking locks, gaining access to cistern, etc.; penalty.
6007. Furnaces, tubs, doublers, worm-tanks; penalty.
6008. Apparatus and fastenings.
6009. Distillery warehouse.
6010. Use of distillery warehouse by successor in business.
6011. When a warehouse becomes unsafe.
6012. Discontinuance of warehouse and transfer of merchandise.
6013. Store-keepers have charge under direction of collector.
6014. Custody and management of warehouse.
6015. Distiller to keep distillery accessible.
6016. Power of revenue officers to enter and examine distilleries; penalty for obstructing officer.
6017. Distillers and rectifiers to furnish facilities for examination; penalty for neglect.
6018. Officers to break up ground or walls in order to examine.
6019. Signs to be put up by distillers and rectifiers; penalty for neglect; penalty for using false signs, etc.
6020. Distillers not to carry on business until the law is complied with.
6021. Carrying on distillery without giving bond, etc.; penalty.
6022. Mash, wort, and vinegar; location and operation of vinegar factories; forfeitures; punishment.
6023. Location and operation of certain vinegar factories.
6024. No process for distilling between 11 p. m. of Saturday and 1 a. m. of Monday.
6025. Using material or removing spirits in absence of store-keeper; penalty.
6026. Emptying and filling fermenting tubs.
6027. Drawing off water, cleansing worm-tub, etc.
6028. Drawing off, gauging, etc., and removal of spirits to warehouse.
6029. Tax-paid spirits not to remain on distillery premises.

Sec.
6030. Forfeiture of unstamped packages.
6031. Gauger employing distiller, etc., to use brands or perform his duties; penalty.
6032. Gauger's returns.
6033. Fraudulent inspection, gauging, etc.; penalty.
6034. Distiller's entry of deposit in warehouse; bond for taxes; collection of taxes.
6035. Distiller's bond for taxes on spirits deposited in warehouses.
6036. Withdrawal from warehouse, entry for.
6037. Gauging, stamping, and branding spirits removed from warehouse.
6038. Removal, concealment, etc., of spirits contrary to law; penalty.
6039. Special bonded warehouses for grape brandy.
6040. Payment of tax on grape brandy; removal to special bonded warehouse.
6041. Special stamp on removal to special bonded warehouse.
6042. Deposit in warehouse; bond.
6043. Withdrawal from warehouse for transfer or exportation; entry; bond.
6044. Exportation of grape brandy.
6045. Discontinuance of warehouse and transfer of merchandise.
6046. Removal of grape brandy without compliance with act; assessment and collection of tax.
6047. Time for payment of tax on grape brandy; forfeitures.
6048. Rules and regulations.
6049. Failure to comply with provisions for deposit in special warehouse, etc.; punishable.
6050. Special bonded warehouse provisions extended to fruit brandy.
6051. Regauging at warehouse; allowance for loss.
6052. Allowance for loss of spirits in warehouse.
6053. Regauging.
6054. Allowance for loss of spirits deposited in warehouse extended.
6055. Allowance for leakage or loss on withdrawal of spirits from distillery warehouse for exportation.
6056. Tax on lost spirits covered by insurance not to be remitted.
6057. Allowance for leakage or loss on withdrawal of spirits from distillery warehouse to manufacturing warehouse.
6058. General bonded warehouses.
6059. Removal of spirits to general bonded warehouses.
6060. Stamp on removal to general bonded warehouse.
6061. Warehousing bonds.
6062. Withdrawal from general bonded warehouse.
6063. Previous provisions applicable to spirits deposited in general bonded warehouses.
6064. Tax on spirits removed from distillery warehouse to general bonded warehouse without compliance with requirements of act; excessive loss.
6065. Failure to deposit in general bonded warehouse in time, or removal therefrom without compliance with requirements of act; punishment; forfeitures.
6066. Alcohol withdrawn for scientific purposes.
6067. Withdrawal of alcohol for scientific purposes by unincorporated institutions.
6068. Withdrawal of spirits for medicinal preparations, etc., manufactured in bonded warehouse for export.
6069. Withdrawal of spirits from distillery warehouses for making sorghum sugar.
6070. Bottling of spirits in bond.
6070a. Bottling of gin in bond for export without payment of tax.
6071. Regulations for bottling of spirits in bond.
6072. Inspection, etc., of spirits bottled for export; drawback.
6073. Tax on deficiency of spirits bottled.
6074. Tax on spirits entered for export if case opened, or marks, etc., removed, changed, etc.
6075. Reusing stamp or bottle, and other violations of act, punishable.
6076. Forging stamps, etc., punishable.
6077. Bottled spirits subject to State law.
6078. Power of officers to detain packages on suspicion.
6079. Forfeiture of spirits unlawfully removed from distillery.
6080. Store-keeper unlawfully removing or allowing to be removed, etc.
6081. Store-keepers' warehouse-books and returns.
6082. Store-keepers to have charge of distillery and keep account of materials used, etc.
6083. Distillers' books; entries to be made.
6084. Books to be open to inspection and preserved two years.
6085. False entries, or omitting to keep or produce books; penalty.
6086. Using false weights or measures in ascertaining materials; penalty; using unregistered materials; penalty.
6087. Distillers' returns of production to collector.
6088. Distillers' returns of the number of barrels distilled.
6089. Monthly examination of distiller's return, etc.

Sec.
6090. Assessments for deficiency in production.
6091. Remission and refunding of assessments for deficient production of distillery.
6092. When distilling deemed commenced; suspension of work; penalty.
6093. Reduction of capacity; penalty.
6094. Stamps, how prepared and issued.
6095. Stamps, form of, how used.
6096. Accountability for stamp-books.
6097. Restamping tax-paid spirits, tobacco, etc., when stamps lost or destroyed.
6098. Officer using, or issuing, or permitting use of stamps, contrary to law; penalty.
6099. Rectifier's returns; penalty for unlawfully rectifying.
6100. Books to be kept by rectifiers and wholesale dealers; penalty; monthly transcript; penalty.
6101. Purchase of quantities greater than twenty gallons from one person, etc.
6102. Gauging, inspection, and stamping of rectified spirits.
6102a. Casks or packages dumped for rectification, or received from rectification, to be gauged, marked, etc., by gauger or by rectifier.
6103. Filling blanks, and affixing and protecting stamps.
6104. Spirits drawn into new packages to be gauged and branded; returns; forfeitures.
6105. Stamps and brands to be effaced from empty casks; penalty for omitting to efface, and for transporting in violation of law.
6106. Buying or selling spirit-casks having inspection-marks.
6107. Changing stamps, shifting spirits, etc.; penalty.
6108. Affixing imitation stamps on packages of distilled spirits; penalty.
6109. Removal within certain hours from distillery or rectifier's premises.
6110. (Superseded.)
6110a. What constitutes natural wine; what constitutes wine within meaning of act; sweetening of wine.
6110b. [a] Rate of tax on still wines and combinations sold as wine; classification of wines; abatement or refundment in case of payment of tax under other acts.
[b] Payment of tax to be made by affixing stamp; notice, bond and inventories; affixing stamps; not to apply to wines held by retail dealers defined by R. S. § 3244, or wines produced for family use; issuance of stamps; collection before stamps are prepared.
[c] Withdrawal of grape brandy or wine spirits from distillery or special bonded warehouse for fortification of wines; tax on wines; exemptions from payment of tax.
6111. Use of wine spirits to fortify pure sweet wines.
6112. Wine spirits and sweet wine defined.
6113. (Superseded.)
6114. Withdrawal of wine spirits from warehouse or registered distillery for fortifying sweet wines.
6114a. Removal of domestic wines to bonded premises; number of removals; tax on product of wines used as material.
6114b. Amount of tax payable on domestic and imported sparkling wines; regulations, etc.; exception of wines, etc., on which tax has been paid under other acts; preparation of revenue stamps; application of other laws; collection of tax by assessment instead of by stamps.
6114c. Penalty for violation of act; forfeiture of wines, etc.; prohibition as to mixing or blending not applicable; use of tax paid grain or other ethyl alcohol for fortification purposes.
6114d. Requiring use of spirit meters, locks, seals; assignment of gaugers or storekeeper-gaugers; compensation of gaugers.
6114e. Allowance for unavoidable loss of wines.
6114f. Rules and regulations.
6115. Withdrawal of wine spirits for fortifying wines for exportation.
6116. Reimportation of domestic wines exported.
6117. Unlawful use of wine spirits, not tax-paid, punishable.
6118. Recovery of wine spirits from fortified wines.
6119. Special gaugers for supervision of fortification of wines; compensation; bonds.
6120. Fermenting vats for manufacture of wines or of brandy for fortification thereof.
6121. Remission of tax on grape brandy accidentally destroyed.
6122. Unlawful recovery of spirits from fortified wines; penalty; blending fortified wines.
6123. Tax on alcoholic compounds coming from Porto Rico.
6124. Drawback on distilled spirits.
6125. Exportation of distilled spirits withdrawn from bonded warehouses.

Sec.
6126. Transportation bond on withdrawal of distilled spirits from bonded warehouse for exportation; export bond.
6127. Expense of providing and affixing stamps for casks for exportation.
6127a. Transfer in tanks or tank cars of distilled spirits for export.
6128. Release of distillery before judgment, in what cases.
6129. Distillery to be destroyed in certain cases of forfeiture; witnesses of destruction; reimbursement.
6130. When burden of proof is on claimant of spirits seized.
6131. Spirits sold under judicial process subject to tax; sale of spirits for taxes.
6132. Denatured alcohol for use in arts, etc., free of tax.
6133. Denatured alcohol for manufacture of chemicals, free of tax; rum.
6134. Central denaturing bonded warehouses authorized.
6135. Transfer of alcohol for denaturation from distilleries to denaturing bonded warehouses or to central denaturing plants.
6136. Unlawful use of alcohol withdrawn, etc., punishable.
6137. Manufacture of alcohol free of tax for denaturation.

§ 5981. (R. S. § 3247.) Distiller, definition of.

Every person who produces distilled spirits, or who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits, or who, by any process of evaporization, separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller.

Act July 20, 1868, c. 186, § 59, 15 Stat. 150.

Notes of Decisions

See note under § 5842.

General purpose of statute.—The provisions of this chapter were adopted solely to secure the payment of the tax imposed by law on distilled spirits. U. S. v. Ulrici (1884) 4 Sup. Ct. 288, 289, 111 U. S. 38, 28 L. Ed. 344.

The general purpose of the internal revenue law of July 20, 1868 (chapter 186), so far as relates to distilled spirits, is to lay a tax upon the product of distillation known as proof-spirits. (1868) 12 Op. Atty. Gen. 523.

The act has made decisive and peremptory distinctions between the production of proof-spirits and the rectification or purification or the production of other forms of alcoholic compounds. Id.

Distillers.—A manufacturer of vanilla or ginger extract by mixing the comminuted vanilla beans or ginger root with alcohol in a percolator, and who afterward recovers a part of the alcohol remaining in the mixture for reuse by distillation, is not a distiller within this section. Henry K. Wampole & Co. v. U. S. (1911) 191 Fed. 573, 112 C. C. A. 633, certiorari denied (1912) 32 Sup. Ct. 840, 225 U. S. 710, 56 L. Ed. 1268.

A rectifier of spirits distilled from domestic materials is not a distiller of spirituous liquors, within the meaning of Act July 24, 1813. U. S. v. Tenbroek (C. C. 1815) Fed. Cas. No. 16,446.

If a rectifier, by any process, manufactures spirits from fruits or berries, saloon washings containing fermented substances, or from sour beer, he becomes a distiller. R. S. §§ 3259, 3260, post, §§ 5994, 5995. U. S. v. Marshall (C. C. 1876) Fed. Cas. No. 15,726.

To make one in possession of a still a distiller, because he keeps mash, wort, or wash, the mash, wort, or wash kept must be such as will produce spirits on distillation. U. S. v. Frerichs (C. C. 1879) Fed. Cas. No. 15,166.

And a person who makes alcoholic vapor in the process of making vinegar by machinery, which is not adapted to the condensation of such vapor is not a distiller. Act July 13, 1866, §§ 21, 23; Act March 2, § 16. U. S. v. One Still (D. C. 1867) Fed. Cas. No. 15,956.

A manufacturer of vinegar, who, in the process, produces a fluid containing from 5 to 7 per cent. of spirits, with machinery which is not capable of producing a higher per cent., is not bound to take out a distiller's license. U. S. v. Two Barrels (D. C. 1867) Fed. Cas. No. 16,575.

Under Act March 2, 1867, § 16, a manufacturer of vinegar is not a distiller, although he uses a patent apparatus in which a mash, fermented in the same manner as for the production of whisky, is used. One Vaporizer (D. C. 1868) Fed. Cas. No. 10,537.

All persons having an interest in the business of distilling or directly aiding in the production of spirits for their use or benefit are distillers, and amenable to the provisions of the internal revenue laws. U. S. v. Howard (D. C. 1870) Fed. Cas. No. 15,401.

A vinegar manufacturer is liable as a distiller if, by the process used, he obtains alcohol from his mash so that he is saved the expense of purchasing the alcohol necessary for the manufacture of vinegar. U. S. v. Steen & Cwergius' Factory (D. C. 1872) Fed. Cas. No. 16,383; Same v. Distillery (D. C. 1877) Fed. Cas. No. 14,960.

A person is liable for illicit distilling under Act July 20, 1868, where the spirits extracted partake of the qualities of alcohol, irrespective of their degree of strength. U. S. v. Bagwell (D. C. 1874) Fed. Cas. No. 14,494.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Ridenour (D. C. 1902) 119 Fed. 411, 414.

§ 5982. (R. S. § 3248.) Distilled spirits, definition of.

Distilled spirits, spirits, alcohol, and alcoholic spirit, within the true intent and meaning of this act, is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation of grain, starch, molasses, or sugar, including all dilutions and mixtures of this substance; and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirit, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

Act July 20, 1868, c. 186, § 4, 15 Stat. 126.

Wine spirits and pure sweet wine were defined by Act Oct. 1, 1890, c. 1244, § 43, as amended by Act Aug. 27, 1894, c. 349, § 68, Act June 7, 1906, c. 3046, § 1, Act Oct. 22, 1914, c. 331, § 2, 38 Stat. 747, and Act Sept. 8, 1916, c. 463, § 402(c), post, § 6112.

Notes of Decisions

See notes under § 6125, post.

Medicinal preparation.—Under this section and section 5971, subd. 4, ante, it was held that, where a druggist, without paying the internal revenue tax imposed on retail liquor dealers, sold a medicinal preparation which was 88 per cent. proof spirits, more than sufficient to preserve the medicinal properties of any herbs, roots, or drugs contained therein, he was a retail liquor dealer within such section. U. S. v. Morfew (D. C. 1905) 136 Fed. 491.

Bay rum.—Bay rum is not within the enumeration of "distilled spirits," defined in this section as "ethyl alcohol, * * * including all dilutions and mixtures of this substance." Anderson v. Newhall (1908) 161 Fed. 906, 88 C. C. A. 511.

"Bay rum" is a fragrant spirit, obtained by distilling the leaves of the pimenta acris with rum, or by mixing the volatile oil procured from the leaves by distillation with alcohol, water, and acetic ether. It is also defined as an aromatic liquid obtained by distilling the leaves with the bayberry, or by mixing various oils, as the oils of myrica, of orange peel, and of pimenta, with alcohol. Under the decision of the Circuit Court of Appeals, it must be held that it is neither a "distilled spirit," as that term is defined by this section, nor a "product of distillation," within section 5989, post, providing for internal revenue taxation of products of distillation as distilled spirits. Roche v. Jordan (C. C. 1909) 175 Fed. 234.

Vermuth as wine.—Vermuth is not "wine" within either the commercial or the popular meaning of that term, and therefore is not subject to the stamp tax on "sparkling or other wines," provided in War Revenue Act June 13, 1898, c. 448, 30 Stat. 463. Treat v. Taylor (1908) 166 Fed. 1021, 91 C. C. A. 330, affirming judgment Taylor v. Treat (C. C. 1907) 153 Fed. 656.

Soakage of barrel of spirits.—Under this section, declaring it to be the true intent and meaning of internal revenue laws that all "distilled spirits, spirits, alcohol, and alcoholic spirit," shall be subject to the tax, the soakage of a barrel of spirits is liable to taxation if, by any process, it is extracted from the wood, so as to become merchantable. It is no obstacle to the collection of the tax thereon that the usual allowance for soakage was originally made on the package, the tax then paid, and the proper stamps affixed, or that there are no specific regulations by the commissioner of internal revenue for the collection of the tax on soakage so extracted. Hunter v. E. S. Corning & Co. (1898) 86 Fed. 913, 30 C. C. A. 483.

When tax attaches.—Under the internal revenue laws, the tax on spirts attaches as soon as they come into existence, and must be paid by the manufacturer, even in case of their destruction, unless the circumstances on which he relies for exemption come within the particular description in some one of the remedial statutes.

of tax on distilled spirits deposited in a bonded warehouse prior to Aug. 1, 1872, was temporary merely, and is omitted.

The tax on distilled spirits was increased to 90 cents on each proof gallon, or wine gallon when below proof, to be paid by the distiller, owner, or person in possession thereof before removal from the distillery bonded warehouse, and so much of this section as is inconsistent with these provisions was repealed by Act March 3, 1875, c. 127, § 1, 18 Stat. 339. The tax was increased to $1.10 on each proof gallon, or wine gallon when below proof, a proportionate tax at a like rate on fractional parts of such proof or wine gallon, excluding fractional parts less than one-tenth, to be paid by the distiller on or before the removal from the distillery or place of storage, by Act Aug. 27, 1894, c. 349, § 48, post, § 5986.

The word "seventy," in this section, inclosed in brackets, was superseded by said subsequent provisions.

Notes of Decisions

1. Tax as constitutional.
2. Construction of former laws.
3. Statute in force in Alaska.
4. When tax becomes due.
5. Increase or reduction of tax.
6. Rate of tax.
7. Tax on fractional part of gallon.
8. Liability for tax on illicit spirits.
9. Persons interested in use of distillery, etc.
10. Proprietor defined.
11. Liability of municipal corporation.
12. Tax on bay rum imported from Porto Rico.
13. Lien and enforcement thereof.

See notes under §§ 5908, 5982, and 5983, ante.

1. Tax as constitutional.—The tax imposed on distillers is constitutional. U. S. v. Singer (1872) 15 Wall. 111, 121, 21 L. Ed. 49.

2. Construction of former laws.—Construction of acts of March 3, 1791, May 8, 1792, Feb. 18, 1793, and April 6, 1802, in relation to the duties on domestic distilled spirits. U. S. v. Sweeney (D. C. 1859) Fed. Cas. No. 16,426.

3. Statute in force in Alaska.—Act July 20, 1868, imposing a tax on distilled spirits, being a general act, and passed since the acquisition of Alaska, is in force there. U. S. v. Seveloff (D. C. 1872) Fed. Cas. No. 16,252.

4. When tax becomes due.—The internal revenue tax on spirits becomes due as soon as the spirits are produced. United States Fidelity & Guaranty Co. of Baltimore, Md., v. U. S. (C. C. A. 1914) 220 Fed. 592.

5. Increase or reduction of tax.—When distilled spirits are only proof as defined by section 5983, ante, or less than proof, the tax is to be levied and collected by the wine gallon pursuant to this section; but, if the spirits are above proof, the excess is to be determined, and the tax thereon increased proportionately. Louisville Public Warehouse Co. v. Collector of Customs (1892) 49 Fed. 561, 567, 1 C. C. A. 371.

Spirits in a bonded warehouse at the time of the passage of Act March 7, 1864, are subject to the additional duty imposed by section 7. Westfall v. Shook (C. C. 1867) Fed. Cas. No. 17,448.

The statute which took effect March 3, 1875, changed the rate of duty upon spirituous liquors from 70 cents to 90 cents. An assessment was made for a period previous to and including March 3d at 70 cents. Held, that though the statute was in force during the whole of March 3d, so that the rate for that day should have been 90 cents, the taxpayer could not, on that account, dispute the validity of the assessment. U. S. v. O'Neill (C. C. 1884) 19 Fed. 567.

Act July 20, 1868, reducing the tax on distilled spirits, but requiring payment on the quantity manufactured, instead of the quantity remaining when it was withdrawn from bond, as under prior acts, and which took effect by its terms as to "all distilled spirits on which the tax prescribed by law has not been paid," as applied to spirits which had been previously placed in a bonded warehouse and had not been withdrawn, required payment of the tax upon the quantity in existence when the act was passed; being neither retroactive, so as to tax spirits which had, prior to its enactment, become lost by leakage, soakage, or evaporation, nor affected by a custom of the department, continued for a time after its passage, to accept payment on the quantity shown by a regauge at the time of withdrawal. Burrough v. Abel (C. C. 1900) 100 Fed. 66.

6. Rate of tax.—The tax must be paid at the rate prescribed by the law in force at the time the bond was given. U. S. v. Dutcher (C. C. 1868) Fed. Cas. No. 15,014.

7. Tax on fractional part of gallon.—Spirits were manufactured and placed in bond prior to July 20, 1868. Upon withdrawal, on July 26, 1869, plaintiff was required to pay taxes on 13.86 gallons more than the number of proof gallons, through the reckoning by the collector of each fraction of a gallon left over in each package, after the number of whole gallons therein had been counted, as a whole gallon. Held, in view of Act July 20, 1868 (15 Stat. 125), plaintiff could not recover the amount of the taxes collected on these extra gallons. Stuart v. Barnes (C. C. 1890) 43 Fed. 281.

8. Liability for tax on illicit spirits.—Knowledge by defendant that illicit spirits were being manufactured on the premises does not render him liable for the tax. U. S. v. Van Slyke (C. C. 1878) Fed. Cas. No. 16,610.

9. Persons interested in use of distillery, etc.—The stockholders of a corporation engaged in operating a distillery are "persons interested in the use of the distillery," within this section. U. S. v. Wolters (C. C. 1891) 46 Fed. 509; Richter v. Henningsan (1895) 42 P. 1077, 110 Cal. 530.

A person is not liable for the tax unless he has a direct interest in the business. An interest as lessor, or as a creditor who expected to collect his claim if the business proved successful, is not sufficient. U. S. v. Van Slyke (C. C. 1878) Fed. Cas. No. 16,-610.

The terms of this section, namely, "every person in any manner interested in the use of any still, distillery, or distilling apparatus shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom," include stockholders of private corporations engaged in distilling for gain. (1877) 15 Op. Atty. Gen. 559.

The stockholders of a corporation engaged in the business of distilling cannot properly be accepted as sureties upon the bond required of the corporation by section 6034, post, even if their individual liability for the debts of the corporation is, by the terms of the charter, limited to the amount of their stock. Such stockholders being already jointly and severally liable, under the provisions of this section, for the taxes imposed upon the spirits manufactured by the corporation, no additional security for the payment thereof would be gained by their suretyship. (1878) 16 Op. Atty. Gen. 10.

The liability imposed upon the stockholders by the internal revenue law is a liability distinct from that which they are under as such to the public with whom the corporation deals; it is a liability imposed by reason of the business in which the corporation whereof they are stockholders is engaged. Id.

10. Proprietor defined.—The word "proprietor" is used in the sense of an owner who has the exclusive right to and control over the premises, and includes a lessee. U. S. v. Van Slyke (C. C. 1878) Fed. Cas. No. 16,610.

11. Liability of municipal corporation.—A municipal corporation which engages in the business of distilling and selling ardent spirits is none the less liable for the internal revenue taxes thereon, because it had no authority under its charter to engage in the business. City of Salt Lake City v. Hollister (1886) 6 Sup. Ct. 1055, 118 U. S. 256, 30 L. Ed. 176, affirming (1882) 3 Utah, 200, 2 Pac. 200.

12. Tax on bay rum imported from Porto Rico.—The Circuit Court of Appeals having previously determined that under Foraker Act April 12, 1900, C.—§ 3, ante, § 3749, providing for the taxation of imports from Porto Rico, Porto Rican bay rum was not subject to customs duties because not distilled spirits nor the product of distillation, taxable under this section and section 5989, post, such construction could not be affected by the subsequent passage of Act Cong. Feb. 4, 1909, post, § 6123, declaring that on bay rum or any article containing alcohol afterwards brought from Porto Rico into the United States a tax should be paid on any spirits contained therein. Roche v. Jordan (C. C. 1909) 175 Fed. 234.

13. Lien and enforcement thereof.—The tax being a first lien, sureties on a bond of a distiller have the right to insist that, when the spirits are seized and sold by the United States for any reason whatever, the proceeds shall be first applied to the payment of the taxes and the bond thereby discharged. U. S. v. Ulrici (1884) 4 Sup. Ct. 288, 289, 290, 111 U. S. 38, 28 L. Ed. 344.

Under this section and section 5999, post, declaring that, where a distiller does not own the land on which his distillery is situated, he must file with the collector the written consent of the owner of the fee, or of any mortgagee, judgment creditor, or other person having a lien thereon, that the premises may be used for the purpose of distilling spirits, and stipulating that the lien of the United States for taxes shall have priority of such mortgage, etc., it was held that the consent provided for in section 5999, post, passes no interest in the land to the distiller, but merely gives to the United States a first lien for the taxes that may be due from him. Mansfield v. Excelsior Refinery Co. (1890) 10 Sup. Ct. 825, 830, 135 U. S. 326, 34 L. Ed. 162.

The lien can be enforced only by a suit in equity, in which the owners of the fee in the land, or of incumbrances on it, are made parties. Id.

The government has a first lien on spirits until the tax is paid. United States Fidelity & Guaranty Co. of Baltimore, Md., v. U. S. (C. C. A. 1914) 220 Fed. 592.

Failure of a purchaser of property leased for a distillery, with covenants to be subject to the lien of taxes and penalties, to appeal from an assessment thereon, precludes him, in a subsequent action against the collector, from showing that no tax or penalty was in fact due. Milan Distilling Co. v. Tillson (C. C. 1880) Fed. Cas. No. 9,539.

The lien of the government for its tax, and its possession by a storekeeper, is not a proprietary right. Hedger v. Union Ins. Co. (C. C. 1883) 17 Fed. 498.

Act 1867, making the land on which

whisky is distilled liable for the tax, does not apply where one distills on another's land without his consent. Gudger v. Bates (1874) 52 Ga. 285.

The lien of the United States for taxes on distilled spirits under the acts of July 13, 1866, and March 2, 1867, is valid against subsequent judgments on the distiller's real and personal estate. U. S. v. Black (Pa. 1869) 3 Brewst. 166.

Personal property of a distiller, not located on the distillery premises nor used in the process of distilling, is not subject to the lien for taxes on the spirits. Id.

The lien of the United States for tax upon distilled spirits under the acts of July 13, 1866, and March 2, 1867, is valid against subsequent judgments on the real and personal estate of the distiller. Id.

Where a distillery is sold on execution issuing out of a state court, the lien of the United States for taxes on distilled spirits must be first paid out of the proceeds of the execution sale, which priority will be recognized in the state court. Appeal of Dungan (1871) 68 Pa. (18 P. F. Smith) 204, 8 Am. Rep. 169.

Where the state court has issued execution against property used for a distillery, the property cannot be sold under the lien of the United States for taxes, but the taxes will be paid first out of the proceeds under the execution sale. Id.

See, also, notes under § 5982, ante.

Cited without definite application, U. S. v. Boecker (1874) 21 Wall. 652, 653, 22 L. Ed. 472; Hartman v. Bean (1878) 99 U. S. 393, 25 L. Ed. 455; Solomons v. U. S. (1890). 11 Sup. Ct. 88, 89, 137 U. S. 342, 34 L. Ed. 667; Jordan v. Roche (1913) 33 Sup. Ct. 573, 228 U. S. 436, 57 L. Ed. 908; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Crystal Springs Distillery Co. v. Cox (1892) 49 Fed. 555, 557, 1 C. C. A. 365; Anderson v. Newhall (1908) 161 Fed. 906, 88 C. C. A. 511; Pattison v. Dale (1912) 196 Fed. 5, 115 C. C. A. 639; Louisville Public Warehouse Co. v. Surveyor of Port at Louisville (C. C. 1891) 48 Fed. 372, 374; U. S. v. Peace (C. C. 1892) 48 Fed. 714, 715; Same v. Ridenour (D. C. 1902) 119 Fed. 411, 414.

§ 5986. (Act Aug. 27, 1894, c. 349, § 48.) Tax on distilled spirits; stamps; time for payment of tax; deposit in warehouse.

On and after the passage of this Act there shall be levied and collected on all distilled spirits in bond at that time, or that have been or that may be then or thereafter produced in the United States, on which the tax is not paid before that day, a tax of one dollar and ten cents on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon: Provided, That in computing the tax on any package of spirits all fractional parts of a gallon, less than one tenth, shall be excluded. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe and furnish suitable stamps denoting the payment of the internal-revenue tax imposed by this section; and until such stamps are prepared and furnished, the stamps now used to denote the payment of the internal-revenue tax on distilled spirits shall be affixed to all packages containing distilled spirits on which the tax imposed by this section is paid; and the Commissioner of Internal Revenue shall, by assessment or otherwise, cause to be collected the tax on any fractional gallon contained in each of such packages as ascertained by the original gauge, or regauge when made, before or at the time of removal of such packages from warehouse or other place of storage; and all provisions of existing laws relating to stamps denoting the payment of internal-revenue tax on distilled spirits, so far as applicable, are hereby extended to the stamps provided for in this section. That the tax herein imposed shall be paid by the distiller of the spirits, on or before their removal from the distillery or place of storage, except in case the removal therefrom without payment of tax is authorized by law; and (upon spirits lawfully deposited in any distillery warehouse, or other bonded warehouse, established under internal-revenue laws) within eight years from the date of the original entry for deposit in any distillery warehouse, or from the date of original gauge of fruit brandy deposited in special-bonded

warehouse, except in case of withdrawal therefrom without payment of tax as authorized by law. (28 Stat. 563.)

This section was part of the Wilson Tariff Act, cited above.

This section modified R. S. § 3251, ante, § 5985, and superseded the provision fixing the tax at 90 cents a gallon contained in Act March 3, 1875, c. 127, § 1, 18 Stat. 339.

Provisions for drawing off distilled spirits into packages, and for gauging, proving, marking, branding, and stamping the packages, were made by R. S. § 3287, as amended by Act May 28, 1880, c. 108, § 6, Act Feb. 21, 1899, c. 177, and Act March 2, 1911, c. 199, incorporated into said section, set forth post, § 6028.

Provisions for gauging, stamping, and branding spirits removed from warehouses were made by R. S. § 3295, as amended by Act July 16, 1892, c. 196, § 1, incorporated into said section, post, § 6037.

Provisions for the preparation and issuance of stamps required for distilled spirits were made by R. S. § 3312, post, § 6094.

The failure to efface stamps from empty casks and the changing of stamps and shifting spirits were punishable by R. S. §§ 3324, 3326, post, §§ 6105, 6107.

Special bonded warehouses for fruit brandy were authorized by Act March 3, 1877, c. 114, and Act Oct. 18, 1888, c. 1194, post, §§ 6039–6050.

General bonded warehouses for spirits were authorized by Act Aug. 27, 1894, c. 349, § 51, post, § 6058.

Notes of Decisions

See notes under § 5985, ante.

When tax is due.—The tax on distilled spirits is due the moment they are produced, and must be paid, even if they are afterwards destroyed by leakage or fire. Mason v. Peabody (C. C. 1871) Fed. Cas. No. 9,250.

Payment of tax.—A distiller sold certain casks of unstamped spirits to plaintiff, which were then in the government warehouse, and on March 10, 1902, plaintiff paid the tax on the spirits, but before the attachment of stamps the spirits were seized on the same day for violation of the internal revenue law by the distiller, discovered March 4, 1902, after which the spirits were forfeited to the government and sold. Held that, as this section requires the payment of the tax by the distiller and the issuance of stamps to him, plaintiff was not entitled to recover from the United States the internal revenue tax so paid. Harkins v. Williard (1906) 146 Fed. 703, 77 C. C. A. 129.

The purpose of Congress in adopting this amendment was to provide that only the distiller should have a right to apply to the commissioner of internal revenue for the settlement of a controversy as to the payment of taxes. Id.

Taxation by state of liquors in bonded warehouse.—The taxation of liquors in bonded warehouses within the state, provided for by Laws Md. 1892, c. 704, as amended by Laws 1900, c. 320, under which the proprietors of such warehouses were required to pay the taxes, and were given a lien on the property therefor, is within the powers of the state, despite the facts that there is no specific provision giving the proprietor who pays the taxes a right to recover interest thereon, that, under federal legislation, distilled spirits may be left in a warehouse for several years, and that for spirits so in bond negotiable warehouse receipts have been issued. Carstairs v. Cochran (1904) 24 Sup. Ct. 318, 319, 193 U. S. 10, 48 L. Ed. 596.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Ridenour (D. C. 1902) 119 Fed. 411, 415.

§ 5987. (R. S. § 3252.) Adding substances to create fictitious proof; penalty.

Every person who adds or causes to be added any ingredient or substance to any distilled spirits before the tax is paid thereon, for the purpose of creating a fictitious proof, shall be fined not less than one hundred dollars nor more than one thousand dollars for each cask or package so adulterated, and imprisoned not less than three months nor more than two years; and every such cask or package, with its contents, shall be forfeited to the United States.

Act July 20, 1868, c. 186, § 38, 15 Stat. 141.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 5988. (R. S. § 3253.) Tax on spirits removed without deposit in warehouse.

The tax upon any distilled spirits, removed from the place where they were distilled and not deposited in bonded warehouse as required by law, shall, at any time, when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law.

Act March 2, 1867, c. 169, § 14, 14 Stat. 481. Act Dec. 24, 1872, c. 13, § 2, 17 Stat. 402.

Notes of Decisions

Suit to recover taxes assessed under statute.—The defendants in a suit on a distiller's bond, instituted for the recovery of internal revenue taxes assessed under this section, have no legal right to the use at the trial of the reports, documents and other papers on file in the office of the Commissioner upon which the Commissioner acted in making the inquiries and determinations contemplated by section 5904, ante, and from which he derived the information that, in whole or in part, formed the basis of the assessment. Nor has the court authority to compel the production of such papers (1878) 16 Op. Atty. Gen. 24.

Cited without definite application, Hartman v. Bean (1878) 99 U. S. 393, 25 L. Ed. 455; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Allen (C. C. 1882) 14 Fed. 263, 267.

§ 5989. (R. S. § 3254.) Products of distillation containing spirits.

All products of distillation, by whatever name known, which contain distilled spirits or alcohol, on which the tax imposed by law has not been paid, shall be considered and taxed as distilled spirits.

Res. Feb. 5, 1867, No. 11, § 1, 14 Stat. 565.

Notes of Decisions

Bay rum.—"Bay rum" is a fragrant spirit, obtained by distilling the leaves of the pimenta acris with rum, or by mixing the volatile oil procured from the leaves by distillation with alcohol, water, and acetic ether. It is also defined as an aromatic liquid obtained by distilling the leaves with the bayberry, or by mixing various oils, as the oils of myrica, of orange peel, and of pimenta, with alcohol. Under the decision of the Circuit Court of Appeals, it must be held that it is neither a "distilled spirit," as that term is defined by section 5982, ante, nor a "product of distillation," within section 5989, providing for internal revenue taxation of products of distillation as distilled spirits. Roche v. Jordan (C. C. 1909) 175 Fed. 234.

The Circuit Court of Appeals having previously determined that under Foraker Act April 12, 1900, § 3, ante, § 3749, providing for the taxation of imports from Porto Rico, Porto Rican bay rum was not subject to customs duties because not distilled spirits nor the product of distillation, taxable under this section and section 5985, ante, such construction could not be affected by the subsequent passage of Act Feb. 4, 1909, post, § 6123, declaring that on bay rum or any article containing alcohol afterwards brought from Porto Rico into the United States a tax should be paid on any spirits contained therein. Id.

Cited without definite application, Jordan v. Roche (1913) 33 Sup. Ct. 573, 228 U. S. 436, 57 L. Ed. 908; Taney v. Penn Nat. Bank (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Anderson v. Newhall (1908) 161 Fed. 906, 88 C. C. A. 511; U. S. v. Ridenour (D. C. 1902) 119 Fed. 411, 414.

§ 5990. (R. S. § 3255, as amended, Act June 3, 1896, c. 309, Act Feb. 4, 1901, c. 195, Act March 2, 1911, c. 198, and Act Sept. 8, 1916, c. 463, § 404.) Brandy made from apples, peaches, grapes, etc.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, plums, pawpaws, persimmons, prunes, figs, or cherries from any provision of this title relating to the manufacture of spirits except as to the tax thereon, when in his judgment it may seem expedient to do so: Provided, That where, in manufacture of

wine, artificial sweetening has been used the wine or the fruit pomace residuum may be used in the distillation of brandy, as such use shall not prevent the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, from exempting such distiller from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: And provided further, That the distillers mentioned in this section may add to not less than five hundred gallons (or ten barrels) of grape cheese not more than five hundred gallons of a sugar solution made from cane, beet, starch, or corn sugar, ninety-five per centum pure, such solution to have a saccharine strength of not to exceed ten per centum, and may ferment the resultant mixture on a winery or distillery premises, and such fermented product shall be regarded as distilling material. (39 Stat. 788.)

Act July 20, 1868, c. 186, § 2, 15 Stat. 125. Act June 3, 1896, c. 309, 29 Stat. 195. Act Feb. 4, 1901, c. 195, 31 Stat. 759. Act March 2, 1911, c. 198, 36 Stat. 1014. Act Sept. 8, 1916, c. 463, § 404, 39 Stat. 788.

This section, as enacted in the Revised Statutes, was amended by adding pears, pineapples, oranges, apricots, berries, and prunes to the list of fruits mentioned by Act June 3, 1896, c. 309, cited above. It was further amended by adding figs and cherries to such list of fruits, by Act Feb. 8, 1901, c. 195, cited above. It was further amended by adding plums, pawpaws, and persimmons to such list of fruits, and by adding the proviso at the end of the section, making it read as set forth here, by Act March 2, 1911, c. 198, last cited above.

Special bonded warehouses for fruit brandy are authorized and regulated by Act March 3, 1877, c. 114, and Act Oct. 18, 1888, c. 1194, post, under Rev. St. § 3296.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to exempt small distilleries from certain provisions of this chapter, by Act March 1, 1879, c. 125, § 5, post, § 5991.

This section was § 404 of an act entitled "An act to increase the revenue, and for other purposes," cited above. The amendatory act adds a second proviso to the section as amended by Act March 2, 1911. In other respects the provision remains the same.

Notes of Decisions

Regulations authorized by statute.—The regulations of April 22, 1869, were authorized by the act of July 20, 1868, § 2. U. S. v. Thirty-Seven Barrels of Apple Brandy (D. C. 1870) Fed. Cas. No. 16,466.

Exemption from special tax.—Distillers of brandy from apples, peaches, and grapes, exclusively, may be exempted, in the discretion of the Commissioner of Internal Revenue and the Secretary of the Interior, from the provision of the fifty-ninth section of Act July 20, 1868, c. 186, levying a special tax of $4 a barrel upon distilled spirits. (1868) 12 Op. Atty. Gen. 514.

Cited without definite application, Solomons v. U. S. (1890) 11 Sup. Ct. 88, 89, 137 U. S. 342, 34 L. Ed. 667; Taney v. Penn Nat. Bank (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Ridenour (D. C. 1902) 119 Fed. 411, 415; Same v. Three Packages of Distilled Spirits (D. C. 1903) 125 Fed. 52, reversed (1904) 129 Fed. 329, 63 C. C. A. 263.

§ 5991. (Act March 1, 1879, c. 125, § 5.) Small distilleries may be exempted from certain requirements.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers whose distilleries have a daily spirit-producing capacity of thirty gallons of proof spirits, or less, from such of the provisions of existing law in regard to grain distilleries which require the processes of distillation to be carried on through continuous closed vessels and pipes, or which require the cisterns to be connected with the outlet of the worm or condenser by suitable pipes or other apparatus or which require certain clear spaces about the cisterns and other vessels of the distillery, or which require the distillers to have or furnish a plan of the distillery, as he may deem proper. (20 Stat. 336.)

This was a provision of an act to amend the laws relating to internal revenue, cited above.

The requirements mentioned in this section were prescribed by R. S. §§ 3263, 3267, post, §§ 6001, 6005.

§ 5992. (R. S. § 3256.) Evading tax; penalty.

Whenever any person evades, or attempts to evade, the payment of the tax on any distilled spirits, in any manner whatever, he shall forfeit and pay double the amount of the tax so evaded or attempted to be evaded.

Act July 20, 1868, c. 186, § 39, 15 Stat. 141.
As to fortification of wines, see § 6114c, post.

Cited without definite application, Coffey v. U. S. (1886) 6 Sup. Ct. 437, 439, 116 U. S. 436, 29 L. Ed. 684; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 5993. (R. S. § 3257.) Distiller defrauding or attempting to defraud United States of tax on spirits.

Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he shall forfeit the distillery and distilling-apparatus used by him, and all distilled spirits and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years.

Act March 31, 1868, c. 41, § 5, 15 Stat. 59.
Violation of act relating to tax on wines, see post, § 6114c.

Notes of Decisions

1. Repeal of statute.
2. Effect of statute as repealing former law.
3. Rights of participants in fraud.
4. Forfeitures in general.
5. Unlawful removal of spirits.
6. Forfeiture of distillery as bar to prosecution of stockholder personally.
7. Who may contest forfeiture proceedings.
8. Evidence required in forfeiture proceedings.
9. Distiller of apple brandy as subject to indictment under statute.
10. Indictment or information.
11. General verdict on several counts.
12. Judgment of acquittal as bar to suit.

See § 5966, ante, and § 6021, post, and notes thereunder. See also, notes under § 6355, post.

1. Repeal of statute.—This section is not repealed by section 6039 et seq., post, providing for the establishment of a bonded warehouse exclusively for the storage of grape brandy, removal of such spirits thereto, their deposit and withdrawal, etc., and Act October 18, 1888, section 6050, post, extending the provisions of the act of March 3, 1877, to distillers of all fruit brandies. U. S. v. Ridenour (D. C. 1902) 119 Fed. 411.

2. Effect of statute as repealing former law.—Act July 13, 1866, § 23, was not repealed by this statute, which provides a more severe punishment, as the statutes cover different subject-matters. U. S. v. Cushman (C. C. 1869) Fed. Cas. No. 14,906.

3. Rights of participants in fraud.—Where plaintiff and his bookkeeper shared the gains from a sale of whisky sold in fraud of revenue laws, and the sales were affected through the bookkeeper as agent of his employer, the fact that the bookkeeper was the more immediate participant in the fraud will not enable his partner in the transaction to recover his share of the illicit gains. Curran v. Downs (1879) 7 Mo. App. 329.

4. Forfeitures in general.—A forfeiture for a violation of the law extends to the interest of the mortgagee. U. S. v. Seven Barrels Distilled Oil (C. C. 1868) Fed. Cas. No. 16,253: All the Distilled Spirits, etc., Found at the Distillery of England v. Evans (D. C. 1868) Fed. Cas. No. 3,923; U. S. v. Twenty Barrels of Distilled Spirits, Id. 16,558.

A bona fide purchaser for value, prior to seizure, is protected. U. S. v. Sixty-Four Barrels Distilled Spirits (C. C. 1870) Fed. Cas. No. 16,306; Same v. Three Hundred and Ninety-Six Barrels of Distilled Spirits (D. C. 1865) Fed. Cas. No. 16,504; Same v. Three Hundred and Seventy-Two Pipes of Distilled Spirits (D. C. 1879) Fed. Cas. No. 16,505.

Distilled spirits are subject to forfeiture for misconduct of the distiller, even though the tax on the same may have been paid in full. Harkins v. Williard (1906) 146 Fed. 703, 77 C. C. A. 129.

The intention of congress must be manifest and unmistakable to justify the courts in construing a law imposing a forfeiture as extending to property which, before seizure, had been sold to an innocent purchaser. U. S. v. One Hundred Barrels of Spirits (C. C. 1870) Fed. Cas. No. 15,948.

This section, in declaring that a dis-

tiller shall forfeit the distillery and distillery apparatus used by him, means "shall subject to forfeiture." U. S. v. Distillery at Spring Valley (C. C. 1873) Fed. Cas. No. 14,963.

Under this section no proof is required of the actual complicity of the owner of the property to be forfeited in the fraud or other thing which causes the forfeiture. Id.

Where forfeited spirits have been mixed, though in good faith, with spirits which have paid the tax, so that they can no longer be distinguished, the entire amount is forfeited to the government. U. S. v. Fifty-Six Barrels of Whisky (D. C. 1866) Fed. Cas. No. 15,095; Same v. Fifty-Four Barrels of Distilled Spirits (D. C. 1869) Fed. Cas. No. 15,093.

A forfeiture under Act June 30, 1864, § 68, and the penalty of $500 therein prescribed, are independent of any other penalties named, and are cumulative. U. S. v. Three Hundred and Ninety-Six Barrels Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,502.

In the absence of any express declaration that the forfeiture shall be instantaneous upon the commission of the forbidden acts, the forfeiture relates only to the time of seizure. U. S. v. Three Hundred and Ninety-Six Barrels Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,503.

The volunteering of information by the owner after knowledge that his violations of law had been discovered will not save a forfeiture. Id.

After an officer and stockholder of a corporation engaged in distilling is convicted for a violation of the internal revenue law, an action cannot be maintained to enforce the forfeiture of the corporation's property for the same offense, even though the forfeiture is resisted only by the other stockholders. U. S. v. One Distillery (D. C. 1890) 43 Fed. 846, following Same v. McKee (C. C. 1877) Fed. Cas. No. 15,688, judgment affirmed (1899) 19 Sup. Ct. 624, 174 U. S. 149, 43 L. Ed. 929.

One who has been fined and imprisoned under this section for illicit distilling is estopped to claim as his own the distillery and sprits forfeited thereby; and such a conviction is not a bar to the proceeding in rem required by section 6355, post, to declare and perfect the forfeiture. U. S. v. Three Copper Stills, etc. (D. C. 1890) 47 Fed. 495.

The government does not lose its rights to forfeit a distillery for violation of law by reason of a failure of the government's officers to discharge their duties or because of their dereliction or malfeasance. U. S. v. One Distillery and Fixtures, etc. (D. C. 1911) 193 Fed. 720.

5. Unlawful removal of spirits.—Removal of distilled spirits from the cistern room of a distillery by the employés or operators thereof to a place other than a distillery warehouse held to authorize a forfeiture of the distillery and the spirits. U. S. v. One Distillery and Fixtures, etc. (D. C. 1911) 193 Fed. 720.

Removal of any distilled spirits, the product of a distillery by the operator or proprietor without payment of the tax, is ground for forfeiture of the distillery and product. Id.

6. Forfeiture of distillery as bar to prosecution of stockholder personally.—That a distillery has been forfeited in a proceeding by the United States for a violation of the internal revenue laws is not a bar to the prosecution of a stockholder personally for the same violation, although he is the sole stockholder; nor would it be a bar if the property was in his own name. Wood v. U. S. (1913) 204 Fed. 55, 122 C. C. A. 369.

7. Who may contest forfeiture proceedings.—A proceeding to forfeit a distillery and its products for violation of the internal revenue law may be contested by claimant of the property or the sureties on its bond in case a bond is given. U. S. v. One Distillery and Fixtures, etc. (D. C. 1911) 193 Fed. 720.

8. Evidence required in forfeiture proceedings.—The government, in a libel to forfeit a distillery for violation of internal revenue law, is only required to prove its allegations by a preponderance of evidence. U. S. v. One Distillery and Fixtures, etc. (D. C. 1911) 193 Fed. 720.

9. Distiller of apple brandy as subject to indictment under statute.—In view of the legislative intent, manifested by legislation for many years, that "spirits distilled" should include apple brandy, a distiller of apple brandy was properly indicted under this section for an attempt to defraud the government of taxes due by him. U. S. v. Ridenour (D. C. 1902) 119 Fed. 411.

10. Indictment or information.—It is not necessary for a count under this section to set forth the particular means by which the claimant defrauded and attempted to defraud, or to specify the particular spirits covered by the tax. Coffey v. U. S. (1886) 6 Sup. Ct. 432, 436, 116 U. S. 427, 29 L. Ed. 681.

It is not necessary for an information to aver that the distilled spirits found on claimant's distillery premises and seized were distilled by him, or were the product of his distillery, or that the distillery apparatus was wrongfully used; the section not making these facts elements of the causes of forfeiture denounced by it. Id.

A count following the language of this section is sufficient against a general objection by demurrer. Id.

A demurrer to counts of an indictment under this section and section 6354 and 6359, post, as not authorized because a specific penalty other than forfeiture was provided for the acts

therein charged by section 6038, post, was overruled. Id.

In a proceeding by information for the forfeiture of property under this section and section 6021, post, as being used by one carrying on the business of a distiller without giving bond and attempting to defraud the government of the tax on spirits distilled by him, the burden of proof rests on the United States to establish the facts alleged, and every reasonable intendment and effect must be given to answers filed by third persons who claim the property as their own. U. S. v. One Engine & Belting, etc. (1910) 179 Fed. 698, 103 C. C. A. 43.

An indictment under this section which describes the offense in the language of the statute is sufficient. U. S. v. Staton (C. C. 1878) Fed. Cas. No. 16,382.

11. General verdict on several counts.—Informations under the revenue laws for forfeiture of goods which seek no judgment or fine or imprisonment, though civil, and not strictly criminal, cases, are so far criminal as to come within the rule that a general verdict on several counts seeking in different forms one object must be upheld if one count is good. Coffey v. U. S. (1886) 6 Sup. Ct. 432, 436, 116 U. S. 427, 29 L. Ed. 681; Id. 6 Sup. Ct. 437, 440, 116 U. S. 436, 29 L. Ed. 684.

12. Judgment of acquittal as bar to suit.—A judgment of acquittal on counts of an information founded on this section and sections 6352 and 6355, post, is a bar to a suit by the government founded on the fraudulent acts and attempts, and intent to defraud alleged in the prior criminal information and covered by the verdict and judgment of acquittal. Coffey v. U. S. (1886) 6 Sup. Ct. 437, 440, 116 U. S. 436, 29 L. Ed. 684.

Cited without definite application, Dobbins's Distillery v. U. S. (1877) 96 U. S. 395, 397, 24 L. Ed. 637; Mansfield v. Excelsior Refinery Co. (1890) 10 Sup. Ct. 825, 830, 135 U. S. 326, 34 L. Ed. 162; U. S. v. Zucker (1896) 16 Sup. Ct. 641, 642, 161 U. S. 475, 40 L. Ed. 777; Same v. One Distillery (1899) 19 S. Ct. 624, 174 U. S. 149, 43 L. Ed. 929; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Donaldson-Shultz Co. (1906) 148 Fed. 581, 79 C. C. A. 403; Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Olsen (D. C. 1893) 57 Fed. 579, 583; Same v. Jaedicke (D. C. 1896) 73 Fed. 100, 103; Same v. Manufacturing Apparatus of New Jersey Melting & Churning Co. (D. C. 1905) 141 Fed. 475.

§ 5994. (R. S. § 3258.) Registry of stills, etc.

Every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register the same with the collector of the district in which it is, by subscribing and filing with him duplicate statements, in writing, setting forth the particular place where such still or distilling-apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling-apparatus has been or is intended to be used; one of which statements shall be retained and preserved by the collector, and the other transmitted by him to the Commissioner of Internal Revenue. Stills and distilling-apparatus shall be registered immediately upon their being set up. Every still or distilling-apparatus not so registered, together with all personal property in the possession or custody, or under the control of such person, and found in the building, or in any yard or inclosure connected with the building in which the same may be set up, shall be forfeited. And every person having in his possession or custody, or under his control, any still or distilling-apparatus set up which is not so registered, shall pay a penalty of five hundred dollars, and shall be fined not less than one hundred dollars, nor more than one thousand dollars, and imprisoned for not less than one month, nor more than two years.

Act July 20, 1868, c. 186, § 5, 15 Stat. 126. Act Dec. 24, 1872, c. 13, §§ 1, 2, 17 Stat. 401, 402.

Notes of Decisions

Yearly entry of stills under former statute.—Act March 3, 1791, §§ 21, 23, 24, imposed a yearly duty on stills, to be measured by their capacity, unless the actual amount distilled was shown. Act May 8, 1792, required stills to be entered yearly at the inspection office of the district under a penalty. Held, that the duty on stills could be recovered, whether an inspection office was established in the district or not. U. S. v. Wolf (Pa. 1796) Add. 312.

Cited without definite application, U. S. v. Stowell (1890) 10 Sup. Ct.

244, 247, 133 U. S. 1, 33 L. Ed. 555; Powers v. U. S. (1912) 32 Sup. Ct. 281, 282, 223 U. S. 303, 56 L. Ed. 448; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Foster v. U. S. (1911) 188 Fed. 305, 110 C. C. A. 283 (denied [1911] 192 Fed. 1022, 112 C. C. A. 665); U. S. v. Hance (D. C. 1911) 184 Fed. 528 (affirmed [1911] 191 Fed. 573, 112 C. C. A. 633, and certiorari denied [1912] 32 Sup. Ct. 840, 225 U. S. 710, 56 L. Ed. 1268).

§ 5995. (R. S. § 3259.) Notice of intention to carry on business of distiller or rectifier.

Every person engaged in, or intending to be engaged in, the business of a distiller or rectifier, shall give notice in writing, subscribed by him, to the collector of the district wherein such business is to be carried on, stating his name and residence, and if a company or firm, the name and residence of each member thereof, the name and residence of every person interested or to be interested in the business, the precise place where said business is to be carried on, and whether of distilling or rectifying; and if such business is carried on in a city, the residence and place of business shall be indicated by the name of the street and number of the building. In case of a distiller, the notice shall also state the kind of stills and the cubic contents thereof, the number and kind of boilers, the number of mash-tubs and fermenting-tubs, the cubic contents of each tub, the number of receiving-cisterns, the cubic contents of each cistern, the number of hours in which the distillery will ferment each tub of mash or beer, the estimated quantity of distilled spirits which the apparatus is capable of distilling every twenty-four hours, a particular description of the lot or tract of land on which the distillery is situated, and of the buildings thereon, including their size, material, and construction; and that said distillery premises are not within six hundred feet, in a direct line, of any premises authorized to be used for rectifying or refining distilled spirits by any process. In case of a rectifier, the notice shall state the precise place where such business is to be carried on; the name and residence of every person interested or to be interested in the business, the process by which the applicant intends to rectify, purify, or refine distilled spirits, the kind and cubic contents of any still used or to be used for such purpose, the estimated quantity of spirits which can be rectified, purified, or refined every twenty-four hours in such establishment, and that said rectifying-establishment is not within six hundred feet, in a direct line, of the premises of any distillery registered for the distillation of spirits. In case of any change in the location, form, capacity, ownership, agency, superintendency, or in the persons interested in the business of such distillery or rectifying-establishment, or in the time of fermenting the mash or beer, notice thereof, in writing, shall be given to the said collector or proper deputy collector, of the district within twenty-four hours after such change; and any deputy collector receiving such notice shall immediately transmit the same to the collector of the district. Every notice required by this section shall be in such form, and shall contain such additional particulars, as the Commissioner of Internal Revenue may, from time to time, prescribe. Every person who fails or refuses to give such notice shall pay a penalty of one thousand dollars, and shall be fined not less than one hundred dollars nor more than two thousand dollars; and every person who gives a false or fraudulent notice shall, in addition to such penalty or fine, be imprisoned not less than six months nor more than two years.

Act July 20, 1868, c. 186, § 6, 15 Stat. 126, 127. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401.

A rectifier intending to rectify was required, before emptying any package of distilled spirits for the purpose, to give notice of his intention to the collector of the district, and was also required to submit such package for in-

spection to a gauger, who was required to gauge such package and its contents, by Act March 1, 1879, c. 125, § 8, as amended by Act July 16, 1892, c. 196, § 1, post, § 5996.

Notes of Decisions

Construction with other sections.—Under sections 6087 and 6089, post, the penalty is not to be assessed against an apparent excess above the daily average in one month, when that is balanced by a corresponding deficiency in the succeeding month, and this is not altered by the expression in this section and section 6093, post, by which a survey is taken to ascertain the producing capacity for "a day of 24 hours"; that expression being used to represent, with greater certainty, the exact period of duration for which the average capacity of production was to be ascertained; and nothing but "average" was intended, as is manifest from the fact that no distillery, under ordinary conditions, has any spirit-producing capacity in 24 hours. Chicago Distilling Co. v. Stone (1890) 11 Sup. Ct. 862, 865, 140 U. S. 647, 35 L. Ed. 532.

When rectifier becomes a distiller.—If a rectifier, by any process, manufactures spirits from fruits or berries, saloon washings containing fermented substances, or from sour beer, he becomes a distiller. R. S. §§ 3259, 3260, ante, § 5994, and this section. U. S. v. Marshall (C. C. 1876) Fed. Cas. No. 15,726.

Notice in general.—Act July 20, 1868, imposing a tax on distilled spirits, provides in section 6 that the distiller shall give a written notice of his place of business and certain other information, and that the notice "shall also state the number of hours in which the distiller will ferment each tub of mash or beer," etc. Held, that the period of fermentation fixed by the distiller in such notice was not conclusive, but the assessor, in estimating the capacity of the distillery, could fix as the true fermenting period such period as he deemed correct after due examination. Pahlman v. Raster (1873) 87 U. S. (20 Wall.) 189, 22 L. Ed. 342.

Allegation as to notice in indictment.—An indictment under Act 1866, c. 184, § 25, must allege that the still was intended to be used within the United States for distilling spirits, and that defendant failed to give the notice, etc. U. S. v. Reed (D. C. 1868) Fed. Cas. No. 16,136.

Evidence of violation of statute.—Evidence held to sustain a finding that the running of beer into the slop tank of a distillery, instead of into the mash and fermenting tubs, in violation of this section and section 6001, post, was not by mistake, and to sustain a libel against the distillery. Pocahontas Distilling Co. v. U. S. (1914) 218 Fed. 782, 134 C. C. A. 566.

The government, on a libel against a distillery for illegal operation, is only required to establish its case by a preponderance of the evidence. Id.

Cited without definite application. U. S. v. Boecker (1874) 21 Wall. 652, 653, 22 L. Ed. 472; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 5996. (Act March 1, 1879, c. 125, § 8, as amended Act July 16, 1892, c. 196, § 1.) Notice by rectifier of intention to rectify, etc.; gauging; returns.

When any rectifier intends to rectify or compound any distilled spirits he shall, before emptying any package of distilled spirits for that purpose, give notice in duplicate to the collector of internal revenue for the district of his intention so to rectify, and submit such package for the inspection of a United States gauger, who shall duly weigh or gauge such package and its contents and make due return thereof, and such spirits shall not be emptied for rectification, nor rectified or compounded in the package, until gauged or weighed as herein above provided. And such notice and return shall be made in such form and contain such particulars as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe. (20 Stat. 341. 27 Stat. 200.)

This section was part of an act to amend the laws relating to internal revenue, cited above.

This section, as originally enacted, required the rectifier to give notice in duplicate to the collector of the district, in such form and giving such particulars as the Commissioner of Internal Revenue may prescribe, one of such notices to be forwarded by the collector to the Commissioner of Internal Revenue. It was amended, by substituting therefor the provisions set forth here, by Act July 16, 1892, c. 196, § 1, cited above. The amendment followed an appropriation for salaries, expenses, and fees of internal-revenue

officers in the legislative, executive, and judicial appropriation act for the fiscal year 1893, cited above.

A rectifier intending to commence or continue business was required to execute a bond conditioned for the faithful compliance with the law in relation to the business, and for the payment of taxes, penalties, and fines imposed, by Act March 1, 1879, c. 125, § 7, 20 Stat. 341. This section was repealed by Act May 28, 1880, c. 108, § 9, 21 Stat. 148.

Notes of Decisions

Necessity of again inspecting, gauging, and branding.—Spirits merely poured from the original packages into an open vat for rectification, need not be again inspected, gauged, and branded. Act 1866, c. 184, § 43. U. S. v. Eight Barrels of Whiskey (D. C. 1867) Fed. Cas. No. 15,028.

Regulation as to regauging.—A regulation requiring a regauging of distilled spirits on their being emptied to be rectified, and the certificate of the gauger as to the destruction of stamps, held valid and reasonable. Thacher v. U. S. (C. C. 1878) Fed. Cas. No. 13,-851.

Form for return of spirits emptied for rectification.—"Form 122" for the return of spirits emptied for rectification held authorized by law. U. S. v. One Hundred and Two Packages Distilled Spirits (D. C. 1876) Fed. Cas. No. 15,944.

§ 5997. (R. S. § 3260, as amended, Act May 28, 1880, c. 108, § 1.) Distiller to give bond.

Every person intending to commence or to continue the business of a distiller shall, on filing with the collector his notice of such intention, and before proceeding with such business, and on the first day of May of each succeeding year, execute a bond in the form prescribed by the Commissioner of Internal Revenue, conditioned that he shall faithfully comply with all the provisions of law relating to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions; and that he shall not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distilling-apparatus, to be incumbered by mortgage, judgment, or other lien, during the time in which he shall carry on said business. Said bond shall be with at least two sureties, approved by the collector of the district, and for a penal sum not less than the amount of tax on the spirits that can be distilled in his distillery during a period of fifteen days. But in no case shall the bond exceed the sum of one hundred thousand dollars. The collector may refuse to approve said bond when, in his judgment, the situation of the distillery is such as would enable the distiller to defraud the United States; and in case of such refusal the distiller may appeal to the Commissioner of Internal Revenue, whose decision in the matter shall be final. A new bond shall be required in case of the death, insolvency, or removal of either of the sureties, and may be required in any other contingency at the discretion of the collector or Commissioner of Internal Revenue. Every person who fails or refuses to give the bond hereinbefore required, or to renew the same, or who gives any false, forged, or fraudulent bond, shall forfeit the distillery, distilling-apparatus, and all real estate and premises connected therewith, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years.

Act July 20, 1868, c. 186, § 7, 15 Stat. 127. Act June 6, 1872, c. 315, § 12, 17 Stat. 239. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401. Act May 28, 1880, c. 108, § 1, 21 Stat. 145.

This section, as enacted in the Revised Statutes, was amended by striking out after the words "penal sum not less than" the word "double," and by inserting after the words "a period of fifteen days" the words "But in no case shall the bond exceed the sum of one hundred thousand dollars," as set forth here, by Act May 28, 1880, c. 108, § 1, cited above.

Collectors were authorized to refuse to approve the bond of a person convicted of any fraud under the laws relating to distillers, by Act Aug. 27, 1894, c. 349, § 67, post, § 6000.

A successor in the business of distilling was authorized to use the distilling warehouse of his predecessor by Act Jan. 8, 1874, c. 7, post, § 6010.

Carrying on distillery without giving bond was punishable by R. S. § 3281, post, § 6021.

Notes of Decisions

1. Constitutionality.
2. Who is distiller.
3. Validity of bond.
4. Voluntary bond.
5. Authority of officer to vary or change terms of bonds.
6. Prosecution and penalty for failure to give bond.
7. Prosecution for false and fraudulent bond.
8. Forfeiture.
9. When sureties not bound.
10. Obligations or acts covered by bond.
11. Credits to which surety is entitled.
12. Discharge of sureties or release from liability.
13. Actions on bonds.

See § 5985, ante, and notes thereunder; § 6021, post, and notes thereunder.

1. Constitutionality.—Act July 20, 1868, in relation to a tax on distilled spirits, is not unconstitutional because of its regulations requiring a bond before commencing business, etc. Mason v. Rollins (C. C. 1869) Fed. Cas. No. 9,252.

2. Who is distiller.—If a rectifier, by any process, manufactures spirits from fruits or berries, saloon washings containing fermented substances, or from sour beer, he becomes a distiller. R. S. §§ 3259, 3260, ante, §§ 5994, 5995. U. S. v. Marshall (C. C. 1876) Fed. Cas. No. 15,726.

3. Validity of bond. — A distiller's bond, taken in pursuance of Act July 20, 1868, imposing taxes on distilled spirits, and which enacts that the assessor shall not approve it unless the distillery property is unincumbered as against the United States, is not void, even as against the sureties thereto, because the ground was incumbered, and because, it being so, the bond was approved without the consent of the incumbrancers to postpone their liens to that of the United States for taxes and penalties. Osborne v. U. S. (1873) 86 U. S. (19 Wall.) 577, 580, 22 L. Ed. 208.

This rule is not altered by the fact that, if the consent of the incumbrancers had been procured to postpone their liens, the ground on which the distillery stood was of sufficient value to discharge the taxes due by the distiller. Id.

A distiller's bond given under Act July 1, 1862, § 39, conditioned that the distiller should comply with the conditions of such act and of such other acts as might thereafter be enacted, held valid. U. S. v. Mynderse (C. C. 1870) Fed. Cas. No. 15,850a.

4. Voluntary bond.—A bond under the statute is none the less voluntary because of the word "shall." U. S. v. Hodson (1870) 10 Wall. 395, 406, 19 L. Ed. 937.

5. Authority of officer to vary or change terms of bonds.—A public officer cannot vary, or in any way change the terms of distillers' bonds required by law. U. S. v. Bicket (D. C. 1872) Fed. Cas. No. 14,590.

6. Prosecution and penalty for failure to give bond.—A distiller is justified in relying upon the act of the assessor in passing upon the bond given for excise duty (Act July 20, 1868, § 7), and is not liable for the penalty because the preliminaries have not been complied with. U. S. v. Thirty-Five Barrels of High Wines (D. C. 1869) Fed. Cas. No. 16,460.

On a prosecution for conducting a distillery without giving the necessary bond or paying the tax, ignorance on the part of defendant that the bond had not been given or the tax paid is no defense. U. S. v. Dobbs (D. C. 1871) Fed. Cas. No. 14,972.

7. Prosecution for false and fraudulent bond.—It is no defense to a prosecution for executing and signing a false and fraudulent bond that defendant knew nothing of his sureties, but hired a man to obtain them, and that they swore to all that was required by law. U. S. v. O'Brien (D. C. 1868) Fed. Cas. No. 15,909.

8. Forfeiture.—Premises occupied and used as a distillery are liable to forfeiture for the violation of sections 7 and 19 of the act of July 20, 1868 (15 Stat. 127, 132), in relation to distiller's bonds and books of account, without regard to the culpability of the owner of the property. Heidritter v. Elizabeth Oil Cloth Co. (C. C. 1881) 6 Fed. 138, judgment affirmed (1884) 5 Sup. Ct. 135, 112 U. S. 294, 28 L. Ed. 729.

A decree of condemnation under forfeiture for violation of sections 7 and 19 of Act July 20, 1868, 15 Stat. 127, 132, relates back to the time when the acts were committed which incurred the forfeiture. Id.

A mechanic's lien cannot be enforced in a state court, where the premises have been seized by the United States marshal under forfeiture proceedings of property used as a distillery before the claim has been filed. Id.

9. When sureties not bound. — The sureties are not bound if the distillery is established on a different lot from that described in the notice and bond. U. S. v. Boecker (1874) 21 Wall. 652, 654, 22 L. Ed. 472.

10. Obligations or acts covered by bond.—The penalty of a bond given pursuant to Act June 30, 1864, on taking

out a distiller's license, cannot be enforced for acts done in carrying on such business after the term of the license has expired. U. S. v. Smith (1869) 75 U. S. (8 Wall.) 587, 19 L. Ed. 506.

The condition in a distiller's bond, given under Act July 20, 1868, § 7 (15 Stat. 128), that the obligors "shall in all respects comply with all the provisions of law in relation to the duties and business of distillers," is prospective, as well as present. U. S. v. Powell (1871) 81 U. S. (14 Wall.) 493, 20 L. Ed. 726.

A distiller's bond conditioned "faithfully to comply with all the provisions of law in relation to the business of distillers" covers wages of a storekeeper in charge of a distiller's warehouse on week days and Sundays, under Joint Resolution of March 29, 1869, whether the bond was executed before or after the passage of the Joint Resolution. Id.

The bond does not bind the distiller and his sureties to make reimbursement to the government of moneys paid by it to its own officers or agents in pursuance of law. U. S. v. Singer (1872) 15 Wall. 111, 122, 21 L. Ed. 49.

The sureties of a distiller under Act July 20, 1868, are not liable for taxes incurred on business carried on by the principal at a different place from that specified in the bond and notice of the residence and place of business of the principal, prescribed by section 6. U. S. v. Boecker (1874) 88 U. S. (21 Wall.) 652, 22 L. Ed. 472.

A distiller's official or annual bond, given pursuant to this section, and conditioned that he "shall faithfully comply with all the provisions of law relating to the duties and business of distillers," binds the sureties for the payment of the tax on all spirits distilled during its term, which is one of the duties of the distiller, and which tax becomes a debt due to the United States from the time the spirits are manufactured, due and payable at once on their removal, unless they are entered for deposit in warehouse; nor are the sureties relieved from such liability by the execution of a warehousing bond given pursuant to section 6034, post, to secure delay in payment of the tax, which does not extinguish the debt, nor become a substitute for the original bond with respect to such spirits, from the government, for which he failed to account; and the measure of recovery is the face value of such stamps, as charged to him in his account. Such an action is not one for the conversion of property, but one for a breach of official duty, and is governed by the terms and conditions of the bond and the statutes which prescribe such duty; and the government is not required to prove that the stamps unaccounted for were sold, and the money received therefor, even though such fact is unnecessarily alleged in the complaint. U. S. v. Mullins (1902) 119 Fed. 334, 56 C. C. A. 238, writ of certiorari denied (1903) 23 Sup. Ct. 851, 189 U. S. 513, 47 L. Ed. 924.

A distiller's bond, binding him to comply with all the provisions of law and regulations in relation to the duties and business of a distiller, held to cover taxes assessed on liquor distilled. United States Fidelity & Guaranty Co. v. U. S. (1912) 201 Fed. 91, 119 C. C. A. 429.

A distiller's official or annual bond binds the sureties for the payment of the tax on all the spirits distilled by the principal during its term, and they are not relieved from such liability by the execution of a warehousing bond covering certain of such spirits, which is not a substituted, but a cumulative, security. U. S. v. Richardson (D. C. 1904) 127 Fed. 893.

11. Credits to which surety is entitled.—Where the government made an assessment against a distiller of the tax on spirits made from material used and not reported, and a portion of such spirits were found seized and sold, and the tax on such part paid from the proceeds, the surety on the distiller's bond, when charged with liability for the assessment, is entitled to credit for the part of the tax so paid, but not for the remainder of the proceeds of the sale. U. S. v. National Surety Co. (1907) 157 Fed. 174, 84 C. C. A. 622.

Moneys paid to the collector without specific appropriation during the existence of a bond are properly applied first to the payment of back taxes. U. S. v. Bicket (D. C. 1872) Fed. Cas. No. 14,-590.

12. Discharge of sureties or release from liability.—A surety is not released by the neglect of the government's officers in the performance of their duties. Hart v. U. S. (1877) 95 U. S. 316, 317, 24 L. Ed. 479.

Sureties on a distillery bond cannot be subjected to the penalty attached to the removal of spirits from the distillery without payment of the tax, when the principal in the bond has effected a full and complete compromise with the government of prosecutions based on the same offense and designed to secure the same penalty. U. S. v. Chouteau (1880) 102 U. S. 603, 26 L. Ed. 246.

The seizure and sale of bonded spirits forfeited by the fraudulent acts of the distiller, and the payment of the taxes out of the proceeds, render the bond functus officio, and discharge the obligors. U. S. v. Ulrici (1884) 111 U. S. 38, 4 Sup. Ct. 288, 28 L. Ed. 344; Same v. Sutton (1884) 111 U. S. 42, 4 Sup. Ct. 291, 28 L. Ed. 346.

The liability of the sureties is not released by the fact that the collector permitted the distiller to remove from the bonded warehouse a quantity of spirits, sufficient to pay all the taxes due, without first requiring payment

thereof. U. S. v. Hosmer (C. C. 1873) Fed. Cas. No. 15,394.

A pardon operates the same as an actual fulfillment of the sentence, and completely releases the sureties from all liability for the acts or breach of duty charged. U. S. v. Cullerton (C. C. 1878) Fed. Cas. No. 14,899.

The destruction of spirits by fire while in a distillery warehouse, due to the absence of the government storekeeper, does not release the bondsman from liability for the amount of taxes due. U. S. v. Farrell (C. C. 1878) Fed. Cas. No. 15,073.

After a bond had been signed by two sureties, with the understanding between them and the obligor and obligee that it was to be signed by a third surety whose name was written in the bond, the name of the third surety was altered in the body of the instrument, with the knowledge of the obligee, by the substitution of a different surety, who then signed the bond. Held, that the two sureties were discharged. U. S. v. O'Neill (C. C. 1884) 19 Fed. 567.

A sale of a distillery for the sum due to the United States will extinguish the debt, though it is incumbered by valid liens to its full value, and the distiller's bond is discharged thereby. U. S. v. Triplett (D. C. 1876) Fed. Cas. No. 16,539.

13. **Actions on bonds.**—In a suit on a distiller's bond, the petition alleged that defendant omitted to make book entries required by the law, and was thereby enabled to defraud the government. Defendant answered, averring that whatever fraud was committed was effected through other means. Held sufficient on demurrer. U. S. v. Chouteau (1880) 102 U. S. 603, 26 L. Ed. 246.

In an action on a distiller's bond for nonpayment of the tax due on a specified number of gallons of spirits alleged to have been distilled at his distillery between certain dates, the assessment of the commissioner of internal revenue was prima facie evidence of his liability. U. S. v. Rindskopf (1881) 105 U. S. 418, 26 L. Ed. 1131.

The duty imposed on the collector to collect by distraint is not suspended by an action by the government on the distiller's bond for the collection of the same taxes. Harding v. Woodcock (1890) 11 Sup. Ct. 6, 137 U. S. 43, 34 L. Ed. 580.

On a seizure and sale of distilled spirits under the internal revenue law for nonpayment of the tax thereon, the proceeds are applicable on such tax, and, if sufficient, extinguish the same; and in an action by the government on a distiller's bond to recover a tax on spirits an answer containing allegations under which the defendant is entitled to prove such a state of facts is not demurrable. United States Fidelity & Guaranty Co. v. U. S. (1907) 158 Fed. 604, 85 C. C. A. 426, reversing judgment U. S. v. United States Fidelity & Guaranty Co. (D. C. 1906) 144 Fed. 866.

In action for breach of distillery bond, recital of assessment against spirits removed without payment of tax held not to base the action on the assessment, or preclude a recovery as in debt. U. S. v. United States Fidelity & Guaranty Co. of Baltimore, Md. (1915) 221 Fed. 27, 136 C. C. A. 553.

That it was unconscionable for the government to recover from the surety on a distillery bond for a breach of the bond under the circumstances held not a defense. Id.

It is a good defense to a surety on a distiller's bond that it was signed and delivered on a condition of the nonfulfillment of which plaintiff's agent had notice when he accepted it. U. S. v. Hammond (C. C. 1869) Fed. Cas. No. 15,292.

In an action on a distiller's bond under Act July 20, 1868, a plea that the still exploded, whereupon the assessor locked up and took control of the property, is a good defense as to the time the still was disabled. U. S. v. Miller (C. C. 1870) Fed. Cas. No. 15,770.

It is no defense to the sureties on a distiller's bond that the assessor failed to obtain the consent of the mortgagee of the distillery premises to their use as such, and a stipulation for priority of lien of the United States. U. S. v. Hosmer (C. C. 1873) Fed. Cas. No. 15,394.

Errors in the assessment and reassessment of a distiller's tax cannot be set up by the sureties in defense to a suit on the bond. Their remedy is to pay the tax under restraint, and to appeal to the commissioner of internal revenue. If the appeal is denied, a suit will lie against the collector. U. S. v. Black (C. C. 1874) Fed. Cas. No. 14,600.

In an action on a distiller's bond it need not be shown affirmatively that the survey required by Act July 20, 1868, § 10, has been made, and a copy of it served upon him, and a demand of payment made.—Id.

Defense to action on distiller's bond of seizure of property by the collector and surrender to state court receiver. U. S. v. Grant (C. C. 1874) Fed. Cas. No. 15,247.

In an action upon a distiller's bond, an erroneous assessment, which does not include the amount actually due as prescribed by the statute, is not conclusive against the government. U. S. v. Halloran (C. C. 1876) Fed. Cas. No. 15,286.

A conviction and sentence for violation of the law is no bar to an action on the distiller's bond, unless the sentence is actually fulfilled. U. S. v. Cullerton (C. C. 1878) Fed. Cas. No. 14,899.

In a suit on a distiller's bond for the amount of an assessment, defendant may impeach the assessment, though he has not first appealed to the com-

missioner. U. S. v. Myers (C. C. 1878) Fed. Cas. No. 15,846.

In an action on a distiller's bond, verdict was rendered for the full amount of the bond, subject to the opinion of the court upon the question whether the sureties were entitled to a deduction from the verdict of the amount realized from the sale of the distiller's personal property. Held, on a motion for judgment on the verdict, that the judgment should be entered for the full amount of the bond, the sum realized from the personal property not being a legal offset. U. S. v. Loeb (C. C. 1882) 14 Fed. 688.

An action upon a bond, conditioned upon the payment of an assessment, will not fail because the complaint does not set forth the whole of the assessment. U. S. v. O'Neill (C. C. 1884) 19 Fed. 567.

The original report of survey, and certificate of collector of delivery of one of the triplicate copies to distiller, held competent evidence in a suit on his bond for amount assessed for deficiency in spirits reported. U. S. v. Bristow (C. C. 1884) 20 Fed. 378.

A suit in another court on the distiller's bond, commenced before an information for forfeiture under Act June 30, 1864, § 68, or before seizure of the property, does not bar or abate the forfeiture proceeding. U. S. v. Three Hundred and Ninety-Six Barrels Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,502.

The government has its remedy upon the distiller's bond, though it might have collected the tax from the proceeds themselves. U. S. v. Bicket (D. C. 1872) Fed. Cas. No. 14,590.

The defendants, being distillers, having been indicted, tried, found guilty, and fined for a violation of section 6019, post, and execution issued thereon having been returned nulla bona, this action was instituted on the bond executed by the defendants to the United States, containing a covenant that the defendants "shall in all respects faithfully comply with all the provisions of law and regulations in relation to the duties and business of distillers, * * * and shall pay all penalties incurred or fines imposed on him for a violation of any of said provisions." Held, on demurrer to the petition, that the action was maintainable. U. S. v. Thompson (D. C. 1891) 45 Fed. 468.

In an action by the United States on a distiller's bond, plea of accord and satisfaction with the collector, without an averment of his authority to make the commutation is insufficient. Martin's Adm'rs v. U. S. (1825) 18 Ky. (2 T. B. Mon.) 89, 15 Am. Dec. 129.

To debt on a revenue bond, accord with the collector and delivery of goods in satisfaction is not a good answer. Collectors must obtain money. Martin's Adm'rs v. U. S. (1827) 20 Ky. (4 T. B. Mon.) 487.

It is no defense in an action against the sureties on a distiller's bond that they had no notice of the increased producing capacity of the distillery. Notice to the principal is sufficient. U. S. v. Woodman (1875) 1 Utah, 265.

Where the producing capacity of a distillery is 266 gallons per day, the assessor cannot agree with the owners to return taxes for only 80 gallons per day, and such agreement constitutes no defense in an action on the distiller's bond. Id.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 5998. (R. S. § 3261.) Bond not to be approved until law complied with.

No collector shall approve the bond of any distiller until all the requirements of the law and all regulations made by the Commissioner of Internal Revenue in relation to distilleries, in pursuance thereof, have been complied with. Every collector who violates this provision shall forfeit and pay two thousand dollars, and be dismissed from office.

Act July 20, 1868, c. 186, § 17, 15 Stat. 131. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401.

Notes of Decisions

Approval of bond.—The surety on a distiller's bond is liable, though the same is approved in violation of the provisions of Act July 20, 1868, § 7, that prior liens on the property must first be released. Osborne v. U. S. (C. C. 1872) Fed. Cas. No. 10,599.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 5999. (R. S. § 3262, as amended, Act May 28, 1880, c. 108, § 2.) Distiller must be owner in fee-simple, or have written consent of owner, etc.

No bond of a distiller shall be approved, unless he is the owner in fee, unincumbered by any mortgage, judgment, or other lien, of

the lot or tract of land on which the distillery is situated, or unless he files with the collector, in connection with his notice, the written consent of the owner of the fee, and of any mortgagee, judgment-creditor, or other person having a lien thereon, duly acknowledged, that the premises may be used for the purpose of distilling spirits, subject to the provisions of law, and expressly stipulating that the lien of the United States for taxes and penalties shall have priority of such mortgage, judgment, or other incumbrance, and that in case of the forfeiture of the distillery premises, or of any part thereof, the title of the same shall vest in the United States, discharged from such mortgage, judgment, or other incumbrance. In any case where the owner of a distillery or distilling-apparatus, erected prior to the twentieth day of July, eighteen hundred and sixty-eight, has only an estate for a term of years or other estate less than fee-simple in the lot or tract of land on which the distillery is situated, the evidence of title to which shall have been duly recorded prior to that date; or in like case, where the lease or other evidence of title is held but was not required by the laws of the State to be recorded in order to be valid at the time of its execution; or in any case of such prior erection where the title was then, and has continued to be, in litigation; or in any case of such prior erection where such owner is possessed of the fee, but incumbered with a mortgage executed and duly recorded prior to said twentieth of July, eighteen hundred and sixty-eight, and not due, or in any case of such prior erection where the fee is held by a feme-covert, minor, person of unsound mind, or other person incapable of giving consent, as hereinbefore required, the value of such lot or tract of land, together with the building and distilling-apparatus, shall be appraised in the manner to be prescribed by the Commissioner of Internal Revenue; and the collector may, at the discretion of the Commissioner, be authorized to accept, in lieu of the said written consent of the owner of the fee, the bond of such distiller, in such form as the Commissioner may prescribe, with not less than two sureties, conditioned that in case the distillery, distilling-apparatus, or any part thereof, shall by final judgment be forfeited for the violation of any of the provisions of law, the obligors shall pay the amount stated in said bond. Said sureties shall be residents of the collection-district or county, or of an adjoining county in the same State in which the distillery is situated, and owners of unincumbered real estate in said district or county, or adjoining county, equal to such appraised value, and the penal sum of said bond shall be equal to the appraised value of said lot or tract of land together with the buildings and distilling-apparatus: Provided, That in case of any distillery sold at judicial or other sale in favor of the United States, a bond may be taken at the discretion of the Commissioner of Internal Revenue, in lieu of the written consent required by this section, and the person giving such bond may be allowed to operate such a distillery during the existence of the right of redemption from such sale, on complying with all the other provisions of law: And provided also, That the collector may at any time, at the discretion of the Commissioner, accept such bond as is authorized to be given by the distiller in lieu of the written consent of the owner of the fee in the case of a distillery erected prior to July twentieth, eighteen hundred and sixty-eight, notwithstanding such distillery has since then been increased by the addition of land or buildings adjacent or contiguous thereto, not owned by the distiller himself in fee; such bond to be for and in respect of such addition only, if the distillery be one which the distiller owns in fee or in respect to which he has procured the written consent of the owner of the fee or other incumbrance, other-

wise to be for and in respect of the entire distillery as increased by such addition.

Act July 20, 1868, c. 186, § 8, 15 Stat. 127. Act April 10, 1869, c. 18, § 1, 16 Stat. 41. Act June 6, 1872, c. 315, § 13, 17 Stat. 243. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401. Act May 28, 1880, c. 108, § 2, 21 Stat. 145.

This section, as enacted in the Revised Statutes, was amended by adding at the end of the section, as originally enacted, the last proviso, as set forth here, by Act May 28, 1880, c. 108, § 2, cited above.

Notes of Decisions

Consent of owner.—The consent provided for in this section passes no interest in the land to the distiller, but merely gives to the government a first lien for the taxes. Mansfield v. Excelsior Refinery Co. (1890) 10 Sup. Ct. 825, 829, 135 U. S. 326, 34 L. Ed. 162.

Consent of incumbrancers.—A distiller's bond is not void as against the sureties because the ground was incumbered, and because, it being so, the bond was approved without the consent of the incumbrancers to postpone their liens, and this rule is not altered by the fact that, if the consent of the incumbrancers had been procured to postpone their liens, the ground on which the distillery stood was of sufficient value to discharge the taxes due by the distiller. Osborne v. U. S. (1873) 19 Wall. 577, 580, 22 L. Ed. 208.

Sale of property leased for distillery with covenants as to lien.—Failure of a purchaser of property leased for a distillery, with covenants to be subject to the lien of taxes and penalties, to appeal from an assessment thereon, precludes him, in a subsequent action against the collector, from showing that no tax or penalty was in fact due. Milan Distilling Co. v. Tillson (C. C. 1880) Fed. Cas. No. 9,539.

Cited without definite application, U. S. v. Boecker (1874) 21 Wall. 652, 654, 22 L. Ed. 472; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6000. (Act Aug. 27, 1894, c. 349, § 67.) Refusal of bond from person previously convicted.

Whenever any person intending to commence or to continue the business of a distiller shall execute a bond under the provisions of section thirty-two hundred and sixty of the Revised Statutes of United States, and file the same with the collector of internal revenue for the district in which he proposes to distill, the collector may refuse to approve said bond if the person offering the same shall have been previously convicted, in a court of competent jurisdiction, of any fraudulent noncompliance with any of the provisions of law relating to the duties and business of distillers, or if the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall have compromised such an offense with the person upon the payment of penalties or otherwise, and, in case of such refusal, the person so proposing to distill may appeal to the Commissioner of Internal Revenue, whose decision in the matter shall be final. (28 Stat. 568.)

This section was part of the Wilson Tariff Act, cited above.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6001. (R. S. § 3263.) Plan of distillery.

Every distiller and person intending to engage in the business of a distiller shall, previous to the approval of his bond, cause to be made, under the direction of the collector of the district, an accurate plan and description, in triplicate, of the distillery and distilling-apparatus, distinctly showing the location of every still, boiler, doubler, worm-tub, and receiving-cistern, the course and construction of all fixed pipes used or to be used in the distillery, and of every branch and every cock or joint thereof, and of every valve therein, together with every place, vessel, tub, or utensil from and to which any such pipe leads, or with which it communicates; also the number and location and cubic contents of every still, mash-tub, and fermenting-tub, the cubic contents of every receiving-cistern, and the color of each fixed pipe, as required in this Title. One copy of said plan and

description shall be kept displayed in some conspicuous place in the distillery, and two copies shall be furnished to the collector of the district, one of which shall be kept by him, and the other transmitted to the Commissioner of Internal Revenue. The accuracy of every such plan and description shall be verified by the collector, the draughtsman, and the distiller; and no alteration shall be made in such distillery without the consent, in writing, of the collector. Any alteration so made shall be shown on the original, or by a supplemental plan and description, and a reference thereto noted on the original, as the collector may direct; and any supplemental plan and description shall be executed and preserved in the same manner as the original.

Act July 20, 1868, c. 186, § 9, 15 Stat. 128. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401.

The Commissioner of Internal Revenue was authorized to exempt distilleries having a daily spirit-producing capacity of thirty gallons of proof spirits or less from the requirements of this section, by Act March 1, 1879, c. 125, § 5, ante, § 5991.

Notes of Decisions

Evidence of violation of statute.—Evidence held to sustain a finding that the running of beer into the slop tank of a distillery, instead of into the mash and fermenting tubs, in violation of this section and section 5995, ante, was not by mistake, and to sustain a libel against the distillery. Pocahontas Distilling Co. v. U. S. (1914) 218 Fed. 782, 134 C. C. A. 566.

The government, on a libel against a distillery for illegal operation, is only required to establish its case by a preponderance of the evidence. Id.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6002. (R. S. § 3264, as amended, Act March 1, 1879, c. 125, § 5, Act June 22, 1910, c. 329, § 1, and Act Sept. 8, 1916, c. 463, § 402(i).) Surveys of distilleries.

On receipt of notice that any person, firm, or corporation wishes to commence the business of distilling, the collector, or a deputy collector, to be designated by him, shall proceed in person, at the expense of the United States, with the aid of an assistant designated by the Commissioner of Internal Revenue for the purpose of making surveys of distilleries in that district, to make a survey of such distillery for the purpose of estimating and determining its true spirit-producing capacity for a day of twenty-four hours.

In all surveys forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses, except in distilleries operated on the sour-mash principle, in which distilleries sixty gallons of beer brewed or fermented from grain shall represent not less than one bushel of grain, and except that in distilleries where the filtration-aeration process is used, with the approval of the Commissioner of Internal Revenue; that is, where the mash after it leaves the mash tub is passed through a filtering machine before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, there shall hereafter be no limitation upon the number of gallons of water which may be used in the process of mashing or filtration for fermentation; but the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in order to protect the revenue, shall be authorized to prescribe by regulation, to be made by him, such character of survey as he may find suitable for distilleries using such filtration-aeration process. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries.

A written report of such survey shall be made in triplicate, of which one copy shall be delivered to the distiller, one copy shall be retained

by the collector, and one copy shall be transmitted to the Commissioner of Internal Revenue, and the survey shall take effect upon the delivery of such copy to the distiller. Whenever the Commissioner is satisfied that any report of the capacity of a distillery is incorrect or needs revision, he shall direct the collector to make in like manner another survey of said distillery, and the report thereof shall be made and deposited as hereinbefore required: Provided, That the survey of any distillery estimated and stated by the distiller, in his notice of intention to distill, as capable of distilling not more than one hundred and fifty proof-gallons of distilled spirits every twenty-four hours may be made by the collector or by a deputy collector without the aid of an assistant; and that all surveys made for the purpose of correcting clerical errors or errors of computation existing in the report of a previous survey, and all surveys made for the purpose of changing the true spirit-producing capacity of any distillery for a day of twenty-four hours as estimated and determined by a previous survey, but which surveys do not require the remeasuring of the fermenting-tubs in a grain or molasses distillery, or the still or stills in a distillery of apples, peaches, or grapes exclusively, may be made without taking the measurements of the fermenting tubs or stills, as the case may be, and without revisiting the distillery: And provided further, That the Commissioner of Internal Revenue may, whenever he shall deem it proper, designate an officer, agent, or person other than the collector or deputy collector, to make, with or without the aid of a designated assistant, the surveys and resurveys hereinabove provided for. (39 Stat. 787.)

Act June 6, 1872, c. 315, § 12, 17 Stat. 238. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401. Act March 1, 1879, c. 125, § 5, 20 Stat. 334. Act June 22, 1910, c. 329, § 1, 36 Stat. 590. Act Sept. 8, 1916, c. 463, § 402(i), 39 Stat. 787.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "notice that any person," the words "firm or corporation," and by inserting, after the words "the collector," the words "or a deputy collector to be designated by him," and by inserting, after the words "shall proceed," the words "in person," and by striking out, after the words "of an assistant designated," the words "for the purpose," and by inserting, after the words "Internal Revenue," the words "for the purpose of making surveys of distilleries in that district," and by striking out, after the words "as hereinbefore," the word "provided," and by inserting in place thereof the word "required," followed by the two provisos at the end of the section, by Act March 1, 1879, c. 125, § 5, cited above. It was further amended by the insertion, in the second paragraph of the section, of provisions relating to distilleries where the filtration-aeration process is used, making said second paragraph read as set forth here, by Act June 22, 1910, c. 329, § 1, last cited above.

Act Sept. 8, 1916, c. 463, § 402(i), amends the "second paragraph" of R. S. § 3264. The section as it appeared in the Revised Statutes and in the amendatory acts above referred to did not contain a second paragraph. The subject-matter of the amendment, however, seems to relate to the sentences of the section as amended which read as follows: "In all surveys forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses, except in distilleries operated on the sour mash principle, in which distilleries sixty gallons of beer brewed or fermented from grain shall represent not less than one bushel of grain, and except that in distilleries where the filtration-aeration process is used, with the approval of the Commissioner of Internal Revenue; that is, where the mash after it leaves the mash tub is passed through a filtering machine before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, seventy gallons of beer brewed or fermented from grain shall represent not less than one bushel of grain. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries." This part of the section as amended is set forth above in the second paragraph.

Notes of Decisions

Statute to be strictly followed.—Act July 20, 1868, § 10, providing for surveys must be strictly followed in ascertaining the capacity of the distillery. Mason v. Peabody (C. C. 1871) Fed. Cas. No. 9,250.

Ascertaining producing capacity.—The survey directed is required to be

made by the assessor of the collection district with the aid of a competent person designated by the commissioner of internal revenue, and the mode in which the producing capacity of a distillery is to be ascertained is by measuring each mash or fermenting tub by calculating how many bushels of grain when mashed, if grain is used, the fermenters would hold, by considering the period of fermentation and deducing therefrom the number of bushels which could be fermented in twenty-four hours. Stevenson v. Beggs (1872) 17 Wall. 182, 189, 21 L. Ed. 624.

The assessor, in estimating the producing capacity of a distillery, may fix as the true fermenting period such period as he may deem the true one after examination and calculation, and is not bound to take the period which the distiller is required to give in the notice. Pahlman v. Raster (1873) 20 Wall. 189, 190, 22 L. Ed. 342.

Where the period of fermentation has been fixed at 48 hours by the officers of the government upon survey, it is not a valid objection to the tax that the distillery uses a longer time in fermentation. The distiller's remedy is by appeal to the commissioner of internal revenue. U. S. v. Bicket (D. C. 1872) Fed. Cas. No. 14,590.

Delivery of copy.—A distiller may waive delivery of a copy of the survey, and when the distiller accepted the survey and stipulated that it was binding on him, he, in effect, said that he would consider the certificate as effective without formal delivery. Wright v. U. S. (1883) 2 Sup. Ct. 633, 108 U. S. 281, 27 L. Ed. 727.

An indorsement by a distiller on the collector's survey of his distillery, accepting it, and acknowledging it as binding, made at the time his bond is executed, is a waiver of a formal delivery of a copy of the survey required by this section, and the taxes on the difference between the capacity of the distillery and the returns of production may be recovered in an action on the bond. Id.

Under the 80 per cent. clause in section 20 of Act July 20, 1868, a distiller is not liable until a survey in which the tax is assessed has been delivered to him as provided in section 10. Peabody v. Stark (1872) 16 Wall. 240, 243, 21 L. Ed. 311.

Resurvey under former law.—Act July 20, 1868 (15 Stat. 129) § 10, providing for the survey of registered distilleries, declares that, if the commissioner shall at any time be satisfied that the report needs revision, he shall direct a resurvey to be made, the report to be executed in triplicate and deposited as aforesaid. A survey was made of defendant's distillery, and the report properly executed and deposited. Thereafter the commissioner directed a resurvey to be made, stating in his notice that no new measurements were required, etc. The second report was made accordingly from the old measurements, but it did not appear that a copy was furnished the distiller. Held that, as the commissioner's letter required in effect a new estimate of the producing capacity founded on the old survey, and not a new survey, and no new survey was actually made, and no new estimate proven to have been given the distiller, the old survey and estimate was not abrogated, and the defendant was liable for the amount of taxes based on the old estimate. U. S. v. Ferrary (1876) 93 U. S. 625, 23 L. Ed. 832.

Conclusiveness of survey and estimate.—A valid survey and estimate conclusively determines the producing capacity and fixes the minimum tax, and can only be abrogated by a new survey and estimate ordered by the commissioner. U. S. v. Ferrary (1876) 93 U. S. 625, 629, 23 L. Ed. 832.

Compensation of surveyors.—The Secretary of the Treasury may prescribe the compensation to be allowed distillery surveyors either by regulations or instructions. Landram v. U. S. (1880) 16 Ct. Cl. 74.

Cited without definite application, Stall v. Pepper (1878) 97 U. S. 438, 441, 24 L. Ed. 1070; Chicago Distilling Co. v. Stone (1891) 11 Sup. Ct. 862, 863, 140 U. S. 647, 35 L. Ed. 532; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Nebraska Distilling Co. (1897) 80 Fed. 285, 286, 25 C. C. A. 418; Same v. Millinger (C. C. 1881) 7 Fed. 187, 188; Same v. Ridenour (D. C. 1902) 119 Fed. 411, 415.

§ 6003. (R. S. § 3265.) Notice by manufacturer of a still; penalty for setting up still without permit.

Any person who manufactures any still, boiler, or other vessel to be used for the purpose of distilling, shall, before the same is removed from the place of manufacture, notify in writing the collector of the district in which such still, boiler, or other vessel is to be used or set up, by whom it is to be used, its capacity, and the time when the same is to be removed from the place of manufacture; and no such still, boiler, or other vessel shall be set up without the permit in writing of the said collector for that purpose; and any person who sets up any such still, boiler, or other vessel, without first ob-

taining a permit from the said collector of the district in which such still, boiler, or other vessel is intended to be used, or who fails to give such notice, shall pay in either case the sum of five hundred dollars, and shall forfeit the distilling-apparatus thus removed or set up in violation of law.

Act July 20, 1868, c. 186, § 14, 15 Stat. 130. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Craft (D. C. 1890) 43 Fed. 374, 375.

§ 6004. (R. S. § 3266.) Distilling on certain premises prohibited; penalty.

No person shall use any still, boiler, or other vessel, for the purpose of distilling, in any dwelling-house, or in any shed, yard, or inclosure connected with any dwelling-house, or on board of any vessel or boat, or in any building, or on any premises where beer, lager-beer, ale, porter, or other fermented liquors, vinegar, or ether, are manufactured or produced, or where sugars or sirups are refined, or where liquors of any description are retailed, or where any other business is carried on; or within six hundred feet in a direct line of any premises authorized to be used for rectifying; and every person who does any of the acts prohibited by this section, or aids or assists therein, or causes or procures the same to be done, shall be fined one thousand dollars and imprisoned for not less than six months nor more than two years, in the discretion of the court, for each such offense: Provided, That saleratus may be manufactured, or meal or flour ground from grain, in any building or on any premises where spirits are distilled; but such meal or flour shall be used only for distillation on the premises: Provided, further, That any boiler used in generating steam or heating water to be used in any distillery, may be located in any other building or on any other premises to be connected with such still or boiling-tubs, by suitable pipes or other apparatus, or the steam from such boiler in the distillery may be conveyed to other premises to be used for manufacturing or other purposes.

Act July 13, 1866, c. 184, § 25, 14 Stat. 154. Act July 20, 1868, c. 186, § 12, 15 Stat. 130. Act June 6, 1872, c. 315, § 12, 17 Stat. 239.

Notes of Decisions

Indictment under statute.—An indictment, under this section charging the defendant with causing or procuring some other person to use a still, boiler, or other vessel, for the purpose of distilling, within the intent and meaning of the internal revenue laws of the United States, is bad, unless it states the name of such other person, or avers that the same is unknown. U. S. v. Simmons (1877) 96 U. S. 360, 24 L. Ed. 819.

An indictment under this section for causing another to use a still "in a certain building and on certain premises where vinegar was manufactured and produced," is insufficient, as it does not show that vinegar was manufactured there at the time the still was used for the purpose of distilling. Id.

An indictment under this section, forbidding any person to cause another to use a still where vinegar is manufactured, sufficiently shows that a still was in fact used by an allegation that defendant caused and procured a still to be used. Id.

An indictment under this section, forbidding any person to cause another to use a still, boiler, and other vessels where vinegar is manufactured, is not bad for failing to allege that the spirits distilled were alcoholic, where it alleges that the vessels were used "for the purpose of distilling, within the intent and meaning of the internal revenue law of the United States." Id.

An indictment under Act 1866, c. 184, § 25, must allege that the still was intended to be used within the United States for distilling spirits, and that defendant failed to give the notice, etc. U. S. v. Reed (D. C. 1868) Fed. Cas. No. 16,136.

Cited without definite application, U. S. v. Boecker (1874) 21 Wall. 652, 654, 22 L. Ed. 472; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Miller v. U. S. (1905) 136 Fed. 581, 582, 69 C. C. A. 355; U. S. v. Kee Ho (D. C. 1887) 33 Fed. 333. 334; Same v. Wilson (D. C. 1894) 60 Fed. 890, 895.

§ 6005. (R. S. § 3267.) Receiving-cisterns in distilleries.

The owner, agent, or superintendent of any distillery established as hereinbefore provided, shall erect, in a room or building to be provided and used for that purpose, and for no other, and to be constructed in the manner to be prescribed by the Commissioner of Internal Revenue, two or more receiving-cisterns, each to be at least of sufficient capacity to hold all the spirits distilled during the day of twenty-four hours, into which shall be conveyed all the spirits produced in said distillery; and each of said cisterns shall be so constructed as to leave an open space of at least three feet between the top thereof and the floor or roof above, and of not less than eighteen inches between the bottom thereof and the floor below, and shall be so situated that the officer can pass around the same, and shall be connected with the outlet of the worm or condenser by suitable pipes or other apparatus, so constructed as always to be exposed to the view of the officer, and so connected and constructed as to prevent the abstraction of spirits while passing from the outlet of the worm or condenser back to the still or doubler, or forward to the receiving-cistern. Such cisterns and the room in which they are contained shall be in charge and under the lock and seal of the internal-revenue gauger designated for that duty; and all locks and seals required by law shall be provided by the Commissioner of Internal Revenue, at the expense of the United States; and the keys shall be in charge of the collector or such gauger as he may designate. On the third day after the spirits are conveyed into such cistern they shall be drawn off into casks, under the supervision of such gauger, in the presence of the store-keeper, and be removed directly to the distillery warehouse; but on special application to the collector by the owner, agent, or superintendent of any distillery, the spirits may be drawn off from the said cisterns, under the supervision of the gauger, at any time previous to the third day.

Act July 20, 1868, c. 186, § 16, 15 Stat. 131. Act June 6, 1872, c. 315, § 12, 17 Stat. 239. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401.

The Commissioner of Internal Revenue was authorized to exempt distilleries having a daily spirit-producing capacity of thirty gallons of proof spirits or less from the requirements of this section by Act March 1, 1879, c. 125, § 5, ante, § 5991.

Notes of Decisions

See notes under § 5993, ante.

Arrangement of still or apparatus.—A true construction of the statute does not require any distinction to be drawn between an arrangement of stills by which the process of "doubling" is carried on by passing the low wines a second time through the same still, and passing these a second time through distillation in another still. (1868) 12 Op. Atty. Gen. 523.

An arrangement by which a tank is interposed as a receptacle for the product of distillation, so far as the same has not reached the condition of proof-spirits, but still continues to be low wines, with a view to carry it back for further distillation, is not a violation of the act. Id.

Violation of law and penalty therefor.—A distiller will not be held to a penalty imposed for knowingly and willfully violating the law, where he has procured suitable utensils and machinery, employed competent agents and workmen, and given proper directions to accomplish the end desired, and the violation claimed is a technical one only, and unintended, and arises from defects in the apparatus. Felton v. U. S. (1877) 96 U. S. 699, 24 L. Ed. 875.

All that is required to avoid the penalties of the law is to use in good faith the ordinary means by the employment of skilled artisans and competent inspectors to secure utensils and machinery which will accomplish the end desired. If defects should then exist, and the end sought be not attained, or defects not then open to observation should subsequently be discovered, the parties cannot be charged with "knowingly and willfully" omitting to do what is required. Id.

Parties are presumed to be acquainted with the utensils and machinery used in their business, but the law does not punish them where there is no intent to evade it, and usual means to comply therewith are adopted. Id.

A distiller who failed to arrange his distillery apparatus, as prescribed by section 16, Act July 20, 1868, has no authority to manufacture spirits, and is subject to the penalty prescribed by

section 96 (section 6359, post), and this whether he intended to defraud the revenue or not. U. S. v. McKim (D. C. 1869) Fed. Cas. No. 15,693.

Any contrivance which should accomplish the production of alcohol or rectified spirits in a manner to subject such products to a single tax, as upon proof-spirits, would be presumptively in contravention of the law. (1868) 12 Op. Atty. Gen. 523.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6006. (R. S. § 3268.) Breaking locks, gaining access to cistern, etc.; penalty.

Every person who destroys, breaks, injures, or tampers with any lock or seal which may be placed on any cistern-room or building by the duly authorized officers of the revenue, or opens said lock or seal, or the door to said cistern-room or building, or in any manner gains access to the contents therein, in the absence of the proper officer, shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than one year nor more than three years.

Act July 20, 1868, c. 186, § 40, 15 Stat. 141.

Notes of Decisions

Evidence as to breaking lock in prosecution under section 6038.—On the trial of one indicted under section 6038, post, for the removal and concealment of distilled spirits on which the tax had not been paid, testimony was offered that, on the night before the whisky was removed, accused broke the lock of the warehouse where it was stored. Defendant objected on the ground that he had been indicted under this section for breaking such lock, and at the last term of the court had been tried thereon and acquitted. Held that, though such acquittal could be considered by the jury in considering the credibility of the witnesses, it was not ground for excluding the testimony. Pilcher v. U. S. (1902) 113 Fed. 248, 51 C. C. A. 205.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6007. (R. S. § 3269.) Furnaces, tubs, doublers, worm-tanks; penalty.

The door of the furnace of every still or boiler used in any distillery shall be so constructed that it may be securely fastened and locked. The fermenting-tubs shall be so placed as to be easily accessible to any revenue officer, and each tub shall have distinctly painted thereon in oil-colors its cubic contents in gallons and the number of the tub. There shall be a clear space of not less than one foot around every wood-still, and not less than two feet around every doubler and worm-tank. The doubler and worm-tanks shall be elevated not less than one foot from the floor; and every fixed pipe to be used by the distiller, except for conveyance of water, or of spent mash or beer only, shall be so fixed and placed as to be capable of being examined by the officer for the whole of its length or course, and shall be painted, and kept painted, as follows, that is to say: Every pipe for the conveyance of mash or beer shall be painted of a red color; every pipe for the conveyance of low-wines back into the still or doubler shall be painted blue; every pipe for the conveyance of spirits shall be painted black, and every pipe for the conveyance of water shall be painted white. Whenever any fixed pipe is used by any distiller which is not painted or kept painted as herein directed, or which is painted otherwise than as herein directed, he shall forfeit the sum of one thousand dollars.

Act July 20, 1868, c. 186, § 17, 15 Stat. 131.

Notes of Decisions

See notes under § 6005, ante.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S 174, 58 L. Ed. 558.

§ 6008. (R. S. § 3270.) Apparatus and fastenings.

The Commissioner of Internal Revenue is authorized to order and require such changes of or additions to distilling apparatus, connecting-pipes, pumps, or cisterns, or any machinery connected with or used in or on the distillery premises. or may require to be put on any of the stills, tubs, cisterns, pipes, or other vessels, such fastenings, locks, or seals as he may deem necessary.

Act June 6, 1872, c. 315, § 12, 17 Stat. 239.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6009. (R. S. § 3271.) Distillery warehouse.

Every distiller shall provide, at his own expense, a warehouse, to be situated on and to constitute a part of his distillery premises, and to be used only for the storage of distilled spirits of his own manufacture until the tax thereon shall have been paid; but no dwelling-house shall be used for such purpose, and no door, window, or other opening shall be made or permitted in the walls of such warehouse leading into the distillery or into any other room or building; and such warehouse, when approved by the Commissioner of Internal Revenue, on report of the collector, is hereby declared to be a bonded warehouse of the United States, to be known as a distillery warehouse, and shall be under the direction and control of the collector of the district, and in charge of an internal-revenue store-keeper, assigned thereto by the Commissioner.

Act July 20, 1868, c. 186, § 15, 15 Stat. 130. Act June 6, 1872, c. 315, § 12, 17 Stat. 239.

A successor in the business of distilling was authorized to use the distillery warehouse of his predecessor by Act Jan. 8, 1874, c. 7, post, § 6010.

Spirits may remain eight years in distillery warehouses, by Act Aug. 27, 1894, c. 349, § 48, ante, § 5986.

The establishment of special bonded warehouses for fruit brandy was authorized by Act March 3, 1877, c. 114, and Act Oct. 18, 1888, c. 1194, post, §§ 6039–6050.

The establishment of general bonded warehouses for spirits other than from fruit is authorized by Act Aug. 27, 1894, c. 349, § 51, post, § 6058.

The Commissioner of Internal Revenue was authorized to discontinue a distillery warehouse whenever distilling has been suspended at the distillery for six months in a year, and the spirits in the warehouse do not exceed 5,000 proof gallons, by Act Aug. 27, 1894, c. 349, § 57, post, § 6012.

Notes of Decisions

See notes under § 5997, ante.

Authority to dispense with requirement of statute.—An officer of the United States had no authority to dispense with the requirement of this section, and if in violation of his duty he permitted a removal before payment of the tax he subjected himself to punishment, but did not bind the government by his acts, as the government is not responsible for the laches or wrongful acts of its officers. Hart v. U. S. (1877) 95 U. S. 316, 318, 24 L. Ed. 479.

"Bonded warehouse" as including distillery warehouses.—The "bonded warehouse" referred to in this section includes distillery warehouses. U. S. v. Powell (1871) 81 U. S. (14 Wall.) 493, 500, 20 L. Ed. 726.

The "distillery warehouses" which distillers are required by Act July 20, 1868, § 15 (15 Stat. 128), to provide, situated on their distillery premises, are "bonded warehouses," within the joint resolution of March 29, 1869 (16 Stat. 52), which declares that the proprietors of all "internal revenue bonded warehouses" shall reimburse to the United States the expenses and salary of all storekeepers put by it in charge of them. Id.

Per diem wages of storekeepers.—Per diem wages paid to storekeepers for taking charge of distillery warehouses on Sundays, are expenses within the joint resolution of congress of March 29, 1869, which declares that the proprietors of all internal revenue bonded warehouses shall reimburse to the United States the expenses of storekeepers put by it in charge of them. U. S. v. Powell (1871) 81 U. S. (14 Wall.) 493, 20 L. Ed. 726.

Custody and control of warehouse and spirits therein.—Under this section and sections 6014 and 6015, post, the government is not responsible for safe keeping of bonded whisky deposited in a distillery warehouse, and if it is stolen through failure of the revenue officers to provide sufficient locks for

the doors, it is no defense to an action on the bond either in favor of the distiller or of his sureties. U. S. v. Witten (1892) 12 Sup. Ct. 372, 373, 143 U. S. 76, 36 L. Ed. 81.

Though a distillery warehouse is under the lock of the inspector, as provided by Act July 13, 1866, §§ 27–29, the spirits are still in the possession of the owner, within Act July 13, 1866, § 9. U. S. v. Thirty-Six Barrels of High Wines (C. C. 1870) Fed. Cas. No. 16,468.

Whisky deposited in a bonded warehouse and held for internal revenue tax is in possession of the United States, and a sheriff has no right to enter such warehouse and seize the whisky under execution, even though he offers to pay the tax. McCullough v. Large (C. C. 1884) 20 Fed. 309, 311.

A distiller's warehouse is under the government's complete control, and neither a buyer nor pledgee may take actual delivery of spirits stored therein without paying the tax, and neither is bound to make payment until actual removal is desired. In re Miller Pure Rye Distilling Co. (D. C. 1910) 176 Fed. 606, affirmed Taney v. Penn Nat. Bank of Reading (1911) 187 Fed. 689, 109 C. C. A. 437.

Warehouse receipts.—The relation between a distiller and the officers of the government in custody of the whisky in his distillery warehouse is sui generis. It is prescribed by law, and is not contractual, and warehouse receipts issued by the distiller for whisky so stored in bond are not within Act Pa. Sept. 24, 1866 (1 Purd. Dig. [13th Ed.] p. 393), providing for the negotiability of warehouse receipts, which receipts, under the decisions of the Supreme Court of the state, must have been issued by a third and independent person, in order that their transfer by the bailor to a purchaser or pledgee shall operate as a delivery of the property. Taney v. Penn. Nat. Bank of Reading (1911) 187 Fed. 689, 109 C. C. A. 437, affirming decree In re Miller Pure Rye Distilling Co. (D. C. 1910) 176 Fed. 606.

Transfer of warehouse receipts as delivery of whisky, see Id.

A receipt for whisky stored in a bonded warehouse is not a "document of title," within the meaning of Act Ky. May 5, 1880, which provides that "every factor or other agent intrusted with possession of a document of title to merchandise shall be deemed the owner," so as to validate a sale or pledge of the property to an innocent third party, and which also declares that any custom-house permit or warehouse receipt shall be deemed a document of title, since whisky in a bonded warehouse is subject to the regulations of congress, and is in charge of the officers of the government. George v. Fourth Nat. Bank (C. C. 1888) 41 Fed. 257.

Pledges of warehouse receipts against pledgor's whisky stored in his warehouse held invalid. In re Rohrer (D. C. 1911) 186 Fed. 997, reversed Pattison v. Dale (1912) 196 Fed. 5, 115 C. C. A. 639.

Averment as to warehouse in indictment.—An indictment for aiding in the concealment of distilled spirits on which the tax had not been paid need not aver that there was a warehouse provided by law as required by this section, where the spirits should have been stored. Pounds v. U. S. (1898) 18 Sup. Ct. 729, 171 U. S. 35, 43 L. Ed. 62.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Sisk (1910) 176 Fed. 885, 100 C. C. A. 355; Same v. South Branch Distilling Co. (C. C. 1878) Fed. Cas. No. 16,359; Same v. Peace (C. C. 1892) 48 Fed. 714, 715 (reversed [1893] 53 Fed. 999, 4 C. C. A. 148); Merchants' Nat. Bank v. Roxbury Distilling Co. (D. C. 1912) 196 Fed. 76.

§ 6010. (Act Jan. 8, 1874, c. 7.) Use of distillery warehouse by successor in business.

When from death or from any other cause there shall be a change in the person, firm or company engaged in the business of distilling at any distillery, and the person, firm or company that by reason of such change ceases to carry on said business at such distillery has at the time of such change spirits in the distillery warehouse, it shall be lawful for the Commissioner of Internal Revenue, upon the written consent of the surviving principals and sureties interested, and under such rules and regulations, and upon such other conditions, as he may prescribe, to permit the succeeding person, firm or company to use the distillery warehouse on the premises in the same manner as if it did not contain distilled spirits belonging to the original person, firm, or company after setting apart and separating, by a secure and unbroken partition such portion of it as may be necessary for the storage and safe-keeping of the spirits distilled by the original person, firm or company, during the period allowed

by law for the removal of distilled spirits from distillery warehouses, or until said spirits are removed, and the tax paid thereon within that time: Provided, That nothing herein contained shall impair or in any way affect the lien existing at the time of such change under section one of the internal revenue act of July twenty, eighteen hundred and sixty-eight, as amended, or other liabilities under any internal revenue law, but the existence of such lien shall be no ground for refusing to approve the bond of the succeeding person, firm or company, anything in section eight of the said act of July twenty, eighteen hundred and sixty-eight, as amended, to the contrary notwithstanding. (18 Stat. 2.)

These were provisions of an act to allow distillery warehouses to be continued in use after changes in the management of the business, cited above.

The provisions of Act July 20, 1868, and amendments, mentioned in the proviso in this section, were incorporated into R. S. §§ 3251, 3260, 3262, ante, §§ 5985, 5997, 5999.

Provisions for the distiller's entry for deposit in distillery warehouse were made by R. S. § 3293, as amended by Act March 1, 1879, c. 125, § 5, and by Act May 28, 1880, c. 108, § 4, incorporated into that section, post, § 6034.

§ 6011. (R. S. § 3272.) When a warehouse becomes unsafe.

Whenever in the opinion of the Commissioner of Internal Revenue any distillery or other warehouse is unsafe or unfit for use, or the merchandise therein is for any reason liable to loss or great wastage, he may discontinue such warehouse, and require the merchandise therein to be transferred to such other warehouse as he may designate and within such time as he may prescribe. Such transfer shall be made under the supervision of the collector, or of such other officer as may be designated by the Commissioner, and the expense thereof shall be paid by the owner of the merchandise. Whenever the owner of such merchandise fails to make such transfer within the time prescribed, or to pay the just and proper expense of such transfer, as ascertained and determined by the Commissioner, such merchandise may be seized and sold by the collector in the same manner as goods are sold upon distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the costs and expenses of such sale and removal, and the balance paid over to the owner of such merchandise.

Act July 20, 1868, c. 186, § 56, 15 Stat. 149.

The discontinuance of unsafe or unfit special bonded warehouses, and the transfer of merchandise therein, pursuant to this section, including the penalties imposed, were authorized by Act March 3, 1877, c. 114, § 7, post, § 6045.

Similar provisions extended to distillery warehouses and general bonded warehouses were made by Act Aug. 27, 1894, c. 349, § 57, post, § 6012.

Notes of Decisions

Tax as due on removal.—The tax is not due on the removal from one warehouse to another. U. S. v. Peace (C. C. 1892) 48 Fed. 714, 716, reversed (1893) 53 Fed. 999, 4 C. C. A. 148.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Id. (1911) 187 Fed. 689, 109 C. C. A. 437.

§ 6012. (Act Aug. 27, 1894, c. 349, § 57.) Discontinuance of warehouse and transfer of merchandise.

Whenever distilling shall have been suspended at any distillery for a period or periods aggregating six months during any calendar year, and the quantity of spirits remaining in the distillery warehouse does not exceed five thousand proof gallons, or whenever, in the opinion of the Commissioner of Internal Revenue, any distillery warehouse or general bonded warehouse is unsafe or unfit for use, or the merchandise therein is liable to loss or great wastage, he may in either such case discontinue such warehouse and require the merchandise therein to be transferred to such other warehouse as he may designate, and within such time as he may prescribe; and

all the provisions of section thirty-two hundred and seventy-two of the Revised Statutes of the United States relating to transfers of spirits from warehouses, including those imposing penalties, are hereby made applicable to transfers to or from general bonded warehouses established under this Act. (28 Stat. 566.)

This section was part of the Wilson Tariff Act, cited above.

R. S. § 3272, mentioned in this section, providing for discontinuance of a distillery or other warehouse becoming unsafe, etc., is set forth ante, § 6011.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Id. (1911) 187 Fed. 689, 109 C. C. A. 437.

§ 6013. (R. S. § 3273.) Store-keepers have charge under direction of collector.

The store-keeper assigned to any distillery warehouse shall also have charge of the distillery connected therewith; and every store-keeper shall have charge of the warehouse to which he is assigned, and of such distillery, under the direction of the collector controlling the same.

Act July 20, 1868, c. 186, §§ 21, 52, 15 Stat. 134, 146.

Cited without definite application, Clinkenbeard v. U. S. (1874) 21 Wall. 65, 69, 22 L. Ed. 477; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Id. (1911) 187 Fed. 689, 109 C. C. A. 437.

§ 6014. (R. S. § 3274.) Custody and management of warehouse.

Every distillery warehouse shall be in the joint custody of the store-keeper and the proprietor thereof. It shall be kept securely locked, and shall at no time be unlocked, or opened, or remain open, unless in the presence of such store-keeper, or other person who may be designated to act for him, as provided by law; and no articles shall be received in or delivered from such warehouse except on an order or permit addressed to the store-keeper and signed by the collector having control of the warehouse.

Act July 20, 1868, c. 186, § 52, 15 Stat. 146.

Notes of Decisions

See notes under § 6009, ante.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Id. (1911) 187 Fed. 689, 109 C. C. A. 437; U. S. v. Peace (C. C. 1892) 48 Fed. 714, 715, reversed (1893) 53 Fed. 999, 4 C. C. A. 148.

§ 6015. (R. S. § 3275.) Distiller to keep distillery accessible.

No fence or wall of a height greater than five feet shall be erected or maintained around the premises of any distillery, so as to prevent easy and immediate access to such distillery. And every distiller shall furnish to the collector of the district as many keys of the gates and doors of the distillery as may be required by the collector, from time to time, for any revenue officer or other person who may be authorized to make survey or inspection of the premises, or of the contents thereof; and said distillery shall be kept always accessible to any officer or other person having any such key. Every person who violates any of the foregoing provisions of this section by negligence or refusal, or otherwise, shall pay a penalty of five hundred dollars.

Act July 20, 1868, c. 186, § 18, 15 Stat. 132. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401.

Notes of Decisions

See notes under § 6009, ante.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6016. (R. S. § 3276, as amended, Act March 1, 1879, c. 125, § 5.) Power of revenue officers to enter and examine distilleries; penalty for obstructing officer.

It shall be lawful for any revenue officer at all times, as well by night as by day, to enter into any distillery or building or place used for the business of distilling, or used in connection therewith for storage or other purposes, and to examine, gauge, measure, and take an account of every still or other vessel or utensil of any kind and of all low-wines, and of the quantity and gravity of all mash, wort, or beer, and of all yeast, or other compositions for exciting or producing fermentation in any mash or beer, of all spirits and of all materials for making or distilling spirits, which may be in any such distillery or premises, or in possession of the distiller. And whenever any internal-revenue officer, or any person called by him to his aid, is hindered, obstructed, or prevented by any distiller or by any workman, or other person acting for such distiller, or in his employ, from entering into any such distillery or building or place as aforesaid; or any such officer is by the distiller, or his workman or any person in his employ, prevented or hindered from, or opposed or obstructed, or molested in the performance of his duty under the internal-revenue laws, in any respect, the distiller shall forfeit the sum of not exceeding one thousand dollars. And whenever any officer, having demanded admittance into a distillery or distillery premises, and having declared his name and office, is not admitted into such distillery or premises by the distiller or other person having charge thereof, it shall be lawful for such officer at all times, as well by night as by day, to break open by force any of the doors or windows, or to break through any of the walls of such distillery or premises necessary to be broken open or through, to enable him to enter the said distillery or premises; and the distiller shall forfeit the sum of not exceeding one thousand dollars.

Act July 20, 1868, c. 186, § 32, 15 Stat. 139. Act March 1, 1879, c. 125, § 5, 20 Stat. 335.

This section is amended by inserting before the words "one thousand dollars," where they occur in this section, the words "not exceeding," as set forth here by Act March 1, 1879, c. 125, § 5, cited above.

Notes of Decisions

Operation of distillery by officers.— Internal revenue officers held authorized to take possession of a registered distillery and operate same for a short time to ascertain its capacity and whether it is being operated according to law. U. S. v. One Distillery and Fixtures, etc. (D. C. 1911) 193 Fed. 720.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Id. (1911) 187 Fed. 689, 109 C. C. A. 437.

§ 6017. (R. S. § 3277.) Distillers and rectifiers to furnish facilities for examination; penalty for neglect.

On the demand of any internal-revenue officer, every distiller or rectifier shall furnish strong, safe, and convenient ladders of sufficient length to enable the officer to examine and gauge any vessel or utensil in such distillery or premises; and shall, at all times when required, supply all assistance, lights, ladders, tools, staging, or other things necessary for inspecting the premises, stocks, tools, and apparatus belonging to such person, and shall open all doors, and open for examination all boxes, packages, and all casks, barrels, and other vessels not under the control of the revenue officer in charge, under a penalty of five hundred dollars for every refusal or neglect so to do.

Act July 20, 1868, c. 186, § 33, 15 Stat. 139.

The provisions of this section were made applicable to revenue agents by an amendment of R. S. § 3152, by Act March 1, 1879, c. 125, § 2, ante, § 5856.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6018. (R. S. § 3278.) Officers to break up ground or walls in order to examine.

It shall be lawful for any revenue officer, and any person acting in his aid, to break up the ground on any part of a distillery, or premises of a distiller or rectifier, or any ground adjoining or near to such distillery or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance leading therefrom or thereto, to break up any ground, house, wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance, and turn any cock, or to examine whether such pipe or other conveyance conveys or conceals any mash, wort, or beer, or other liquor, which may be used for the distillation of low-wines or spirits, from the sight or view of the officer, so as to prevent or hinder him from taking a true account thereof.

Act July 20, 1868, c. 186, § 34, 15 Stat. 140.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6019. (R. S. § 3279.) Signs to be put up by distillers and rectifiers; penalty for neglect; penalty for using false signs, etc.

Every person engaged in distilling or rectifying spirits, and every wholesale liquor-dealer, shall place and keep conspicuously on the outside of the place of such business a sign, exhibiting in plain and legible letters, not less than three inches in length, painted in oil-colors or gilded, and of a proper and proportionate width, the name or firm of the distiller, rectifier, or wholesale dealer, with the words: "Registered distillery," "rectifier of spirits," or "wholesale liquor-dealer," as the case may be. Every person who violates the foregoing provision by negligence or refusal, or otherwise, shall pay a penalty of five hundred dollars. And every person, other than a rectifier or wholesale liquor-dealer who has paid the special tax, or a distiller who has given bond as required by law, who puts up or keeps up the sign required by this section, or any sign indicating that he may lawfully carry on the business of a distiller, rectifier, or wholesale liquor-dealer, shall forfeit and pay one thousand dollars, and shall be imprisoned not less than one month nor more than six months. And every person who works in any distillery, rectifying establishment, or wholesale liquor-store, on which no sign is placed and kept, as hereinbefore provided; and every person who knowingly receives at, carries or conveys any distilled spirits to or from, any such distillery, rectifying establishment, warehouse, or store, or who knowingly carries and delivers any grain, molasses, or other raw material to any distillery on which such sign is not placed and kept, shall forfeit all horses, carts, drays, wagons, or other vehicle or animal used in carrying or conveying such property aforesaid, and shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned not less than one month nor more than six months.

Act July 20, 1868, c. 186, § 18, 15 Stat. 132.

Notes of Decisions

Violations of statute in general.—It is an offense under this section to work in a distillery on which no sign is placed and kept as provided therein. U. S. v. Flynn (C. C. 1878) Fed. Cas. No. 15,123.

One who erects a "shanty," in which is put up an illicit still, is not punishable under this section, providing that every person who works in any distillery on which no sign is placed and kept, shall be fined. U. S. v. Burgess (D. C. 1888) 33 Fed. 833.

The defendants, being distillers, having been indicted, tried, found guilty, and fined for a violation of this section, and execution issued thereon having been returned nulla bona, this action was instituted on the bond executed by the defendants to the United States,

containing a covenant that the defendants "shall in all respects faithfully comply with all the provisions of law and regulations in relation to the duties and business of distillers, * * * and shall pay all penalties incurred or fines imposed on him for a violation of any of said provisions." Held, on demurrer to the petition, that the action was maintainable. U. S. v. Thompson (D. C. 1891) 45 Fed. 468.

Indictment.—An indictment under this section which charges that the accused "unlawfully and knowingly did carry and deliver, to wit, raw material to a distillery" on which no sign was placed and kept as required by law, but which does not state that such distillery was one for the production of spirits, nor set forth the kind of raw material which was furnished, is insufficient, as not describing the offense with the particularity required. Terry v. U. S. (1903) 120 Fed. 483, 56 C. C. A. 633.

Trial by jury.—Defendants were indicted for unlawfully carrying on the business of a rectifier without having paid the special tax required by law, in violation of section 5966, ante, for which defendants might have been fined $5,000 and imprisoned for two years. The second count was for the unlawful rectifying in violation of section 6099, post, for which a punishment of not less than $1,000 nor more than $5,000 fine and imprisonment for not less than six months nor more than two years might be imposed. The third count was for omitting to put up signs as required by this section. And the fourth count was for violating section 6107, post, prohibiting the changing of stamps and shifting of distilled spirits, under which the maximum punishment is a fine of $1,000 and imprisonment for a year. Held, that such offenses involving imprisonment were crimes for which accused could only be punished after a conviction by a jury under Const. art. 3, § 2, providing that the trial of all crimes except in the case of impeachment shall be by jury. Low v. U. S. (1909) 169 Fed. 86, 94 C. C. A. 1.

Cited without definite application, Powers v. U. S. (1912) 32 Sup. Ct. 281, 282, 223 U. S. 303, 56 L. Ed. 448; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Foster v. U. S. (1911) 188 Fed. 305, 110 C. C. A. 283, denied (1911) 192 Fed. 1022, 112 C. C. A. 665.

§ 6020. (R. S. § 3280.) Distillers not to carry on business until the law is complied with.

It shall not be lawful for any distiller to commence or to continue the business of distilling, until he has given the bond required by law, and complied with the provisions of law relating to the registration and survey of distilleries, and the arrangement and construction of distilleries and the premises connected therewith; nor shall it be lawful for any person to engage in the business of distilling on any premises distant less than six hundred feet in a direct line from any premises used for rectifying; nor shall the processes of distillation and rectification both be carried on within the distance of six hundred feet in a direct line.

Act July 20, 1868, c. 186, § 11, 15 Stat. 129. Act June 6, 1872, c. 315, § 12, 17 Stat. 239.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Heidritter v. Elizabeth Oilcloth Co. (C. C. 1881) 6 Fed. 138, 140, affirmed (1884) 5 Sup. Ct. 135, 112 U. S. 294, 28 L. Ed. 729.

§ 6021. (R. S. § 3281.) Carrying on distillery without giving bond, etc.; penalty.

Every person who carries on the business of a distiller without having given bond as required by law, or who engages in or carries on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, shall, for every such offense, be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years. And all distilled spirits or wines, and all stills or other apparatus fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises, and all the right, title, and interest of such person in the lot or tract of land on which

such distillery is situated, and all right, title, and interest therein of every person, who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery, which shall be found in any such building, yard, or inclosure, and all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States.

Act July 20, 1868, c. 186, § 44, 15 Stat. 142. Act June 6, 1872, c. 315, § 12, 17 Stat. 240.

Similar provisions were made by Act Feb. 8, 1875, c. 36, § 16, ante, § 5966.

Notes of Decisions

See §§ 5966, 5993, ante, and 6038, post, and notes thereunder.

Violation of statute in general.—The act and fraudulent intent together constitute the offense under this section. U. S. v. Simmons (1877) 96 U. S. 360, 364, 24 L. Ed. 819.

An employé having no interest in a distillery or the product as a proprietor or partner, though he is paid in such product, is not subject to indictment, though he has knowledge that the special tax has not been paid. U. S. v. Logan (C. C. 1867) Fed. Cas. No. 15,624; Same v. Cooper (C. C. 1870) Fed. Cas. No. 14,863.

The owner of a distillery who rents the same to another knowing that the latter intends to use it for distilling whisky, in violation of law, is guilty of aiding and abetting such unlawful manufacture. U. S. v. Harbison (C. C. 1871) Fed. Cas. No. 15,300.

Act July 20, 1868, § 44, is applicable to any person distilling spirits without paying the special tax, or giving bond, whether he has registered his still, or given notice of intention to engage in the business, or not. U. S. v. Mathoit (D. C. 1870) Fed. Cas. No. 15,740.

A person is liable to indictment for running a distillery upon which the special tax has not been paid, though he acted merely as the agent of another. U. S. v. Davis (D. C. 1871) Fed. Cas. No. 14,928.

A vinegar manufacturer is liable as a distiller if, by the process used, he obtains alcohol from his mash so that he is saved the expense of purchasing the alcohol necessary for the manufacture of vinegar. U. S. v. Steen & Cwergius' Factory (D. C. 1872) Fed. Cas. No. 16,383; Same v. Distillery (D. C. 1877) Fed. Cas. No. 14,960.

A part owner of a still is liable where he has knowledge of illicit distilling by his co-owner, though he does not share in the product. U. S. v. Bagwell (D. C. 1874) Fed. Cas. No. 14,494.

A person is liable for illicit distilling under Act July 20, 1868, where the spirits extracted partake of the qualities of alcohol, irrespective of their degree of strength. Id.

Whoever aids in the act of illegal distilling is to be held responsible under the law, without regard to ownership of the still or its product. U. S. v. Carpenter (D. C. 1874) Fed. Cas. No. 14,727.

S., who owned a distillery and a quantity of whisky, sold the same to R., taking in payment a promissory note, which he had discounted at a bank. S. had no license to sell whisky, nor were the barrels, when sold, marked as required by the United States laws. The bank brought suit against R. on the note, who contended that it was void because of these violations of the law by S. Held, that it was not void, as the United States statutes did not prohibit the sale of whisky, but only imposed a penalty for their violation. Rahter v. First Nat. Bank (1880) 92 Pa. 393, distinguishing Holt v. Green (1873) 73 Pa. 198, 13 Am. Rep. 737.

Prosecution and punishment.—An indictment, under this section, forbidding the operation of a still with the intent of evading the tax on spirits, charging that defendant knowingly carried on the business of a distiller, within the meaning of the internal revenue laws of the United States, with the intent to defraud the United States of the tax on spirits distilled by him, need not also state the particular means by which the fraud was effected. U. S. v. Simmons (1877) 96 U. S. 360, 24 L. Ed. 819.

In an action on a distiller's bond for breach of section 6038, post, a compromise of prosecutions under this section and section 10201, post, for removal of the same liquor, is a complete defense. U. S. v. Chouteau (1880) 102 U. S. 603, 26 L. Ed. 246.

An indictment for unlawfully carrying on the business of distillers with intent to defraud the United States, or having a still under their superintendence, is supported by proof that the distillery was owned by a corporation of which defendants were the officers and man-

agers. Wood v. U. S. (1913) 204 Fed. 55, 122 C. C. A. 369.

On trial of defendants for operating an illicit still, testimony offered to show that other persons lived in the vicinity of the still, and that there were paths between their houses and the still, held properly excluded as immaterial. Fields v. U. S. (1915) 221 Fed. 242, 137 C. C. A. 98, certiorari denied (1915) 35 Sup. Ct. 941, 238 U. S. 640, 59 L. Ed. 1501.

"Then and there distilling and manufacturing spirits to a very large amount, to wit, to the amount and number of 1,000 gallons of proof spirits," held a sufficient affirmative allegation that defendant did distill. U. S. v. Fox (C. C. 1868) Fed. Cas. No. 15,156.

In an indictment against a distiller for conspiracy to defraud the United States, it is not essential to state, in addition to an intent to defraud, the facts showing such intent. U. S. v. Ulrici (C. C. 1875) Fed. Cas. No. 16,594.

Where the charge is an attempt to defraud, acts constituting the attempt should be specified. Id.

An indictment under this section, which describes the offense in the language of the statute, is sufficient. U. S. v. Staton (C. C. 1878) Fed. Cas. No. 16,382.

The finding of unstamped spirits on premises containing a still is, when unexplained, sufficient to justify the jury in finding that such spirits were distilled there since the last inspection by the gauger. U. S. v. Mathoit (D. C. 1870) Fed. Cas. No. 15,740.

The presence of defendants while the distillery was in operation is merely a circumstance to show their connection with it, and will not alone justify a conviction. U. S. v. Dobbs (D. C. 1871) Fed. Cas. No. 14,972.

A conviction, under section 6038, post, for removing distilled spirits to a place other than a distillery warehouse, or concealing them there contrary to law, is not a bar to a conviction under this section for illicit distilling, because the same are different offenses, and the question of being twice in jeopardy, within Const. Amend. 5, does not arise. U. S. v. Three Copper Stills (D. C. 1890) 47 Fed. 495.

—— For carrying on business without paying special tax under former law.—An indictment for carrying on the business of a distiller of spirits without paying the special tax (Act July 13, 1866, § 23) need not set out the particular acts of distilling, or the kinds of spirits. U. S. v. Fox (C. C. 1868) Fed. Cas. No. 15,156.

—— For false and fraudulent bond under former law.—In an indictment under Act July 13, 1866, § 42, for executing a fraudulent bond, it is not necessary to set out the particulars. U. S. v. Henry (D. C. 1868) Fed. Cas. No. 15,350.

On a prosecution for executing and signing a false and fraudulent bond, the testimony of a subscribing witness that the bond was taken away and returned with the signature of a person whom the witness had seen sign another bond, held sufficient proof of execution by him. U. S. v. O'Brien (D. C. 1868) Fed. Cas. No. 15,909.

Forfeitures and enforcement thereof.—A bona fide purchaser for value, prior to seizure, is protected. U. S. v. Sixty-Four Barrels Distilled Spirits (C. C. 1870) Fed. Cas. No. 16,306; Same v. Three Hundred and Ninety-Six Barrels Distilled Spirits (D. C. 1865) Fed. Cas. No. 16,504; Same v. Three Hundred and Seventy-Two Pipes Distilled Spirits (D. C. 1879) Fed. Cas. No. 16,505.

Under this section the property is forfeited irrespective of question of ownership. U. S. v. Distillery at Spring Valley (C. C. 1873) Fed. Cas. No. 14,963; Same v. One Copper Still (D. C. 1878) Fed. Cas. No. 15,928.

Where the owner of a distillery and other property connected therewith leased them for the purpose of distilling, the acts or omissions of the lessee in carrying on the business of distilling while he was in possession, and with intent to defraud the revenue, though they are unknown to the owner, subject the distillery and such other property to forfeiture to the United States. Dobbins Distillery v. U. S. (1877) 96 U. S. 395, 24 L. Ed. 637.

The forfeiture takes effect on commission of the act, and the condemnation relates back and avoids all intermediate sales, even to purchasers in good faith. U. S. v. Stowell (1890) 10 Sup. Ct. 244, 247, 133 U. S. 1, 33 L. Ed. 555.

The provision in R. S. § 3305, post, § 6085, that "the distillery, distilling apparatus, and the lot or tract of land on which it stands," shall be forfeited, will not be construed to include the interests of innocent third persons; as the forfeiture would be more comprehensive than that provided for the graver offense declared against in this section. Id.

In a proceeding by information for the forfeiture of property under section 5993, ante, and this section as being used by one carrying on the business of a distiller without giving bond and attempting to defraud the government of the tax on spirits distilled by him, the burden of proof rests on the United States to establish the facts alleged, and every reasonable intendment and effect must be given to answers filed by third persons who claim the property as their own. U. S. v. One Engine & Belting, etc. (1910) 179 Fed. 698, 103 C. C. A. 43.

A sale passes to the purchaser all the interest of the United States, and they are estopped to set up against him any lien known when the sale was ordered. U. S. v. Mackoy (C. C. 1872) Fed. Cas. No. 15,696.

Money paid into the district court, on the sale, in condemnation proceedings, of a distillery, cannot, while the proceedings are pending, be withdrawn, or their distribution directed, by the circuit court, on an original bill. Id.

Where the tax has been paid, and the barrels properly marked, branded, and stamped, the spirits cannot be seized under Act July 20, 1868, § 44, while in the hands of an innocent purchaser, for frauds of the distiller. U. S. v. One Hundred Barrels of High Wines (C. C. 1876) Fed. Cas. No. 15,947.

Under this section the forfeiture does not operate when the statute is violated, but only at the time of seizure. U. S. v. Feigelstock (C. C. 1877) Fed. Cas. No. 15,084.

Knowledge that the ingress or egress over the premises was to or from a distillery is necessary to subject it to forfeiture for having suffered its use for ingress or egress to or from an illicit distillery. Gregory v. U. S. (C. C. 1879) Fed. Cas. No. 5,803.

Premises occupied and used as a distillery are liable to forfeiture for the violation of sections 7 and 19 of the act of July 20, 1868 (15 Stat. 127, 132), in relation to distiller's bonds and books of account, without regard to the culpability of the owner of the property. Heidritter v. Elizabeth Oilcloth Co. (C. C. 1881) 6 Fed. 138, judgment affirmed (1884) 5 Sup. Ct. 135, 112 U. S. 294, 28 L. Ed. 729.

In an information for forfeiture of a distillery for violation of the statute, the acts and intents of the servants or agents of the claimant are to be imputed to the principal, in so far as that they may work the forfeiture of the property used for unlawful purposes. Bush v. U. S. (C. C. 1885) 24 Fed. 917.

A factor's lien is not protected against forfeiture unless it appear that his demand requires for his protection an enforcement of his lien against the specific property seized. U. S. v. Three Hundred and Ninety-Six Barrels Distilled Spirits (D. C. 1865) Fed. Cas. No. 16,504.

A lienor prior to seizure is protected. U. S. v. Three Hundred and Seventy-Two Pipes of Distilled Spirits (D. C. 1879) Fed. Cas. No. 16,505.

Knowledge by the owner of a distillery that his lessees are using the same for the fraudulent manufacture of liquors, and evading payment of taxes thereon, is sufficient to warrant a forfeiture of the property. U. S. v. Blair (D. C. 1866) Fed. Cas. No. 14,607.

Pastures, orchards, and vineyards contiguous to a distillery, and under the same ownership, but in no other way connected therewith, are not subject to forfeiture with the distillery as a part of the lot or tract of land on which it is situated. U. S. v. Certain Piece of Land (D. C. 1870) Fed. Cas. No. 14,767.

Under Act July 20, 1868, § 44, no proof is required of the actual complicity of the owner of the property to be forfeited in the fraud or other thing which causes the forfeiture. U. S. v. Distillery at Spring Valley (C. C. 1873) Fed. Cas. No. 14,963.

The connivance of the government storekeeper in the frauds committed by the person who runs the distillery will not operate to destroy the forfeiture resulting from the acts of such person. U. S. v. Distillery at Spring Valley (D. C. 1876) Fed. Cas. No. 14,962.

Knowledge of the owner of its unlawful use. U. S. v. One Copper Still (D. C. 1878) Fed. Cas. No. 15,928.

After an officer and stockholder of a corporation engaged in distilling is convicted for a violation of the internal revenue law, an action cannot be maintained to enforce the forfeiture of the corporation's property for the same offense, even though the forfeiture is resisted only by the other stockholders. U. S. v. One Distillery (D. C. 1890) 43 Fed. 846, judgment affirmed (1899) 19 Sup. Ct. 624, 174 U. S. 149, 43 L. Ed. 929.

A distillery and its product of distilled spirits is subject to forfeiture if the proprietor, his agent or servants, operates the same with intent to evade payment of the tax on the product. U. S. v. One Distillery and Fixtures, etc. (D. C. 1911) 193 Fed. 720.

Under this section a sale, in proceedings in rem, of land forfeited by the distiller, does not pass the title of a mortgagee, without whose knowledge the distillery was maintained. Glenn v. Winstead (1895) 116 N. C. 451, 21 S. E. 393.

The mere erection of a house on land, and its use as a distillery, is not, as a matter of law, notice to a mortgagee that a distillery is being maintained thereon, so as to render his interest liable to forfeiture for violation by the distiller of the revenue laws. Id.

A mortgage of personal property made six days after the decree of forfeiture thereof for violation of the revenue law as to illicit distilling, but before the sale, conveyed no title. Beattie v. Boyle (Ohio, 1872) 2 Cin. R. 201.

Cited without definite application, Whisky Cases (1878) 99 U. S. 594, 25 L. Ed. 399; Coffey v. U. S. (1886) 6 S. Ct. 432, 436, 116 U. S. 427, 29 L. Ed. 681; Powers v. U. S. (1912) 32 Sup. Ct. 281, 282, 223 U. S. 303, 56 L. Ed. 448; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Hardesty v. U. S. (1909) 168 Fed. 25, 93 C. C. A. 417; Foster v. Same (1911) 188 Fed. 305, 110 C. C. A. 283 (denied [1911] 192 Fed. 1022, 112 C. C. A. 665); U. S. v. Manufacturing Apparatus of New Jersey Melting & Churning Co. (D. C. 1905) 141 Fed. 475.

§ 6022. (R. S. § 3282, as amended, Act March 1, 1879, c. 125, § 5.) Mash, wort and vinegar; location and operation of vinegar factories; forfeitures; punishment.

No mash, wort, or wash, fit for distillation or for the production of spirits or alcohol, shall be made or fermented in any building or on any premises other than a distillery duly authorized according to law; and no mash, wort, or wash so made and fermented shall be sold or removed from any distillery before being distilled; and no person, other than an authorized distiller, shall, by distillation, or by any other process, separate the alcoholic spirits from any fermented mash, wort, or wash; and no person shall use spirits or alcohol, in manufacturing vinegar or any other article, or in any process of manufacture whatever, unless the spirits or alcohol so used shall have been produced in an authorized distillery and the tax thereon paid. Every person who violates any provision of this section shall be fined for each offense not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years: Provided further, That nothing in this section shall be construed to apply to fermented liquors, or to fermented liquids used for the manufacture of vinegar exclusively. But no worm, goose-neck, pipe, conductor, or contrivance of any description whatsoever whereby vapor might in any manner be conveyed away and converted into distilled spirits, shall be used or employed or be fastened to or connected with any vaporizing apparatus used for the manufacture of vinegar; nor shall any worm be permitted on or near the premises where such vaporizing process is carried on. Nor shall any vinegar factory, for the manufacture of vinegar as aforesaid, be permitted within six hundred feet of any distillery or rectifying house. But it shall be lawful for manufacturers of vinegar to separate, by a vaporizing process, the alcoholic property from the mash produced by them, and condense the same by introducing it into the water or other liquid used in making vinegar. No person, however, shall remove, or cause to be removed, from any vinegar factory or place where vinegar is made, any vinegar or other fluid or material containing a greater proportion than two per centum of proof spirits. Any violation of this provision shall incur a forfeiture of the vinegar, fluid, or material containing such proof spirits, and shall subject the person or persons guilty of removing the same to the punishment provided for any violation of this section. And all the provisions of sections thirty-two hundred and seventy-six, thirty-two hundred and seventy-seven, and thirty-two hundred and seventy-eight of the Revised Statutes of the United States are hereby extended and made applicable to all premises whereon vinegar is manufactured, to all manufacturers of vinegar and their workmen or other persons employed by them.

Act July 20, 1868, c. 186, § 4, 15 Stat. 126. Res. March 3, 1871, No. 53, 16 Stat. 601. Act March 1, 1879, c. 125, § 5, 20 Stat. 335.

This section, as enacted in the Revised Statutes was amended by striking out, after the words "use spirits or alcohol," the words "or any vapor of alcoholic spirits," and by striking out, at the end of the section as originally enacted, the words "But nothing herein contained shall be construed to authorize the distillation of such fermented liquids, except in an authorized distillery," and by inserting, in lieu thereof, the provisions beginning with the words "But no worm, goose-neck, pipe, conductor," etc., to the end of the section as set forth here by Act March 1, 1879, c. 125, § 5, cited above.

Vinegar factories established and operated before March 1, 1879, were authorized to be operated, for the manufacture of alcoholic vapor, within 600 feet of a distillery or rectifying-house, by Act June 14, 1879, c. 23, set forth post, § 6023.

R. S. §§ 3276, 3277, 3278, mentioned in this section, are set forth ante, §§ 6016–6018.

The Commissioner of Internal Revenue was required to exempt distillers of

alcohol for denaturation from the provisions of this section by a provision of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, N, subsec. 2, post, § 6137.

Notes of Decisions

See notes under § 5981, ante.

Manufacture prohibited by statute.—The manufacture of alcohol in the process of making vinegar, though the alcohol is not released from its impure state, is within the prohibition of Act July 20, 1868, § 4. U. S. v. Prussing (D. C. 1870) Fed. Cas. No. 16,095.

Cited without definite application, Jordan v. Roche (1913) 33 Sup. Ct. 573, 228 U. S. 436, 57 L. Ed. 908; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6023. (Act June 14, 1879, c. 23.) Location and operation of certain vinegar factories.

Any vinegar factory for the manufacture of vinegar, established and operated as a vinegar factory prior to March first, eighteen hundred and seventy-nine, may be operated for the manufacture of vinegar by the use of alcoholic vapor within such distance less than six hundred feet of any distillery or rectifying-house under such regulations as the Commissioner of Internal Revenue may prescribe with the approval of the Secretary of the Treasury. (21 Stat. 20.)

§ 6024. (R. S. § 3283.) No process for distilling between 11 p. m. of Saturday and 1 a. m. of Monday.

No malt, corn, grain, or other material shall be mashed, nor any mash, wort, or beer brewed or made, nor any still used by a distiller, at any time between the hour of eleven in the afternoon of any Saturday and the hour of one in the forenoon of the next succeeding Monday; and every person who violates the provisions of this section shall be liable to a penalty of one thousand dollars.

Act July 20, 1868, c. 186, § 35, 15 Stat. 140.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6025. (R. S. § 3284.) Using material or removing spirits in absence of store-keeper; penalty.

Every distiller or person employed in any distillery who, in the absence of the store-keeper, or person designated to act as store-keeper, uses, or causes or permits to be used, any material for the purpose of making mash, wort, or beer, or for the production of spirits, or removes any spirits, shall forfeit and pay double the amount of taxes on the spirits so produced, distilled, or removed, and in addition thereto be liable to a penalty of one thousand dollars.

Act July 20, 1868, c. 186, § 21, 15 Stat. 134.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6026. (R. S. § 3285, as amended, Act May 28, 1880, c. 108, § 3, and Act June 22, 1910, c. 329, § 2.) Emptying and filling fermenting tubs.

Every fermenting tub shall be emptied at or before the end of the fermenting period; no fermenting tub in a sweet-mash distillery shall be filled oftener than once in seventy-two hours, nor in a sour-mash distillery oftener than once in ninety-six hours, nor in a rum distillery oftener than once in one hundred and forty-four hours, nor in a distillery where the filtration-aeration process is employed, that is, where the mash after it leaves the mash tub is passed through a filtering machine, before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, and the approval of the Commissioner of Internal Revenue being secured, oftener than once in

twenty-four hours. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries.

Act July 20, 1868, c. 186, § 19, 15 Stat. 133. Act May 28, 1880, c. 108, § 3, 21 Stat. 145. Act June 22, 1910, c. 329, § 2, 36 Stat. 590.

This section, as enacted in the Revised Statutes, was as follows:

"Every fermenting-tub shall be emptied at the end of the fermenting period, and shall remain empty for twenty-four hours."

It was amended by substituting therefor the provisions beginning with the word "Every," and ending with the words "one hundred and forty-four hours," by Act May 28, 1880, c. 108, § 3, cited above.

It was further amended by the addition, at the end of said amended section, of the provisions relating to distilleries where the filtration-aeration process is employed, making it read as set forth here, by Act June 22, 1910, c. 329, § 2, last cited above.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6027. (R. S. § 3286, as amended, Act March 1, 1879, c. 125, § 5.) Drawing off water, cleansing worm-tub, etc.

Whenever any officer requires the water contained in any worm-tub in a distillery, at any time when the still is not at work, to be drawn off, and the tub and worm cleansed, the water shall forthwith be drawn off, and the tub and worm cleansed by the distiller, or his workmen, accordingly; and the water shall be kept and continued out of such worm-tub for the period of two hours, or until the officer has finished his examination thereof. For any refusal or neglect to comply with any provision of this section, the distiller shall forfeit the sum of not exceeding one thousand dollars; and it shall be lawful for the officer to draw off such water, or any portion of it, and to keep the same drawn off for so long a time as he shall think necessary.

Act July 20, 1868, c. 186, § 31, 15 Stat. 139.

Act March 1, 1879, c. 125, § 5, 20 Stat. 335.

This section, enacted in the Revised Statutes, was amended by inserting, before the words "one thousand dollars," the words "not exceeding," as set forth here, by Act March 1, 1879, c. 125, § 5, cited above.

The provisions of this section were made applicable to revenue agents by an amendment of R. S. § 3152, by Act March 1, 1879, c. 125, § 2, ante, § 5856.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6028. (R. S. § 3287, as amended, Act March 1, 1879, c. 125, § 5, Act May 28, 1880, c. 108, § 6, Act Feb. 21, 1899, c. 177, and Act March 2, 1911, c. 199.) Drawing off, gauging, etc., and removal of spirits to warehouse.

All distilled spirits shall be drawn from the receiving cisterns into casks or packages, each of not less capacity than ten gallons wine-measure, and shall thereupon be gauged, proved, and marked by an internal-revenue gauger, who shall cut on the cask or package containing such spirits, in a manner to be prescribed by the Commissioner of Internal Revenue, the quantity in wine-gallons and in proof-gallons of the contents of such casks or packages, and the particular name of such distilled spirits as known to the trade, that is to say, high-wines, alcohol, or spirits, as the case may be, shall be marked or branded on the head of such cask or package in letters of not less than one inch in length; and the spirits shall be immediately removed into the distillery warehouse, and the gauger shall, in the presence of the storekeeper of the warehouse, place upon the head of the cask or package an engraved stamp, which shall be signed by the collector of the district and the storekeeper and gauger; and shall have written thereon the number of proof-gallons contained therein, the name of the distiller, the date of the receipt in the warehouse, and the serial number of each cask or package, in progressive order, as the same are received from the distillery. Such

serial number for every distillery shall be in regular sequence of the serial number thereof, beginning with number one (No. 1) with the first cask or package deposited therein after July twentieth, eighteen hundred and sixty-eight, and no two or more casks or packages warehoused at the same distillery shall be marked with the same number. The said stamp shall be as follows:

Distillery-warehouse stamp No. —. Issued by ——— ———, collector, ——— district, State of ———, distillery warehouse of ——— ———, 18—, Cask No. —; contents ——— gallons proof-spirits.

——— ———,
United States Storekeeper

Attest:

——— ———,
United States Gauger.

Provided, however, That upon the application of the distiller, and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, distilled spirits may be drawn into wooden packages, each containing two or more metallic cans, which cans shall have each a capacity of not less than five gallons, wine measure, such packages to be filled and used only for exportation from the United States. And there shall be charged for each of said packages or cases for the expense of providing and affixing stamps, five cents instead of ten cents as now required by law.

Provided further, That alcohol or high-proof spirits withdrawn free of tax for the use of the United States, as authorized by section thirty-four hundred and sixty-four, Revised Statutes, may be drawn off for transfer by pipes direct from the receiving cisterns in the cistern room of any distillery to closed metal storage tanks situated in the distillery bonded warehouse and transferred from such storage tanks to tanks or tank cars for shipment, upon the execution of such bonds and under such regulations as the Secretary of the Treasury may prescribe.

Act July 20, 1868, § 23, 15 Stat. 135. Act March 1, 1879, c. 125, § 5, 20 Stat. 336. Act May 28, 1880, c. 108, § 6, 21 Stat. 147. Act Feb. 21, 1899, c. 177, 30 Stat. 843. Act March 2, 1911, c. 199, 36 Stat. 1014.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "contents of such casks," the words "and by branding or burning into the head of such cask in letters of not less than one inch in length, and such brand shall distinctly indicate the particular name of such distilled spirits as known to the trade, i. e. high-wines, alcohol, or spirits, as the case may be," by Act March 1, 1879, c. 125, § 5, cited above.

It was further amended by striking out, after the words "less capacity than," the word "twenty," and inserting in place thereof the word "ten," and by striking out, after the words "internal-revenue gauger," the words "by cutting," and inserting in place thereof the words "who shall cut," and by inserting, after the words "on the cask," the words "or package," and by inserting, after the words "contents of such casks," the words "or packages," and by inserting, in place of the amendment by Act March 1, 1879, c. 125, § 5, set forth above, the words "and the particular name of such distilled spirits as known to the trade, that is to say, high-wines, alcohol, or spirits, as the case may be, shall be marked or branded on the head of such cask or package in letters of not less than one inch in length," and by inserting, in place of the words "and shall be immediately," the words "and the spirits shall be immediately," and by inserting, after the words "serial number of each cask," the words "or package," and by inserting, after the words "first cask," the words "or package," and by inserting, after the words "no two or more casks," the words "or packages," by Act May 28, 1880, c. 108, § 6, cited above.

It was further amended by adding the first of the two provisos at the end of the section by Act Feb. 21, 1899, c. 177, cited above.

It was further amended by adding the last proviso at the end of the section as set forth here, by Act March 2, 1911, c. 199, last cited above.

Said Act March 2, 1911, c. 199, purported to amend R. S. § 3287, as amended by Act May 28, 1880, not mentioning the later amendment by Act Feb. 21, 1899, c. 177.

The amendatory provision of this act, that R. S. § 3287, as amended by Act May 28, 1880, be "amended to read as follows," which was followed merely by the provision above, beginning with the words "Provided further," may be construed, strictly, as substituting the new provision for the former section, as amended, etc.; but the purpose really contemplated probably was to add said new provision, as a further proviso, at the end of the section as previously amended.

R. S. § 3464, mentioned in said last amendment, is set forth post, § 6365.

Notes of Decisions

1. Food and Drugs Act as repealing or superseding statute.
2. Branding or marking in general.
3. Administrative discretion.
4. Inconsistent regulations.
5. Effect of restraining order.
6. Rebranding.
7. Meaning of the term "cask."
8. "Spirits" or "spirits as the case may be."
9. "Whisky."
10. "High wines."
11. "Alcohol."

See § 8717 et seq., post, and notes thereunder.

See note as to "whisky," ante.

1. Food and Drugs Act as repealing or superseding statute.—Circular No. 33, issued by the Commissioner of Internal Revenue May 10, 1910, instructing subordinates in his department that "all forms of distilled spirits from which the substances congeneric with ethyl alcohol have been removed for practical purposes altogether, and which have been heretofore marked as 'pure, neutral, or cologne spirits,' will be marked 'alcohol,'" under which the marking of any distilled product as "spirits" has been discontinued, is in violation of this section, which provides that "all distilled spirits shall be drawn from the receiving cisterns into casks or packages, * * * and the particular name of such distilled spirits as known to the trade, that is to say, high-wines, alcohol, or spirits, as the case may be, shall be marked or branded on the head of such cask or package"; it being shown that one distinct product of alcoholic distillation is known to the trade as "spirits," while another product is known as "alcohol," the distinction being so well known and established that their being so marked does not constitute a misbranding, and therefore the provision therefor is not by implication repealed by Food and Drugs Act June 30, 1906 (post, § 8717 et seq.). Union Distilling Co. v. Bettman (C. C. 1908) 181 Fed. 419.

There is no inconsistency between the provisions of this section, and section 8 of the pure-food law (section 8724, post). The former statutes are not superseded by the latter. (1908) 26 Op. Atty. Gen. 475.

2. Branding or marking in general.—A removal of brandy from a distillery without having cut or burned on the barrels the name of the distiller, the name of the district, or serial numbers, is not illegal, if all other requirements of the statute have been complied with. U. S. v. Thirty-Seven Barrels of Apple Brandy (D. C. 1870) Fed. Cas. No. 16,466.

As to the requirement that gaugers mark on the casks or packages "the particular name of such distilled spirits as known to the trade, that is to say, high wines, alcohol, or spirits, as the case may be," it is immaterial whether this legislative declaration was, or was not, in accordance with the fact as to trade usages at the time of its adoption, or is, or is not, in conformity with such usages at present. (1908) 26 Op. Atty. Gen. 475.

This section requires that casks or packages not containing either "high wines" or "alcohol" shall be marked with the name of a recognized distilled liquor included within the definition of potable "spirits" and nothing more. Id.

The owner of a cask of spirits may brand his end of the cask with any name he sees fit, subject only to the penalties of the food and drugs act if it should enter into federal commerce when mislabeled or misbranded under that act. (1908) 26 Op. Atty. Gen. 542.

Spirits which have been rectified should be branded so as to show distinctly that the appropriate name of the potable spirits is not applied to spirits from which the congeneric substances have been practically eliminated—which would leave an alcohol—but only to those products of distillation which, without being blended or compounded with other substances, have been so treated as to partially transform or otherwise partially eliminate the original congeneric spirits and bring them to the condition of a particular form of potable spirits. Id.

3. Administrative discretion. — This section makes the characteristics of the marking to be placed on the cask or package a matter of administrative discretion with the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury. (1908) 27 Op. Atty. Gen. 43.

4. Inconsistent regulations. — Those portions of the regulations of the Commissioner of Internal Revenue which require the gauger to mark or brand on the head of each cask containing distilled spirits "the particular name of the spirits as known to the trade," which brand or mark may be varied to suit whatever kind of spirits is contained in the package, as "high wines" "rye," "Bourbon," or "copper distilled" whis-

ky, as the case may be, are inconsistent with the provisions of this section. (1908) 26 Op. Atty. Gen. 475.

5. Effect of restraining order.—The effect of the restraining order issued by the Circuit Courts of the United States for the Southern district of Ohio and the Southern district of Illinois, prohibiting the collectors of internal revenue in those districts from marking casks of spirits as provided by Circular No. 723, issued May 5, 1908, was that the marking or branding of the casks or packages of the two distilleries affected by that order cannot now be done in accordance with said regulations; but in all other cases the circular remains unaffected by the action of those courts, and will so continue until superseded or suspended by the action of the same or other courts, or until modified or rescinded by the Treasury Department. (1908) 27 Op. Atty. Gen. 43.

Such restraining orders did not have the effect of restoring the regulations which were in force prior to the issuance of that circular, and consequently there are no internal revenue regulations now in force regulating the branding of distilled spirits produced by the distillers affected by the order. Id.

Suggested that any action by the officers of the internal revenue service inconsistent with the circular of May 5, 1908, taken in consequence of such orders of court, should be made a matter of record, showing that such action is the result of said orders only and done under protest, or, at least, with a reservation of legal right. Id.

Suggested that casks and packages constituting the subject-matter of such action should be so identified that any course of procedure with respect to them, rendered appropriate by the ultimate determination of the cases, may be readily adopted. Id.

6. Rebranding.—The duty of rebranding packages of distilled spirits to conform to proposed regulations should not be imposed in all cases, but should be limited to instances where the parties intending to use the spirits in federal commerce in such manner as to render them subject to the food and drugs act request a change in the branding. (1908) 26 Op. Atty. Gen. 542.

7. Meaning of the term "cask."—The term "cask" is generally understood to be a receptacle for liquids, either larger or smaller than the usual barrel, and, as employed in the statute respecting the manufacture and sale of spirituous liquors, pertaining to wholesale dealers, has a well-recognized import as a vessel containing not less than 20, 10, or 5 gallons wine measure, as provided by this section and section 5971, ante, and section 6104, post. Williams v. U. S. (1907) 158 Fed. 30, 88 C. C. A. 296, reversing judgment (1906) 87 Pac. 647, 17 Okl. 28.

8. "Spirits" or "spirits as the case may be."—Congress considered the several kinds of spirits in the restricted sense in which the word is used in this section as liquids which were neither "high wines" nor yet "alcohol." (1908) 26 Op. Atty. Gen. 475.

The words "as the case may be" in this section, are intended to apply to "spirits" only, and not to "high wines," on the one hand, or "alcohol," on the other. Id.

The words "spirits, as the case may be," used in this section, are used in conformity with the definition of the word "spirits" as given by Webster, viz.: "Rum, whisky, brandy, gin, and other distilled liquors having much alcohol, in distinction from wines and malt liquors." These words mean such distilled liquor included within the definition of spirits "as may be appropriate in the particular case," that is to say, "rum" or "whisky," "brandy," or "gin," or whatever other name of a distilled spirit may be suitable. Id.

The brand or label, however, must contain only the general name of a spirit; no descriptive or particular designation being required, contemplated, or allowed by this section. Id.

The term "spirits, as the case may be," used in this section, applies to those products of distillation in which, by reason of the original material used and the methods of distillation employed, certain characteristic congeneric products have been retained which differentiate them into certain forms of potable spirits, such as whisky, brandy, and rum. (1908) 26 Op. Atty. Gen. 541.

9. "Whisky."—If the liquid contained in a cask or package is really so-called "neutral spirit," or, in other words, for practical purposes, "ethyl alcohol," this statute requires it to be branded "alcohol," and does not permit it to be labeled a particular kind of potable spirits, as, for example, "whisky." (1908) 26 Op. Atty. Gen. 475.

The Commissioner of Internal Revenue would not be justified in directing all collectors of internal revenue to instruct their gaugers to mark as "whisky" the product of distillers who state that they have so changed the process of their manufacture as to eliminate from wines a portion of the secondary product. (1908) 27 Op. Atty. Gen. 47.

Such action could in any event be justified only when the absence of error in any such statement by a distiller has been established to the satisfaction of the Treasury Department by sufficient legal proof. Id.

Distilled spirits containing a part and not all of the substances congeneric with alcohol, produced by rectifying high wines to the point where a part of the congeneric substances is retained, a larger part of such secondary product being retained than in the product formerly known as "neutral spirits,"

should not be marked "whisky" upon entry into warehouses. Id.

The question in each case must be determined by the fact whether the said spirit is or is not whisky within the contemplation of the pure food law. Id.

Neutral spirits diluted with water and colored with caramel cannot properly, under the provisions of the pure food law, be designated as "neutral whisky," "rectified whisky," or "redistilled whisky." (1909) 27 Op. Atty. Gen. 202.

The Attorney General adheres to his opinions of April 10, 1907 (26 Op. Atty. Gen. 217) and of May 29, 1907 (26 Op. Atty. Gen. 263). (1909) 27 Op. Atty. Gen. 202.

10. "High wines."—It was not intended by the opinion of January 11, 1908 (26 Op. Atty. Gen. 474), to require the term "high wines" to be applied to a product now usually marked "whisky." (1908) 26 Op. Atty. Gen. 541.

For the purposes of the revenue laws, the term "high wines" should be applied to that which is practically the first product of distillation in which substances congeneric with alcohol have not been transformed or their properties otherwise partially eliminated so as to convert them into any form of potable spirits, and should not be applied either to any product of distillation, or to spirits which have been reduced by dilution or otherwise partially transformed so as to convert them into a form of potable spirits, although yet in crude form. Id.

When "high wines" have been diluted to potable proof before being withdrawn from receiving cisterns into casks, and then constitute a form of potable spirits, although crude, then, so far at least as the revenue laws are concerned, such product more nearly resembles the particular form of potable spirits whose name it will ultimately be than it does "high wines," and it should be branded with the name of the particular potable spirits for which it is intended. Id.

The by-product in the distillation of "true alcohol," for the purposes of the revenue laws, may be branded as "commercial," "refuse," or "coarse" alcohol, or any other term which will indicate definitely that it is a product intended only for purposes entirely distinct from those of a food or drug. Id.

11. "Alcohol."—A distiller is entitled to an injunction to restrain the enforcement by the Internal Revenue Bureau of an unauthorized order requiring a distilled product known to the trade as "spirits" to be branded as "alcohol," which as known in the trade is an inferior and cheaper product. Union Distilling Co. v. Bettman (C. C. 1908) 181 Fed. 419.

The term "alcohol" should be applied to the distillate heretofore known as "pure, neutral, or cologne spirits." (1908) 26 Op. Atty. Gen. 541.

Cited without definite application, Pounds v. U. S. (1898) 18 Sup. Ct. 729, 171 U. S. 35, 43 L. Ed. 62; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 290, 232 U. S. 174, 58 L. Ed. 558; Taney v. Penn Nat. Bank (1911) 187 Fed. 689, 109 C. C. A. 437; U. S. v. Peace (C. C. 1892) 48 Fed. 714, 715 (reversed [1893] 53 Fed. 999, 4 C. C. A. 148); Same v. One Package of Distilled Spirits (D. C. 1898) 88 Fed. 856, 857; Same v. National Surety Co. (D. C. 1901) 112 Fed. 336 (reversed [1903] 122 Fed. 904, 59 C. C. A. 130); Same v. Three Packages of Distilled Spirits (D. C. 1903) 125 Fed. 52 (reversed [1904] 129 Fed. 329, 63 C. C. A. 263).

§ 6029. (R. S. § 3288.) Tax-paid spirits not to remain on distillery premises.

No distilled spirits on which the tax has been paid shall be stored or allowed to remain on any distillery premises, under the penalty of a forfeiture of all spirits so found.

Act July 13, 1866, c. 184, § 43, 14 Stat. 162.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6030. (R. S. § 3289.) Forfeiture of unstamped packages.

All distilled spirits found in any cask or package containing five gallons or more, without having thereon each mark and stamp required therefor by law, shall be forfeited to the United States.

Act July 20, 1868, c. 186, § 57, 15 Stat. 150. Act June 6, 1872, c. 315, § 12, 17 Stat. 243.

Notes of Decisions

See notes under §§ 6104 and 6358, post.

Pure food law as repealing statute.—There is nothing in the pure food law which renders the provision of this section, forfeiting to the United States all distilled spirits not contained in receptacles and marked as herein prescribed, inappropriate; and this section was not repealed, either expressly or by implication, by the enactment of the pure food law. (1908) 26 Op. Atty. Gen. 475.

Forfeiture in general.—Under this section and Act July 20, 1868, § 96, post, § 6358, providing that, if any

person neglects to do anything required by him to be done in carrying on his business, if there is no specific penalty imposed by any other section for such negligence, he shall suffer the penalty and forfeiture imposed thereby it was held that the omission of a distiller to cause packages of distilled spirits containing more than 20 gallons each to be gauged, inspected, and stamped according to Act July 20, 1868, § 25, post, § 6102, does not warrant forfeiture under section 96; a specified penalty being provided by section 57. United States v. Two Hundred Barrels of Whisky (1877) 95 U. S. 571, 24 L. Ed. 491.

The special provision of section 57 of the act of 1868 is not limited to distilled spirits on hand when that act was passed, but is a specific penalty for failure to procure stamping to be done on packages of five gallons and upwards, and it follows the packages wherever found. Id.

The fact that packages of whisky which have been once properly gauged and marked, and the taxes thereon paid, are afterwards found to contain a less quantity and lower proof of spirit than the marks indicate, is no evidence that the government has been defrauded, and does not justify forfeiture of the whisky, under this section. U. S. v. Fourteen Packages of Whisky (1895) 66 Fed. 984, 14 C. C. A. 220.

The term "distilled spirits" includes all spirits which have been distilled, whether they have been subsequently rectified or not. Boyd v. U. S. (C. C. 1877) Fed. Cas. No. 1,749.

The fact that a person has, in good faith, made advances upon distilled spirits, is no defense to an action for their forfeiture. Id.

"Stand casks" forming part of the fixtures of a retail liquor saloon, and used for holding distilled spirits, are not required to be stamped; and their contents are not liable to forfeiture, under this section, because of the absence of such stamp. U. S. v. Four Stand Casks (C. C. 1881) 5 Fed. 438; Same v. Cask of Gin (D. C. 1880) 3 Fed. 20.

Merely tacking a piece of newspaper over the stamped end of a barrel of distilled spirits is no ground of forfeiture under the internal revenue laws and the regulations of the internal revenue department. U. S. v. Three Barrels of Whisky (C. C. 1896) 77 Fed. 963.

The removal of spirits by a distiller before they have been officially inspected, gauged, and proved is a cause of forfeiture; otherwise as to a removal before payment of duties. U. S. v. Three Hundred and Ninety-Six Barrels Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,502.

And the failure of the inspector to mark on the barrels the quantity in proof as required by Act June 30, 1864, § 59, is not a cause of forfeiture. Id.

The forfeiture by section 57 (Act July 20, 1868) is general, and that section imposes a penalty for a violation of section 25 in case the unstamped packages contain more than five gallons. U. S. v. Ninety-Five Barrels of Distilled Spirits (D. C. 1871) Fed. Cas. No. 15,890.

Where packages containing liquors have once been properly stamped and marked, and the proper duties paid thereon, and after a sale by a retail dealer of a portion of the contents the residue is diluted with water only, and still remains in the original packages, held, that such liquors are not liable to forfeiture, under this section, as "not having thereon each mark and stamp required therefor." Three Packages of Distilled Spirits (D. C. 1882) 14 Fed. 569.

Under this section a package is forfeited when found bearing a distillery warehouse stamp and an inspection mark, neither of which have any date; for section 6028, ante, requires each warehouse stamp to bear the date of the receipt of the package into the warehouse, and the regulations promulgated by the commissioner of internal revenue require the inspection brand to show the date of inspection. U. S. v. 9 Casks & Packages of Distilled Spirits (D. C. 1892) 51 Fed. 191.

Section 5983, ante, which provides that the commissioner of internal revenue may prescribe rules and regulations to secure a uniform and correct system of inspection, weighing, marking, and gauging of spirits, does not empower the commissioner to require an additional mark upon a package of distilled spirits in the event of a reduction in proof or volume, so as to make the absence of it a forfeitable offense under this section, as not "having thereon such mark and stamp required therefor by law," where the statutes neither prohibit such reduction nor provide for any additional marks in the event it is so reduced. U. S. v. One Package of Distilled Spirits (D. C. 1898) 88 Fed. 856.

Mere evidence that the contents of a package of spirits as to volume and proof does not conform to the volume and proof as marked on the package, without more, fails to make a prima facie case for seizure or forfeiture. Id.

In proceedings to forfeit liquors not properly stamped it was immaterial that the stamps on the barrels indicated that they contained a greater number of gallons than were actually placed therein, and that the government therefore was not actually defrauded. U. S. v. Seven Barrels of Whisky (D. C. 1904) 131 Fed. 806.

Section 6104, post, declares that every rectifier or wholesale liquor dealer who refuses or willfully neglects to comply with the requirements of the

act as to marking, branding, and stamping, in accordance with the rules and regulations made in pursuance thereof, the packages filled on his premises as aforesaid, shall for every offense be fined not less than $200 nor more than $1,000. Held, in view of this section, that the penalty imposed by section 6104, post, was not exclusive, and did not prevent the United States from enforcing a forfeiture of the goods not properly stamped in a proceeding in rem against them. Id.

Section 6104, post, which declares that every package of distilled spirits containing five wine gallons or more, filled on the premises of a local liquor dealer, shall be marked, branded, and stamped by such wholesale liquor dealer in such manner and under such rules and regulations as the commissioner of internal revenue, with the approval of the Secretary of the Treasury, may prescribe, etc., and declares that every rectifier or wholesale dealer who refuses or willfully neglects so to mark, brand, or stamp his liquors shall be fined, etc., only authorizes the commissioner of internal revenue, with the approval of the Secretary of the Treasury, to designate the kind and character of the mark and stamp to be affixed to the packages, and hence the marks and stamps so prescribed were marks and stamps "required by law," within this section. Id.

Information for forfeiture.—If the dates of the distillery warehouse stamp and inspection mark required to be stamped on a cask or package of distilled liquors have been removed through accidental causes, their absence is no ground of forfeiture under this section, but, as the statute does not in terms contain any exceptions, this fact need not be negatived by the information; it is matter of defense to be set up by the claimant. U. S. v. 9 Casks & Packages of Distilled Spirits (D. C. 1892) 51 Fed. 191.

An information for a forfeiture of distilled spirits for violation of this section and section 6357, post, held bad on demurrer, as not sufficiently definite to disclose to the court or claimant the precise nature of the act charged to be a violation of statute. U. S. v. Three Packages of Distilled Spirits (D. C. 1907) 152 Fed. 580.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Two Barrels of Whisky (1899) 96 Fed. 479, 37 C. C. A. 518; Same v. Three Packages of Distilled Spirits (D. C. 1903) 125 Fed. 52, reversed (1904) 129 Fed. 329, 63 C. C. A. 263.

§ 6031. (R. S. § 3290.) Gauger employing distiller, etc., to use brands or perform his duties; penalty.

Whenever any gauger employs any owner, agent, or superintendent of any distillery or distillery warehouse, or any person in the service of such owner, agent, or superintendent, or any rectifier or wholesale liquor-dealer, or any person in the service of such rectifier or wholesale liquor-dealer, to use his brands, or to discharge any of the duties imposed upon him by law, he shall, for each offense so committed, pay a fine not exceeding one thousand dollars, in the discretion of the court.

Act July 13, 1866, c. 184, § 38, 14 Stat. 160.

Notes of Decisions

Delegation of authority.—A gauger has no power to delegate his authority, or to have his duties performed for him. U. S. v. Bittinger (D. C. 1875) Fed. Cas. No. 14,599.

Use of inspector's brand with intent to defraud.—The use of an inspector's brand with intent to defraud, though without the inspector's knowledge or connivance, was punishable under another provision of Act July 13, 1866, § 38 (not incorporated in this section). U. S. v. Devlin (C. C. 1867) Fed. Cas. No. 14,954.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6032. (R. S. § 3291.) Gauger's returns.

Every gauger shall, under such regulations as may be prescribed by the Commissioner of Internal Revenue, make a daily return to the collector of his district, giving a true account, in detail, of all articles gauged and proved or inspected by him, and for whom, and the number and kind of stamps used by him.

Act July 20, 1868, c. 186, § 53, 15 Stat. 147. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401.

Notes of Decisions

Mistake in overgauging.—A distiller cannot avail himself of any mistake of the officer in overgauging the spirits. U. S. v. Dutcher (C. C. 1868) Fed. Cas. No. 15,014.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6033. (R. S. § 3292.) Fraudulent inspection, gauging, etc.; penalty.

Every gauger who makes any false or fraudulent inspection, gauging, or proof shall pay a penalty of one thousand dollars, and be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than three years.

Act July 20, 1868, c. 186, § 53, 15 Stat. 147.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Brown v. Foster (1912) 194 Fed. 855, 116 C. C. A. 1.

§ 6034. (R. S. § 3293, as amended, Act March 1, 1879, c. 125, § 5, and Act May 28, 1880, c. 108, § 4.) Distiller's entry of deposit in warehouse; bond for taxes; collection of taxes.

The distiller or owner of all spirits removed as aforesaid to the distillery warehouse shall, on the first day of each month, or within five days thereafter, enter the same for deposit in such warehouse, under such regulations as the Commissioner of Internal Revenue may prescribe. Said entry shall be in triplicate, and shall contain the name of the person making the entry, the designation of the warehouse in which the deposit is made, and the date thereof, and shall be in the following form:

Entry for Deposit in Distillery Warehouse.

Entry of distilled spirits deposited by ——— ———, in distillery warehouse ———, in the ——— district, State of ———, during the month ending on the ——— day of ———, anno Domini ———.

And the entry shall specify the kind of spirits, the whole number of packages, the marks and serial numbers thereon, the number of gauge or wine gallons, proof-gallons, and taxable gallons, and the amount of tax on the spirits contained in them; all of which shall be verified by the oath of the distiller or owner of the same attached to the entry. The said distiller or owner shall at the time of making said entry give his bond in duplicate, with one or more sureties, satisfactory to the collector of the district, conditioned that the principal named in said bond shall pay the tax on the spirits as specified in the entry, or cause the same to be paid, before removal from said distillery warehouse, and within three years from the date of said entry; and the penal sum of such bond shall not be less than the amount of the tax on such distilled spirits. One of said entries shall be retained in the office of the collector of the district, one sent to the storekeeper in charge of the warehouse, to be retained and filed in the warehouse, and one sent with duplicate of the bond to the Commissioner of Internal Revenue, to be filed in his office. A new bond shall be required in case of the death, insolvency, or removal of either of the sureties, and may be required in any other contingency affecting its validity or impairing its efficiency, at the discretion of the Commissioner of Internal Revenue. And in case the distiller or owner fails or refuses to give the bond hereinbefore required, or to renew the same, or neglects to immediately withdraw the spirits and pay the tax thereon, or if he neglects to withdraw any bonded spirits and pay the tax thereon before the expiration of the time limited in the bond, the collector shall proceed to collect the tax by distraint, issuing his warrant of distraint for the amount of tax found to be due, as ascertained by him from the report of the gauger if no bond was given, or from the terms of the bond if a bond was given. But this provision shall not exclude any other remedy or proceeding provided by law. If it shall appear at any time that there has been a loss of distilled spirits from any

cask or other package hereafter deposited in a distillery warehouse, other than the loss provided for in section thirty-two hundred and twenty-one of the Revised Statutes of the United States, as amended, which, in the opinion of the Commissioner of Internal Revenue, is excessive, he may instruct the collector of the district in which the loss has occurred to require the withdrawal from warehouse of such distilled spirits, and to collect the tax accrued upon the original quantity of distilled spirits entered into the warehouse in such cask or package, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered into warehouse in such cask or package has not expired. If the said tax is not paid on demand, the collector shall report the amount due upon his next monthly list, and it shall be assessed and collected as other taxes are assessed and collected. That the tax on all distilled spirits hereafter entered for deposit in distillery warehouses shall be due and payable before and at the time the same are withdrawn therefrom and within three years from the date of the entry for deposit therein; and warehousing bonds hereafter taken under the provisions of section thirty-two hundred and ninety-three of the Revised Statutes of the United States shall be conditioned for the payment of the tax on the spirits as specified in the entry before removal from the distillery warehouse, and within three years from the date of said bonds.

Act July 20, 1868, c. 186, § 23, 15 Stat. 135. Act June 6, 1872, c. 315, § 12, 17 Stat. 240. Act March 1, 1879, c. 125, § 5, 20 Stat. 336. Act May 28, 1880, c. 108, § 4, 21 Stat. 145.

This section, as enacted in Revised Statutes, was amended by inserting, in the form for entry, after the words "State of ———" the words "during the month ending," and by striking out, after the words "gauge or wine gallons," the words "and proof-gallons," and inserting in lieu thereof the words "proof-gallons, and taxable gallons," and by inserting, after the words "owner shall," the words "at the time of making said entry," and by striking out, after the words "the date of said," the word "bond," and inserting in place thereof the word "entry," and by adding, at the end of the section as originally enacted, the provisions beginning with the words "A new bond shall be required," and ending with the words "as other taxes are assessed and collected," by Act March 1, 1879, c. 125, § 5, cited above.

It was further amended by inserting, in place of the words "whole number of casks," the words "whole number of packages," and by inserting, in place of the words "and within one year from the date," the words "and within three years from the date," and by striking out, after the words "not less than," the word "double," and by adding, at the end of the section as amended by Act March 1, 1879, c. 125, § 5, the provisions beginning with the words "That the tax on all distilled spirits," etc., to the end of the section as set forth here by Act May 28, 1880, c. 108, § 4, cited above.

The bonds for taxes were conditioned upon the payment of the taxes within three years from the date of the bonds, by Res. March 28, 1878, No. 16, 20 Stat. 249. This resolution was repealed by Act May 28, 1880, c. 108, § 4, 21 Stat. 145.

Provisions for the entry of fruit brandy in special bonded warehouses, and the giving of bonds for taxes, were made by Act March 3, 1877, c. 114, post, §§ 6039–6049.

Provisions for the removal of spirits to general bonded warehouses were made by Act Aug. 27, 1894, c. 349, §§ 52–59, post, §§ 6059–6065.

The bonds for taxes on spirits deposited in distillery warehouses and special bonded warehouses were conditioned for the payment of the taxes before removal and within eight years, by Act Aug. 27, 1894, c. 349, § 49, post, § 6035.

Notes of Decisions

Bonds.—Theft from distillery warehouse as defense to an action on bond, see note under section 6009, ante.

Right to assess on deficiency after giving of bond, see note under section 6125, post.

A bond was given, under 15 Stat. 135, § 23, by a distiller, with sureties, conditioned to be void if the obligors paid the taxes on the spirits deposited in the warehouse before their removal and within one year from the date of the bond. Before the expiration of that time, the spirits, while in the bonded warehouse, in charge of an internal revenue storekeeper, were destroyed by fire, without any fault, negligence, or carelessness on the part of the dis-

tiller, or of any person in charge of the distillery and warehouse who was in his employ. Held, that the obligors were liable to pay the taxes. Farrell v. U. S. (1878) 99 U. S. 221, 25 L. Ed. 321.

Obligors held liable on a bond taken pursuant to Act July 20, 1868, § 23. Id.

The seizure and sale of bonded spirits forfeited by the fraudulent acts of the distiller, and the payment of the taxes out of the proceeds, render the bond functus officio, and discharge the obligors. U. S. v. Ulrici (1884) 4 Sup. Ct. 288, 111 U. S. 38, 28 L. Ed. 344; Same v. Sutton (1884) 4 Sup. Ct. 291, 111 U. S. 42, 28 L. Ed. 346.

A bond on which suit was brought, having been executed for the sole purpose of securing payment of taxes, was discharged by forfeiture, seizure, and sale of bonded spirits, and was discharged as against the contention that the forfeiture, being for the fraudulent acts of the distiller in seeking to evade payment of the tax, was quasi criminal and merely a punishment, and not a payment of the tax. In this case the marshal procured from the collector the necessary stamps and placed them on the packages containing the spirits. U. S. v. Ulrici (1884) 4 Sup. Ct. 288, 289, 290, 111 U. S. 38, 28 L. Ed. 344.

Where bonded spirits forfeited by the fraudulent acts of the distiller were seized, the affixing of the stamps to the packages by the marshal was intended to be a payment of the tax, and the bond of the distiller given to secure the payment was discharged. Id.

When the commissioner of internal revenue regards a loss from warping of barrels as excessive, he has authority, under Act May 28, 1880, § 4, to order the withdrawal of the spirits from the warehouse before the three years of the bond have expired, and to require payment of the tax on the quantity originally entered, without making any allowance under section 17 of said act for the loss even though it occurred without the fraud or negligence of the owner. Crystal Spring Distillery Co. v. Cox (1892) 49 Fed. 555, 1 C. C. A. 365, affirming (C. C. 1891) 47 Fed. 693.

Under the requirement of the statute that distillers give a bond conditioned to pay the tax on spirits stored in distillery warehouses "before removal" therefrom, or within three years from the date of the bond, it was held that the destruction of such spirits by fire, while in the warehouse, constitutes a "removal," so as to make the tax payable before the expiration of the three years. U. S. v. Peace (1893) 53 Fed. 999, 4 C. C. A. 148, reversing judgment (C. C. 1892) 48 Fed. 714.

The word "removal" means "withdrawal," and withdrawal must be the act of an intelligent agent and not the work of chance or accident. U. S. v. Peace (C. C. 1892) 48 Fed. 714, 716, reversed (1893) 53 Fed. 999, 4 C. C. A. 148.

The word "withdraw" is the equivalent of "removal." Id.

A removal from a distillery warehouse must be a removal by or under the authority of the owner of the commodity. Id.

The negligence of officers in failing to collect a tax on spirits at the proper time, when the spirits were removed from the warehouse, will not preclude the United States from recovering such tax in an action upon the distiller's bond if it was properly chargeable. U. S. v. Mullins (1902) 119 Fed. 334, 56 C. C. A. 238, writ of certiorari denied (1903) 23 Sup. Ct. 851, 189 U. S. 513, 47 L. Ed. 924.

A distiller's official or annual bond, given pursuant to section 5997, ante, and conditioned that he "shall faithfully comply with all the provisions of law relating to the duties and business of distillers," binds the sureties for the payment of the tax on all spirits distilled during its term, which is one of the duties of the distiller, and which tax becomes a debt due to the United States from the time the spirits are manufactured, due and payable at once on their removal, unless they are entered for deposit in warehouse; nor are the sureties relieved from such liability by the execution of a warehousing bond given pursuant to this section to secure delay in payment of the tax, which does not extinguish the debt, nor become a substitute for the original bond with respect to such spirits, but is an additional or cumulative security required under the scheme of the revenue law because of the additional risk incidental to the long time given the distiller in such case before he is required to remove the spirits and pay the tax. U. S. v. National Surety Co. of Kansas City, Mo. (1903) 122 Fed. 904, 59 C. C. A. 130, reversing judgment (D. C. 1901) 112 Fed. 336, and writ of certiorari denied National Surety Co. of Kansas City, Mo., v. U. S. (1903) 24 Sup. Ct. 845, 191 U. S. 573, 48 L. Ed. 307.

Surety on distillery warehouse bond held liable for internal revenue tax on spirits deposited in warehouse and subsequently stolen after the government had obtained a judgment forfeiting the distillery and the spirits to it. U. S. Fidelity & Guaranty Co. of Baltimore, Md., v. U. S. (C. C. A. 1914) 220 Fed. 592.

Exercise by the Commissioner of Internal Revenue of his discretion under this section to require a new warehousing bond held, under the circumstances, not subject to interference by the courts. Brown v. Foster (1912) 194 Fed. 855, 116 C. C. A. 1.

The fact that distilled spirits are seized, condemned, and sold for viola-

tion of the internal revenue law while bonded, does not release the obligors on the warehouse bond. U. S. v. South Branch Distilling Co. (C. C. 1878) Fed. Cas. No. 16,359.

The fact that the purchaser at the sale paid the tax is immaterial. Id.

Plaintiffs deposited distilled spirits in their bonded warehouse in December, 1880, and gave bond under this section to pay the tax within three years from entry. The tax was not paid within three years, and on February 24, 1884, the collector gave them notice to pay the tax as required by section 5906, ante, stating, as in the section provided, that unless the tax was paid within 10 days it would be the collector's duty to collect a penalty of 5 per centum in addition, and interest. By section 5982, ante, the tax attaches as soon as the spirits come into existence. Held, that the tax and penalty were due and payable before March 5, 1884. Clay v. Swope (C. C. 1889) 38 Fed. 396.

The person to give the warehouse bond under section 27, Act July 13, 1866, is the person who, under section 24, notifies the government that he is the person engaged in the business of a distiller. U. S. v. Henry (D. C. 1868) Fed. Cas. No. 15,350.

A distiller's official or annual bond binds the sureties for the payment of the tax on all the spirits distilled by the principal during its term, and they are not relieved from such liability by the execution of a warehousing bond covering certain of such spirits, which is not a substituted, but a cumulative, security. U. S. v. Richardson (D. C. 1904) 127 Fed. 893.

The stockholders of a corporation engaged in the business of distilling cannot properly be accepted as sureties upon the bond required of the corporation by this section, even if their individual liability for the debts of the corporation is, by the terms of the charter, limited to the amount of their stock. Such stockholders being already jointly and severally liable, under the provisions of section 5985, ante, for the taxes imposed upon the spirits manufactured by the corporation, no additional security for the payment thereof would be gained by their suretyship. (1878) 16 Op. Atty. Gen. 10.

The liability imposed upon the stockholders by the internal revenue law is a liability distinct from that which they are under as such to the public with whom the corporation deals; it is a liability imposed by reason of the business in which the corporation whereof they are stockholders is engaged. Id.

The Secretary of the Treasury has power to make a regulation under which distilled spirits may be permitted to remain in warehouse after the expiration of three years, upon the distiller or owner of the spirits filing a declaration of his purpose to export the same in good faith, and giving a bond to do so within a given period. (1884) 18 Op. Atty. Gen. 92.

—— **Transportation bonds.**—See U. S. v. Grotenkemper (C. C. 1867) Fed. Cas. No. 15,267; Same v. Dutcher (C. C. 1868) Fed. Cas. No. 15,014; Same v. Turner (C. C. 1870) Fed. Cas. No. 16,547; Same v. Stewart (D. C. 1871) Fed. Cas. No. 16,399.

Distraint.—The "tax on deficiency" in the quantity of distilled spirits exported, when compared with the quantity withdrawn for exportation (see Act June 9, 1874, c. 259, and Act March 1, 1879, c. 125), may be collected by distraint upon the property of the withdrawer of the spirits, as well as by suit upon the transportation bond. (1879) 16 Op. Atty. Gen. 634.

The spirits covered by an exportation bond, after the failure to withdraw them and after the forfeiture of the bond, are liable to distraint under the act of May 28, 1880 (21 Stat. 145). (1885) 18 Op. Atty. Gen. 246.

The condition of the bond having been broken by the failure to withdraw the spirits, the government may also proceed upon the bond. Id.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 290, 232 U. S. 174, 58 L. Ed. 558; Crystal Springs Distillery Co. v. Cox (1892) 49 Fed. 555, 557, 1 C. C. A. 365; Pattison v. Dale (1912) 196 Fed. 5, 115 C. C. A. 639.

§ 6035. (Act Aug. 27, 1894, c. 349, § 49.) Distiller's bond for taxes on spirits deposited in warehouses.

Warehousing bonds and transportation and warehousing bonds, conditioned for the payment of the taxes on all distilled spirits entered for deposit into distillery or special bonded warehouses on and after the passage of this Act, shall be given by the distiller of said spirits as required by existing laws, conditioned, however, for payment of taxes at the rate imposed by this Act and before removal from warehouse and within eight years; as to fruit brandy, from the date of the original gauge, and as to all other spirits from the date of the original entry for deposit, and all warehousing bonds or transportation and warehousing bonds conditioned

for the payment of the taxes on distilled spirits entered for deposit into distillery or special bonded warehouses prior to that date shall continue in full force and effect for the time named in said bonds, except where new or additional bonds are required under existing law. The Commissioner of Internal Revenue may require the distillers of the spirits to give bonds for the additional tax, and before the expiration of the original bonds shall prescribe rules and regulations for re-entry for deposit and for new bonds as provided for spirits originally entered for deposit under this Act, and conditioned for payment of tax at the rate imposed by this Act and before removal of the spirits from warehouse, and within eight years; as to fruit brandy, from the date of the original gauge, and as to all other spirits from the date of original entry for deposit. If the distiller of the spirits fails or refuses to give the bond for the additional tax, or to re-enter and re-bond the spirits, the Commissioner of Internal Revenue may proceed to collect the tax as now provided by law for failure or refusal to give warehousing bonds on original entry into distillery warehouse or special-bonded warehouse, and the provisions of section four of the Act of May twenty-eighth, eighteen hundred and eighty (twenty-first Statutes, one hundred and forty-five), so far as applicable, are hereby extended to bonds given under the provisions of this section: Provided, That the distiller may, at his option and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, execute an annual bond for the spirits so deposited in lieu of the bonds herein provided. (28 Stat. 563.)

This section was part of the Wilson Tariff Act, cited above.

This section modified the provisions for distillery warehouse bonds made by R. S. § 3293, as amended by Act March 1, 1879, c. 125, § 5, and Act May 28, 1880, c. 108, § 4, incorporated into that section, ante, § 6034, and superseded the provisions for bonds for special bonded warehouses made by Act March 3, 1877, c. 114, § 4, set forth post, § 6042.

Act May 28, 1880, c. 108, § 4, mentioned in this section, is incorporated into R. S. § 3293, ante, § 6034.

Notes of Decisions

See the preceding section and notes thereunder.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 290, 232 U. S. 174, 58 L. Ed. 558.

§ 6036. (R. S. § 3294, as amended, Act March 1, 1879, c. 125, § 5, and Act May 28, 1880, c. 108, § 5.) Withdrawal from warehouse, entry for.

Any distilled spirits may, on payment of the tax thereon, be withdrawn from the warehouse on application to the collector of the district in charge of such warehouse, on making a withdrawal entry in duplicate and in the following form:

Entry for Withdrawal of Distilled Spirits from Warehouse
Tax paid

Entry of distilled spirits to be withdrawn, on payment of the tax, from warehouse of distillery number ———, situated in the ——— district of ———, by ——— deposited on the ——— day of ———, anno Domini ———, by ———, in said warehouse.

And the entry shall specify the whole number of casks, or packages with the marks and serial numbers thereon, the number of gauge or wine gallons, and of proof gallons and taxable gallons, and the amount of the tax on the distilled spirits contained in them at the time they were deposited in the distillery warehouse; and

said entry shall also specify the number of gauge or wine gallons, and of proof-gallons and taxable gallons contained in said casks or packages at the time application shall be made for the withdrawal thereof; and on payment of the tax the collector shall issue his order to the storekeeper in charge of the warehouse for the delivery. One of said entries shall be filed in the office of the collector, and the other transmitted by him to the Commissioner of Internal Revenue.

Act July 20, 1868, c. 186, § 24, 15 Stat. 136. Act March 1, 1879, c. 125, § 5, 20 Stat. 337. Act May 28, 1880, c. 108, § 5, 21 Stat. 146.

This section, as enacted in the Revised Statutes, was amended by inserting, in the form of entry, after the words "on payment of the tax," in place of the words "from —— warehouse," the words "from warehouse of distillery number ——, situated in the —— district of ——," by Act March 1, 1879, c. 125, § 5, cited above.

It was further amended by inserting, after the words "number of casks," the words "or packages," and by inserting, after the words "contained in them," the provision beginning with the words "at the time they were" and ending with the words "for withdrawal thereof," as set forth here, by Act May 28, 1880, c. 108, § 5, cited above.

Notes of Decisions

See notes under § 5985, ante, and § 6125, post.

Functions of treasury officials.—The functions of the treasury officials in these cases are more than ministerial. Corning & Co. v. U. S. (1899) 34 Ct. Cl. 271.

Withdrawal in general.—Under this section whisky can be only withdrawn from a bonded warehouse on application to the proper collector, on making a withdrawal entry in duplicate in a prescribed form, specifying the whole number of casks or packages, with the marks and serial numbers thereon, etc., which particulars must be verified on oath, and the withdrawal can only be made upon the order of the collector, on payment of the proper tax, and on branding the casks, etc. McCullough v. Large (Pa. 1884) 1 Lanc. Law Rev. 205.

Seizure of whisky on execution by sheriff offering to pay tax.—Whisky deposited in a bonded warehouse of the United States, and held therein for internal revenue tax due the government, is virtually in the possession of the United States, and a sheriff has no right to enter such warehouse and seize, in execution, such whisky as the property of the defendant in a writ of fieri facias in his hands, even though he may offer to pay the tax. This section and section 6037, post, preclude the exercise by the sheriff of the authority claimed by him in such case. McCullough v. Large (1884) 20 Fed. 309.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 290, 232 U. S. 174, 58 L. Ed. 558; Pattison v. Dale (1912) 196 Fed. 5, 115 C. C. A. 639; Miles v. Johnson (C. C. 1893) 59 Fed. 38, 40; U. S. v. Three Packages of Distilled Spirits (D. C. 1903) 125 Fed. 52, reversed (1904) 129 Fed. 329, 63 C. C. A. 263.

§ 6037. (R. S. § 3295, as amended, Act July 16, 1892, c. 196, § 1.) Gauging, stamping, and branding spirits removed from warehouse.

Whenever an order is received from the collector for the removal from any distillery warehouse of any cask of distilled spirits on which tax has been paid, the gauger by whom the same is gauged and inspected shall, in presence of the store-keeper and before such cask has left the warehouse, place upon the head thereof, in such manner as to cover no portion of any brand or mark prescribed by law already placed thereon, a stamp, on which shall be engraved the number of proof-gallons contained in said cask on which the tax has been paid, and which shall state the serial number of the cask, the name of the person by whom the tax was paid, and the person to whom and the place where it is to be delivered. Said stamp shall be signed by the collector of the district, the store-keeper, and gauger, and shall be as follows:

Tax-Paid Stamp, No. —.

Received ——— ———, 18—, from ——— ——— tax on ——— gallons proof-spirit, cask No. ——, ——— warehouse at ———, for delivery to ———, at ———.

——— ———,

Collector —— District, State of ———.

Attest:

——— ———,

United States Store-keeper.

——— ———,

United States Gauger.

And at the time of affixing the tax-paid stamp the gauger shall, in the presence of the store-keeper, cut or burn upon each cask the name of the distiller, the district, the date of the payment of the tax, the number of proof-gallons, and the number of the stamp, which cutting or burning shall be erased when such cask is emptied.

Act July 20, 1868, c. 186, § 25, 15 Stat. 136. Act July 16, 1892, c. 196, § 1, 27 Stat. 200.

This section, as enacted in the Revised Statutes, was amended by striking out, at the end of the section as originally enacted, the words "by cutting or burning a canceling line across such marks or brands," as set forth here, by Act July 16, 1892, c. 196, § 1, cited above. This amendment was a provision following an appropriation for salaries, expenses, and fees of internal revenue officers in the legislative, executive, and judicial appropriation act for the fiscal year 1893, cited above.

Notes of Decisions

See notes under § 6036, ante.

Casks to which statute refers.—This section evidently has reference to casks containing less than 20 gallons wine measure. Williams v. U. S. (1907) 158 Fed. 30, 88 C. C. A. 296.

Duty to cause casks to be gauged, inspected, or stamped.—Section 25, Act July 20, 1868, does not impose the duty upon the rectifier or wholesale dealer of causing the filled casks to be gauged, inspected, or stamped, but it is the duty of the gauger to cause this to be done. U. S. v. Two Hundred Barrels of Whisky (1877) 95 U. S. 571, 573, 24 L. Ed. 491.

Stamps as receipts.—The tax-paid stamps issued by collectors for the payment of taxes on distilled spirits are nothing more than receipts, and are worthless as receipts to other parties than those to whom they are issued. Woolner v. U. S. (1877) 13 Ct. Cl. 355.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Pattison v. Dale (1912) 196 Fed. 5, 115 C. C. A. 639; U. S. v. Bayaud (C. C. 1883) 16 Fed. 376, 377; Same v. One Package of Distilled Spirits (D. C. 1898) 88 Fed. 856, 857; Same v. Three Packages of Distilled Spirits (D. C. 1903) 125 Fed. 52, reversed (1904) 129 Fed. 329, 63 C. C. A. 263.

§ 6038. (R. S. § 3296.) Removal, concealment, etc., of spirits contrary to law; penalty.

Whenever any person removes, or aids or abets in the removal of any distilled spirits on which the tax has not been paid, to a place other than the distillery warehouse provided by law, or conceals or aids in the concealment of any spirits so removed, or removes, or aids or abets in the removal of any distilled spirits from any distillery warehouse, or other warehouse for distilled spirits authorized by law, in any manner other than is provided by law, or conceals or aids in the concealment of any spirits so removed he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not less than two hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than three years.

Act July 20, 1868, c. 186, § 36, 15 Stat. 140.

The establishment of special bonded warehouses for fruit brandy was authorized by Act March 3, 1877, c. 114, and Act Oct. 18, 1888, c. 1194, post, §§

6039–6050, and the establishment of general bonded warehouses was authorized by Act Aug. 27, 1894, c. 349, §§ 49–62, and Act March 3, 1899, c. 435, ante, § 6035, and post, §§ 6051–6053, 6056–6065.

Notes of Decisions

See notes under § 5993, ante.

Removal and concealment in general.—Under Act July 13, 1866, § 45, providing that all distilled spirits found elsewhere than in a bonded warehouse, not having been removed from such warehouse according to law, and the tax imposed by law not having been paid, shall be forfeited, a removal procured by a false and fraudulent bond, though accepted by the collector, is not a removal according to law, and spirits thus withdrawn are not exempted from the operation of the section. In re Distilled Spirits (1870) 78 U. S. (11 Wall.) 356, 20 L. Ed. 167, affirming U. S. v. Two Hundred and Seventy-Eight Barrels of Distilled Spirits (C. C. 1869) Fed. Cas. No. 16,580.

In an action on a distiller's bond for breach of this section, a compromise of prosecutions under section 6021 ante, and section 10201, post, for removal of the same liquor is a complete defense. U. S. v. Chouteau (1880) 102 U. S. 603, 26 L. Ed. 246.

In an indictment under this section for the removal and concealment of spirits, where defendant pleaded that the spirits had been removed from the designated place of deposit to an adjoining smoke room, with purpose of preventing waste from leakage, and not with the intent of defrauding the government, the jury are justified in acquitting, if they find that the act of removal was not willful, in the sense not only of voluntary, but also with a bad purpose. U. S. v. Smith (D. C. 1886) 27 Fed. 854.

This section makes it unlawful to remove any spirits on which the tax has not been paid except from a registered distillery to the designated place of deposit, and applies as well to removals from an illicit, as from a registered, distillery. U. S. v. Thompson (D. C. 1911) 189 Fed. 838.

Larceny of spirits.—This section, which makes it indictable to remove distilled spirits from a government warehouse before the lien for taxes is satisfied, has no application to the larceny of such spirits, and the latter offense is triable in the state courts. State v. Harmon (1889) 104 N. C. 792, 10 S. E. 474.

Persons liable.—If an officer of the United States in violation of his duty permits removal of liquor from a distillery warehouse without payment of the tax, he subjects himself to punishment, but does not bind the government by his acts; as the government is not responsible for the laches or wrongful acts of its officers. Hart v. U. S. (1877) 95 U. S. 316, 318, 24 L. Ed. 479.

Under Act July 13, 1866, § 45, a person cannot be convicted as a principal in removing spirits, and also as an aider and abettor in the same offense. U. S. v. Blaisdell (D. C. 1869) Fed. Cas. No. 14,608.

A person who, with unlawful intent, designs or directs the removal of spirits on which the tax has not been paid, is equally guilty with the one who actually carries out the unlawful object. U. S. v. Nunnemacher (C. C. 1876) Fed. Cas. No. 15,902.

Conspiracy to remove spirits.—An indictment will lie, under R. S. § 5440, post, § 10201, for conspiracy to remove distilled spirits on which the tax had not been paid, in violation of this section, although it is charged that the purpose of the conspiracy was accomplished. Scott v. U. S. (1908) 165 Fed. 172, 91 C. C. A. 206, affirming judgment U. S. v. Scott (C. C. 1905) 139 Fed. 697.

Indictment.—An indictment under this section for aiding in the concealment of distilled spirits on which the tax had not been paid, and which had been removed to a place other than the distillery warehouse provided by law, is sufficiently certain where it charges the offense substantially in the language of the statute, and need not aver that there was a warehouse provided by law where such spirits should have been stored. Pounds v. U. S. (1898) 18 Sup. Ct. 729, 171 U. S. 35, 43 L. Ed. 62.

An indictment which charges a removal of a certain quantity of "distilled spirits" on which the tax has not been paid to a place other than the distillery warehouse, is good. U. S. v. Ulrici (C. C. 1875) Fed. Cas. No. 16,594; Same v. Anthony (C. C. 1877) Fed. Cas. No. 14,460.

An indictment under this section charging defendant with aiding in the concealment of spirits removed from a distillery, contrary to law, and on which the tax had not been paid, held sufficient. Rosenfeld v. U. S. (1912) 202 Fed. 469, 120 C. C. A. 599.

An allegation that the tax on certain spirits "had not been paid" is sufficient without an allegation that it "was still due and owing." U. S. v. Nunnemacher (C. C. 1876) Fed. Cas. No. 15,903.

The words "in execution and pursuance of" are equivalent in meaning to the words "to effect the object of." Id.

An indictment averring the removal of spirits on which the tax had not been paid to a place other than the

distillery warehouse, "and" the concealment thereof, is not bad for duplicity, under this section. Id.

On indictment for removing whisky from a distillery, and sending it to another state under a false inspector's brand, without paying the tax, the court of the latter state has jurisdiction, where the whisky was not taken from the possession of the railroad company by which it was shipped, before arrival at its destination. U. S. v. Sperry (D. C. 1869) Fed. Cas. No. 16,369.

Under this section which makes it an offense to remove any distilled spirits on which the tax has not been paid "to a place other than the distillery warehouse provided by law," an indictment states an offense where it charges the removal by defendant of fruit brandy from the distillery to a place other than "the designated place of deposit provided by law," since under the regulations of the department, made by authority of law, such brandy is not required to be removed to a distillery warehouse, but to a designated place of deposit required to be provided by the distiller. U. S. v. Thompson (D. C. 1911) 189 Fed. 838.

Evidence.—On the trial of defendants, charged with a violation of the internal revenue laws, the instructions, rules, and regulations prescribed by the Commissioner of Internal Revenue, as authorized by statute, are admissible in evidence where pertinent to the issues. Sprinkle v. U. S. (1905) 141 Fed. 811, 73 C. C. A. 285.

On a trial for the fraudulent removal of distilled spirits from the distiller's bonded warehouse (Act July 13, 1866, § 45), it need not be shown that the warehouse was duly designated or authorized. U. S. v. Harries (C. C. 1869) Fed. Cas. No. 15,309.

A distiller's bonded warehouse which the law requires him to provide is a part of the distiller's premises, and proof of the unlawful removal of spirits therefrom sustains the averment that the removal was from the distillery. U. S. v. Smith (C. C. 1869) Fed. Cas. No. 16,322.

On an indictment for removing distilled spirits on which the tax has not been paid, that the removal took place at the precise time stated need not be proved. U. S. v. Nunnemacher (C. C. 1876) Fed. Cas. No. 15,902.

Under a count for removal and concealment, conviction may be had if removal is proved, though concealment is not shown. Id.

See, also, U. S. v. Furlong (D. C. 1869) Fed. Cas. No. 15,178.

—— In prosecutions under other statutes.—On the trial of one indicted under this section for the removal and concealment of distilled spirits on which the tax had not been paid, testimony was offered that, on the night before the whisky was removed, accused broke the lock of the warehouse where it was stored. Defendant objected on the ground that he had been indicted under section 6006, ante, for breaking such lock, and at the last term of the court had been tried thereon and acquitted. Held that, though such acquittal could be considered by the jury in considering the credibility of the witnesses, it was not ground for excluding the testimony. Pilcher v. U. S. (1902) 113 Fed. 248, 51 C. C. A. 205.

Evidence that employés of the owner of a distillery joined and participated with him in removing from such distillery to a place other than a bonded warehouse spirits on which the internal revenue tax had not been paid, in violation of this section, under circumstances from which they must have known the illegal nature of the transactions, is sufficient to sustain an indictment, under section 10201, post, of both employer and employés, for conspiracy to commit an offense against the United States. U. S. v. Scott (C. C. 1905) 139 Fed. 697, judgment affirmed Scott v. U. S. (1908) 165 Fed. 172, 91 C. C. A. 206.

Conviction under statute as bar to prosecution under other statute.—A conviction, under this section for removing distilled spirits to a place other than a distillery warehouse, or concealing them there contrary to law, is not a bar to a conviction under section 6021, ante, for illicit distilling, because the same are different offenses, and the question of being twice in jeopardy, within Const. Amend. 5, does not arise. U. S. v. Three Copper Stills (D. C. 1890) 47 Fed. 495.

Recovery for spirits fraudulently removed and sold.—Where one permits distilled spirits to be removed from his distillery and sold in fraud of the revenue laws, he cannot recover for spirits thus sold. Curran v. Downs (1879) 7 Mo. App. 329.

Cited without definite application, Whisky Cases (1878) 99 U. S. 594, 25 L. Ed. 399; Coffey v. U. S. (1886) 6 Sup. Ct. 437–439, 116 U. S. 436, 29 L. Ed. 684; Sprinkle v. Same (1906) 150 Fed. 56, 82 C. C. A. 1 (certiorari denied Angle v. U. S. [1907] 27 Sup. Ct. 789, 205 U. S. 542, 51 L. Ed. 922); Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 290, 232 U. S. 174, 58 L. Ed. 558; Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Foster v. U. S. (1911) 188 Fed. 305, 110 C. C. A. 283 (denied [1911] 192 Fed. 1022, 112 C. C. A. 665); Pattison v. Dale (1912) 196 Fed. 5, 115 C. C. A. 639; Tucker v. U. S. (1912) 196 Fed. 260, 116 C. C. A. 62, 41 L. R. A. (N. S.) 70; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Olsen (D. C. 1893) 57 Fed. 579, 583; Same v. Gallant (D. C. 1910) 177 Fed. 281.

§ 6039. (Act March 3, 1877, c. 114, § 1.) Special bonded warehouses for grape brandy.

The Commissioner of Internal Revenue shall be, and hereby is, authorized in his discretion, and upon the execution of such bonds as he may prescribe, to establish warehouses, to be known as special bonded warehouses, not exceeding ten in numbers in any one collection-district, exclusively for the storage of brandy made from grapes, each of which warehouses shall be in the charge of a storekeeper, to be appointed, assigned, transferred, and paid in the same manner that storekeepers for distillery-warehouses are now appointed, assigned, transferred, and paid. Every such warehouse shall be under the control of the collector of internal revenue of the district in which such warehouse is located, and shall be in the joint custody of the storekeeper and the proprietor thereof and kept securely locked, and shall at no time be unlocked or opened or remain open except in the presence of such storekeeper or other person who may be designated to act for him, as provided in the case of distillery-warehouses. And such warehouses shall be under such further regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. (19 Stat. 393.)

This section and the ten sections next following were an act entitled "An act relating to the production of fruit brandy, and to punish frauds connected with the same."

The provisions of this act were made applicable to brandy distilled from apples or peaches or other fruit, the brandy distilled from which was not required to be deposited in a distillery warehouse, by Act Oct. 18, 1888, c. 1194, post, § 6050.

Notes of Decisions

Effect as repealing other statute.—Section 5993, ante, punishing distillers who defraud or attempt to defraud the United States of the tax on spirits distilled by them is not repealed by this and following sections, providing for the establishment of a bonded warehouse exclusively for the storage of grape brandy, removal of such spirits thereto, their deposit and withdrawal, etc., and Act Oct. 18, 1888 (section 6050, post), extending the provisions of the act of March 3, 1877, to distillers of all fruit brandies. U. S. v. Ridenour (D. C. 1902) 119 Fed. 411.

Cited without definite application, U. S. v. Ridenour (D. C. 1902) 119 Fed. 411, 412, 414, 415.

§ 6040. (Act March 3, 1877, c. 114, § 2.) Payment of tax on grape brandy; removal to special bonded warehouse.

Every distiller of brandy from grapes, upon rendering his monthly return of materials used and spirits produced by him, shall immediately pay the tax upon such spirits, or may, after they have been properly gauged, marked, and branded, under regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, and also stamped as hereinafter provided, cause them to be removed in bond from the place of manufacture to a special bonded warehouse, under such regulations, and after making such entries, and executing and filing with the collector of the district in which such spirits were manufactured such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. (19 Stat. 393.)

Assessments were not to be charged against a distiller of fruit brandy for failing to maintain the required capacity, in the absence of notification by the Commissioner to the distiller within six months of such failure, by Act March 1, 1879, c. 125, § 6, as amended by Act May 28, 1880, c. 108, § 8, post, § 6091.

The amount of the tax was fixed by Act Aug. 27, 1894, c. 349, § 48, ante, § 5986.

§ 6041. (Act March 3, 1877, c. 114, § 3.) Special stamp on removal to special bonded warehouse.

All brandy intended for deposit in a special bonded warehouse,

before being removed from the distillery, shall have affixed to each package an engraved stamp indicative of such intention, to be provided and furnished to the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner; and for the expense attending, providing, and affixing such stamps ten cents for each stamp shall be paid the collector on making the entry for such transportation. (19 Stat. 393.)

Provisions for the drawing off of spirits into packages, for the gauging, marking, and stamping the packages, and for the allowance of five cents for the expense of providing and affixing stamps to wooden packages containing two or more metallic cans, were made in R. S. § 3287, as amended by Act March 1, 1879, c. 125, § 5, by Act May 28, 1880, c. 108, § 6, Act Feb. 21, 1899, c. 177, and by Act March 2, 1911, c. 119, incorporated into that section, ante, § 6028.

§ 6042. (Act March 3, 1877, c. 114, § 4.) Deposit in warehouse; bond.

Any brandy made from grapes removed in bond according to law may, upon its arrival at a special bonded warehouse, be deposited therein upon making such entries, filing such bonds and other securities, and under such regulations as shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. It shall be one of the conditions of the warehousing-bond covering such spirits that the principal named in said bond shall pay the tax on the spirits as specified in the entry, or cause the same to be paid within three years from the date of the original gauging of the same, and before withdrawal, except as hereinafter provided. (19 Stat. 393.)

The provisions of the last sentence of this section were superseded by the provisions requiring that bonds for deposit of spirits in special bonded warehouses be conditioned for the payment of the tax before removal, and within eight years from the date of the original gauge, made by Act Aug. 27, 1894, c. 349, § 49, ante, § 6035.

Provisions for bonds on deposit of spirits in distillery warehouses were made by R. S. § 3293, as amended by Act March 1, 1879, c. 125, § 5, and by Act May 28, 1880, c. 108, § 4, incorporated into that section, ante, § 6034.

§ 6043. (Act March 3, 1877, c. 114, § 5.) Withdrawal from warehouse for transfer or exportation; entry; bond.

Any brandy made from grapes may be withdrawn once and no more from one special bonded warehouse for transportation to another special bonded warehouse; and such brandy shall, on its arrival at the second special bonded warehouse, be immediately entered therein, from which warehouse it shall be withdrawn only on payment of the tax or for immediate exportation. In case the brandy withdrawn is intended for deposit in another special bonded warehouse, an additional stamp, indicative of such intention, shall be affixed to each package withdrawn, as in the case of brandy withdrawn from a distillery intended to be so deposited. And in case the brandy is intended for exportation, an engraved stamp indicative of such intention, shall be affixed to each package so removed, as in the case of spirits withdrawn from a distillery bonded warehouse for exportation, under the provisions of section thirty-three hundred and thirty, Revised Statutes: all the provisions of which section not inconsistent with this act are hereby made applicable to such withdrawals. And all withdrawals authorized by law of grape-brandy from any special bonded warehouse shall be upon making such withdrawal entries, and under such regulations, and unless the withdrawal is upon payment of tax, upon the execution of such bonds and bills of lading as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Export bonds given under the provisions of this act shall be canceled upon the production of such certificates of landing as the Commissioner of Internal Revenue, with the approval of

the Secretary of the Treasury, may prescribe, or upon proof of loss at sea satisfactory to the Commissioner of Internal Revenue. And the provisions of existing law relative to an allowance of loss by casual[i]ty in a distillery bonded warehouse are hereby made applicable to brandy stored in special bonded warehouses, in accordance with the provisions of this act. (19 Stat. 394.)

Provisions authorizing an allowance for leakage upon the withdrawal of spirits from special bonded warehouses were made by Act May 28, 1880, c. 108, § 17, 21 Stat. 149, which were superseded by provisions authorizing an allowance for loss upon a regauging of spirits in bond in special bonded warehouses, made by Act Aug. 27, 1894, c. 349, § 50, Act March 3, 1899, c. 435, and Act Jan. 13, 1903, c. 134, post, §§ 6051–6053.

R. S. § 3330, mentioned in this section, is set forth post, § 6125.

Provision for withdrawal of wine spirits for fortification of wines is made by Act Sept. 8, 1916, c. 463, post, § 6114.

§ 6044. (Act March 3, 1877, c. 114, § 6.) Exportation of grape brandy.

The provisions of existing law in regard to the exportation of distilled spirits are hereby extended so as to permit the exportation from special bonded warehouses of grape brandy free of tax in any original cask containing not less than twenty gallons, and for the exportation of grape brandy upon which all taxes have been paid, with the privilege of drawback in quantities of not less than one hundred gallons, and in the distillers' original cask, containing not less than twenty nine gallons each. (19 Stat. 394.)

The provisions for the exportation of distilled spirits from bonded warehouses without payment of taxes were made by Rev. St. § 3330, post, § 6125.

See, also, § 6127a, post.

§ 6045. (Act March 3, 1877, c. 114, § 7.) Discontinuance of warehouse and transfer of merchandise.

Whenever, in the opinion of the Commissioner of Internal Revenue, any special bonded warehouse is unsafe or unfit for use, or the merchandize therein is liable to loss or great wastage, he may discontinue such warehouse, and require the merchandize therein to be transferred to such other warehouse as he may designate, and within such time as he may prescribe; and all the provisions of section thirty two hundred and seventy two of the Revised Statutes of the United States, relating to transfers of spirits from warehouses, including those imposing penalties, are hereby made applicable to transfers from special bonded warehouses. (19 Stat. 394.)

A similar provision authorizing the discontinuance of a distillery or other warehouse was made by R. S. § 3272, ante, § 6011, and a similar provision authorizing the discontinuance of a distillery warehouse or general bonded warehouse was made by Act Aug. 27, 1894, c. 349, § 57, ante, § 6012.

§ 6046. (Act March 3, 1877, c. 114, § 8.) Removal of grape brandy without compliance with act; assessment and collection of tax.

The tax upon any brandy distilled from grapes, removed from the place where it was distilled, and in respect of which any requirement of this act is not complied with, shall at any time when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law. (19 Stat. 394.)

§ 6047. (Act March 3, 1877, c. 114, § 9.) Time for payment of tax on grape brandy; forfeitures.

Nothing in this act shall be construed as extending the time in which the tax on brandy made from grapes shall be paid

beyond three years from the day on which the taxable quantity is ascertained by the gauger; and all brandy made from grapes, found elsewhere than in a distillery or special bonded warehouse, not having been removed therefrom according to law, and all brandy on which the tax has not been paid within three years of the date of the original gauging shall be forfeited to the United States. (19 Stat. 394.)

The provision of this section limiting the time for the payment of the tax to three years superseded by provisions limiting the time to eight years, made by Act Aug. 27, 1894, c. 349, § 48, ante, § 5986.

§ 6048. (Act March 3, 1877, c. 114, § 10.) Rules and regulations.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may make all needful rules and regulations for carrying into effect the provisions of this act, and such regulations when made shall have all the force and effect of law. (19 Stat. 395.)

§ 6049. (Act March 3, 1877, c. 114, § 11.) Failure to comply with provisions for deposit in special warehouse, etc., punishable.

In case any grape brandy removed from the distillery for deposit in a special warehouse, shall fail to be deposited in such warehouse within ten days thereafter, or within the time specified in any bond given on such removal, or if any grape-brandy deposited in any special warehouse shall be taken therefrom for deposit in another warehouse, or for export, or otherwise, without full compliance with the provisions of this act, and with the requirements of any regulations made thereunder, and with the terms of any bond given on such removal, then any person who shall be guilty of such failure, and any person who shall in any manner violate any provisions of this act, or of the regulations made in pursuance thereof, shall be subject, on conviction to a fine of not less than one hundred dollars nor more than five thousand dollars, and to imprisonment for not less than three months nor more than three years, for every such failure or violation; and the spirits as to which such failure or violation shall take place shall be forfeited to the United States. (19 Stat. 395.)

A similar provision applicable to deposits of spirits in general bonded warehouses and the removal of the same therefrom was made by Act Aug. 27, 1894, c. 349, § 59, post, § 6065.

§ 6050. (Act Oct. 18, 1888, c. 1194.) Special bonded warehouse provisions extended to fruit brandy.

The provisions of an act entitled "An act relating to the production of fruit brandy, and to punish frauds connected with the same," approved March third, eighteen hundred and seventy-seven, be extended and made applicable to brandy distilled from apples or peaches, or from any other fruit the brandy distilled from which is not now required or hereafter shall not be required to be deposited in a distillery warehouse: Provided, That each of the warehouses established under said act, or which may hereafter be established, shall be in charge either of a storekeeper or of a storekeeper and gauger, at the discretion of the Commissioner of Internal Revenue. (25 Stat. 560.)

This was an act entitled "An act to provide for warehousing fruit brandy." Act March 3, 1887, c. 114, mentioned in this section, is set forth ante, §§ 6039–6049.

Notes of Decisions

Effect as repealing other statute.—Section 5993, ante, punishing distillers who defraud or attempt to defraud the United States of the tax on spirits distilled by them is not repealed by this section and section 6039 et seq. ante, providing for the establishment of a bonded warehouse exclusively for the storage of grape brandy, removal of such spirits thereto, their deposit and withdrawal, etc. U. S. v. Ridenour (D. C. 1902) 119 Fed. 411.

Cited without definite application, U. S. v. Ridenour (D. C. 1902) 119 Fed. 411, 412, 414, 415.

§ 6051. (Act Aug. 27, 1894, c. 349, § 50.) Regauging at warehouse; allowance for loss.

The distiller of any distilled spirits deposited in any distillery warehouse, or special-bonded warehouse, or in any general-bonded warehouse established under the provisions of this Act may, prior to the expiration of four years from the date of original gauge as to fruit brandy, or original entry as to all other spirits, file with the collector a notice giving a description of the packages containing the spirits, and request a regauge of the same, and thereupon the collector shall direct a gauger to regauge the spirits, and to mark upon each such package the number of gauge or wine gallons and proof gallons therein contained. If upon such regauging it shall appear that there has been a loss of distilled spirits from any cask or package, without the fault or negligence of the distiller thereof, taxes shall be collected only on the quantity of distilled spirits contained in such cask or package at the time of the withdrawal thereof from the distillery warehouse or other bonded warehouse: Provided, however, That the allowance which shall be made for such loss of spirits as aforesaid shall not exceed one proof gallon for two months or part thereof; one and one-half gallons for three and four months; two gallons for five and six months; two and one-half gallons for seven and eight months; three gallons for nine and ten months; three and one-half gallons for eleven and twelve months; four gallons for thirteen, fourteen, and fifteen months; four and one-half gallons for sixteen, seventeen, and eighteen months; five gallons for nineteen, twenty, and twenty-one months; five and one-half gallons for twenty-two, twenty-three, and twenty-four months; six gallons for twenty-five, twenty-six, and twenty-seven months; six and one-half gallons for twenty-eight, twenty-nine, and thirty months; seven gallons for thirty-one, thirty-two, and thirty-three months; seven and one-half gallons for thirty-four, thirty-five, and thirty-six months; eight gallons for thirty-seven, thirty-eight, thirty-nine, and forty months; eight and one-half gallons for forty-one, forty-two, forty-three, and forty-four months; nine gallons for forty-five, forty-six, forty-seven, and forty-eight months; and no further allowance shall be made: And provided further, That in case such spirits shall remain in warehouse after the same have been regauged, the packages containing the spirits shall, at the time of withdrawal from warehouse and at such other times as the Commissioner of Internal Revenue may direct, be again regauged or inspected; and if found to contain a larger quantity than shown by the first regauge, the tax shall be collected and paid on the quantity contained in each such package as shown by the original gauge: And provided further, That taxes shall be collected on the quantity contained in each cask or package as shown by the original gauge, where the distiller does not request a regauge before the expiration of four years from the date of original entry or gauge: Provided also, That the foregoing allowance of loss shall apply only to casks or packages of a capacity of forty or more wine gallons, and that the allowance for loss on casks or packages of less capacity than forty gallons shall not exceed one-half the amount allowed on said forty-gallon cask or package; but no allowance shall be made on casks or packages of less capacity than twenty gallons: And provided further, That the proof of such distilled spirits shall not in any case be computed at the time of withdrawal at less than one hundred per centum. (28 Stat. 564.)

This section was part of the Wilson Tariff Act, cited above.

A further maximum allowance for loss was authorized, and the time of the allowance was extended to seven years, by Act March 3, 1899, c. 435, post, §§ 6052, 6053.

This section and Act March 3, 1899, c. 435, superseded the provisions requiring a regauge of spirits withdrawn from a distillery warehouse or special bonded warehouse, and authorizing an allowance for loss, made by Act May 28, 1880, c. 108, § 17, 21 Stat. 149.

The allowance for loss as to distilled spirits deposited in warehouse prior to Jan. 1, 1899, by Act March 3, 1899, c. 435, under the conditions and limitations of this section, was extended to all distilled spirits in internal revenue bonded warehouses, or afterwards produced and deposited therein, by Act Jan. 13, 1903, c. 134 post, § 6054.

Notes of Decisions

Functions of commissioner and collectors and finality of decision.—When the commissioner of internal revenue regards a loss from warping of barrels as excessive, he has authority, under Act May 28, 1880, § 4, to order the withdrawal of the spirits from the warehouse before the three years of the bond have expired, and to require payment of the tax on the quantity originally entered, without making any allowance under section 17 of said act for the loss, even though it occurred without the fraud or negligence of the owner. Crystal Spring Distillery Co. v. Cox (1892) 49 Fed. 555, 1 C. C. A. 365, affirming (C. C. 1891) 47 Fed. 693.

The functions of the commissioner and the collectors of internal revenue are judicial, and his decision final, under Act May 28, 1880 (21 Stat. 145) § 17, providing for the payment of taxes on spirits in bonded warehouses, and for regauging the same, and for refunding of taxes erroneously or unlawfully assessed or collected. Corning & Co. v. U. S. (1899) 34 Ct. Cl. 271.

Regauging as prerequisite to claim.—Under Act May 28, 1880 (21 Stat. 145), providing for the payment of taxes on spirits in bonded warehouses, regauging, as required by section 17, is an important step in determining how much loss by leakage or evaporation there has been, and what the tax shall be; and is the prerequisite to any claim. Corning & Co. v. U. S. (1899) 34 Ct. Cl. 271.

Allowance for leakage.—No allowance is made by Act June 30, 1864 (13 Stat. 223), for leakage of spirituous liquors while stored in bonded warehouses. (1883) 17 Op. Atty. Gen. 500.

Cited without definite application. Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6052. (Act March 3, 1899, c. 435, § 1.) Allowance for loss of spirits in warehouse.

Under the conditions and limitations imposed by section fifty of the Act of August twenty-eighth, eighteen hundred and ninety-four, entitled "An act to reduce taxation, to provide revenue for the support of the Government, and for other purposes," allowance for loss shall be made as to all distilled spirits produced and originally gauged for deposit prior to January first, eighteen hundred and ninety-nine, and which lawfully remain in any internal-revenue bonded warehouse, after the expiration of the period of forty-eight months from the date of original gauge: Provided, however, That the allowance for loss herein authorized shall not exceed nine and one-half gallons for forty-nine, fifty, fifty-one, and fifty-two months; ten gallons for fifty-three, fifty-four, fifty-five, and fifty-six months; ten and one-half gallons for fifty-seven, fifty-eight, fifty-nine, and sixty months; eleven gallons for sixty-one, sixty-two, sixty-three, and sixty-four months; eleven and one-half gallons for sixty-five, sixty-six, sixty-seven, and sixty-eight months; twelve gallons for sixty-nine, seventy, seventy-one, and seventy-two months; twelve and one-half gallons for seventy-three, seventy-four, seventy-five, and seventy-six months; thirteen gallons for seventy-seven, seventy-eight, seventy-nine, and eighty months; and thirteen and one-half gallons for eighty-one, eighty-two, eighty-three, and eighty-four months, and no further allowance shall be made. (30 Stat. 1349.)

This section and the section next following were an act entitled "An act to amend the internal revenue laws relating to distilled spirits, and for other purposes."

Act Aug. 27, 1894, c. 349, § 50, mentioned in this section, is set forth ante, § 6051.

This act and Act Aug. 27, 1894, c. 349, § 50, superseded Act May 28, 1880, c. 108, § 17, 21 Stat. 149. See note to said section 50, ante, § 6051.

The allowance for loss authorized by this section was extended to all dis-

tilled spirits in internal revenue bonded warehouses, or afterwards produced and deposited therein, by Act Jan. 13, 1903, c. 134, post, § 6054.

Allowance for loss of wine while on storage is provided for by Act Sept. 8, 1916, c. 463, § 402(h), post, § 6114e.

Notes of Decisions

See notes under the preceding section.

§ 6053. (Act March 3, 1899, c. 435, § 2.) Regauging.

The allowance for loss herein provided shall be ascertained by regauge on request of distiller before the expiration of eighty-four months from date of original gauge, and shall apply to spirits remaining in any internal-revenue bonded warehouse which shall have been regauged heretofore under the provisions of section fifty of the said Act of August twenty-eighth, eighteen hundred and ninety-four: Provided, That for the regauge of spirits originally gauged for deposit on or before the first day of March, eighteen hundred and ninety-two, the request of the distiller for a regauge under the provisions of this Act may be made at any time before the first day of May, eighteen hundred and ninety-nine. (30 Stat. 1350.)

Act Aug. 27, 1894, c. 349, § 50, mentioned in this section, limiting the time for regauging to four years from the date of original gauge as to fruit brandy in special bonded warehouses, and to four years from the date of the original entry as to all other spirits in distillery warehouses or general bonded warehouses, is set forth ante, § 6051.

Notes of Decisions

See notes under § 6051, ante.

§ 6054. (Act Jan. 13, 1903, c. 134.) Allowance for loss of spirits deposited in warehouse extended.

All distilled spirits now in internal-revenue bonded warehouses or which may hereafter be produced and deposited in such warehouses shall be entitled to the same allowance for loss from leakage or evaporation which now exists in favor of distilled spirits produced, gauged, and so deposited prior to January first, eighteen hundred and ninety-nine, and subject to the same conditions and limitations. (32 Stat. 770.)

This was an act to amend the internal revenue laws.

The allowance for loss of spirits deposited in warehouse prior to Jan. 1, 1899, mentioned in this section as existing, was authorized by Act March 3, 1899, c. 435, § 1, ante, § 6052.

§ 6055. (Act Dec. 20, 1879, c. 1, § 1.) Allowance for leakage or loss on withdrawal of spirits from distillery warehouse for exportation.

Where spirits are withdrawn from distillery warehouses for exportation according to law, it shall be lawful, under such rules and regulations and limitations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for an allowance to be made for leakage or loss by any unavoidable accident, and without any fraud or negligence of the distiller, owner, exporter, carrier, or their agents or employees, occurring during transportation from a distillery warehouse to the port of export; nor shall any assessment be collected for such loss or leakage where the same has not been paid on distilled spirits exported since the first day of May, eighteen hundred and seventy-eight. (21 Stat. 59.)

This section and the section next following were an act entitled "An act authorizing an allowance for loss by leakage or casualty of spirits withdrawn from distillery warehouses for exportation."

§ 6056. (Act Dec. 20, 1879, c. 1, § 2.) Tax on lost spirits covered by insurance not to be remitted.

Where the spirits provided for in the preceding section are cov-

ered by a valid claim of insurance in excess of the market value thereof, exclusive of the tax, the tax upon such spirits shall not be remitted to the extent of such excessive insurance. (21 Stat. 59.)

Provisions of similar nature relating to tax on spirits accidentally destroyed were made by R. S. § 3223, ante, § 5946.

§ 6057. (Act May 28, 1880, c. 108, § 15.) Allowance for leakage or loss on withdrawal of spirits from distillery warehouse to manufacturing warehouse.

Where spirits are withdrawn from distillery warehouses for transfer to manufacturing warehouses, under the provisions of this act, it shall be lawful, under such rules and regulations and limitations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for an allowance to be made for leakage or loss by any unavoidable accident, and without any fraud or negligence of the distiller, owner, exporter, carrier, or their agents or employees, occurring during transportation from a distillery warehouse to a manufacturing warehouse. (21 Stat. 148.)

This section was part of an act entitled "An act to amend the laws in relation to internal revenue."

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6058. (Act Aug. 27, 1894, c. 349, § 51.) General bonded warehouses.

The Commissioner of Internal Revenue shall be, and is hereby, authorized, in his discretion and upon the execution of such bond as he may prescribe, to establish one or more warehouses, not exceeding ten in number in any one collection district, to be known and designated as general bonded warehouses, and to be used exclusively for the storage of spirits distilled from materials other than fruit, each of which warehouses shall be in the charge of a storekeeper or storekeeper and gauger to be appointed, assigned, transferred, and paid in the same manner as such officers for distillery warehouses are now appointed, assigned, transferred, and paid. Every such warehouse shall be under the control of the collector of internal revenue of the district in which such warehouse is located, and shall be in the joint custody of the storekeeper and proprietor thereof, and kept securely locked, and shall at no time be unlocked or opened or remain open except in the presence of such storekeeper or other person who may be designated to act for him, as provided in the case of distillery warehouses; and such warehouses shall be under such further regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. (28 Stat. 564.)

This section and the eight sections next following were part of the Wilson Tariff Act, cited above.

Notes of Decisions

Operation and effect of state dispensary law.—The dispensary law of South Carolina of 1893 is ineffective and inoperative as against distilled liquors held in a United States bonded warehouse under the control of the collector of internal revenue. (1894) 21 Op. Atty. Gen. 73.

Local taxation of liquors.—The taxation of liquors in bonded warehouses within the state, provided for by Laws Md. 1892, c. 704, as amended by Laws 1900, c. 320, under which the proprietors of such warehouses were required to pay the taxes, and were given a lien on the property therefor, is within the powers of the state, despite the facts that there is no specific provision giving the proprietor who pays the taxes a right to recover interest thereon, that, under federal legislation, distilled spirits may be left in a warehouse for several years, and that for spirits so in bond negotiable warehouse receipts have been issued. Carstairs v. Cochran (1904) 24 Sup. Ct. 318, 319, 193 U. S. 10, 48 L. Ed. 596.

Liability of proprietor for negligence.—See, also, notes under § 6109, post.

In an action against the proprietor

of a bonded warehouse for negligence resulting in the destruction of property intrusted to his care, the rules and regulations of the treasury department pertinent to the case were inadmissible in evidence, though proper for the court's consideration. Macklin v. Frazier (1872) 72 Ky. (9 Bush) 3.

A government storekeeper and a bonded warehouseman, being of equal authority in opening and closing the warehouse, the latter is bound to exercise reasonable diligence in seeing that no combustible matter is left in the house in a condition likely to become ignited, and his liability is not affected by any carelessness of the storekeeper in that regard. Id.

Proprietor of warehouse as bailee.—General warehouses not connected with a distillery may be established and spirits may be stored therein, but the regulations and restrictions of the internal revenue laws apply to these warehouses, and in the case of a general bonded warehouse the proprietor is a bailee and physical delivery of property in the warehouse is not necessary to validate a sale or a pledge. In re Miller Pure Rye Distilling Co. (D. C. 1910) 176 Fed. 606, affirmed Taney v. Penn Nat. Bank of Reading (1911) 187 Fed. 689, 109 C. C. A. 437.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Greenbrier Distillery Co. v. Johnson (1898) 88 Fed. 638, 639, 32 C. C. A. 74; In re Rohrer (D. C. 1911) 186 Fed. 997, reversed Pattison v. Dale (1912) 196 Fed. 5, 115 C. C. A. 639.

§ 6059. (Act Aug. 27, 1894, c. 349, § 52.) Removal of spirits to general bonded warehouses.

Any distilled spirits made from materials other than fruit, and lawfully deposited in a distillery warehouse, may, upon application of the distiller thereof, be removed from such distillery warehouse to any general bonded warehouse established under the provisions of the preceding section; and the removal of said spirits to said general bonded warehouse shall be under such regulations, and after making such entries and executing and filing with the collector of the district in which the spirits were manufactured, such bonds and bills of lading, and the giving of such other additional security, as may be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. (28 Stat. 565.)

Provisions for the deposit of fruit brandy in special bonded warehouses were made by Act March 3, 1877, c. 114, set forth ante, §§ 6039–6049.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Greenbrier Distillery Co. v. Johnson (1898) 88 Fed. 638, 639, 641, 32 C. C. A. 74.

§ 6060. (Act Aug. 27, 1894, c. 349, § 53.) Stamp on removal to general bonded warehouse.

All spirits intended for deposit in a general bonded warehouse, before being removed from the distillery warehouse, shall have affixed to each package an engraved stamp indicative of such intention, to be provided and furnished to the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner. (28 Stat. 565.)

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Greenbrier Distillery Co. v. Johnson (1898) 88 Fed. 638, 641, 32 C. C. A. 74.

§ 6061. (Act Aug. 27, 1894, c. 349, § 54.) Warehousing bonds.

Any spirits removed in bond as aforesaid may, upon its arrival at a general bonded warehouse, be deposited therein upon making such entries, filing such bonds and other securities, and under such regulations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. It shall be one of the conditions of the warehousing bond covering such spirits that the principal named in said bond shall pay the tax on the spirits as specified in the entry or cause the same to be paid within eight years from the date of the original entry of the same into

the distillery warehouse, and before withdrawal, except as hereinafter provided. (28 Stat. 565.)

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Greenbrier Distillery Co. v. Johnson (1898) 88 Fed. 638, 639, 641, 32 C. C. A. 74.

§ 6062. (Act Aug. 27, 1894, c. 349, § 55.) Withdrawal from general bonded warehouse.

Any spirits may be withdrawn once and no more from one general bonded warehouse for transportation to another general bonded warehouse, and when intended to be so withdrawn, shall have affixed thereto another general bonded warehouse stamp indicative of such intention; and the withdrawal of such spirits, and their transfer to and entry into such general bonded warehouse shall be under such regulations and upon the filing of such notices, entries, bonds, and bills of lading as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, from time to time, prescribe; and the bonds covering spirits in general bonded warehouses shall be given by distillers of the spirits, and shall be renewed at such times as the Commissioner of Internal Revenue may, by regulations, require. (28 Stat. 565.)

Notes of Decisions

Removal of spirits once removed from distiller's warehouse to general bonded warehouse.—Spirits once removed from the distiller's bonded warehouse to a general bonded warehouse cannot be again removed to another bonded warehouse. U. S. v. Five Hundred and Eight Barrels of Spirits (C. C. 1867) Fed. Cas. No. 15,114.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Greenbrier Distillery Co. v. Johnson (1898) 88 Fed. 638, 640, 641, 32 C. C. A. 74.

§ 6063. (Act Aug. 27, 1894, c. 349, § 56.) Previous provisions applicable to spirits deposited in general bonded warehouses.

The provisions of existing law in regard to the withdrawal of distilled spirits from warehouses upon payment of tax, or for exportation, or for transfer to a manufacturing warehouse, and as to the gauging, marking, branding, and stamping of the spirits upon such withdrawals, and in regard to withdrawals for the use of the United States or scientific institutions or colleges of learning, including the provisions for allowance for loss by accidental fire or other unavoidable accident, are hereby extended and made applicable to spirits deposited in general bonded warehouses under this Act. (28 Stat. 565.)

Section 57 of the Wilson Tariff Act is set forth ante, § 6012.

Notes of Decisions

Allowance for loss by fire or other accident.—Under this section the provisions for allowance for loss by fire or other unavoidable accident do not extend to the case of such a loss while spirits are in transit from a distillery warehouse to a general bonded warehouse. Greenbrier Distillery Co. v. Johnson (1898) 88 Fed. 638, 32 C. C. A. 74.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6064. (Act Aug. 27, 1894, c. 349, § 58.) Tax on spirits removed from distillery warehouse to general bonded warehouse without compliance with requirements of act; excessive loss.

The tax upon any distilled spirits removed from a distillery warehouse for deposit in a general bonded warehouse, and in respect of which any requirement of this Act is not complied with, shall, at any time when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment

of such tax, and upon the neglect of payment by the distiller shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law to enforce the payment of the tax. If it shall appear at any time that there has been a loss of distilled spirits from any cask or package deposited in a general bonded warehouse or special bonded warehouse, other than the loss provided for in section thirty-two hundred and twenty-one of the Revised Statutes of the United States, which, in the opinion of the Commissioner of Internal Revenue, is excessive, he may instruct the collector of the district in which the loss has occurred to require the withdrawal from warehouse of such cask or package of distilled spirits and to collect the tax accrued upon the original quantity of distilled spirits entered into the warehouse in such cask or package, less only the allowance for loss provided by law. If the said tax is not paid on demand the collector shall report the amount due, as shown by the original gauge, upon his next monthly list, and it shall be assessed and collected as other taxes are assessed and collected. (28 Stat. 566.)

Notes of Decisions

Allowance for leakage.—No allowance is made by Act June 30, 1864 (13 Stat. 223), for leakage of spirituous liquors while stored in bonded warehouses. (1883) 17 Op. Atty. Gen. 500.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6065: (Act Aug. 27, 1894, c. 349, § 59.) Failure to deposit in general bonded warehouse in time, or removal therefrom without compliance with requirements of act; punishment; forfeitures.

In case any distilled spirits removed from a distillery warehouse for deposit in a general bonded warehouse shall fail to be deposited in such general bonded warehouse within ten days after such removal, or within the time specified in any bond given on such removal, or if any distilled spirits deposited in any general bonded warehouse shall be taken therefrom, for export or otherwise, without full compliance with the provisions of this Act, and with the requirements of any regulations made thereunder, and with the terms of any bond given on such removal, or if any distilled spirits which have been deposited in a general bonded warehouse shall be found elsewhere, not having been removed therefrom according to law, any person who shall be guilty of such failure, or any person who shall in any manner violate any provision of the next preceding eleven sections of this Act, shall be subject, on conviction, to a fine of not less than one hundred dollars nor more than five thousand dollars, or to imprisonment for not less than three months nor more than three years for every such failure or violation; and the spirits as to which such failure or violation, or unlawful removal shall take place shall be forfeited to the United States. (28 Stat. 566.)

Similar provisions applicable to fruit brandy were made by Act March 3, 1877, c. 114, § 11, ante, § 6049.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6066. (R. S. § 3297.) Alcohol withdrawn for scientific purposes.

The Secretary of the Treasury is authorized to grant permits to any incorporated or chartered scientific institution or college of learning to withdraw alcohol in specified quantities from bond without payment of the internal-revenue tax on the same, or on the spirits from which the alcohol has been distilled, for the sole purpose of preserving specimens of anatomy, physiology, or natural history belonging to such institution, or for use in its chemical laboratory:

Provided, That application for permits shall be made by the president or curator of such institution, who shall file a bond for double the amount of the tax on the alcohol to be withdrawn, with two good and sufficient sureties, to be approved by the Commissioner of Internal Revenue, and conditioned that the whole quantity of alcohol so withdrawn from bond shall be used for the purposes above specified, and for no other, and that the said president or curator shall comply with such other requirements and regulations as the Secretary of the Treasury may prescribe. And if any alcohol so obtained is used by any officer, as aforesaid, of such institution for any purposes other than that above specified, then the said officer or sureties shall pay the tax on the whole amount of alcohol withdrawn from bond, together with a like amount as a penalty in addition thereto.

Act Feb. 21, 1873, c. 173, 17 Stat. 468.

The privileges of this section were extended to unincorporated institutions of learning by Act May 3, 1878, c. 88, as amended by Act July 8, 1916, c. 236, 39 Stat., post, § 6067.

The withdrawal of spirits free of tax for the manufacture of medicines, etc., in manufacturing bonded warehouses, was authorized by Act March 1, 1879, c. 125, § 20, as amended by Act May 28, 1880, c. 108, § 14, post, § 6068.

The withdrawal of distilled spirits free of tax for making sorghum sugar was authorized by Act March 3, 1891, c. 544, § 1, post, § 6069.

The bottling of spirits in bond was authorized by Act March 3, 1897, c. 379, post, §§ 6070–6077.

The bottling of gin in bond is authorized by Act Sept. 8, 1916, c. 463, § 405, post, § 6070a.

The withdrawal, free of tax, of domestic alcohol when mixed with denaturing material was provided for by Act June 7, 1906, c. 3047, and Act March 2, 1907, c. 2571, post, §§ 6132–6136.

The manufacture of alcohol, free of tax, for denaturization only, was provided for by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, N, subsec. 2, post, § 6137.

The Commissioner of Internal Revenue was authorized to remit taxes on alcohol withdrawn for scientific institutions or colleges in accordance with this section and Act May 3, 1878, c. 88, post, § 6067, and erroneously used, by Act June 4, 1912, c. 150, 37 Stat. 122, which is omitted as temporary.

Notes of Decisions

Meaning of the term "alcohol."—The term "alcohol," as used in this section, and in section 1 of the act of June 7, 1906 (section 6132, post), embraces the various grades of alcohol as reclassified in Internal Revenue Circular No. 723, and referred to therein as pure, neutral, or cologne spirits, and as commercial alcohol. (1909) 27 Op. Atty. Gen. 226.

Opinions of January 11, 1908, and March 25, 1908 (26 Op. Atty. Gen. 476, 542), dealt with the meaning of the terms under the food and drug acts, to secure regulations for branding spirits in conformity with the intent of that act, and have no application to the above section. Id.

§ 6067. (Act May 3, 1878, c. 88, as amended, Act July 8, 1916, c. 236.) Withdrawal of alcohol for scientific purposes by unincorporated institutions.

That the Secretary of the Treasury is authorized to grant permits, as provided for in section thirty-two hundred and ninety-seven of the Revised Statutes of the United States, for the withdrawal of alcohol from bond, free of tax to any scientific university or college of learning created and constituted as such by any State or Territory under its laws, though not incorporated or chartered, and to any hospital maintained by endowment or otherwise, and not conducted for profit, upon the same terms and subject to the same restrictions and penalties already provided by said section thirty-two hundred and ninety-seven: Provided, however, That alcohol so obtained by hospitals may be used in surgical operations and, except as a beverage, in the treatment of patients, under such regulations as the Secretary of the Treasury may prescribe: And provided further, That the bond required by said section thirty-two

hundred and ninety-seven may be executed by an officer of such hospital or institution or by any other person for it, and on its behalf, with two good and sufficient sureties, upon like conditions, and to be approved as by said section is provided. (20 Stat. 48. 39 Stat. 354.)

The act amended read as follows:

"The Secretary of the Treasury, be and is hereby authorized to grant permits, as provided for in section thirty-two hundred and ninety-seven of the Revised Statutes of the United States passed at the first session of the Forty-third Congress, to any scientific university, or college of learning created and constituted such by any State or Territory under its laws, though not incorporated or chartered, upon the same terms and subject to the same restrictions and penalties, already provided by said section thirty-two hundred and ninety-seven: Provided further, That the bond required thereby may be executed by any officer of such university or college, or by any other person for it, and on its behalf, with two good and sufficient sureties, upon like conditions, and to be approved as by said section is provided."

R. S. § 3297, mentioned in this section, is set forth ante, § 6066.

§ 6068. (Act March 1, 1879, c. 125, § 20, as amended, Act May 28, 1880, c. 108, § 14.) Withdrawal of spirits for medicinal preparations, etc., manufactured in bonded warehouse for export.

Under such regulations and requirements as to stamps, bonds, and other security as shall be prescribed by the Commissioner of Internal Revenue, any manufacturer of medicines, preparations, compositions, perfumeries, cosmetics, cordials, and other liquors, for export, manufacturing the same in a duly constituted manufacturing warehouse, shall be authorized to withdraw, in original packages, from any distillery warehouse, so much distilled spirits as he may require for the said purpose, without the payment of the internal-revenue tax thereon. (20 Stat. 351. 21 Stat. 148.)

This section, as originally enacted, in Act March 1, 1879, c. 125, § 20, cited above, was amended by substituting for the words "perfumery, medicines or preparations," after the words "manufacturer of," the words "medicines, preparations, compositions, perfumeries, cosmetics, cordials, and other liquors," and by substituting for the word "alcohol," the words "distilled spirits," making the section read as set forth here, by Act May 28, 1880, c. 108, § 14, cited above.

Provisions of existing law in regard to withdrawal of distilled spirits from warehouses for exportation, etc., were extended and made applicable to spirits deposited in general bonded warehouses by Act Aug. 27, 1894, c. 349, § 56, ante, § 6063.

The articles intended for exportation were required to be manufactured in bonded warehouses by R. S. § 3433, post, § 6339.

Notes of Decisions

Exportation and reimportation of liquor.—A lot of rum which had been manufactured within the United States from imported molasses was exported December 3, 1883, and drawback thereon allowed, and reimported October 20, 1884. Held to be dutiable under section 2500, R. S., and not under the act of March 3, 1883 (22 Stat. 488), furthermore, that the importers are entitled to remove the same under section 3433, R. S. (1884) 18 Op. Atty. Gen. 82.

The word "imported," in section 3433, R. S., is used generally, and includes "reimported." Id.

In February and March, 1886, certain liquors (which had been manufactured in the United States, in a bonded manufacturing warehouse under R. S. § 3433, out of both domestic and imported spirits that were removed to such warehouse without payment of either the internal revenue or customs duties, and which liquors had been exported therefrom) were imported into New York and assessed with the duty prescribed by the statute (Schedule H) as foreign liquors. Advised that, the liquors being of the manufacture of the United States and once exported, R. S. § 2500, affords the rule under which to levy duties thereon. (1889) 19 Op. Atty. Gen. 243.

That section does not contemplate the levying of different rates of duty on the several different ingredients of which an article may be composed; it is the product that is to be taxed, not its constituent ingredients. Id.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6069. (Act March 3, 1891, c. 544, § 1.) Withdrawal of spirits from distillery warehouses for making sorghum sugar.

Any manufacturer of sugar from sorghum may remove from

distillery warehouses to factories used solely for the manufacture of such sugar from sorghum distilled spirits in bond free of tax, to be used solely in such manufacture of sugar from sorghum; that all distilled spirits removed as herein authorized shall be of an alcoholic strength of not less than one hundred and sixty per centum proof, and may be removed, stored, and used in the manufacture of sugar from sorghum, and when so used may be recovered by redistillation in the sugar factory of such sugar manufacturer under such bonds, rules, and regulations for the protection of the revenue and the accomplishment of the purposes herein expressed as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may prescribe. Any person who removes or uses distilled spirits in violation of this provision, as the regulations issued pursuant thereof, shall, on conviction thereof, be fined not less than one thousand dollars nor more than five thousand dollars for each offense, and the spirits and the premises on which such spirits are used shall be forfeited to the United States. (26 Stat. 1050.)

This was a provision following an appropriation for experiments in the manufacture of sugar from corn, beets, and sorghum in the act making appropriations for the Department of Agriculture for the fiscal year 1892, cited above.

§ 6070. (Act March 3, 1897, c. 379, § 1.) Bottling of spirits in bond.

Whenever any distilled spirits deposited in the warehouse of a distillery having a surveyed daily capacity of not less than twenty bushels of grain, which capacity or not less than twenty bushels thereof is commonly used by the distiller, have been duly entered for withdrawal upon payment of tax, or for export in bond, and have been gauged and the required marks, brands, and tax-paid stamps or export stamps, as the case may be, have been affixed to the package or packages containing the same, the distiller or owner of said distilled spirits, if he has declared his purpose so to do in the entry for withdrawal, which entry for bottling purposes may be made by the owner as well as the distiller, may remove such spirits to a separate portion of said warehouse which shall be set apart and used exclusively for that purpose, and there, under the supervision of a United States storekeeper, or storekeeper and gauger, in charge of such warehouse, may immediately draw off such spirits, bottle, pack, and case the same: Provided, That for convenience in such process any number of packages of spirits of the same kind, differing only in proof, but produced at the same distillery by the same distiller, may be mingled together in a cistern provided for that purpose, but nothing herein shall authorize or permit any mingling of different products, or of the same products of different distilling seasons, or the addition or the subtraction of any substance or material or the application of any method or process to alter or change in any way the original condition or character of the product except as herein authorized; nor shall there be at the same time in the bottling room of any bonded warehouse any spirits entered for withdrawal upon payment of the tax and any spirits entered for export: Provided also, That under such regulations and limitations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the provisions of this Act may be made to apply to the bottling and casing of fruit brandy in special bonded warehouses. Every bottle when filled shall have affixed thereto and passing over the mouth of the same such suitable adhesive engraved strip stamp as may be prescribed, as hereinafter provided, and shall be packed into cases to contain six bottles or multiples thereof, and in the aggregate not less than two nor more than five gallons in each case, which shall be

immediately removed from the distillery premises. Each of such cases shall have affixed thereto a stamp denoting the number of gallons therein contained, such stamp to be affixed to the case before its removal from the warehouse, and such stamps shall have a cash value of ten cents each, and shall be charged at that rate to the collectors to whom issued, and shall be paid for at that rate by the distiller or owner using the same. And there shall be plainly burned on the side of each case, to be known as the Government side, the proof of the spirits, the registered distillery number, the State and district in which the distillery is located, the real name of the actual bona fide distiller, the year and distilling season, whether spring or fall, of original inspection or entry into bond, and the date of bottling, and the same wording shall be placed upon the adhesive engraved strip stamp over the mouth of the bottle. It being understood that the spring season shall include the months from January to July, and the fall season the months from July to January. And no trade-marks shall be put upon any bottle unless the real name of the actual bona fide distiller shall also be placed conspicuously on said bottle. (29 Stat. 626.)

This section and the seven sections next following were an act entitled, "An act to allow the bottling of distilled spirits in bond."

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6070a. (Act Sept. 8, 1916, c. 463, § 405.) Bottling of gin in bond for export without payment of tax.

That distilled spirits known commercially as gin of not less than eighty per centum proof may at any time within eight years after entry in bond at any distillery be bottled in bond at such distillery for export without the payment of tax, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. (39 Stat. 788.)

§ 6071. (Act March 3, 1897, c. 379, § 2.) Regulations for bottling of spirits in bond.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulations, prescribe the mode of separating and securing the additional warehouse, or portion of the warehouse hereinbefore required to be set apart, the manner in which the business of bottling spirits in bond shall be carried on, the notices, bonds, and returns to be given and accounts and records to be kept by the persons conducting such business, the mode and time of inspection of such spirits, the accounts and records to be kept and returns made by the Government officers, and all such other matters and things, as in his discretion, he may deem requisite for a secure and orderly supervision of said business; and he may also, with the approval of the Secretary of the Treasury, prescribe and issue the stamps required. The distiller may, in the presence of the United States storekeeper or storekeeper and gauger, remove by straining through cloth, felt, or other like material any charcoal, sediment, or other like substance found therein, and may whenever necessary reduce such spirits as are withdrawn for bottling purposes by the addition of pure water only to one hundred per centum proof for spirits for domestic use, or to not less than eighty per centum proof for spirits for export purposes, under such rules and regulations as may be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury; and no spirits shall be withdrawn for bottling under this Act until after the period shall have expired within which a distiller may request a regauge of distilled spirits as provided in section fifty of

the Act of August twenty-eighth, eighteen hundred and ninety-four. (29 Stat. 627.)

Act Aug. 28, 1894, § 50, mentioned in this section, was intended to refer to Act Aug. 27, 1894, § 50, set forth ante, § 6051.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6072. (Act March 3, 1897, c. 379, § 3.) Inspection, etc., of spirits bottled for export; drawback.

All distilled spirits intended for export under the provisions of this Act shall be inspected, bottled, cased, weighed, marked, labeled, stamped, or sealed in such manner and at such time as the Commissioner of Internal Revenue may prescribe; and the said Commissioner, with the approval of the Secretary of the Treasury, may provide such regulations for the transportation, entry, reinspection, and lading of such spirits for export as may from time to time be deemed necessary; and all provisions of existing law relating to the exportation of distilled spirits in bond, so far as applicable, and all penalties therein imposed, are hereby extended and made applicable to distilled spirits bottled for export under the provisions of this Act, but no drawbacks shall be allowed or paid upon any spirits bottled under this Act. (29 Stat. 627.)

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6073. (Act March 3, 1897, c. 379, § 4.) Tax on deficiency of spirits bottled.

Where, upon inspection at the bonded warehouse in which the spirits are bottled as aforesaid, the quantity so bottled and cased for export is less than the quantity actually contained in the distiller's original casks or packages at the time of withdrawal for that purpose the tax on the loss or deficiency so ascertained shall be paid before the removal of the spirits from such warehouse, and the tax so paid shall be receipted and accounted for by the collector in such manner as the Commissioner of Internal Revenue may prescribe. (29 Stat. 627.)

Notes of Decisions

See notes under § 5908, ante.

Spirits exported.—The "tax on deficiency" in the quantity of distilled spirits exported, when compared with the quantity withdrawn for exportation (see Acts June 9, 1874, c. 259, and March 1, 1879, c. 125), may be collected by distraint upon the property of the withdrawer of the spirits, as well as by suit upon the transportation bond. (1879) 16 Op. Atty. Gen. 634.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6074. (Act March 3, 1897, c. 379, § 5.) Tax on spirits entered for export if case opened, or marks, etc., removed, changed, etc.

Where, upon reinspection at the port of entry, any case containing or purporting to contain distilled spirits for export is found to have been opened or tampered with, or where any mark, brand, stamp, label, or seal placed thereon or upon any bottle contained therein has been removed, changed, or willfully defaced, or where upon such reinspection any loss or discrepancy is found to exist as to the contents of any case so entered for export, the tax on the spirits contained in each such case at the time of its removal from warehouse shall be collected and paid. (29 Stat. 627.)

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6075. (Act March 3, 1897, c. 379, § 6.) Reusing stamp or bottle, and other violations of act, punishable.

Any person who shall reuse any stamp provided under this Act

after the same shall have been once affixed to a bottle as provided herein, or who shall reuse a bottle for the purpose of containing distilled spirits which has once been filled and stamped under the provisions of this Act without removing and destroying the stamp so previously affixed to such bottle, or who shall, contrary to the provisions of this Act or of the regulations issued thereunder remove or cause to be removed from any bonded warehouse any distilled spirits inspected or bottled under the provisions of this Act, or who shall bottle or case any such spirits in violation of this Act or of any regulation issued thereunder, or who shall, during the transportation and before the exportation of any such spirits, open or cause to be opened any case or bottle containing such spirits, or who shall willfully remove, change, or deface any stamp, brand, label, or seal affixed to any such case or to any bottle contained therein, shall for each such offense be fined not less than one hundred nor more than one thousand dollars, and be imprisoned not more than two years, in the discretion of the court, and such spirits shall be forfeited to the United States. (29 Stat. 627.)

Notes of Decisions

Reuse of bottles.—Where accused was one of three persons, each of whom held a retail liquor dealer's special tax stamp for a saloon in which government officers found a bottle which had been refilled with spirits without destroying the internal revenue stamps previously affixed thereto, in violation of this section, but there was no evidence that the bottle was refilled by accused, or by his procurement, or by any one acting for him, he could not be convicted of violating the statute. Duff v. U. S. (1911) 185 Fed. 101, 107 C. C. A. 319.

A seller of whisky is guilty of violating this section, though the refilling of the bottle, without destroying the stamp, is the act of the seller's bartender, or agent, acting within the scope of his employment. U. S. v. Guthrie (D. C. 1909) 171 Fed. 528.

The criminality involved in the reuse of a bottle containing whisky bottled in bond, without removing and destroying the stamps, does not depend on its being knowingly and willfully done; the offense being complete if the bottle is reused without destroying the stamps. Id.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6076. (Act March 3, 1897, c. 379, § 7.) Forging stamps, etc., punishable.

Every person who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under any provision of this Act, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or who shall make, use, sell, or have in his possession any paper in imitation of the paper used in the manufacture of any stamp required by this Act, shall on conviction be punished by a fine not exceeding one thousand dollars and by imprisonment at hard labor not exceeding five years. (29 Stat. 628.)

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6077. (Act March 3, 1897, c. 379, § 8.) Bottled spirits subject to state law.

Nothing in this Act shall be construed to exempt spirits bottled under the provisions of this Act from the operation of chapter seven hundred and twenty-eight of the public laws of the Fifty-first Congress, approved August eighth, eighteen hundred and ninety. (29 Stat. 629.)

Act Aug. 8, 1890, c. 728, mentioned in this section, is set forth post, § 8738.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6078. (R. S. § 3298.) Power of officers to detain packages on suspicion.

It shall be lawful for any internal-revenue officer to detain any cask or package containing, or supposed to contain, distilled spirits, when he has reason to believe that the tax imposed by law upon the same has not been paid, or that the same is being removed in violation of law; and every such cask or package may be held by him at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than forty-eight hours without process of law or intervention of the officer to whom such detention is to be reported.

Act July 20, 1868, c. 186, § 41, 15 Stat. 141.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Agnew v. Haymes (1905) 141 Fed. 631, 72 C. C. A. 325.

§ 6079. (R. S. § 3299, as amended, Act Feb. 18, 1875, c. 80, § 1.) Forfeiture of spirits unlawfully removed from distillery.

All distilled spirits found elsewhere than in a distillery or distillery warehouse, not having been removed therefrom according to law, shall be forfeited to the United States.

Act July 20, 1868, c. 186, § 36, 15 Stat. 140. Act Feb. 18, 1875, c. 80, § 1, 18 Stat. 319.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "in a distillery or," the word "distilling," and inserting in place thereof the word "distillery," as set forth here, by Act Feb. 18, 1875, c. 80, § 1, cited above.

Provisions for the establishment of special bonded warehouses for fruit brandy were made by Act March 3, 1877, c. 114, ante, §§ 6039–6049, and provisions for the establishment of general bonded warehouses were made by Act Aug. 27, 1894, c. 349, § 51, ante, § 6058.

The provisions of existing law in regard to withdrawal of distilled spirits from warehouses upon payment of tax were made applicable to spirits deposited in general bonded warehouses by Act Aug. 27, 1894, c. 349, § 56, ante, § 6063.

Notes of Decisions

Forfeiture in general.—The fact that a person has, in good faith, made advances upon distilled spirits, is no defense to an action for their forfeiture. Boyd v. U. S. (C. C. 1877) Fed. Cas. No. 1,749.

The removal of spirits by a distiller before they have been officially inspected, gauged, and proved is a cause of forfeiture, otherwise as to a removal before payment of duties. U. S. v. Three Hundred and Ninety-Six Barrels Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,502.

And the failure of the inspector to mark on the barrels the quantity in proof as required by Act June 30, 1864, § 59, is not a cause of forfeiture. Id.

"Distilled spirits" defined.—The term "distilled spirits" includes all spirits which have been distilled, whether they have been subsequently rectified or not. Boyd v. U. S. (C. C. 1877) Fed. Cas. No. 1,749.

Removal according to law.—A removal procured by a false bond to the collector is not a removal according to law. Harrington v. U. S. (1870) 11 Wall. 356, 364, 20 L. Ed. 167.

Consent of collector obtained by fraud.—Goods removed from a bonded warehouse by consent of the collector, obtained by fraud, are subject to forfeiture. U. S. v. Two Hundred and Seventy-Eight Barrels of Distilled Spirits (C. C. 1869) Fed. Cas. No. 16,580.

Spirits mixed with others.—Where spirits fraudulently withdrawn from a warehouse are innocently mixed with others belonging to the claimants, so that they cannot be distinguished, the United States are entitled to a forfeiture of a fair proportion of the mixture, if the spirits would have been subject to forfeiture had they not been so mixed. U. S. v. Two Hundred and Seventy-Eight Barrels of Distilled Spirits (C. C. 1869) Fed. Cas. No. 16,580.

Cited without definite application, Whisky Cases (1878) 99 U. S. 594, 25 L. Ed. 399; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6080. (R. S. § 3300.) Store-keeper unlawfully removing or allowing to be removed, etc.

Whenever any store-keeper or other person in the employment of

the United States, having charge of a bonded warehouse, removes or allows to be removed therefrom any cask or other package, without an order or permit of the collector, or which has not been marked or stamped in the manner required by law; or removes or allows to be removed any part of the contents of any cask or package deposited therein, he shall be immediately dismissed from office or employment, and be fined not less than five hundred dollars nor more than two thousand dollars, and imprisoned not less than three months nor more than two years.

Act July 20, 1868, c. 186, § 52, 15 Stat. 147.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6081. (R. S. § 3301, as amended, Act March 1, 1879, c. 125, § 5.) Store-keepers' warehouse-books and returns.

Every storekeeper shall keep a warehouse-book, which shall at all times be open to the examination of any revenue officer, and shall enter therein an account of all articles deposited in the warehouse to which he is assigned, indicating in each case the date of deposit, by whom manufactured or produced, the number and description of the package and contents, the quantities therein, the marks and serial numbers thereon, and by whom gauged, inspected, or weighed, and if distilled spirits, the number of gauge or wine gallons, of proof-gallons, and of taxable gallons; and before delivering any article from the warehouse he shall enter in said book the date of the permit or order of the collector for the delivery of such articles, the number and description of the packages, the marks and serial numbers thereon, the date of delivery, to whom delivered, and for what purpose, which purpose shall be specified in the permit or order for delivery; and in case of delivery of any distilled spirits the number of gauge or wine gallons, of proof-gallons, and of taxable gallons, shall also be stated; and such further particulars shall be entered in the warehouse-books as may be prescribed or found necessary for the identification of the packages, to insure the correct delivery thereof and proper accountability therefor. And every store keeper shall furnish daily to the collector of the district a return of all articles received in and delivered from the warehouse during the day preceding that on which the return is made, and mail at the same time a copy thereof to the Commissioner of Internal Revenue, and shall, on the first Monday of every month, make a report in duplicate of the number of packages of all articles, with the respective descriptions thereof, as above provided, which remained in the warehouse at the date of his last report, of all articles received therein and delivered therefrom during the preceding month, and of articles remaining therein at the end of said month. He shall deliver one of these reports to the collector having control of the warehouse, to be recorded and filed in his office, and transmit one to the Commissioner of Internal Revenue, to be recorded and filed in his office.

Act July 20, 1868, c. 186, § 52, 15 Stat. 147. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401. Act March 1, 1879, c. 125, § 5, 20 Stat. 337.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "of gauge or wine gallons," wherever they occur in the section, the words "and of proof-gallons," and by inserting in place thereof the words "of proof-gallons, and of taxable gallons," as set forth here, by Act March 1, 1879, c. 125, § 5, cited above.

Notes of Decisions

Reports as public records.—The reports are not public records. In re Comingore (D. C. 1899) 96 Fed. 552, 556, affirmed Boske v. Comingore (1900) 20 Sup. Ct. 701, 177 U. S. 459, 44 L. Ed. 846.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 290, 232 U. S. 174, 58 L. Ed. 558.

§ 6082. (R. S. § 3302.) Store-keepers to have charge of distillery and keep account of materials used, etc.

The store-keeper assigned to any distillery-warehouse shall, in addition to the duties required of him as store-keeper in charge of a warehouse, keep in a book to be provided for that purpose, and in the manner prescribed by the Commissioner of Internal Revenue, a daily account of all the meal and vegetable productions or other substances brought into said distillery, or on said premises, to be used for the purpose of producing spirits, from whom purchased, and when delivered at said distillery; of the kind and quantity of all fuel used, and from whom purchased; of all repairs made on said distillery, and by whom and when made; of the names and places of residence of all persons employed in or about the distillery; of the materials put into the mash-tub or otherwise used for the production of spirits; of the time when any fermenting-tub is emptied of ripe mash or beer, recording the same by the number painted on said tub; and of all spirits drawn off from the receiving-cistern, and the time when the same were drawn off.

Act July 20, 1868, c. 186, § 21, 15 Stat. 134.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6083. (R. S. § 3303.) Distillers' books; entries to be made.

Every person who makes or distills spirits, or owns any still, boiler, or other vessel used for the purpose of distilling spirits, or who has such still, boiler, or other vessel so used under his superintendence, either as agent or owner, or who uses any such still, boiler, or other vessel, shall from day to day make, or cause to be made, in a book or books, to be kept by him in such form as the Commissioner of Internal Revenue may prescribe, a true and exact entry of the kind of materials, and the quantity in pounds, bushels, or gallons purchased by him for the production of spirits, from whom and when purchased, and by what conveyance delivered at said distillery, the amount paid therefor, the kind and quantity of fuel purchased for use in the distillery, and from whom purchased, the amount paid for ice or water for use in the distillery, the repairs placed on said distillery or distilling-apparatus, the cost thereof, and by whom and when made, and of the name and residence of each person employed in or about the distillery, and in what capacity employed. And in another book he shall make like entry of the quantity of grain or other material used for the production of spirits, the time of day when any yeast or other composition is put into any mash or beer for the purpose of exciting fermentation, the quantity of mash in each tub, designating the same by the number of the tub, the number of dry inches, that is to say, the number of inches between the top of each tub and the surface of the mash or beer therein at the time of yeasting, the gravity and temperature of the beer at the time of yeasting, and on every day thereafter its quantity, gravity, and temperature at the hour of twelve meridian; also, of the time when any fermenting-tub is emptied of ripe mash or beer, the number of gallons of spirits distilled, the number of gallons placed in the warehouse, and the proof thereof, the number of gallons sold or removed, with the proof thereof, and the name, place of business, and residence of the person to whom sold.

Act July 20, 1868, c. 186, § 19, 15 Stat. 132.

Notes of Decisions

Action on bond for breach of statute.—In an action on a distiller's bond for breach of this section, an answer denying that by reason of omission to make proper entries in the distiller's book he defrauded the United States, and alleging that the fraud was committed in another way, specifying it,

alleges a defense to the action. U. S. v. Chouteau (1880) 102 U. S. 603, 26 L. Ed. 246.

Oral evidence as to record.—Under this section, requiring every distiller to keep a book in which shall be recorded certain facts specified with reference to his business, and section 6100, post, after providing for the books to be so kept, declaring that every person required to keep the books prescribed by such section shall on or before the 10th day of each month make a full and complete transcript of all the entries made therein during the month preceding, and, after verifying the same by oath, shall forward it to the collector of the district in which he resides, it was held, in an action by a distiller to recover internal revenue taxes alleged to have been wrongfully imposed, that evidence that plaintiff's record book had been taken from him and carried to a certain collector's office, after which it was taken to the revenue agent's office at G., and was last seen in 1893 or 1894, three years after the final disposition of a criminal case against plaintiff, and that search had been made in the office of the revenue agent, where it had last been seen, without proof that a search had been made in the collector's office for the transcript on which the assessment made was required to be filed nor in the office of the clerk where the original record had been used in evidence in the criminal proceeding, was insufficient to justify the admission of oral evidence of contents of such record. Brown v. Harkins (1904) 131 Fed. 63, 65 C. C. A. 301.

Rules and regulations under former law.—Rectifiers and distillers must take the proper steps to ascertain what the rules and regulations are as to keeping of a book as required by Act July 13, 1866, § 26. U. S. v. Dutcher (D. C. 1868) Fed. Cas. No. 15,013.

Cited without definite application, Dobbin's Distillery v. U. S. (1877) 96 U. S. 395, 396, 24 L. Ed. 637; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grain Distillery No. 8 of Eastern Distillery Co. v. U. S. (1913) 204 Fed. 429, 122 C. C. A. 615; Grier v. Tucker (C. C. 1907) 150 Fed. 658.

§ 6084. (R. S. § 3304.) Books to be open to inspection and preserved two years.

The books of every distiller hereinbefore required shall always be kept at the distillery and be always open to the inspection of any revenue officer, and, when filled up, shall be preserved by the distiller for a period of not less than two years thereafter, and whenever required shall be produced for the inspection of any revenue officer.

Act July 20, 1868, c. 186, § 19, 15 Stat. 133.

Notes of Decisions

Distiller's private books as government books.—If a distiller's private books show a different state of facts from those kept for the government, they also may be treated as government books. U. S. v. Mason (D. C. 1875) Fed. Cas. No. 15,735.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658.

§ 6085. (R. S. § 3305.) False entries, or omitting to keep or produce books; penalty.

Whenever any false entry is made in, or any entry required to be made is omitted from, either of the said books mentioned in the two preceding sections, with intent to defraud or to conceal from the revenue officers any fact or particular required to be stated and entered in either of said books, or to mislead in reference thereto; or any distiller as aforesaid omits or refuses to provide either of said books, or cancels, obliterates, or destroys any part of either of such books, or any entry therein, with intent to defraud, or permits the same to be done, or such books, or either of them, are not produced when required by any revenue officer, the distillery, distilling-apparatus, and the lot or tract of land on which it stands, and all personal property on said premises used in the business there carried on, shall be forfeited to the United States. And every person who makes such false entry, or omits to make any entry hereinbefore required to be made, with the intent aforesaid, or who causes or procures the same to be done, or fraudulently cancels, obliterates, or destroys any

part of said books, or any entry therein, or willfully fails to produce such books, or either of them, shall be fined not less than five hundred dollars, nor more than five thousand dollars, and imprisoned not less than six months, nor more than two years.

Act July 20, 1868, c. 186, § 19, 15 Stat. 133. Act June 6, 1872, c. 315, § 12, 17 Stat. 240.

Notes of Decisions

Intent to defraud as necessary to render distiller liable.—The failure or omission to keep books showing the facts prescribed by the statute to render a distiller liable must be shown to be with intent to defraud. U. S. v. Thirty-Five Barrels of High Wines (D. C. 1869) Fed. Cas. No. 16,460.

Indictment.—An indictment against a distiller for making false entries in a book required to be kept by him by section 6083, ante, held sufficient. Wood v. U. S. (1913) 204 Fed. 55, 122 C. C. A. 369.

Forfeiture.—This statute attaches the offense to the distillery, and the real and personal property connected with it. Dobbin's Distillery v. U. S. (1877) 96 U. S. 395, 400, 24 L. Ed. 637.

The provision for forfeiture will not be construed to include interests of innocent third persons. U. S. v. Stowell (1890) 10 Sup. Ct. 244, 133 U. S. 1, 33 L. Ed. 555.

In a proceeding in rem for the forfeiture of distillery property for violation of section 6083, ante, the government is required to prove such violation by a preponderance of the evidence only. Grain Distillery No. 8 of Eastern Distillery Co. v. U. S. (1913) 204 Fed. 429, 122 C. C. A. 615.

The intention of congress must be manifest and unmistakable to justify the courts in construing a law imposing a forfeiture as extending to property which, before seizure, had been sold to an innocent purchaser. U. S. v. One Hundred Barrels of Spirits (C. C. 1870) Fed. Cas. No. 15,948.

Under Act July 20, 1868, § 19, no proof was required of the actual complicity of the owner of the property to be forfeited in the fraud or other thing which causes the forfeiture. U. S. v. Distillery at Spring Valley (C. C. 1873) Fed. Cas. No. 14,963.

A distillery is subjected to forfeiture by the omission to make such entries in the distiller's books as the law requires, or by the making of false entries. U. S. v. Distillery at Petersburg (C. C. 1876) Fed. Cas. No. 14,961.

A decree of condemnation under forfeiture for violation of sections 7 and 19 of the act July 20, 1868, (15 Stat. 127, 132), relates back to the time when the acts were committed which incurred the forfeiture. Heidritter v. Elizabeth Oil Cloth Co. (C. C. 1881) 6 Fed. 138, judgment affirmed (1884) 5 Sup. Ct. 135, 112 U. S. 294, 28 L. Ed. 729.

A mechanic's lien cannot be enforced in a state court, where the premises have been seized by the United States marshal under forfeiture proceedings of property used as a distillery before the claim has been filed. Id.

Premises occupied and used as a distillery are liable to forfeiture for the violation of sections 7 and 19 of the act of July 20, 1868 (15 Stat. 127, 132), in relation to distiller's bonds and books of account, without regard to the culpability of the owner of the property. Id.

In the absence of any express declaration that the forfeiture shall be instantaneous upon the commission of the forbidden acts, the forfeiture relates only to the time of seizure. U. S. v. Three Hundred and Ninety-Six Barrels of Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,503.

A failure to produce the books after an order duly served, where unexplained, will entitle the United States to a forfeiture. U. S. v. Four Hundred and Sixty-Nine Barrels of Spirits (D. C. 1869) Fed. Cas. No. 15,148; Same v. Distillery at Petersburg (C. C. 1876) Fed. Cas. No. 14,961.

Distilled spirits found on the premises on which the business of distilling is carried on, being the product of such business, are not "personal property used in the business," within the meaning of the statute. U. S. v. Forty-Eight Hundred Gallons of Spirits (D. C. 1871) Fed. Cas. No. 15,153.

After an officer and stockholder of a corporation engaged in distilling is convicted for a violation of the internal revenue law, an action cannot be maintained to enforce the forfeiture of the corporation's property for the same offense, even though the forfeiture is resisted only by the other stockholders. U. S. v. One Distillery (D. C. 1890) 43 Fed. 846, following Same v. McKee (C. C. 1877) Fed. Cas. No. 15,688, and judgment affirmed (1899) 19 Sup. Ct. 624, 174 U. S. 149, 43 L. Ed. 929.

Evidence.—See U. S. v. Furlong (D. C. 1869) Fed. Cas. No. 15,178.

—— Under former law.—Distilled spirits, purchased in good faith, while in a bonded warehouse of the United States, upon which the purchaser paid the taxes, cannot be afterwards seized and condemned as forfeited for the failure of the distiller to keep proper books and to make proper reports. Acts July 13, 1866, and March 2, 1867. U. S. v. One Hundred Barrels of Spirits (C. C. 1870) Fed. Cas. No. 15,948.

The forfeiture of spirits, etc., provid-

ed for by Act March 2, 1867, § 25, is also imposed as a penalty for violation of Act July 13, 1866, § 31, in the neglect on the part of a distiller to make entry and return as required by that section. U. S. v. Eighteen Barrels High Wines (C. C. 1871) Fed. Cas. No. 15,033.

Act June 30, 1864, § 68, confers no authority for the seizure of a distillery, and the lot on which it is situated, or for subjecting such real estate to forfeiture. U. S. v. One Barrel of Whisky (D. C. 1866) Fed. Cas. No. 15,921; U. S. v. Three Hundred and Ninety-Six Barrels of Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,503. But see U. S. v. Forty-Six Casks of California Grape Brandy (D. C. 1867) Fed. Cas. No. 15,135.

A refusal or neglect to comply with any of the requirements of Act June 30, 1864, § 57, works a forfeiture under section 68. U. S. v. Three Hundred and Ninety-Six Barrels Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,502.

Cited without definite application, U. S. v. One Distillery (1899) 19 Sup. Ct. 624, 174 U. S. 149, 43 L. Ed. 929; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6086. (R. S. § 3306.) Using false weights or measures in ascertaining materials; penalty; using unregistered materials; penalty.

Every person who knowingly uses any false weights or measures in ascertaining, weighing, or measuring the quantities of grain, meal, or vegetable materials, molasses, beer, or other substances to be used for distillation, shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than one year nor more than three years. Any person who uses any molasses, beer, or other substance, whether fermented on the premises or elsewhere, for the purpose of producing spirits, before an account of the same is registered in the proper book provided for that purpose, shall forfeit and pay the sum of one thousand dollars for each offense so committed.

Act July 20, 1868, c. 186, § 40, 15 Stat. 141.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6087. (R. S. § 3307.) Distillers' returns of production to collector.

On the first day of each month, or within five days thereafter, every distiller shall render to the collector of the district an account in duplicate, taken from his books, stating the quantity and kind of materials used for the production of spirits each day, and the number of wine-gallons and of proof-gallons of spirits produced and placed in warehouse. And the distiller or the principal manager of the distillery shall make and subscribe the following oath, to be attached to said return: "I, ——— ———, distiller (or principal manager, as the case may be) of the distillery at ———, do solemnly swear that, since the date of the last return of the business of said distillery, dated ——— day of ——— to ——— day of ———, both inclusive, there was produced in said distillery, and withdrawn and placed in warehouse, the number of wine-gallons and proof-gallons of spirits; and there were actually mashed and used in said distillery, and consumed in the production of spirits therein, the several quantities of grain, sugar, molasses, and other materials respectively hereinbefore specified, and no more." One of the said duplicate returns shall be transmitted by the collector to the Commissioner of Internal Revenue.

Act July 20, 1868, c. 186, § 19, 15 Stat. 133. Act June 6, 1872, c. 315, § 12, 17 Stat. 240. Act Dec. 24, 1872, c. 13, § 6, 17 Stat. 403.

Notes of Decisions

What distiller must return.—The distiller must return not merely the amount of his product, but the kind and quantity of the materials used by him, and the assessor must test the accuracy of the return. Stevenson v. Beggs (1872) 17 Wall. 182, 188, 21 L. Ed. 624.

Returns as public records.—The returns are not public records. In re Comingore (D. C. 1899) 96 Fed. 552, 556, affirmed Boske v. Comingore (1900) 20 Sup. Ct. 701, 177 U. S. 459, 44 L. Ed. 846.

False return.—The government claiming that a distiller must have used more material and manufactured more spirits than returned is bound to prove that such was necessarily the fact. U. S. v. Furlong (D. C. 1869) Fed. Cas. No. 15,178.

To sustain the theory that a given amount of material will produce a certain quantity of spirits, it must be shown that this is a necessary and unavoidable inference from the facts proved. Id.

See, also, § 5901, and notes thereunder.

Assessment of tax.—Under this section and R. S. § 3309, post, § 6089, providing that, "if the commissioner finds that the distiller has used any grain in excess of the capacity of his distillery as estimated according to law, he shall make an assessment against the distiller at the rate of ninety cents for every proof gallon that should have been produced from the grain so used in excess," it was held that the tax is not to be assessed against an apparent excess above the daily average in one month, which is balanced by a corresponding deficiency in the next month. Chicago Distilling Co. v. Stone (1891) 11 Sup. Ct. 862, 140 U. S. 647, 35 L. Ed. 532.

Assessment of penalty.—Under this section and section 6089, post, the penalty is not to be assessed against an apparent excess above the daily average in one month, when that is balanced by a corresponding deficiency in the succeeding month, and this is not altered by the expression in section 5995, ante, and section 6093, post, by which a survey is taken to ascertain the producing capacity for "a day of 24 hours"; that expression being used to represent, with greater certainty, the exact period of duration for which the average capacity of production was to be ascertained; and nothing but "average" was intended, as is manifest from the fact that no distillery, under ordinary conditions, has any spirit-producing capacity in 24 hours. Chicago Distilling Co. v. Stone (1891) 11 Sup. St. 862, 865, 140 U. S. 647, 35 L. Ed. 532.

Cited without definite application, Hartman v. Bean (1878) 99 U. S. 393, 394, 25 L. Ed. 455; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Lamson (C. C. 1908) 165 Fed. 80.

§ 6088. (R. S. § 3308.) Distillers' returns of the number of barrels distilled.

Every distiller shall make a return of the number of barrels of spirits distilled by him, counting forty gallons of proof-spirits to the barrel, whenever such return is demanded by the collector of the district.

Act July 20, 1868, c. 186, § 59, 15 Stat. 151. Act June 6, 1872, c. 315, § 13, 17 Stat. 244.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Lamson (C. C. 1908) 165 Fed. 80.

§ 6089. (R. S. § 3309, as amended, Act March 3, 1875, c. 131, § 12.) Monthly examination of distiller's return, etc.

On the receipt of the distiller's return in each month, the Commissioner of Internal Revenue shall inquire and determine whether the distiller has accounted for all the grain or molasses used, and all the spirits produced by him in the preceding month. If he is satisfied that the distiller has reported all the spirits produced by him, and the quantity so reported is found to be less than eighty per centum of the producing-capacity of the distillery as estimated according to law, he shall make an assessment for such deficiency at the rate of [ninety] cents for every proof-gallon. In determining the quantity of grain used, fifty-six pounds shall be accounted as a bushel; and if the Commissioner finds that the distiller has used any grain or molasses in excess of the capacity of his distillery as estimated according to law, he shall make an assessment against the distiller at the rate of [ninety] cents for every proof-gallon of spirits that should have been produced from the grain or molasses so used in excess, which assessment shall be made whether the quantity of spirits reported is equal to or exceeds eighty per centum of the producing-capacity of the distillery. If the Commissioner finds that

the distiller has not accounted for all the spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of spirits was actually produced by such distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced, at the rate of ninety cents for every proof-gallon: Provided, That the actual product shall be assumed to be in no case less than eighty per centum of the producing-capacity of the distillery as estimated according to law. All assessments made under this section shall be a lien on all distilled spirits on the distillery premises, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the tract of land whereon the said distillery is located, and any building thereon, from the time such assessment is made until the same shall have been paid.

Act July 20, 1868, c. 186, § 20, 15 Stat. 133. Act April 10, 1869, c. 18, § 1, 16 Stat. 42. Act June 6, 1872, c. 315, § 13, 17 Stat. 243. Act March 3, 1875, c. 131, § 12, 18 Stat. 419.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "at the rate of," wherever they occur, the word "seventy," and inserting in place thereof the word "ninety," as set forth here, by Act March 3, 1875, c. 131, § 12, cited above.

The word "ninety" of this section, inclosed in brackets, was superseded by the increase of the tax to $1.10 a gallon by Act Aug. 27, 1894, c. 349, § 48, ante, § 5986.

The assessments made under the provisions of this section were required to be made at the rate of tax imposed by Act Aug. 27, 1894, c. 349, by section 60 of said act, post, § 6090.

Provisions authorizing the remission and refunding of the assessments made by this section were made by Act March 1, 1879, c. 125, § 6, as amended by Act May 28, 1880, c. 108, § 8, post, § 6091.

The Commissioner of Internal Revenue was required to exempt distillers of alcohol for denaturation from the provisions of this section by a provision of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, N, subsec. 2, post, § 6137.

Use as material of wine removed to bonded premises subject to this section is provided for by Act Sept. 8, 1916, c. 463, § 402(d), post, § 6114a.

Notes of Decisions

1. Practice prescribed by statute as similar to anti-trust law.
2. Practice in determining as to accounting for grain.
3. Capacity or deficiency tax in general.
4. Survey as prerequisite to tax.
5. Producing capacity reduced by government direction.
6. Assessment precedent to collection.
7. Reassessment of regular gallon tax.
8. Tax in case of accident.
9. Lien for tax.
10. Suit for tax.
11. Capacity duty on stills imposed by former law.

See notes under § 6087, ante, and § 6092, post.

1. Practice prescribed by statute as similar to anti-trust law.—Section 6 of the anti-trust law of 1890 requires a like procedure to that prescribed in R. S. §§ 3309–3391 (this compilation, § 6089 et seq.). U. S. v. Addyston Pipe & Steel Co. (1898) 85 Fed. 271, 301, 29 C. C. A. 141, 46 L. R. A. 122, modified (1899) 20 Sup. Ct. 96, 175 U. S. 211, 44 L. Ed. 136.

2. Practice in determining as to accounting for grain.—Practice in determining under this section whether a distiller accounted for all grain used by him in a month. Weitzel v. Rabe (1880) 103 U. S. 340, 343, 26 L. Ed. 320.

3. Capacity or deficiency tax in general.—A distiller is liable to a tax upon 80 per cent. of the producing capacity of the distillery, whether that quantity is produced or not. Act July 20, 1868, § 20. Mason v. Peabody (C. C. 1871) Fed. Cas. No. 9,250; U. S. v. Nissley (C. C. 1871) Fed. Cas. No. 15,893; Daley v. U. S. (C. C. 1872) Fed. Cas. No. 3542; U. S. v. Bicket (D. C. 1872) Fed. Cas. No. 14,590. CONTRA, see U. S. v. Singer (C. C. 1870) Fed. Cas. No. 16,292.

The original section meant that in no case should the distiller be assessed for a less amount of spirits than 80 per cent. of the producing capacity of his distillery, and if the spirits actually produced exceeded this 80 per cent., he should also be assessed on the excess. U. S. v. Singer (1872) 82 U. S. (15 Wall.) 111, 21 L. Ed. 49, reversing (1870) Fed. Cas. No. 16,292.

It is lawful for the government to assess and collect, as for a deficiency, the taxes on the difference between the producing capacity as estimated by the assessor and the amount of spirits actually produced by the distillery, though the distiller has in good faith reported

and paid taxes on his whole production, and though the production exceeded 80 per cent. of such producing capacity. Stevenson v. Beggs (1872) 17 Wall. 182, 187, 21 L. Ed. 624.

A distiller held not liable to the capacity tax during the days he was unable to operate because no store keeper had been assigned to him. Clinkenbeard v. U. S. (1874) 21 Wall. 65, 69, 22 L. Ed. 477.

Under this section and section 6087, ante, requiring the distiller to make a sworn report monthly of the grain used, the tax is not to be assessed against an apparent excess above the daily average in one month, which is balanced by a corresponding deficiency in the next month. Chicago Distilling Co. v. Stone (1890) 140 U. S. 647, 11 Sup. Ct. 862, 35 L. Ed. 532.

The "deficiency" tax is based upon the quantity of spirits actually produced, or on 80 per cent. of the capacity of the distillery. Act July 20, 1868. U. S. v. Reed (C. C. 1871) Fed. Cas. No. 16,135.

A distiller who pays tax on the actual product of the distillery, though falling short of 80 per cent. of its estimated capacity, cannot be made liable for a larger amount. U. S. v. Bicket (D. C. 1872) Fed. Cas. No. 14,590.

4. Survey as prerequisite to tax.—Under Act July 20, 1868, § 10 (15 Stat. 129), which requires assessors to make surveys of registered distilleries, to estimate their true producing capacity, and to make a written report of such survey, "one copy of which shall be furnished to the distiller," the distiller is not liable for the tax mentioned in the 80 per cent. clause in section 20 of the act until a copy of the survey has been delivered to him. Peabody v. Stark (1872) 83 U. S. (16 Wall.) 240, 243, 21 L. Ed. 311; Mason v. Peabody (C. C. 1871) Fed. Cas. No. 9,250.

5. Producing capacity reduced by government direction.—Where the producing capacity of a distillery is reduced by a direction of the government that the distillery be run only a certain number of hours, a pro rata tax only can be collected. U. S. v. Park (D. C. 1870) Fed. Cas. No. 15,991.

6. Assessment precedent to collection.—The producing capacity of a distillery being the measure of taxation (Act July 20, 1868, § 20), an assessment by an officer is not a condition precedent to the collection of the tax. U. S. v. Halloran (C. C. 1876) Fed. Cas. No. 15,286.

7. Reassessment of regular gallon tax.—A distiller who in good faith uses material for distillation in excess of the estimated capacity of his distillery, according to survey made and returned, and in the regular course of his business pays the taxes upon his entire production, cannot be again assessed at the rate of 70 cents on every gallon of spirits which the excess material would have produced under the estimates prescribed by the Internal Revenue Law, since to enforce its collection would be double taxation. Stoll v. Pepper (1878) 97 U. S. 438, 440, 24 L. Ed. 1070.

If a distiller uses material for distillation in excess of the estimated capacity of his distillery according to the survey, but, in the regular course of his business, pays the tax upon his entire production, he cannot be again assessed the regular, gallon tax on the spirits which the excess of material used should have produced. Runkle v. Citizens' Ins. Co. (C. C. 1881) 6 Fed. 143.

An assessment therefor, and all proceedings taken thereunder, are void, and may be attacked collaterally. Id.

8. Tax in case of accident.—Act July 20, 1868 (15 Stat. 133), imposing a tax on distilled spirits, provides in section 20 that the tax shall in no case be on less than 80 per cent. of the capacity of the distillery. Section 22 declares that the distiller shall be deemed to be continuously engaged in production, except when he suspends work as therein provided, and goes on to provide the mode of suspension. Held, that where a distillery was inoperative because of an accident, and in charge of a government officer for four days, as provided by the suspension clause, he was not liable for the capacity tax during such time. Clinkenbeard v. U. S. (1874) 88 U. S. (21 Wall.) 65, 22 L. Ed. 477.

The court has no power to allow an abatement of tax to a distiller from the loss of mash by the bursting of a fermenting tub. Turner v. Williams (C. C. 1873) Fed. Cas. No. 14,265.

9. Lien for tax.—A. purchased, May 8, 1875, certain high wines from B., which the latter had produced and removed from his distillery to the bonded warehouse; the tax not having been paid on them. The collector of internal revenue was duly notified of the sale. While they were there, the commissioner of internal revenue, under authority of this section, assessed a tax on the number of proof gallons of spirits distilled by B. at that distillery between January 6 and March 8, 1875. Held, that the wines so purchased by A. were subject to the lien of the tax. Hartman v. Bean (1878) 99 U. S. 393, 25 L. Ed. 455.

10. Suit for tax.—Taxes assessed by commissioner of internal revenue under this section may be sued for under section 5937, ante. U. S. v. Bristow (C. C. 1884) 20 Fed. 378.

In a suit based on an internal revenue assessment made under this section, the assessment is prima facie evidence of its validity. U. S. v. Cole (D. C. 1904) 134 Fed. 697.

Where, in a suit to recover an as-

sessment on unreported spirits alleged to have been distilled from 2,774 gallons of fruit, defendant stipulated that he had received such amount of fruit, but wholly failed to account either for the destruction of the fruit or of the spirits alleged to have been distilled therefrom, a finding in favor of the government was justified. Id.

II. Capacity duty on stills imposed by former law.—The act of July 24, 1813, imposing a duty according to capacity on stills employed in distilling spirits from domestic or foreign materials did not extend to the rectification or purification of spirits already distilled. U. S. v. Tenbroek (1817) 2 Wheat. 248, 258, 4 L. Ed. 231.

Act March 3, 1791, §§ 21, 23, 24, imposed a yearly duty on stills, to be measured by their capacity, unless the actual amount distilled was shown. Act May 8, 1792, required stills to be entered yearly at the inspection office of the district under a penalty. Held, that the duty on stills could be recovered, whether an inspection office was established in the district or not. U. S. v. Wolf (Pa. 1796) Add. 312.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Nebraska Distilling Co. (1897) 80 Fed. 285, 286, 25 C. C. A. 418; Same v. Millinger (C. C. 1881) 7 Fed. 187, 188.

§ 6090. (Act Aug. 27, 1894, c. 349, § 60.) Assessments for deficiency in production.

All assessments made under the provisions of section thirty-three hundred and nine of the Revised Statutes of the United States, and Acts amendatory thereof, shall be at the rate of tax imposed by this Act on each proof gallon. (28 Stat. 566.)

This section was part of the Wilson Tariff Act, cited above.

The rate of tax was fixed at $1.10 a gallon by section 48 of this act, ante, § 5986.

R. S. § 3309, mentioned in this section, is set forth ante, § 6080

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6091. (Act March 1, 1879, c. 125, § 6, as amended, Act May 28, 1880, c. 108, § 8.) Remission and refunding of assessments for deficient production of distillery.

Whenever, under the provisions of section thirty-three hundred and nine of the Revised Statutes, an assessment shall have been made against a distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law, or for the tax upon the spirits that should have been produced from the grain, or fruit, or molasses found to have been used in excess of the capacity of his distillery for any month, as estimated according to law, such excessive use of grain, or fruit, or molasses having arisen from a failure on the part of the distiller to maintain the capacity required by law to enable him to use such grain, or fruit, or molasses without incurring liability to such assessment, and it shall be made to appear to the satisfaction of the Commissioner of Internal Revenue that said deficiency, or that said failure, whereby such excessive use of grain, molasses, or fruit arose, was not occasioned by any want of diligence or by any fraudulent purpose, on the part of the distiller, but from misunderstanding as to the requirements of the law and regulations in that respect or by reason of unavoidable accidents, then, and in such case, the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury is authorized, on appeal made to him, to remit or refund such tax, or such part thereof as shall appear to him to be equitable and just in the premises: And the Commissioner of Internal Revenue upon the production to him of satisfactory proof of the actual destruction, by accidental fire or other casualty, and without any fraud, collusion, or negligence of the distiller of any spirits in process of manufacture or distillation, or before removal to the distillery warehouse, shall not assess the distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law when the deficiency is occa-

sioned by such destruction, nor shall he, in such case, assess the tax on the spirits so destroyed. * * Provided further, That no assessments shall be charged against any distiller of fruit for any failure to maintain the required capacity, unless the Commissioner shall, within six months after his receipt of each monthly report notify such distiller of such failure so to maintain the required capacity. (20 Stat. 340. 21 Stat. 147.)

This section, as originally enacted in Act March 1, 1879, c. 125, § 6, cited above, was amended by inserting after the word "premises" the words "And the Commissioner of Internal Revenue upon the production to him," etc., to the word "destroyed," as set forth here by Act May 28, 1880, c. 108, § 8, last cited above.

A proviso of this section, preceding the further proviso at the end of the section, that no tax should be remitted or refunded under the section upon any assessment made prior to Jan. 1, 1874, is omitted as temporary merely.

Notes of Decisions

Nature of commissioner's powers.—The words "whenever it shall be made to appear to the satisfaction of the commissioner" refer merely to the occasion when the granted power may be exercised, and not to the extent, operation, and effect of the power. Barnett v. U. S. (1880) 16 Ct. Cl. 515.

The powers conferred on the commissioner relating to the refund of taxes erroneously assessed by R. S. § 3220, ante, § 5944, and by this section, are essentially identical. Id.

Conclusiveness of commissioner's certificate.—The commissioner's certificate issued under the statute is conclusive. Barnett v. U. S. (1880) 16 Ct. Cl. 515.

Fruit distillery.—Under this section requiring a distiller to pay internal revenue tax on at least 80 per cent. of the capacity of his distillery as estimated according to law, he is liable for such tax, though the materials used by him will not produce such percentage; but a fruit distiller within the proviso of said supplemental acts cannot be assessed for a deficiency, unless the notice thereby required shall have been given him. U. S. v. Ball (1908) 163 Fed. 504, 90 C. C. A. 134.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Ridenour (D. C. 1902) 119 Fed. 411, 415.

§ 6092. (R. S. § 3310, as amended, Act Feb. 27, 1877, c. 69, § 1, and Act May 28, 1880, c. 108, § 7.) When distilling deemed commenced; suspension of work; penalty.

The first fermenting period of every distiller shall be taken to begin on the day the distiller's bond is approved; and every distiller at the hour of twelve meridian on the last day of such first fermenting period, or at the same hour on any previous day of such fermenting period on which spirits are distilled, shall be deemed to have commenced, and thereafter to be continuously engaged in, the production of distilled spirits in his distillery, except in the intervals when he shall suspend work as hereinafter provided. Any distiller desiring to suspend work in his distillery may give notice in writing to the collector of the district, stating when he will suspend work; and on the day mentioned in said notice said collector or one of his deputies shall, at the expense of the distiller, proceed to fasten securely the door of every furnace of every still or boiler in said distillery, by locks and otherwise, and shall adopt such other means as the Commissioner of Internal Revenue may prescribe to prevent the lighting of any fire in such furnace or under such stills or boilers. The locks and seals, and other materials required for such purpose, shall be furnished to the collector by the Commissioner of Internal Revenue, to be duly accounted for by said collector. Such notice by any distiller, and the action taken by the collector in pursuance thereof, shall be immediately transmitted to the Commissioner of Internal Revenue. No distiller, after having given such notice, shall, after the time stated therein, carry on the business of a distiller on said premises until he gives another notice in writing to said collector, stating the time when he will resume work; and at the time so stated for resuming work the collector or one of his deputies

shall attend at the distillery to remove said locks and other fastenings; and thereupon, and not before, work may be resumed in said distillery, which fact shall be immediately reported to the collector of the district, and by him transmitted to the Commissioner of Internal Revenue. Every distiller who, after the time fixed in said notice declaring his intention to suspend work, carries on the business of a distiller on said premises, or has mash, wort, or beer in his distillery, or on any premises connected therewith, or has in his possession or under his control any mash, wort, or beer, with intent to distill the same on said premises, shall incur the forfeitures and be subject to the same punishment as provided for persons who carry on the business of a distiller without having given the bonds required by law. But nothing in this section shall be held to apply to suspensions caused by unavoidable accident; and the Commissioner of Internal Revenue shall prescribe regulations to govern such cases of involuntary suspension.

Act July 20, 1868, c. 186, § 22, 15 Stat. 134. Act June 6, 1872, c. 315, § 12, 17 Stat. 240. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401; Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248. Act May 28, 1880, c. 108, § 7, 21 Stat. 147.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "suspensions caused by," the word "unadvoidable," and inserting in place thereof the word "unavoidable," by Act Feb. 27, 1877, c. 69, § 1, cited above.

It was further amended by striking out, at the beginning of the section as originally enacted, the words "Every distiller, at the hour of twelve meridian, on the third day after that on which the bond is approved," and inserting in place thereof the provision beginning with the words "The first fermenting period," and ending with the words "on which spirits are distilled," as set forth here, by Act May 28, 1880, c. 108, § 7, cited above.

Notes of Decisions

Suspension of distillery in general.—A distiller is relieved from the tax during a suspension of work, though the resumption be irregular. Act July 20, 1868, § 22. Daniels v. Tarbox (C. C. 1871) Fed. Cas. No. 3,568.

Having mash or wort on the premises during the period of suspension does not make the distiller liable to the tax. Id.

A noncompliance with the statute in regard to one interval of suspension cannot affect the question of the regularity of another suspension. Id.

Notice of suspension.—Notice of intention to suspend work held not invalid because addressed to the assessor, where it was acted upon by the assistant assessor. Daniels v. Tarbox (C. C. 1871) Fed. Cas. No. 3,568.

Where the distiller refuses to fix the time to run off the mash on hand before the notice of suspension takes effect there can be no legal suspension. Stowell v. Williams (C. C. 1873) Fed. Cas. No. 13,515.

Where the defendant had a license to distill, under Act July 24, 1813, and after the passage of Act Dec. 21, 1814, laying a duty of 20 cents per gallon on spirits distilled, he failed to give notice of his intention to desist from distilling after the 1st of February, by reason of this neglect he was held liable to pay the duties laid by both acts. U. S. v. Whitmell (1819) 7 N. C. 137.

Locking furnace door and reporting suspension.—The failure of the assistant assessor to comply with the statute by locking the door of the furnace, and reporting the suspension, will not affect the right of the distiller. Daniels v. Tarbox (C. C. 1871) Fed. Cas. No. 3,568.

Defective still.—A deficiency assessment against a distillery is erroneous where the deficiency of production for which the assessment was made was caused by a defective still, and was not the result of "culpable neglect, default, or mismanagement of the owners"; and the failure to apply to the collector to have the distillery sealed up until the fault could be rectified, as provided by this section, was not in this instance a want of diligence. U. S. v. Nebraska Distilling Co. (1897) 80 Fed. 285, 25 C. C. A. 418.

Distillery in action from accident.—Act July 20, 1868 (15 Stat. 133), imposing a tax on distilled spirits, provides in section 20 that the tax shall in no case be on less than 80 per cent. of the capacity of the distillery. Section 22 declares that the distiller shall be deemed to be continuously engaged in production, except when he suspends work as therein provided, and goes on to provide the mode of suspension. Held that, where a distillery was inoperative because of an accident, and in charge of a government officer for four days, as provided by the suspension clause, he was not liable for the capacity tax during such time. Clin-

kenbeard v. U. S. (1874) 88 U. S. (21 Wall.) 65, 69, 22 L. Ed. 477.

See, also, notes under § 6089, ante.

Forfeiture.—Under Act July 20, 1868, § 22, and Act June 6, 1872, § 12, no proof is required of the actual complicity of the owner of the property to be forfeited in the fraud or other thing which causes the forfeiture. U. S. v. Distillery at Spring Valley (C. C. 1873) Fed. Cas. No. 14,963.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6093. (R. S. § 3311.) Reduction of capacity; penalty.

Whenever any distiller desires to reduce the producing-capacity of his distillery, he shall give notice of such intention, in writing, to the collector, stating the quantity of spirits which he desires thereafter to manufacture or produce every twenty-four hours, and thereupon said collector shall proceed, at the expense of the distiller, to reduce and limit the producing-capacity of the distillery to the quantity stated in said notice, by placing upon a sufficient number of the fermenting-tubs close-fitting covers, which shall be securely fastened by nails, seals, and otherwise, and in such manner as to prevent the use of such tubs without removing said covers or breaking said seals, and shall adopt such other precautions as may be prescribed by the Commissioner of Internal Revenue to reduce the capacity of said distillery. And every person who breaks, injures, or in any manner tampers with any lock, seal, or other fastening applied to any furnace, still, or fermenting-tub, or other vessel, in pursuance of the provisions of law, or who opens or attempts to open any door, tub, or other vessel, which is locked or sealed, or otherwise closed or fastened as herein provided, or who uses any furnace, still, or fermenting-tub, or other vessel, which is so locked, sealed, or fastened, shall be deemed guilty of a felony, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned for not less than one year nor more than three years.

Act July 20, 1868, c. 186, § 30, 15 Stat. 138. Act Dec. 24, 1872, c. 13, 17 Stat. 401.

Notes of Decisions

Construction with other statutes.—Under sections 6087 and 6089, ante, the penalty is not to be assessed against an apparent excess above the daily average in one month, when that is balanced by a corresponding deficiency in the succeeding month, and this is not altered by the expression in section 5995, ante, and this section, by which a survey is taken to ascertain the producing capacity for a "day of 24 hours"; that expression being used to represent, with greater certainty, the exact period of duration for which the average capacity of production was to be ascertained; and nothing but "average" was intended, as is manifest from the fact that no distillery, under ordinary conditions, has any spirit-producing capacity in 24 hours. Chicago Distilling Co. v. Stone (1891) 11 Sup. Ct. 862, 865, 140 U. S. 647, 35 L. Ed. 532.

Reduction of capacity in general.—While a distillery, the capacity of which was estimated at 416.90 bushels of grain each 24 hours, was in full operation, A., the owner thereof, made application under this section to have the capacity reduced to 207.45 bushels by closing six tubs. According to the practice prevailing in that collection district, two tubs were closed a day, commencing May 2, 1876. On May 2d and 3d A. mashed 207.45 bushels, but distilled beer from 415.96 bushels which he had mashed April 30th and May 1st. Thereafter he used 207.45 bushels daily. All the spirits produced by him during May were reported by him, and the tax thereon duly paid. Held, that the producing capacity of the distillery was not in law reduced to 207.45 bushels per day until May 4th and hence A. was not liable to be taxed for the beer distilled from the 415.96 bushels of grain mashed April 30th and May 1st, as for material used by him in excess of the producing capacity of his distillery on May 2d and 3d. Weitzel v. Rabe (1880) 103 U. S. 340, 26 L. Ed. 320.

Time from which reduction dates.—Time from which reduction of producing capacity of distillery takes place. Caldwell v. Weitzel (C. C.) Fed. Cas. No. 2,306.

Cited without definite application, Stoll v. Pepper (1878) 97 U. S. 438, 441, 24 L. Ed. 1070; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6094. (R. S. § 3312.) Stamps, how prepared and issued.

All stamps required for distilled spirits shall be engraved in their several kinds in book-form, and shall be issued by the Commissioner of Internal Revenue to any collector, upon his requisition, in such numbers as may be necessary in the several districts. Each stamp shall have an engraved stub attached thereto, with a number thereon corresponding with an engraved number on the stamp, and the stub shall not be removed from the book. And there shall be entered on each stub such memoranda of the contents of its corresponding stamp as shall be necessary to preserve a perfect record of the use of such stamp when detached.

Act July 20, 1868, c. 186, § 26, 15 Stat. 137. Act Dec. 24, 1872, c. 13, § 3, 17 Stat. 402.

The Commissioner of Internal Revenue was required to prepare and furnish stamps denoting the payment of the tax on distilled spirits, by Act Aug. 27, 1894, c. 349, § 48, ante, § 5986.

Cited without definite application, In re Kollock (1897) 17 Sup. Ct. 444, 448, 165 U. S. 526, 41 L. Ed. 813; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Dougherty v. U. S. (1901) 108 Fed. 56, 58, 47 C. C. A. 195 (writ of certiorari denied [1901] 21 Sup. Ct. 926, 181 U. S. 622, 45 L. Ed. 1033); Chadwick v. U. S. (C. C. 1880) 3 Fed. 750, 753; U. S. v. Bayaud (C. C. 1883) 16 Fed. 376, 379.

§ 6095. (R. S. § 3313.) Stamps, form of, how used.

On every stamp for the payment of tax on distilled spirits there shall be engraved words and figures representing a decimal number of gallons, and on the stub corresponding to such stamp there shall be engraved a similar number of gallons, and between the stamp and the stub, and connecting them, shall be engraved nine coupons, which, beginning next to the stamp, shall indicate in succession the several numbers of gallons between the number named in the stamp and the decimal number next above. And whenever any collector receives the tax on the distilled spirits contained in any cask, he shall detach from the book a stamp representing the denominate quantity nearest to the quantity of proof-spirits in such cask, as shown by the gauger's return, with such number of the coupons attached thereto as shall be necessary to make up the whole number of proof-gallons in said cask; and any fractional part of a gallon amounting to one-half gallon or over in addition to the number of full gallons shall be regarded as a full gallon, and any fractional part of a gallon less than one-half gallon in any cask or package shall be exempt from tax. All unused coupons shall remain attached to the marginal stub, and no coupon shall have any value or significance when detached from the stamp and stub. And the tax-paid stamps with the coupons may denote such number of gallons, not less than twenty, as the Commissioner of Internal Revenue may deem advisable.

Act July 20, 1868, c. 186, § 27, 15 Stat. 137. Act June 6, 1872, c. 315, § 12, 17 Stat. 240.

The provision of this section that any fractional part of a gallon less than "one-half gallon" in any cask or package shall be exempt from tax was superseded by a proviso "that in computing the tax on any package of spirits all fractional parts of a gallon, less than one tenth, shall be excluded," annexed to the provision fixing the rate of tax imposed by Act Aug. 27, 1894, c. 349, § 48, ante, § 5986, which section also required the Commissioner of Internal Revenue to prescribe and furnish stamps.

Cited without definite application, U. S. v. Ulrici (1884) 4 Sup. Ct. 288, 290, 111 U. S. 38, 28 L. Ed. 344; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6096. (R. S. § 3314, as amended, Act March 1, 1879, c. 125, § 5, and Act May 28, 1880, c. 108, § 16.) Accountability for stamp-books.

The books of tax-paid stamps issued to any collector shall be

charged to his account at the full value of the tax on the number of gallons represented on the stamps and coupons contained in said books; and every collector shall make a monthly return to the Commissioner of Internal Revenue of all tax-paid stamps issued by him to be affixed to any cask or package containing distilled spirits on which the tax has been paid, and account for the amount of the tax collected; and when the said collector returns to the Commissioner of Internal Revenue any book of marginal stubs, which it shall be his duty to do as soon as all the stamps contained in the book when issued to him have been used, and accounts for the tax on the number of gallons represented on the stamps and coupons that were contained in said book, there shall be allowed to the collector a commission of one-half of one per centum on the amount of such tax, in addition to any other commission by law allowed: Provided, That the total net compensation of collectors as fixed by this title shall not be thereby increased. All stamps relating to distilled spirits, other than the tax-paid stamps, shall be charged to collectors; and the books containing such stamps may be intrusted by any collector to the gauger of the district, who shall make a daily report to the collector of all such stamps used by him and for whom used; and when all the stamps contained in any such book have been issued, the gauger of the district shall return the book to the collector, with all the marginal stubs therein: Provided, That all export stamps issued to collectors shall be charged to them as representing the value of ten cents for each stamp, and they shall collect the amount due for such stamps at the rate of ten cents for each stamp issued in such manner and at such time as the Commissioner of Internal Revenue may prescribe, and the Commissioner may, in his discretion, make assessment therefor.

Act July 20, 1868, c. 186, § 28, 15 Stat. 138. Act June 6, 1872, c. 315, § 12, 17 Stat. 240. Act Dec. 24, 1872, c. 13, § 6, 17 Stat. 403. Act March 1, 1879, c. 125, § 5, 20 Stat. 339. Act May 28, 1880, c. 108, § 16, 21 Stat. 148.

This section, as enacted in the Revised Statutes, was amended by striking out, in the first proviso, after the words "stamps used by him and for whom used," the words "and from these reports the Commissioner of Internal Revenue shall assess the person for whom they were used and the collector shall thereupon collect the amount due for such stamps at the rate of ten cents for each stamp issued during the month," and inserting in place thereof the words "the collector shall collect the amount due for such stamps at the rate of ten cents for each stamp issued, in such manner and at such times as the Commissioner of Internal Revenue may prescribe, and the Commissioner may, in his discretion, make assessments therefor," by Act March 1, 1879, c. 125, § 5, cited above.

It was further amended by striking out the words of the amendment by Act March 1, 1879, c. 125, § 5, as given here, and by adding, at the end of the section as originally enacted, the last proviso, as set forth here, by Act May 28, 1880, c. 108, § 16, cited above.

The provisions for commissions were superseded by Act Feb. 8, 1875, c. 36, § 12, as amended March 1, 1879, c. 125, § 2, ante, § 5850.

Notes of Decisions

Repeal of statute.—R. S. § 3314, was not repealed as to commissions by section 2 of the act of March 1, 1879; it being reenacted verbatim in section 5 of that act. U. S. v. Landram (1886) 6 Sup. Ct. 954, 118 U. S. 81, 30 L. Ed. 58.

Cited without definite application, U. S. v. Ulrici (1884) 4 Sup. Ct. 288, 290, 111 U. S. 38, 28 L. Ed. 344; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Chadwick v. U. S. (C. C. 1880) 3 Fed. 750, 755; Landram v. U. S. (1886) 21 Ct. Cl. 128.

§ 6097. (R. S. § 3315, as amended, Act March 1, 1879, c. 125, § 5.) Restamping tax-paid spirits, tobacco, etc., when stamps lost or destroyed.

The Commissioner of Internal Revenue may, under regulations prescribed by him with the approval of the Secretary of the Treasury,

issue stamps for restamping packages of distilled spirits, tobacco, cigars, snuff, cigarettes and fermented liquors which have been duly stamped, but from which the stamps have been lost or destroyed by unavoidable accident.

Act June 6, 1872, c. 315, § 15, 17 Stat. 245. Act March 1, 1879, c. 125, § 5, 20 Stat. 338.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "Secretary of the Treasury," the words "issue tax paid stamps for restamping distilled spirits upon which the tax shall have been paid," and inserting in place thereof the provision beginning with the words "issue stamps for restamping," and ending with the words "which have been duly stamped," as set forth here, by Act March 1, 1879, c. 125, § 5, cited above.

Notes of Decisions

Authority of commissioner to direct restamping.—The commissioner has no authority to direct the restamping of distilled spirits and fermented liquors where the stamp previously affixed has become detached and destroyed without the fault of the distiller. (1871) 13 Op. Atty. Gen. 574.

Loss of tax-paid stamps before being affixed.—Distillers whose tax-paid stamps are lost before being affixed to the cask are not restricted to applying to the Commissioner of Internal Revenue for duplicate stamps under the Statutes. They may pay the tax a second time to the collector and apply for a refund. Woolner v. U. S. (1877) 13 Ct. Cl. 355.

Where a distiller loses his tax-paid stamps before they are affixed to the cask, and pays the tax again to procure other stamps, the duplicate payment is an overpayment, which may be refunded by the Commission of Internal Revenue. Id.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6098. (R. S. § 3316.) Officer using, or issuing, or permitting use of stamps, contrary to law; penalty.

Whenever any revenue officer affixes or cancels, or causes or permits to be affixed or canceled, any stamp relating to distilled spirits provided for by law, in any other manner or in any other place, or issues the same to any other person than as provided by law, or by regulation made in pursuance thereof, or knowingly affixes, or permits to be affixed, any such stamp to any cask or package of spirits of which the whole or any part has been distilled, rectified, compounded, removed, or sold, in violation of law, or which has in any manner escaped payment of tax due thereon, he shall, for every such offense, be fined not less than five hundred dollars nor more than three thousand dollars, and be imprisoned for not less than six months nor more than three years.

Act July 20, 1868, c. 186, § 29, 15 Stat. 138.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6099. (R. S. § 3317, as amended, March 1, 1879, c. 125, § 5.) Rectifier's returns; penalty for unlawfully rectifying.

That on or before the tenth day of each month every person engaged in rectifying or compounding distilled spirits shall make, in such form as may be prescribed by the Commissioner of Internal Revenue, a return to the collector of the district, showing the quantity of spirits received for rectification, and from whom received, the quantity dumped for rectification, the quantity rectified, the quantity removed after rectification during the preceding month, and giving such other information as may be required by the Commissioner of Internal Revenue, such return to be made in duplicate and sworn to by the rectifier; and the collector shall forward one of such returns to the Commissioner of Internal Revenue. Every person who engages in, or carries on, the business of a rectifier with intent to defraud the United States of the tax on the spirits rectified by him, or any part thereof, or with intent to aid, abet, or assist any person or persons in defrauding the United States of the tax

on any distilled spirits, or who shall purchase or receive or rectify any distilled spirits which have been removed from a distillery to a place other than the distillery-warehouse provided by law, knowing or having reasonable grounds to believe that the tax on said spirits, required by law, has not been paid, shall, for every such offense, be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years.

Act June 30, 1864, c. 173, § 17, 13 Stat. 227. Act July 20, 1868, c. 186, § 59, 15 Stat. 151. Act June 6, 1872, c. 315, § 13, 17 Stat. 244. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401. Act March 1, 1879, c. 125, § 5, 20 Stat. 339.

This section, as enacted in the Revised Statutes, was as follows:

"Every rectifier of distilled spirits shall make a return of the quantity and proof of all the spirits purchased, and of the number of barrels of spirits, counting forty gallons of proof-spirits to the barrel, rectified, purified, or refined by him, whenever such return is demanded by the collector of his district."

It was amended to read as set forth here, by Act March 1, 1879, c. 125, § 5, cited above.

Notes of Decisions

Receipt of spirits from illicit distillery.—The receipt of distilled spirits produced at and removed from an illicit distillery is within the scope of this section. U. S. v. Byrne (C. C. 1881) 7 Fed. 455.

Prosecution and punishment.—Where defendants on trial were jointly indicted with others charged with engaging in and carrying on business as rectifiers in the names of certain companies organized by them with intent to defraud the United States of the taxes on spirits so rectified by them, although conspiracy is not charged, statements made by the defendants not on trial are admissible in evidence, to show intent, where so connected with the acts and transactions charged as to constitute a part of the res gestæ. Sprinkle v. U. S. (1905) 141 Fed. 811, 73 C. C. A. 285.

On the trial of defendants, charged with a violation of the internal revenue law, the instructions, rules, and regulations prescribed by the Commissioner of Internal Revenue, as authorized by statute, are admissible in evidence where pertinent to the issues. Id.

Where defendants on trial were jointly indicted with others charged with carrying on the business of rectifiers in the names of certain companies organized by them with intent to defraud the United States of the internal revenue on their rectified spirits, a typewritten letter purporting to have been dictated by one of the defendants and signed in his name by a rubber stamp or stencil, no part of which was in his handwriting, was inadmissible as against him, in the absence of other evidence sufficient to connect him with the offense charged. Sprinkle v. U. S. (1906) 150 Fed. 56, 82 C. C. A. 1, writ of certiorari denied Angle v. U. S. (1907) 27 Sup. Ct. 789, 205 U. S. 542, 51 L. Ed. 922.

Defendants were indicted for unlawfully carrying on the business of a rectifier without having paid the special tax required by law, in violation of section 5966, ante, for which defendants might have been fined $5,000 and imprisoned for two years. The second count was for the unlawful rectifying in violation of this section, for which a punishment of not less than $1,000 nor more than $5,000 fine, and imprisonment for not less than six months nor more than two years, might be imposed. The third count was for omitting to put up signs as required by section 6019, ante, the punishment for which was a fine of $500. And the fourth count was for violating section 6107, post, prohibiting the changing of stamps and shifting of distilled spirits, under which the maximum punishment is a fine of $1,000 and imprisonment for a year. Held, that such offenses involving imprisonment were crimes for which accused could only be punished after a conviction by a jury under Const. art. 3, § 2, providing that the trial of all crimes except in the case of impeachment shall be by jury. Low v. U. S. (1909) 169 Fed. 86, 94 C. C. A. 1.

An indictment under this section for purchasing distilled spirits which had been removed from the distillery to a place other than the warehouse provided by law, held, at most, defective in form only, and sufficient under section 1691, ante. Rosenfeld v. U. S. (1912) 202 Fed. 469, 120 C. C. A. 599.

In a prosecution, by information, for the violation of this section, evidence that the defendant had in his possession a rectifying apparatus, and that illicit spirits had been conveyed to said apparatus in ale barrels, and in the presence of the defendant poured into the receiving tub of such apparatus, on two different occasions, under suspicious circumstances, is sufficient to justify a jury in finding that the defendant was then carrying on the business of a rectifier, with intent to defraud the

government of the tax on the spirits there and then rectified by such defendant. U. S. v. Byrne (C. C. 1881) 7 Fed. 455.

An averment in an information for the violation of this section that the spirits were received from some person or persons to the district attorney as yet unknown was not necessary to a prosecution under the statute, and did not require to be proved. Id.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Old Nick Williams Co. v. Same (1907) 152 Fed. 925, 82 C. C. A. 73 (affirmed [1910] 30 Sup. Ct. 221, 215 U. S. 541, 54 L. Ed. 318).

§ 6100. (R. S. § 3318, as amended, Act Feb. 27, 1877, c. 69, § 1, and Act March 1, 1879, c. 125, § 5.) Books to be kept by rectifiers and wholesale dealers; penalty; monthly transcript; penalty.

Every rectifier and wholesale liquor-dealer shall provide a book, to be prepared and kept in such form as may be prescribed by the Commissioner of Internal Revenue, and shall, on the same day on which he receives any foreign or domestic spirits, and before he draws off any part thereof, or adds water or anything thereto, or in any respect alters the same, enter in such book, and in the proper columns respectively prepared for the purpose, the date when, the name of the person or firm from whom, and the place whence the spirits were received, by whom distilled, rectified, or compounded, and when and by whom inspected, and, if in the original package, the serial number of each package, the number of wine-gallons and proof-gallons, the kind of spirit, and the number and kind of adhesive stamps thereon. And every such rectifier and wholesale dealer shall, at the time of sending out of his stock or possession any spirits, and before the same are removed from his premises, enter in like manner in the said book the day when and the name and place of business of the person or firm to whom such spirits are to be sent, the quantity and kind or quantity of such spirits, the number of gallons and fractions of a gallon at proof, and, if in the original packages in which they were received, the name of the distiller and the serial number of the package. Every such book shall be at all times kept in some public or open place on the premises of such rectifier or wholesale dealer for inspection, and any revenue officer may examine it and take an abstract therefrom; and when it has been filled up as aforesaid, it shall be preserved by such rectifier or wholesale liquor-dealer for a period not less than two years; and during such time it shall be produced by him to every revenue officer demanding it. And whenever any rectifier or wholesale liquor-dealer refuses or neglects to provide such book, or to make entries therein as aforesaid, or cancels, alters, obliterates, or destroys any part of such book, or any entry therein, or makes any false entry therein, or hinders or obstructs any revenue officer from examining such book, or making any entry therein, or taking any abstract therefrom; or whenever such book is not preserved or is not produced by any rectifier or wholesale liquor-dealer as hereinbefore directed, he shall pay a penalty of one hundred dollars, and shall on conviction be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than three years. That every person required to keep the books prescribed by this section shall, on or before the tenth day of each month, make a full and correct transcript of all entries made in such book during the month preceding, and, after verifying the same by oath, shall forward the same to the collector of the district in which he resides. Any failure by reason of refusal or neglect to make said transcripts shall subject the person so offending to a fine of one hundred dollars for each neglect or refusal.

Act July 20, 1868, c. 186, § 45, 15 Stat. 143. Act Feb. 27, 1877, c. 69, 19 Stat. 248. Act March 1, 1879, c. 125, § 5, 20 Stat. 339.

This section, as enacted in the Revised Statutes, was amended by striking

out after the words "or any entry" the word "therin," and inserting in place thereof the word "therein," and by inserting after the words "and shall" the words "on conviction," by Act Feb. 27, 1877, c. 69, § 1, cited above.

It was further amended by adding at the end of the section as originally enacted the provisions beginning with the words "That every person required to keep books," etc., to the end of the section as set forth here, by Act March 1, 1879, c. 125, § 5, cited above.

A distiller selling his own product, though not subject to the special tax of a wholesale liquor dealer on account of such sales, was required to keep the books and to make the transcript as provided for in this section, by Act Aug. 27, 1894, c. 349, § 62, ante, § 5974.

The provisions of this section were made applicable to revenue agents by an amendment of R. S. § 3152, by Act March 1, 1879, c. 125, § 2, ante, § 5856.

Notes of Decisions

See notes under § 6353, post.

Dealers to whom statute applies.—A retail dealer in liquors, who also purchases and sells malt liquors in quantities of more than five gallons at the same time, is not required to keep the book provided for in Act July 20, 1868, c. 186, § 45. U. S. v. Reagan (D. C. 1872) Fed. Cas. No. 16,128.

The book is to be kept only by wholesale dealers in domestic spirits, and a person does not become such dealer by taking out a wholesale license for selling ale, though he also sells domestic spirits at retail. Id.

Dealers in foreign as well as domestic spirits are subject to Act 1868, § 45, and must keep the books and make the entries specified therein so far as they can. U. S. v. McCullough (D. C. 1876) Fed. Cas. No. 15,665.

Premises of dealer.—The bonded warehouse in which a liquor dealer stores his goods is to be regarded as his premises, in the meaning of the statute; and, by a sale and transfer of the goods in bond without removal, the premises then become the premises of the vendee, instead of the vendor. U. S. v. McCullough (D. C. 1876) Fed. Cas. No. 15,665.

Liability for failure to make entry in general.—To render the party liable under this section for neglect, it must appear that the entries were omitted through carelessness or design, and not by pure accident. U. S. v. Amann (C. C. 1876) Fed. Cas. No. 14,438.

Sale of spirits by the consignee, after the arrival and transfer of the bill of lading, so that the purchaser receives them from the carrier, makes the seller liable, under this section, for sending them out of his stock and possession, without entering them on his books. U. S. v. Miller (C. C. 1877) Fed. Cas. No. 15,771.

Wholesale liquor dealers who received 15 barrels of spirits, and entered only 6 on their books, intending to retail the remaining 9, are liable for the penalty of $100, under this section. U. S. v. Malone (D. C. 1876) Fed. Cas. No. 15,713.

Delegation of duty of making entries.—The duty of making entries may be delegated to a clerk, but the principal is responsible if the proper entries are not made. U. S. v. Amann (C. C. 1876) Fed. Cas. No. 14,438; Same v. Fifty Barrels of Whisky (D. C. 1870) Fed. Cas. No. 15,091. But see Quantity of Distilled Spirits (D. C. 1869) Fed. Cas. No. 11,495.

Ambiguous entries.—All ambiguous entries in the book are to be taken most strongly against the rectifier where discrepancies are not explained. Quantity of Distilled Spirits (D. C. 1868) Fed. Cas. No. 11,494.

Oral evidence as to record.—Under this section and section 6083, ante, requiring every distiller to keep a book in which shall be recorded certain facts specified with reference to his business, it was held, in an action by a distiller to recover internal revenue taxes alleged to have been wrongfully imposed, that evidence that plaintiff's record book had been taken from him and carried to a certain collector's office, after which it was taken to the revenue agent's office at G., and was last seen in 1893 or 1894, three years after the final disposition of a criminal case against plaintiff, and that search had been made in the office of the revenue agent, where it had last been seen, without proof that a search had been made in the collector's office for the transcript on which the assessment made was required to be filed nor in the office of the clerk where the original record had been used in evidence in the criminal proceeding, was insufficient to justify the admission of oral evidence of contents of such record. Brown v. Harkins (1904) 131 Fed. 63, 65 C. C. A. 301.

Prosecution and punishment.—On the trial of defendants, charged with a violation of the internal revenue law, the instructions, rules, and regulations prescribed by the Commissioner of Internal Revenue, as authorized by statute, are admissible in evidence where pertinent to the issues. Sprinkle v. U. S. (1905) 141 Fed. 811, 73 C. C. A. 285.

Under subdivision 4, § 5971, ante, defining a wholesale liquor dealer to be a person who sells or offers for sale foreign or domestic distilled spirits or wines in quantities not less than five

wine gallons at a time, it was held that, where an indictment charged defendant as a wholesale liquor dealer with sending out two casks of distilled spirits without making the required entries in his record book, required to be kept by this section, the indictment sufficiently charged that the casks contained each not less than five wine gallons. Williams v. U. S. (1907) 158 Fed. 30, 88 C. C. A. 296, reversing judgment (1906) 87 Pac. 647, 17 Okl. 28.

The indictment was also not objectionable for failure to specify the name of the consignee or the place where the casks were sent; such specifications being mere matters of evidence of which defendant could have secured information by demanding a bill of particulars. Id.

Under the requirement that every wholesale liquor dealer at the time of sending out any spirits shall enter in his record book the day when and the name and place of business of the person or firm to whom such spirits are to be sent, the quantity and kind or quality of such spirits, the number of gallons, the name of the distiller, and the serial number of the package, it was held that, the gist of the offense being the sending out of any spirits without complying with the section, the quantity sent out was not an essential element thereof, so that an indictment charging that defendant, a wholesale liquor dealer, sent out of his stock two casks of distilled spirits, without making the required record entries, was not fatally defective in failing to specify the quantity shipped. Id.

Accused was indicted for willfully and unlawfully refusing and neglecting to make in his record book, kept as a wholesale liquor dealer, any entry or entries concerning two particular casks of spirits at the time they were sent out. The court charged that if defendant failed or neglected to provide a book in such form as prescribed by the Commissioner of Internal Revenue, and sold as a wholesale liquor dealer any kind of distilled spirits, and at the time of sending out of his stock and possession any of such spirits, and before the same were removed from his premises, to enter in such book the date when and the name and place of business of the person or firm to whom such spirits were to be sent, the kind and quantity of such spirits, he was guilty as charged. In another paragraph the court stated that if defendant in good faith went to the deputy revenue collector for the district and requested instruction as to the keeping of his records, and was instructed to keep them on a sheet of paper until he could procure the prescribed form book, and he in good faith relied on such instructions and so kept his record, he was not guilty. Held, that accused by the latter instruction received the full benefit of his claim of good faith, and could not complain of any contradiction in such instructions. Id.

Since a plea of not guilty puts in issue every fact essential to constitute the offense charged, and the benefit of reasonable doubt in favor of accused extends to every matter offered in evidence for as well as against him, an instruction, in a prosecution of a wholesale liquor dealer for violating the internal revenue law in failing to make proper records of sales, that it was incumbent on defendant to show that he made the entries in a book prescribed by the internal revenue department, or that he made them on a sheet of paper, etc., was erroneous. Id.

A judgment in an action for the penalty given by this section is no bar to a criminal prosecution for the same offense. In re Leszynsky (C. C. 1879) Fed. Cas. No. 8,279.

In an indictment under this section, it is not necessary to charge or prove to whom the spirits were sold and the place where sent. Williams v. U. S. (1906) 87 P. 647, 17 Okl. 28.

In charging an offense under this section for failing, while a rectifier and wholesale liquor dealer, to keep books as required, it is not necessary to allege in the indictment that the defendant is both a rectifier and wholesale liquor dealer. Id.

Information of forfeiture.—In an information of forfeiture for neglect to make the entries required by Act July 20, 1868, § 45, it is not necessary to aver the time the liquors were received or sent out, or from whom received, or to whom sent. U. S. v. Rectifying Establishment (D. C. 1870) Fed. Cas. No. 16,131.

Former law.—Rectifiers are bound to keep the book prescribed by Act July 13, 1866, § 26, and make the proper entries in it, whether the revenue commissioner has prescribed any rules and regulations on the subject or not. In re Quantity of Distilled Spirits (D. C. 1868) Fed. Cas. No. 11,494.

Rectifiers and distillers must take the proper steps to ascertain what the rules and regulations are as to keeping of a book as required by Act July 13, 1866, § 26. U. S. v. Dutcher (D. C. 1868) Fed. Cas. No. 15,013.

A rectifier and wholesale liquor dealer, who enters upon his books spirits bought by him, and the names of the manufacturers or rectifiers marked on the barrels as the names of the persons from whom purchased, instead of the names of the actual sellers, incurs the forfeiture denounced by Act July 13, 1866, § 26. U. S. v. One Water Cask (D. C. 1869) Fed. Cas. No. 15,966.

The forfeiture denounced by section 26 (Act July 13, 1866) applies only to the apparatus, and articles in the possession of the offender at the time of the act or neglect whereby forfeited,

and not to those subsequently acquired, and found in his possession. Id.

Act July 13, 1866, § 26, as to the entries of purchases and sales or receipts and deliveries of spirits, is complied with as to entries made before the act of 1868, if the entries, although made in a continuous manner, without anything to designate to what the figures refer, are a true statement of such transaction. U. S. v. Fifty Barrels of Whisky (D. C. 1870) Fed. Cas. No. 15,091.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Sprinkle v. U. S. (1906) 150 Fed. 56, 82 C. C. A. 1 (certiorari denied Angle v. U. S. [1907] 27 Sup. Ct. 789, 205 U. S. 542, 51 L. Ed. 922); Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658.

§ 6101. (R. S. § 3319.) Purchase of quantities greater than twenty gallons from one person, etc.

It shall not be lawful for any rectifier of distilled spirits, or wholesale or retail liquor-dealer, to purchase or receive any distilled spirits in quantities greater than twenty gallons from any person other than an authorized rectifier of distilled spirits, distiller, or wholesale liquor-dealer. Every person who violates this section shall forfeit and pay one thousand dollars: Provided, That this provision shall not be held to apply to judicial sales, or to sales at public auction made by an auctioneer.

Act July 20, 1868, c. 186, § 46, 15 Stat. 144. Act July 14, 1870, c. 255, § 1, 16 Stat. 256.

This section was not to be held to prohibit certain purchases described, by a rectifier or liquor dealer, in quantities greater than 20 gallons, of distilled spirits sold in one parcel, by a provision of R. S. § 3244, subsec. 5, as amended by Act March 1, 1879, c. 125, § 4, ante, § 5971 (5).

Notes of Decisions

Purchase by rectifier.—A rectifier purchasing, from one authorized as a distiller only, over 20 gallons of spirits, not of the seller's own manufacture, is liable to the penalty prescribed by this section. New York Rectifying Co. v. U. S. (C. C. 1878) Fed. Cas. No. 10,214.

Retailer receiving spirits for storage.—A retail liquor dealer who receives more than 20 gallons of spirits from any person other than one authorized to sell such spirits, for storage only, and not for sale, does not incur the penalty. Act July 20, 1868, § 46. U. S. v. Fridenberg (D. C. 1869) Fed. Cas. No. 15,168.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Williams v. U. S. (1907) 158 Fed. 30, 88 C. C. A. 296.

§ 6102. (R. S. § 3320, as amended, Act July 16, 1892, c. 196, § 1, and Act Aug. 27, 1894, c. 349, § 66.) Gauging, inspection, and stamping of rectified spirits.

Whenever any cask or package, containing five wine gallons or more, is filled for shipment, sale, or delivery on the premises of any rectifier who has paid the special tax required by law, it shall be inspected and gauged by a United States gauger whose duty it shall be to mark and brand the same and place thereon an engraved stamp, which shall state the date when affixed and the number of proof gallons, and shall be in such form as shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury: Provided, That when such cask or package is filled on the premises of a rectifier rectifying less than five hundred barrels a year, counting forty gallons of proof spirits to the barrel, it may be gauged, marked, branded, and stamped by a United States gauger, or it may be gauged, marked, branded, and stamped by the rectifier, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe.

Act July 20, 1868, c. 186, §§ 25, 57, 15 Stat. 136, 149. Act June 6, 1872, c. 315, § 12, 17 Stat. 243. Act July 16, 1892, c. 196, § 1, 27 Stat. 200. Act Aug. 27, 1894, c. 349, § 66, 28 Stat. 567.

This section, enacted in the Revised Statutes, was amended by Act July 16, 1892, c. 196, § 1, cited above, by striking out, after the words "who has

paid the special tax required by law," the following provisions, including a form of the stamp required:

"It shall be the duty of the United States gauger to gauge and inspect the same, and to place thereon an engraved stamp, signed by the collector of the district and the said gauger, which shall state the date when affixed, and the number of proof-gallons, and shall be as follows:

Stamp for rectified spirits, No. ——.

Issued by —— ——, collector —— district, State of ——. —— ——, rectifier of spirits in the —— district, State of ——, ——, 18–. —— proof-gallons.

—— ——,
United States Gauger."

—And inserting in place thereof the words "it shall be marked, branded, and stamped by the rectifier in such manner and under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe."

This amendment was a provision following an appropriation for salaries, expenses, and fees of internal-revenue officers in the legislative, executive, and judicial appropriation act for the fiscal year 1893, cited above.

The section was further amended by Act Aug. 27, 1894, c. 349, § 66, cited above, by striking out, after the words "cask or package," the words "of rectified spirits," and by inserting in place of the words of the amendment by Act July 16, 1892, c. 196, § 1, as given here, the provision beginning with the words "it shall be inspected and gauged," and ending with the words "Secretary of the Treasury," and by adding, at the end of the section as originally enacted, the proviso, as set forth here.

See § 6102a, post.

Notes of Decisions

See notes under § 6104, post.

Construction with other statutes.—The rules and regulations which the commissioner of internal revenue is authorized by Act July 20, 1868, § 2, ante, § 5983, to prescribe, cannot have the effect of bringing a case under the operation of the penalty provided in section 96, section 6358, post, if it was already covered by section 57 (this section) as the regulations of the department cannot have the effect of amending the law. U. S. v. Two Hundred Barrels of Whisky (1877) 95 U. S. 571, 576, 24 L. Ed. 491.

Punishment for failure to comply with statute.—Act July 20, 1868, § 96 (post, § 6358), provides that if any person neglects to do anything required by him to be done in carrying on his business, if there is no specific penalty imposed by any other section for such negligence, he shall suffer the penalty and forfeiture imposed thereby. Section 57 (ante, § 6030) provides that all distilled spirits found in any cask or package containing 5 gallons or more, and not properly marked and stamped as required by law, shall be forfeited. Held, that the omission of a distiller to cause packages of distilled spirits containing more than 20 gallons each to be gauged, inspected, and stamped according to Act July 20, 1868, § 25 (15 Stat. 164), does not warrant forfeiture under section 96; a specified penalty being provided by section 57. U. S. v. Two Hundred Barrels of Whisky (1877) 95 U. S. 571, 24 L. Ed. 491.

The failure of the rectifier to cause spirits to be gauged and stamped as required by Act July 20, 1868, § 25, is punishable by section 57 and not by section 96 (section 6358, post). U. S. v. Two Hundred Barrels of Whisky (C. C. 1874) Fed. Cas. No. 16,585.

The knowing and willful omission, neglect, or refusal of the wholesale liquor dealer to cause packages of distilled spirits to be gauged, inspected, and stamped (Act July 20, 1868, § 25) will expose all distilled spirits and liquors owned by him to forfeiture under section 96 (section 6358, post). U. S. v. One Hundred and Thirty-Three Casks of Distilled Spirits (D. C. 1870) Fed. Cas. No. 15,940.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Fourteen Packages of Whisky (1895) 66 Fed. 984, 986, 14 C. C. A. 220; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Cask of Gin (D. C. 1880) 3 Fed. 20, 21.

§ 6102a. (Act March 4, 1915, c. 141, § 1.) Casks or packages dumped for rectification, or received from rectification, to be gauged, marked, etc., by gauger or by rectifier.

Whenever any cask or package of distilled spirits containing five wine gallons or more is dumped by a rectifier for rectification or filled and received from rectification for sale, shipment, or delivery the same shall be gauged, marked, branded and stamped by a United States gauger; but the Commissioner of Internal Revenue may by regulations, approved by the Secretary of the Treasury,

provide that the gauging, marking, stamping and branding of such packages so dumped for rectification, or received therefrom, be done by the rectifier instead of by a United States gauger. (38 Stat. 1017.)

See ante, § 6102.

(R. S. § 3321. Repealed.)

This section required gaugers to gauge, inspect, and stamp packages of spirits of not less than five wine-gallons, filled for shipment, sale, or delivery, on the premises of a wholesale liquor dealer. It was repealed by Act Aug. 15, 1876, c. 287, § 1, 19 Stat. 152.

Cited without definite application, U. S. v. Cask of Gin (D. C. 1880) 3 Fed. 20, 21; U. S. v. Thirty-Two Barrels of Distilled Spirits (D. C. 1880) 5 Fed. 188, 189.

§ 6103. (R. S. § 3322.) Filling blanks, and affixing and protecting stamps.

All blanks in any of the forms prescribed in the preceding section shall be duly filled in accordance with the facts in each case. And the stamps therein designated shall in every case be affixed to a smooth surface of the cask or other package, which surface shall not have been previously painted or covered with any substance, and so as to fasten the same securely to the cask or package, and shall be duly canceled, and shall then be immediately covered with a coating of transparent varnish or other substance, so as to protect them from removal or damage by exposure; and such affixing, cancellation, and covering shall be done in such manner as the Commissioner of Internal Revenue may by regulation prescribe.

Act July 20, 1868, c. 186, § 25, 15 Stat. 137.

Notes of Decisions

Forfeiture for tacking paper over stamped end of barrel.—Merely tacking a piece of newspaper over the stamped end of a barrel of distilled spirits is no ground of forfeiture under the internal revenue laws, and the regulations of the internal revenue department. U. S. v. Three Barrels of Whisky (C. C. 1896) 77 Fed. 963.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6104. (R. S. § 3323, as amended, Act July 16, 1892, c. 196, § 1.) Spirits drawn into new packages to be gauged and branded; returns; forfeitures.

Every package of distilled spirits containing five wine gallons or more, filled on the premises of a wholesale liquor dealer, who has paid the special tax required by law, shall be marked, branded, and stamped by such wholesale liquor dealer in such manner and under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe; and on or before the tenth day of each month every wholesale liquor dealer shall make return, under oath, to the collector of internal revenue for the district of the various kinds and quantities of each kind and of the total quantities of distilled spirits received on his premises and of the various kinds and quantities of each kind and of the total quantity of distilled spirits sent out from his stock or possession during the preceding month, and of the quantity of each kind and the total quantity remaining on hand at the end of the month; and such return shall be made in such form and contain such other particulars as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. And every rectifier or wholesale liquor dealer who refuses or wilfully neglects to comply with the requirements of this act as to giving the said notice or the said return, and as to marking, branding, and stamping, in accordance with the law and the regulations made in pursuance thereof, the packages of spirits filled on his premises as aforesaid, shall, for

each such offense, be fined not less than two hundred dollars nor more than one thousand dollars.

Act July 20, 1868, c. 186, § 47, 15 Stat. 144. Act June 6, 1872, c. 315, § 12, 17 Stat. 240. Act July 16, 1892, c. 196, § 1, 27 Stat. 200.

This section, as enacted in the Revised Statutes, was as follows:

"All distilled spirits drawn from any cask or package and placed in any other cask or package containing not less than ten gallons, and intended for sale, shall be again inspected and gauged; and the cask or package into which it is so transferred shall be marked or branded, and such marking or branding shall distinctly indicate the name of the gauger, the time and place of inspection, the proof of the spirits, the particular name of such spirits as known to the trade, and the name and place of business of the dealer or rectifier, as the case may be; and, except where such spirits have been rectified or compounded, the name also of the distiller and the distillery where such spirits were produced, and the serial number of the original cask or package; and where such spirits have been rectified, the name of the rectifier, and the serial number of the rectifier's stamp; and the absence of such mark or brand shall be held as sufficient cause and evidence for the forfeiture of such unmarked packages of spirits."

So much of this section as related to wholesale liquor dealers' packages filled on the premises was repealed by Act Aug. 15, 1876, c. 287, § 1, 19 Stat. 152, and said act required the stamping of packages of spirits filled on the premises of a wholesale liquor dealer under the regulations prescribed by the Commissioner of Internal Revenue.

This section was amended to read as set forth here by Act July 16, 1892, c. 196, § 1, cited above. This amendment superseded Act Aug. 15, 1876, c. 287, § 1. It was a provision following an appropriation for salaries, expenses, and fees of internal revenue officers in the legislative, executive, and judicial appropriation act for the fiscal year 1893, cited above.

Notes of Decisions

Wholesalers as bound to "cause" casks to be stamped and branded.—Wholesale dealers are bound to "cause" their casks to be stamped and branded in the cases which come under Act July 20, 1868, §§ 25, 47. U. S. v. Ninety-Five Barrels of Distilled Spirits (D. C. 1870) Fed. Cas. No. 15,889.

Meaning of term "cask."—The term "cask" is generally understood to be a receptacle for liquids, either larger or smaller than the usual barrel, and, as employed in the statute respecting the manufacture and sale of spirituous liquors, pertaining to wholesale dealers, has a well-recognized import as a vessel containing not less than 20, 10, or 5 gallons wine measure, as provided by this section and sections 5971 and 6028, ante. Williams v. U. S. (1907) 158 Fed. 30, 88 C. C. A. 296, reversing judgment (1906) 87 Pac. 647, 17 Okl. 28.

Stand casks.—Stand casks in a retail liquor dealer's saloon need not be marked or stamped, though they may hold over five gallons. U. S. v. Mooney (D. C. 1880) Fed. Cas. No. 15,800a.

Change of package requiring stamp.—The mere addition of water to packages of distilled spirits, upon which the tax had been fully paid, the wine and proof gallons therein having been by age reduced below the original gauge, is not a change of package requiring a wholesale liquor dealer's stamp to be placed thereon. U. S. v. Thirty-Two Barrels of Distilled Spirits (D. C. 1880) 5 Fed. 188, 189.

Punishment for violation of statute.—Section 96, Act July 20, 1868, is not applicable to offenses under section 47, which prescribes a punishment in its own terms for an infraction of its requirements. U. S. v. Thirty-Four Barrels Distilled Spirits (D. C. 1871) Fed. Cas. No. 16,461.

In view of section 6030, ante, which declares that all distilled spirits found in any cask or package, containing five gallons or more, without having thereon each mark and stamp required by law, shall be forfeited to the United States, it was held that the penalty imposed by this section was not exclusive, and did not prevent the United States from enforcing a forfeiture of the goods not properly stamped in a proceeding in rem against them. U. S. v. Seven Barrels of Whisky (D. C. 1904) 131 Fed. 806.

This statute only authorizes the commissioner of internal revenue, with the approval of the Secretary of the Treasury, to designate the kind and character of the mark and stamp to be affixed to the packages, and hence the marks and stamps so prescribed were marks and stamps "required by law," within section 6030, ante, declaring that all distilled spirits found in any package containing five gallons or more, without having thereon each mark and stamp required by law, should be forfeited to the United States. Id.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. Cask of Gin (D. C. 1880) 3 Fed. 20, 21.

§ 6105. (R. S. § 3324.) Stamps and brands to be effaced from empty casks; penalty for omitting to efface, and for transporting in violation of law.

Every person who empties or draws off, or causes to be emptied or drawn off, any distilled spirits from a cask or package bearing any mark, brand, or stamp required by law, shall, at the time of emptying such cask or package, efface and obliterate said mark, stamp, or brand. Every such cask or package from which said mark, brand, or stamp is not effaced and obliterated as herein required, shall be forfeited to the United States, and may be seized by any officer of internal revenue wherever found. And every railroad company or other transportation company, or person who receives or transports, or has in possession with intent to transport, or with intent to cause or procure to be transported, any such empty cask or package, or any part thereof, having thereon any brand, mark, or stamp, required by law to be placed on any cask or package containing distilled spirits, shall forfeit three hundred dollars for each such cask or package, or any part thereof, so received or transported, or had in possession with the intent aforesaid; and every boat, railroad-car, cart, dray, wagon, or other vehicle, and all horses and other animals used in carrying or transporting the same, shall be forfeited to the United States. Every person who fails to efface and obliterate said mark, stamp, or brand, at the time of emptying such cask or package, or who receives any such cask or package, or any part thereof, with the intent aforesaid, or who transports the same, or knowingly aids or assists therein, or who removes any stamp provided by law from any cask or package containing, or which had contained, distilled spirits, without defacing and destroying the same at the time of such removal, or who aids or assists therein, or who has in his possession any such stamp so removed as aforesaid, or has in his possession any canceled stamp, or any stamp which has been used, or which purports to have been used, upon any cask or package of distilled spirits, shall be deemed guilty of a felony, and shall be fined not less than five hundred dollars nor more than ten thousand dollars, and imprisoned not less than one year nor more than five years.

Act July 20, 1868, c. 186, § 43, 15 Stat. 142.

Notes of Decisions

Violation of statute.—A stamp once in use may have accidentally fallen off the package, which afterwards for one to have it in possession is an offense under this section, but it is not an offense under the act of March 1, 1879. U. S. v. Spiegel (1886) 6 Sup. Ct. 587, 590, 116 U. S. 270, 29 L. Ed. 664.

A person transporting empty barrels is bound to know whether or not there were uneffaced stamps thereon. U. S. v. Goodrich Transp. Co. (C. C. 1878) Fed. Cas. No. 15,228.

What is forbidden is the removal of the stamp from a package of distilled spirits without, at the same time, destroying it, and the offense is committed whether the spirits in the cask be the product of a licensed or an illicit distillery, and without reference to the circumstances under which the stamp was affixed. U. S. v. Bayaud (C. C. 1883) 16 Fed. 376.

A rectifier "knowingly and willfully" neglects to comply with the law where it was his will, freely exercised, that stamps should not be canceled when barrels were emptied on his premises; and all distilled spirits owned by him are forfeited for such neglect. Act July 20, 1868, §§ 43, 96. In re Quantity of Distilled Spirits (D. C. 1869) Fed. Cas. No. 11,495.

Spirits are not liable to seizure because the barrels were emptied before the stamps were obliterated, where a clerk was in the act of obliterating them when they were seized. U. S. v. Ten Barrels and Three Kegs (D. C. 1869) Fed. Cas. No. 16,444.

The failure of employés of a rectifier to efface or obliterate stamps at the time of emptying spirits will render the rectifier liable to indictment under this section. U. S. v. Adler (D. C. 1875) Fed. Cas. No. 14,424.

A criminal intent is not an element of the offense of having in possession tax-paid stamps once used. U. S. v. Ulrici (D. C. 1875) Fed. Cas. No. 16,594.

A conviction may be had, under this section, making it a felony to empty a cask of distilled spirits without then and there effacing and obliterating the stamps, marks, and brands thereon,

though defendant's act was inadvertent and negligent, and did not involve actual felonious intent. U. S. v. Gallant (D. C. 1910) 177 Fed. 281.

Prosecution and punishment.—An indictment for failing to efface, etc., marks and brands at the time of emptying the cask or package, need not aver a criminal intent. U. S. v. Ulrici (C. C. 1875) Fed. Cas. No. 16,594.

As the offense described in this section, as amended by Act March 1, 1879, c. 125, § 12 (ante, § 5651), is committed by the removal, without destroying, of stamps from a cask containing distilled spirits, whether such spirits be foreign or domestic, it is not necessary in the indictment to describe the spirits as domestic in order to charge an offense. U. S. v. Bayaud (C. C. 1883) 16 Fed. 376.

It need not be alleged in the indictment that the casks contained more than five gallons, and were not "standing casks." Id.

It is not necessary in the indictment to set out the stamps removed verbatim. A description thereof by their statutory designation is sufficient. Id.

As neither an intent to use the stamps again, nor an intent to defraud the United States, nor any other particular intent, is made by the statute an ingredient of this offense, the indictment need not charge any such intent. Id.

As, in this case, the statute bound the accused to know the facts and to obey the law at their peril, a conviction may be had without charging in the indictment knowledge of the contents of the casks from which the stamps were removed. Id.

Although the statute designates the stamps, respectively, "distiller warehouse stamps" and "tax-paid stamps," a designation of such stamps in the indictment as "United States internal revenue distillery warehouse stamps" and "United States internal revenue tax-paid stamps for distilled spirits" will be sufficient. Id.

An indictment, under this section for a failure to efface a stamp from an empty cask which had contained distilled spirits, cannot be sustained, though the proof shows that the cask had been emptied so far as it could be done by the faucet, if there is proof of the additional fact that it had been removed, with the stamp still on it, from the place where it had been used in the course of business with intent to pour the spirits still remaining in it out of the bung hole as soon as the necessary assistance could be procured for that purpose, and the delay is within reasonable time. U. S. v. Buchanan (D. C. 1881) 9 Fed. 689.

The conviction of a defendant of a violation of this section by failing to remove the stamp from a barrel which contained distilled spirits when such barrel was emptied, which constitutes a felony, and requires the imprisonment of the defendant in the penitentiary for a term of not less than one year, will not be sustained on evidence that, on the sale of a single barrel by defendant, he expressly directed an employé to empty it of the liquor remaining therein and to destroy the stamp before delivering the barrel to the purchaser, and that the failure of the employé to obey such order was unknown to him. U. S. v. Rogers (D. C. 1908) 164 Fed. 520.

Failure to cancel brand on oil barrels.—Where the owner failed to cancel the inspection brand on oil barrels which had contained kerosene, a sale of the empty barrels worked a statutory forfeiture to the United States, which related back to the time of the offense committed, and thus defeated any title. Dean v. Chapin (1871) 22 Mich. 275.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Williams v. U. S. (1907) 158 Fed. 30, 88 C. C. A. 296; Grier v. Tucker (C. C. 1907) 150 Fed. 658.

§ 6106. (R. S. § 3325.) Buying or selling spirit-casks having inspection-marks.

Whenever any person knowingly purchases or sells, with inspection-marks thereon, any cask or package, after the same has been used for distilled spirits, he shall forfeit and pay the sum of two hundred dollars for every such cask so purchased or sold.

Act July 13, 1866, c. 184, § 38, 14 Stat. 160.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Williams v. U. S. (1907) 158 Fed. 30, 88 C. C. A. 296.

§ 6107. (R. S. § 3326.) Changing stamps, shifting spirits, etc.; penalty.

Whenever any person changes or alters any stamp, mark, or brand on any cask or package containing distilled spirits, or puts into any cask or package spirits of greater strength than is indicated by the inspection-mark thereon, or fraudulently uses any cask or package

having any inspection-mark or stamp thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected therein, he shall forfeit and pay the sum of two hundred dollars for every cask or package on which the stamp or mark is so changed or altered, or which is so fraudulently used, and shall be fined for each such offense not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than one month nor more than one year.

Act July 20, 1868, c. 186, § 39, 15 Stat. 141.

Affixing imitation stamps on packages of distilled spirits was punishable by Act Feb. 8, 1875, c. 36, § 17, post, § 6108.

Notes of Decisions

Change or alteration of mark or stamp.—The "obliteration" of a portion of a government inspection mark or stamp is a "change or alteration" thereof, within the meaning of this section. U. S. v. Bardenheier (D. C. 1892) 49 Fed. 846.

Information.—An information under this section for using casks or packages previously inspected for the sale of other spirits, or spirits of a different quality from those contained in them at the time of inspection, must show that the change was brought about by filling them with other spirits after the original contents, or a part thereof, had been withdrawn; and a count alleging that spirits of 102 degrees proof were fraudulently sold in casks marked "105 degrees proof," without stating the cause of such change in quality, is defective. U. S. v. Bardenheier (D. C. 1892) 49 Fed. 846.

An information which avers that the defendant "did unlawfully change and alter" the marks and stamps sufficiently shows that the act was done willfully and intentionally. Id.

Trial by jury.—The offense under this section involving imprisonment is a crime for which accused could only be punished after a conviction by a jury under Const. art. 3, § 2, providing that the trial of all crimes except in the case of impeachment shall be by jury. Low v. U. S. (1909) 169 Fed. 86, 94 C. C. A. 1.

Cited without definite application, Coffey v. U. S. (1886) 6 Sup. Ct. 432, 433, 116 U. S. 427, 29 L. Ed. 681; Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; W. F. Corbin & Co. v. U. S. (1910) 181 Fed. 296, 104 C. C. A. 278; Three Packages of Distilled Spirits (D. C. 1882) 14 Fed. 569, 570.

§ 6108. (Act Feb. 8, 1875, c. 36, § 17.) Affixing imitation stamps on packages of distilled spirits; penalty.

If any person shall affix, or cause to be affixed, to or upon any cask or package containing, or intended to contain, distilled spirits, any imitation stamp, or other engraved, printed, stamped, or photographed label, device, or token, whether the same be designed as a trade mark, caution notice, caution, or otherwise, and which shall be in the similitude or likeness of, or shall have the resemblance or general appearance of, any internal revenue stamp required by law to be affixed to or upon any cask or package containing distilled spirits, he shall, for each offense, be liable to a penalty of one hundred dollars, and, on conviction, shall be fined not more than one thousand dollars, and imprisoned not more than three years, and the cask or package with its contents shall be forfeited to the United States. (18 Stat. 311.)

This section was part of an act to amend existing customs and internal revenue laws, etc., cited above.

Cited without definite application, U. S. v. Dominici (1897) 78 Fed. 334, 336, 24 C. C. A. 116.

§ 6109. (R. S. § 3327.) Removal within certain hours from distillery or rectifier's premises.

No person shall remove any distilled spirits at any other time than after sun-rising and before sun-setting in any cask or package containing more than ten gallons from any premises or building in which the same may have been distilled, redistilled, rectified, compounded, manufactured, or stored; and every person who violates

this provision shall be liable to a penalty of one hundred dollars for each cask, barrel, or package of spirits so removed; and said spirits, together with any vessel containing the same, and any horse, cart, boat, or other conveyance used in the removal thereof, shall be forfeited to the United States.

Act July 20, 1868, c. 186, § 37, 15 Stat. 141.

Notes of Decisions

When statute may be disregarded.—Under Act March 2, 1867, providing under a penalty that no spirits shall be removed from any place of storage at any other time than after sunrise and before sunset, it was held that, in case of a fire at night, it would be the duty of the warehouseman to disregard the statute, when its observance would inevitably result in the destruction of the property intrusted to his care. Macklin v. Frazier (1872) 72 Ky. (9 Bush) 3.

But, so long as the warehouseman has reason to believe that the fire can be extinguished by the means at hand without damage to the whisky, he would not be excusable for the violation of the law by its removal. Id.

A warehouseman who, in case of a fire at night, fails to remove the spirits when it becomes evident that otherwise they will be destroyed, would be liable for negligence, since he would be justified in violating the statute. Id.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6110. (R. S. § 3328.) (Superseded.)

This was section 12 of Act June 6, 1872, c. 315, 17 Stat. 240, and provided for a tax on compounds known as wine, made in imitation of sparkling wine or champagne, but not made from grapes grown in the United States, and on all liquors, not made from grapes, currants, rhubarb, or berries grown in the United States, but produced by being rectified or mixed with distilled spirits or by the infusion of any matter in spirits, to be sold as wine, or as a substitute for wine. It was superseded by Act Oct. 22, 1914, c. 331, § 2, 38 Stat. 746, and Act Sept. 8, 1916, c. 463, §§ 401, 402, post, §§ 6110a, 6110b.

Notes of Decisions

Taxation of wine made from grapes grown in United States.—Wine made from grapes grown in the United States is not subject to a tax under Act June 6, 1872, § 12, because made in imitation of sparkling wine by injecting carbonic acid gas by a separate process of manufacture. U. S. v. One Case (D. C. 1873) Fed. Cas. No. 15,922.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. One Hundred and Thirty-Two Packages of Spirituous Liquors (D. C. 1895) 65 Fed. 980, 983.

§ 6110a. (Act Sept. 8, 1916, c. 463, § 401.) What constitutes natural wine; what constitutes wine within meaning of act; sweetening of wine.

That natural wine within the meaning of this Act shall be deemed to be the product made from the normal alcoholic fermentation of the juice of sound, ripe grapes, without addition or abstraction, except such as may occur in the usual cellar treatment of clarifying and aging: Provided, however, That the product made from the juice of sound, ripe grapes by complete fermentation of the must under proper cellar treatment and corrected by the addition (under the supervision of a gauger or storekeeper-gauger in the capacity of gauger) of a solution of water and pure cane, beet, or dextrose sugar (containing, respectively, not less than ninety-five per centum of actual sugar, calculated on a dry basis) to the must or to the wine, to correct natural deficiencies, when such addition shall not increase the volume of the resultant product more than thirty-five per centum, and the resultant product does not contain less than five parts per thousand of acid before fermentation and not more than thirteen per centum of alcohol after complete fermentation, shall be deemed to be wine within the meaning of this Act, and may be labeled, transported, and sold as "wine," qualified by the name of the locality where produced, and may be further qualified by the name of its own particular type or variety: And provided further,

That wine as defined in this section may be sweetened with cane sugar or beet sugar or pure condensed grape must and fortified under the provisions of this Act, and wines so sweetened or fortified shall be considered sweet wine within the meaning of this Act. (39 Stat. 783.)

This provision constituted section 401 of "An act to increase the revenue and for other purposes," cited above. The other parts of this act have been distributed to their appropriate places in this compilation. See Chapter 11A of this title.

§ 6110b. (Act Sept. 8, 1916, c. 463, § 402[a].) Rate of tax on still wines and combinations sold as wine; classification of wines; abatement or refundment in case of payment of tax under other acts.

That upon all still wines, including vermuth, and upon all artificial or imitation wines or compound sold as wine hereafter produced in or imported into the United States, and upon all like wines which on the date this section takes effect shall be in the possession or under the control of the producer, holder, dealer, or compounder there shall be levied, collected, and paid taxes at rates as follows:

On wines containing not more than fourteen per centum of absolute alcohol, 4 cents per wine gallon, the per centum of alcohol taxable under this section to be reckoned by volume and not by weight.

On wines containing more than fourteen per centum and not exceeding twenty-one per centum of absolute alcohol, 10 cents per wine gallon.

On wines containing more than twenty-one per centum and not exceeding twenty-four per centum of absolute alcohol, 25 cents per wine gallon.

All such wines containing more than twenty-four per centum of absolute alcohol by volume shall be classed as distilled spirits and shall pay tax accordingly: Provided, That on all unsold still wines in the actual possession of the producer at the time this title takes effect, upon which the tax imposed by the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," has been assessed, the tax so assessed shall be abated, or, if paid, refunded under such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe. (39 Stat. 783.)

From "An act to increase the revenue, and for other purposes," cited above.

The above section supersedes a part of section 2 of Act Oct. 22, 1914, c. 331, 38 Stat. 746, which part read as follows:

"Upon all still wines, domestic and imported, when sold or offered for sale or consumption, there shall be levied and collected taxes as follows: On each bottle containing one-fourth pint or less, one-fourth cent; on each bottle containing more than one-fourth pint and not more than one-half pint, one-half cent; on each bottle containing more than one-half pint and not more than one pint, 1 cent; and on each bottle containing more than one pint and not more than one quart, 2 cents; and on still wines in all other containers, not herein specially provided for, the tax shall be at the rate of 8 cents per gallon.

"Upon all domestic and imported champagne and other sparkling wines, and upon all artificially carbonated wines when sold or offered for sale or consumption, there shall be levied and collected taxes as follows: Upon each bottle containing one-half pint or less, 5 cents; on each bottle containing more than one-half pint and not more than one pint, 10 cents; on each bottle containing more than one pint and not more than one quart, 20 cents; and on all other containers at the rate of 20 cents per quart; and on all

liqueurs, cordials, or similar compounds, domestic and imported, by whatever name sold or offered for sale, there shall be levied and collected a tax on each bottle containing not more than one-half pint, 1½ cents; more than one-half pint and not more than one pint, 3 cents; more than one pint and not more than one quart, 6 cents; and on larger containers a tax at the rate of 24 cents per gallon."

By section 409 of Act Sept. 8, 1916, c. 463, set forth ante, § 5980k, all administrative provisions of law are made applicable to the enforcement of the tax hereby imposed.

[b] Payment of tax to be made by affixing stamp; notice, bond and inventories; affixing stamps; not to apply to wines held by retail dealers defined by R. S. § 3244, or wines produced for family use; issuance of stamps; collection before stamps are prepared.

That the taxes imposed by this section shall be paid by stamp on removal of the wines from the customshouse, winery, or other bonded place of storage for consumption or sale, and every person hereafter producing, or having in his possession or under his control when this section takes effect, any wines subject to the tax imposed in this section shall file such notice, describing the premises on which such wines are produced or stored; shall execute a bond in such form; shall make such inventories under oath; and shall, prior to sale or removal for consumption, affix to each cask or vessel containing such wine such marks, labels, or stamps as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe; and the premises described in such notice shall, for the purpose of this section, be regarded as bonded premises. But the provisions of this subdivision of this section, except as to payment of tax and the affixing of the required stamps or labels, shall not apply to wines held by retail dealers, as defined in section thirty-two hundred and forty-four of the Revised Statutes of the United States, nor, subject to regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall the tax imposed by this section apply to wines produced for the family use of the producer thereof and not sold or otherwise removed from the place of manufacture and not exceeding in any case two hundred gallons per year. The Commissioner of Internal Revenue is hereby authorized to have prepared and issue such stamps denoting payment of the tax imposed by this section as he may deem requisite and necessary; and until such stamps are provided the taxes imposed by this section shall be assessed and collected as other taxes are assessed and collected, and all provisions of law relating to assessment and collection of taxes, so far as applicable, are hereby extended to the taxes imposed by this section. (39 Stat. 784.)

Act Sept. 8, 1916, c. 463, § 402(b).

R. S. § 3244, referred to above, is set forth ante, § 5971.

The above provision supersedes a part of section 2 of Act Oct. 22, 1914, c. 331, which part read as follows:

"All of the taxes imposed in the preceding paragraphs of this section shall be paid by stamps to be affixed to each bottle or container in which such still wines, champagne wines, carbonated wines, liqueurs, or cordials, or similar compounds are sold or offered for sale: Provided, that when such still wines, champagne wines, carbonated wines, liqueurs, cordials, or similar compounds, taxable under the provisions of this section, are sold or delivered by the producer, importer, or dealer in wholesale quantities to other dealers, including rectifiers, manufacturing chemists, and druggists, the dealer receiving and selling, or offering the same for sale or consumption to any person other than a dealer, shall affix thereto the stamps hereinbefore prescribed: And provided further, That the stamp tax herein imposed shall not be collected on any still wine used by any rectifier, manufacturing chemist, or druggist in the manufacture of any liqueur, cordial, or compound subject to any internal-revenue tax imposed by this Act.

"The Commissioner of Internal Revenue shall cause to be prepared suitable

and special stamps denoting the tax herein imposed, to be affixed and canceled in such manner as he, with the approval of the Secretary of the Treasury, may prescribe; and in the absence of such stamps from any bottle or container containing wine, liqueur, cordial, or compound taxable under the provisions of this section, sold or offered for sale or consumption, shall be prima facie evidence that the tax thereon has not been paid, and all such wines, liqueurs, cordials, or compounds shall be forfeited to the United States."

By section 409 of Act Sept. 8, 1916, c. 463, ante, § 5980k, all administrative provisions of law are made applicable in the enforcement of the tax imposed hereby.

[c] Withdrawal of grape brandy or wine spirits from distillery or special bonded warehouse for fortification of wines; tax on wines; exemptions from payment of tax.

That under such regulations and official supervision and upon the giving of such notices, entries, bonds, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, any producer of wines defined under the provisions of this section or section four hundred and one of this Act, may withdraw from any fruit distillery or special bonded warehouse grape brandy, or wine spirits, for the fortification of such wines on the premises where actually made: Provided, That there shall be levied and assessed against the producer of such wines a tax of 10 cents per proof gallon of grape brandy or wine spirits so used by him in the fortification of such wines during the preceding month, which assessment shall be paid by him within six months from the date of notice thereof: Provided further, That nothing herein contained shall be construed as exempting any wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this section. (39 Stat. 784.)

Act Sept. 8, 1916, c. 463, § 402(c).

Section 401, referred to, is set forth ante, § 6110a.

The above paragraph superseded a part of section 2 of Act Oct. 22, 1914, c. 331, 38 Stat. 747, which read as follows:

"There shall be levied and assessed against the maker or producer of all wines fortified under the provisions and conforming to the requirements of the sections of the tariff Act of October first, eighteen hundred and ninety, relating to the fortification of pure sweet wines, as amended, and as further amended by this Act, a tax of 55 cents on each taxable gallon of grape brandy or wine spirits used by him in the fortification of such wines: Provided, however, That the maker or producer of such fortified wines shall, under regulations and suitable bonds, to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, have assessed against him monthly the said tax of 55 cents on each taxable gallon of grape brandy or wine spirits used by him during the preceding month, which assessment shall be paid within ninety days from the date of notice thereof: Provided further, That nothing herein contained shall be construed as exempting any still wines, cordials, liqueurs, or similar compounds from the payment of any stamp tax provided for in this section."

§ 6111. (Act Oct. 1, 1890, c. 1244, § 42, as amended, Act Oct. 22, 1914, c. 331, § 2, and Act Sept. 8, 1916, c. 463, § 402(c).) Use of wine spirits to fortify pure sweet wines.

Any producer of pure sweet wines may use in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, wine spirits produced by any duly authorized distiller, and the Commissioner of Internal Revenue, in determining the liability of any distiller of wine spirits to assessment under section thirty-three hundred and nine of the Revised Statutes, is authorized to allow such distiller credit in his computations for the wine spirits withdrawn to be used in fortify-

ing sweet wines under this Act. (26 Stat. 621. 38 Stat. 747. 39 Stat. 784.)

R. S. § 3309, mentioned in this section, is set forth ante, § 6089.

This section, prior to its amendment, by Act Oct. 22, 1914, c. 331, § 2, read as follows:

"Any producer of pure sweet wines, who is also a distiller, authorized to separate from fermented grape-juice, under internal-revenue laws, wine spirits, may use, free of tax, in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products, as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may prescribe, so much of such wine spirits so separated by him as may be necessary to fortify the wine for the preservation of the saccharine matter contained therein: Provided, That the wine spirits so used free of tax shall not be in excess of the amount required to introduce into such sweet wines in alcoholic strength equal to fourteen per centum of the volume of such wines after such use: Provided further, That such wine containing after such fortification more than twenty-four per centum of alcohol, as defined by section thirty-two hundred and forty-nine of the Revised Statutes, shall be forfeited to the United States: Provided further, That such use of wine spirits free from tax shall be confined to the months of August, September, October, November, December, January, February, March, and April of each year. The Commissioner of Internal Revenue, in determining the liability of any distiller of fermented grape-juice to assessment under section thirty-three hundred and nine of the Revised Statutes, is authorized to allow such distiller credit in his computation for the wine spirits used by him in preparing sweet wine under the provisions of this section."

Act Oct. 22, 1914, c. 331, § 2, is in the same words of Act Sept. 8, 1916, c. 463, § 402(c), set forth above, except that it ends with the following proviso:

"Provided, That such wine containing after fortification more than twenty-four per centum of alcohol, as defined by section thirty-two hundred and forty-nine of the Revised Statutes, shall be forfeited to the United States."

§ 6112. (Act Oct. 1, 1890, c. 1244, § 43, as amended, Act Aug. 27, 1894, c. 349, § 68, Act June 7, 1906, c. 3046, § 1, Act Oct. 22, 1914, c. 331, § 2, and Act Sept. 8, 1916, c. 463, § 402(c).) Wine spirits and sweet wine defined.

The wine spirits mentioned in section forty-two herein mentioned is the product resulting from the distillation of fermented grape juice, to which water may have been added prior to, during, or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof, and shall be held to include the product from grapes or their residues commonly known as grape brandy, and shall include commercial grape brandy which may have been colored with burnt sugar or caramel; and the pure sweet wine which may be fortified with wine spirits under the provisions of this Act is fermented of partially fermented grape juice only, with the usual cellar treatment, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, except as herein expressly provided: Provided, That the addition of pure boiled or condensed grape must or pure crystallized cane or beet sugar, or pure dextrose sugar containing, respectively, not less than ninety-five per centum of actual sugar calculated on a dry basis, or water, or any or all of them, to the pure grape juice before fermentation, or to the fermented product of such grape juice, or to both, prior to the fortification herein provided for, either for the purpose of perfecting sweet wines according to commercial standards or for mechanical purposes, shall not be excluded by the definition of pure sweet wine aforesaid: Provided, however, That the cane or beet sugar, or pure dextrose sugar added for sweetening purposes shall not be in excess of eleven per centum of the weight of the wine to be fortified: And provided further, That the addition of water herein authorized shall be under such regulations as the Commissioner of Internal Revenue, with the approval of the Secre-

tary of the Treasury, may from time to time prescribe: Provided, however, That records kept in accordance with such regulations as to the percentage of saccharine, acid, alcoholic, and added water content of the wine offered for fortification shall be open to inspection by any official of the Department of Agriculture thereto duly authorized by the Secretary of Agriculture; but in no case shall such wines to which water has been added be eligible for fortification under the provisions of this Act, where the same, after fermentation and before fortification, have an alcoholic strength of less than five percentum of their volume. (26 Stat. 621. 28 Stat. 568. 34 Stat. 215. 38 Stat. 747. 39 Stat. 785.)

This section was part of § 402 of an act entitled "An act to increase the revenue, and for other purposes," cited above.

The act amended read as follows:

"The wine spirits mentioned in section forty-two of this Act is the product resulting from the distillation of fermented grape juice, to which water may have been added prior to, during or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof, and shall be held to include the product from grapes or their residues, commonly known as grape brandy; and the pure sweet wine, which may be fortified free of tax, as provided in said section, is fermented grape juice only, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, except as herein expressly provided; and such sweet wine shall contain not less than four per centum of saccharine matter, which saccharine strength may be determined by testing with Balling's saccharometer or must scale, such sweet wine, after the evaporation of the spirits contained therein, and restoring the sample tested to original volume by addition of water: Provided, That the addition of pure boiled or condensed grape must or pure crystallized cane or beet sugar or pure anhydrous sugar to the pure grape juice aforesaid, or the fermented product of such grape juice prior to the fortification provided by this Act for the sole purpose of perfecting sweet wines according to commercial standard, or the addition of water in such quantities only as may be necessary in the mechanical operation of grape conveyors, crushers, and pipes leading to fermenting tanks, shall not be excluded by the definition of pure sweet wine aforesaid: Provided, however, That the cane or beet sugar, or pure anhydrous sugar, or water, so used shall not in either case be in excess of ten per centum of the weight of the wine to be fortified under this Act: And provided further, That the addition of water herein authorized shall be under such regulations and limitations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe; but in no case shall such wines to which water has been added be eligible for fortification under the provisions of this Act where the same, after fermentation and before fortification, have an alcoholic strength of less than five per centum of their volume."

Act Oct. 22, 1914, c. 331, § 2, 38 Stat. 747, is in the language of the amendatory Act of Sept. 8, 1916, c. 463, § 402(c), set forth above, except that it omits the words "containing, respectively, not less than ninety-five per centum of actual sugar calculated on a dry basis" in the first proviso, and the words "added for sweetening purposes" in the second proviso.

This section, as originally enacted in the McKinley Tariff Act of 1890, cited above, was amended by changing, after the words at the beginning of the section, "That the wine spirits mentioned in section," the words "fifty-three" to "forty-two," and by adding, at the end of the section as originally enacted, the first two provisos, by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 68, cited above.

It was further amended by including in the wine spirits defined by the section such spirits to which water may have been added for the sole purpose of facilitating the fermentation and economical distillation thereof; by including in the pure sweet wine which may be fortified free of tax, fermented grape juice, to which pure anhydrous sugar has been added for the sole purpose of perfecting such wine according to commercial standard, and by adding, at the end of the section as previously amended, the third proviso, making the section read as set forth here, by Act June 7, 1906, c. 3046, cited above.

Section 42 of this act mentioned in this section, is set forth ante, § 6111.

Cited without definite application,
Roche v. Jordan (C. C. 1909) 175 Fed. 234.

§ 6113. (Superseded.)

This was section 44 of Act Oct. 1, 1890, c. 1244, 26 Stat. 622. It imposed a penalty in double the amount of the tax on wine spirits for the unlawful use of such spirits in the fortification of wine. It was superseded by Act Sept. 8, 1916, c. 463, § 402(f), set forth post, § 6114c.

§ 6114. (Act Oct. 1, 1890, c. 1244, § 45, as amended, Act Oct. 22, 1914, c. 331, § 2, and Act Sept. 8, 1916, c. 463, § 402(c).) Withdrawal of wine spirits from warehouse or registered distillery for fortifying sweet wines.

Under such regulations and official supervision, and upon the execution of such entries and the giving of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, any producer of pure sweet wines as defined by this Act may withdraw wine spirits from any special bonded warehouse in original packages or from any registered distillery in any quantity not less than eighty wine gallons, and may use so much of the same as may be required by him under such regulations, and after the filing of such notices and bonds and the keeping of such records and the rendition of such reports as to materials and products and the disposition of the same as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, in fortifying the pure sweet wines made by him, and for no other purpose, in accordance with the foregoing limitations and provisions; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized whenever he shall deem it to be necessary for the prevention of violations of this law to prescribe that wine spirits withdrawn under this section shall not be used to fortify wines except at a certain distance prescribed by him from any distillery, rectifying house, winery, or other establishment used for producing or storing distilled spirits, or for making or storing wines other than wines which are so fortified, and that in the building in which such fortification of wines is practiced no wines or spirits other than those permitted by this regulation shall be stored in any room or part of the building in which fortification of wines is practiced. The use of wine spirits for the fortification of sweet wines under this Act shall be under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall provide by regulations the time within which wines so fortified with the wine spirits so withdrawn may be subject to inspection, and for final accounting for the use of such wine spirits and for rewarehousing or for payment of the tax on any portion of such wine spirits which remain not used in fortifying pure sweet wines. (39 Stat. 785.)

This section was part of § 402 of an act entitled "An act to increase the revenue, and for other purposes," cited above.

Act Oct. 22, 1914, c. 331, § 2, 38 Stat. 747, is in the exact language of Act Sept. 8, 1916, c. 463, § 402(c), set forth above, except that the words "with the approval of the Secretary of the Treasury" in the sixth and seventh lines from the bottom are omitted.

The amendment by Act Sept. 8, 1916, consists in omitting from the act as passed October 1, 1890, cited above, the words "free of tax" after the words "bonded warehouse"; in adding the words "or from any registered distillery" after the words "original packages"; in changing the expression "with the limitations and provisions as to uses, amount to be used, and period for using the same set forth in section fifty-three of this act" to "with the foregoing limitations and provisions"; in changing the words "by his

regulation shall be stored" to "by this regulation shall be stored in any room or part of the building in which fortification of wines is practiced"; in omitting the words "free of tax" after the words "the use of wine-spirits" in the last paragraph; in omitting the words "begun and completed at the vineyard of the wine-grower where the grapes are crushed and the grape juice is expressed and fermented, such use to be"; in adding the words "with the approval of the Secretary of the Treasury" in the clause following the semicolon in the last paragraph.

§ 6114a. (Act Sept. 8, 1916, c. 463, § 402(d).) Removal of domestic wines to bonded premises; number of removals; tax on product of wines used as material.

That under such regulations and upon the execution of such notices, entries, bonds, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, domestic wines subject to the tax imposed by this section may be removed from the winery where produced, free of tax, for storage on other bonded premises or from said premises to other bonded premises: Provided, That not more than one such additional removal shall be allowed, or for exportation from the United States or for use as distilling material at any regularly registered distillery: Provided, however, That the distiller using any such wine as material shall, subject to the provisions of section thirty-three hundred and nine of the Revised Statutes of the United States, as amended, be held to pay the tax on the product of such wines as will include both the alcoholic strength therein produced by fermentation and that obtained from the brandy or wine spirits added to such wines at the time of fortification. (39 Stat. 786.)

R. S. § 3309, above referred to, is set forth ante, § 6089.

§ 6114b. (Act Sept. 8, 1916, c. 463, § 402(e).) Amount of tax payable on domestic and imported sparkling wines; regulations, etc.; exception of wines, etc., on which tax has been paid under other acts; preparation of revenue stamps; application of other laws; collection of tax by assessment instead of by stamps.

That upon all domestic and imported sparkling wines, liqueurs, cordials, and similar compounds remaining in the hands of dealers when this section takes effect, or thereafter removed from the place of manufacture or storage for sale or consumption, there shall be levied and paid, by stamp, taxes as follows:

On each bottle or other container of champagne or sparkling wine, 3 cents on each one-half pint or fraction thereof.

On each bottle or other container of artificially carbonated wine, 1½ cents on each one-half pint or fraction thereof.

On each bottle or other container of liqueurs, cordials, or similar compounds, by whatever name sold or offered for sale, containing sweet wine, fortified with grape brandy under the provisions of paragraph (c) of this section, 1½ cents on each one-half pint or fraction thereof.

The taxes imposed by this section shall not apply to wines, liqueurs, or cordials on which the tax imposed by the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue, and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," has been paid by stamp.

The Commissioner of Internal Revenue, with the approval of

the Secretary of the Treasury, is hereby authorized to have prepared suitable revenue stamps denoting the payment of the taxes imposed by this section; and all provisions of law relating to internal-revenue stamps, so far as applicable, are hereby extended to the taxes imposed by this section: Provided, That the collection of the tax herein prescribed on imported still wines, including vermouth, and sparkling wines, including champagne, and on imported liqueurs, cordials, and similar compounds, may be made within the discretion of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, by assessment instead of by stamps. (39 Stat. 786.)

Act Oct. 22, 1914, c. 331, 38 Stat. 745, and Res. Dec. 17, 1915, No. 4, 39 Stat., referred to, are superseded by the above paragraph, as far as its provisions extend.

By section 409 of Act Sept. 8, 1916, c. 463, ante, § 5980k, all administrative provisions of law are made applicable in the enforcement of the tax imposed hereby.

§ 6114c. (Act Sept. 8, 1916, c. 463, § 402(f).) Penalty for violation of act; forfeiture of wines, etc.; prohibition as to mixing or blending not applicable; use of tax paid grain or other ethyl alcohol for fortification purposes.

That any person who shall evade or attempt to evade the tax imposed by this section, or any requirement of this section or regulation issued pursuant thereof, or who shall, otherwise than provided in this section, recover or attempt to recover any spirits from domestic or imported wine, or who shall rectify, mix, or compound with distilled spirits any domestic wines, other than in the manufacture of liqueurs, cordials, or similar compounds taxable under the provisions of this section, shall, on conviction, be punished for each such offense by a fine of not exceeding $5,000, or imprisonment for not more than five years, or both, and all wines, spirits, liqueurs, cordials, or similar compounds as to which such violation occurs shall be forfeited to the United States. But the provision of this subdivision of this section and the provision of section thirty-two hundred and forty-four of the Revised Statutes of the United States, as amended, relating to rectification, or other internal-revenue laws of the United States, shall not be held to apply to or prohibit the mixing or blending of wines subject to tax under the provisions of this section with each other or with other wines for the sole purpose of perfecting such wines according to commercial standards: Provided, That nothing herein contained shall be construed as prohibiting the use of tax-paid grain or other ethyl alcohol in the fortification of sweet wines as defined in section fifty-three of this Act. (39 Stat. 787.)

R. S. § 3244, referred to, is set forth ante, § 5971.

Section 53, referred to, probably refers to section 43 of Act Oct. 22, 1914, c. 331, as amended, set forth ante, § 6112.

§ 6114d. (Act Sept. 8, 1916, c, 463, § 402 (g).) Requiring use of spirit meters, locks, seals; assignment of gaugers or storekeeper-gaugers; compensation of gaugers.

That the Commissioner of Internal Revenue, by regulations to be approved by the Secretary of the Treasury, may require the use at each fruit distillery of such spirit meters, and such locks and seals to be affixed to fermenters, tanks, or other vessels and to such pipe connections as may in his judgment be necessary or expedient; and the said commissioner is hereby authorized to assign to any such distillery and to each winery where wines are to be fortified such number of gaugers or storekeeper-gaugers in the capacity of gaugers as may be necessary for the proper supervision of the manufacture of brandy or the making or fortifying

of wines subject to tax imposed by this section; and the compensation of such officers shall not exceed $5 per diem while so assigned, together with their actual and necessary traveling expenses, and also a reasonable allowance for their board bills, to be fixed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, but not to exceed $2.50 per diem for said board bills. (39 Stat. 787.)

Act April 6, 1914, c. 52, § 1, ante, § 3236a, provides for a maximum allowance to officers and employés traveling on duty in lieu of expenses actually incurred for subsistence.

This section supersedes a part of section 3 of Act June 7, 1906, c. 3046, 34 Stat. 316, as amended by Act Oct. 22, 1914, c. 331, § 2, 38 Stat. 750, post, § 6119.

§ 6114e. (Act Sept. 8, 1916, c. 463, § 402(h).) Allowance for unavoidable loss of wines.

That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make such allowances for unavoidable loss of wines while on storage or during cellar treatment as in his judgment may be just and proper, and to prepare all necessary regulations for carrying into effect the provisions of this section. (39 Stat. 787.)

Allowance for loss of spirits in warehouses is provided for by §§ 6052–6057, ante.

§ 6114f. (Act Oct. 22, 1914, c. 331, § 2.) Rules and regulations.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make all necessary regulations to make effective the provisions of this section.

The words "this section" have reference embraced in section 2 of the act above cited. It corresponds to the matter embraced in section 402 of the act of 1916, ante, §§ 6110b–6114e.

See § 5980*l*, and notes thereunder.

§ 6115. (Act Oct. 1, 1890, c. 1244, § 46, as amended, Act Oct. 22, 1914, c. 331, § 2.) Withdrawal of wine spirits for fortifying wines for exportation.

Wine spirits may be withdrawn from special bonded warehouses at the instance of any person desiring to use the same to fortify any wines, in accordance with commercial demands of foreign markets, when such wines are intended for exportation, without the payment of tax on the amount of wine spirits used in such fortification, under such regulations, and after making such entries, and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security to prevent the use of such wine spirits free of tax otherwise than in the fortification of wine intended for exportation and for the due exportation of the wine so fortified, as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and all of the provisions of law governing the exportation of distilled spirits free of tax, so far as applicable, shall apply to the withdrawal and use of wine spirits and the exportation of the same in accordance with this section; and the Commissioner of Internal Revenue is authorized, subject to the approval of the Secretary of the Treasury, to prescribe that wine spirits intended for the fortification of wines under this section shall not be introduced into such wines except under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the ap-

proval of the Secretary of the Treasury. Whenever transportation of such wine is to be effected by land carriage the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as to sealing packages and vehicles containing the same, and as to the supervision of transportation from the point of departure, which point shall be determined as the place where such wine spirits may be introduced into such wines to the point of destination as may be necessary to insure the due exportation of such fortified wines: Provided, That where, in accordance with regulations of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, wines fortified under the provisions of this Act with brandy taxable at [55 cents] per proof gallon are exported directly from the winery where fortified, there shall be allowed an abatement or refund of tax equivalent to [55 cents]per gallon on each proof gallon of wine spirits contained in such wine at the time of exportation, which amount of wine spirits shall be ascertained by the Commissioner of Internal Revenue under regulations approved by the Secretary of the Treasury: Provided, That such wine spirits on which abatement or refund of tax is allowed shall not exceed the total amount of alcohol in such wine over and above fourteen per centum thereof. (38 Stat. 749.)

From an act to increase the internal revenue, cited above.

Act Oct. 1, 1890, c. 1244, § 46, 26 Stat. 623, amended by the above provision, is identical with Act Oct. 22, 1914, c. 331, § 2, set forth above, except that after the word "Whenever," at the beginning of the second sentence, the words "such wine spirits are withdrawn as provided herein for the fortification of wines intended for transportation by sea they shall be introduced into such wines only after removal from storage and arrival alongside of the vessel which is to transport the same; and" are inserted, and the proviso set forth above is omitted.

The above provision was not carried into Act Sept. 8, 1916, c. 463, ante, §§ 6110a–6114e. It is not inconsistent with the new act, except as to the words in brackets, the tax having been reduced by the new act to 10 cents per gallon, ante, § 6110b[c].

By section 24 of the above act the "taxes levied under" the act were to be "no longer levied and collected" after December 31, 1915. By Res. Dec. 17, 1915, set forth in a note to § 5980*l*, the "provisions of the act" of October 22, 1914, above cited, were continued to and including December 31, 1916. If this time limitation is to be construed as referring to the act itself, and not merely to the collection of the taxes provided for, the above provision and all other provisions of Act Oct. 22, 1914, will be no longer operative after December 31, 1916.

It is to be also noted that Act Sept. 8, 1916, c. 463, § 410, post, § 5980*l*, expressly repeals Act Oct. 22, 1914, except sections 3 and 4 thereof, and Res. Dec. 17, 1915, extending for one year the operation of Act Oct. 22, 1914. If this repealing provision is to be given its literal import, instead of being confined to the subject-matters treated under the heading "Special Taxes" appearing in both acts, the above provision will become inoperative on January 1, 1917.

§ 6116. (Act Oct. 1, 1890, c. 1244, § 47.) Reimportation of domestic wines exported.

All provisions of law relating to the re-importation of any goods of domestic growth or manufacture which were originally liable to an internal-revenue tax shall be, as far as applicable, enforced against any domestic wines sought to be re-imported; and duty shall be levied and collected upon the same when re-imported, as an original importation. (26 Stat. 623.)

§ 6117. (Act Oct. 1, 1890, c. 1244, § 48.) Unlawful use of wine spirits, not tax-paid, punishable.

Any person using wine spirits or other spirits which have not been tax-paid in fortifying wine otherwise than as provided for in this act, shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished for each offense by a fine of not more than

two thousand dollars, and for every offense other than the first also by imprisonment for not more than one year. (26 Stat. 623.)

This section is superseded by Act Sept. 8, 1916, c. 463, § 402(f), ante, § 6114c, as far as acts done under such section 402 (ante, §§ 6110b–6114e) is concerned. This provision may be operative, however, as to acts done under § 6115, ante, not embraced in section 402.

§ 6118. (Act Oct. 1, 1890, c. 1244, § 49, as amended, Act June 7, 1906, c. 3046, § 2, and Act Oct. 22, 1914, c. 331, § 2.) Recovery of wine spirits from fortified wines.

Wine spirits used in fortifying wines may be recovered from such wines only on the premises of a duly authorized grape brandy distiller, and for the purpose of such recovery wine so fortified may be received as material on the premises of such a distiller, on a special permit of the collector of internal revenue in whose district the distillery is located; and the distiller will be held to pay the tax on the product from such wines as will include both the alcoholic strength therein produced by the fermentation of the grape juice and that obtained from the added distilled wine spirits: Provided, That when application for such special permit for redistillation shall be made by the producer of any wines fortified with brandy subject to the tax of 55 cents per proof gallon, before such wine shall have been moved from the premises of the winery where fortified and the redistillation is had under regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, an abatement or refund of the tax assessed against said producer shall be allowed equivalent to 55 cents per proof gallon of brandy contained in said spirits at the time of redistillation, which amount of brandy shall be ascertained by the Commissioner of Internal Revenue, under regulations approved by the Secretary of the Treasury, and wine spirits so recovered may be used in the manner provided by law for the fortification of other wine: Provided, That such wine spirits on which abatement or refund of tax is allowed shall not exceed the total amount of alcohol in such wine over and above fourteen per centum thereof. (38 Stat. 749.)

For discussion as to possible repeal or supersession of this section, see notes under § 6115, ante.

This section substantially follows the language of the provision amended down to the word "Provided." From that point the former provision read as follows: "Subject, however, to the provisions of section thirty-three hundred and nine of the Revised Statutes of the United States, as amended by section six of the Act entitled 'An Act to amend the laws relating to internal revenue,' approved March first, eighteen hundred and seventy-nine; and such spirits so recovered may be used by such distiller to fortify wines as authorized by section forty-two of the aforesaid Act, approved October first, eighteen hundred and ninety."

This section, as originally enacted in the McKinley Tariff Act of 1890, cited above, was amended by the addition, at the end of the original section of the provisions beginning with the words "subject, however, to the provisions," etc., to the end of the section as set forth here, by Act June 7, 1906, c. 3046, § 2, cited above.

R. S. § 3309, and Act March 1, 1879, c. 125, § 6, mentioned in the old provision, are set forth ante, §§ 6089, 6091; and Act Oct. 1, 1890, c. 1244, § 42, also mentioned therein, is set forth in its amended form, ante, § 6111.

§ 6119. (Act June 7, 1906, c. 3046, § 3, as amended, Act Oct. 22, 1914, c. 331, § 2.) Special gaugers for supervision of fortification of wines; compensation; bonds.

[The Commissioner of Internal Revenue is hereby authorized to assign at each winery where wines are to be fortified such number of gaugers or storekeeper gaugers, in the capacity of gaugers, for special duties as may be necessary for the proper supervision of the making and fortifying of such wines, and the compensation of such officers shall not exceed $5 per diem while so assigned, to-

gether with their actual and necessary traveling expenses, and also a reasonable allowance for their board bills, to be fixed by the Commissioner of Internal Revenue, but not to exceed $2 per diem for said board bills.] That bonds hereafter given under the provisions of the aforesaid Act of October first, eighteen hundred and ninety, as amended, shall be conditioned for the payment of the tax on all brandy removed thereunder and not used and accounted for within the time and in the manner required by law and regulations, and for the payment of all taxes imposed on the brandy so withdrawn and used for fortifications; and the said bonds shall contain such other conditions as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe. (38 Stat. 750.)

For discussion as to possible repeal or supersession of this section, see notes under § 6115, ante.

Act June 7, 1906, c. 3046, § 3, amended hereby, after the words "board bills" contained the clause "and to cover the expenses to the Government attending the making and fortification of such sweet wines there shall be levied and assessed against each maker of such wines, and collected monthly, a charge of three cents on each taxable gallon of brandy used by him in the fortification of such wines during the preceding month," and in other respects was in the language of the amendatory act, except that the word "charges" is used in place of the word "taxes," and the words "for fortifications" after the words "withdrawn and used" are omitted.

The provisions relating to bonds on withdrawal of wine spirits from warehouse, made by Act Oct. 1, 1890, c. 1244, §§ 45, 46, referred to in this section, are set forth ante, §§ 6114, 6115.

The words in brackets are superseded by a provision of Act Sept. 8, 1916, c. 463, § 402(g), ante, § 6114d.

§ 6120. (Act June 7, 1906, c. 3046, § 4.) Fermenting vats for manufacture of wines or of brandy for fortification thereof.

Where brandy to be used in the fortification of wine is distilled on premises adjacent to the winery premises the Commissioner of Internal Revenue may, in his discretion, authorize the erection on either of said premises of fermenting vats for material to be used either in the manufacture of such wines or the brandy to be used in the fortification thereof; and all such materials used or received on either of said premises shall be under the supervision of the officer assigned to such winery, and shall be accounted for at such times and in such manner as the Commissioner may direct. (34 Stat. 216.)

§ 6121. (Act June 7, 1906, c. 3046, § 5.) Remission of tax on grape brandy accidentally destroyed.

The provisions of sections thirty-two hundred and twenty-one and thirty-two hundred and twenty-three of the Revised Statutes of the United States, as amended by an Act approved March first, eighteen hundred and seventy-nine, are hereby extended to grape brandy withdrawn for use in the fortification of sweet wines, and which, prior to such use, is accidentally destroyed by fire or other casualty while stored in the fortifying room on the winery premises. (34 Stat. 216.)

R. S. §§ 3221 and 3223, as amended by Act March 1, 1879, c. 125, mentioned in this section, which provided for the remission of tax on spirits accidentally destroyed, are set forth ante, §§ 5945, 5946.

§ 6122. (Act June 7, 1906, c. 3046, § 6, as amended, Act Oct. 22, 1914, c. 331, § 2.) Unlawful recovery of spirits from fortified wines; penalty; blending fortified wines.

Any person who by any process recovers from wines fortified under the provisions of the aforesaid Act approved October first, eighteen hundred and ninety, as amendments thereto, any brandy or wine spirits used in the manufacture or fortification of said wine, otherwise than is provided for in said Act and its amend-

ments, or who shall rectify, mix, or compound with distilled spirits or other materials, except as provided in this Act, such grape brandy, fortified wines or wine spirits unlawfully recovered therefrom, shall, on conviction, be punished for each such offense by a fine of not less than $200 nor more than $1,000. But the provisions of this section and the provisions of section thirty-two hundred and forty-four of the Revised Statutes of the United States, as amended, relating to rectification, or other internal revenue laws of the United States, shall not be held to apply to or prohibit the mixing or blending of pure sweet wines fortified under the provisions of this Act with each other or with other wines: Provided, That the pure sweet wines fortified under the provisions of this Act may be used in the manufacture of cordials, liqueurs, and similar compounds on which an internal revenue tax of 24 cents a gallon is imposed, and otherwise the provision of section thirty-two hundred and forty-four of the Revised Statutes of the United States shall remain in full force and effect. (38 Stat. 750.)

For suggestion as to repeal or supersession of this section, see note under § 6115, ante.

Act June 7, 1906, c. 3046, § 6, 34 Stat. 216, amended hereby, read as follows:

"Any person who by any process recovers from wines fortified under the provisions of the aforesaid Act approved October first, eighteen hundred and ninety, or amendments thereto, any brandy or wine spirits used in the manufacture or fortification of said wine, otherwise than is provided for in said Act and its amendments, or who shall rectify, mix, or compound with other distilled spirits such fortified wines or grape brandy or wine spirits unlawfully recovered therefrom, shall, on conviction, be punished for each such offense by a fine of not less than two hundred dollars nor more than one thousand dollars. But the provisions of this section, and the provisions of section thirty-two hundred and forty-four of the Revised Statutes of the United States, as amended, relating to rectification, shall not be held to apply to the blending of pure sweet wines fortified under the provisions of the said Act of October first, eighteen hundred and ninety, or amendments thereto, where such wines are blended for the sole purpose of perfecting the same according to commercial standard."

R. S. § 3244, as amended, mentioned in this section, which imposed a special tax on rectifiers of distilled spirits, is set forth ante, § 5971.

§ 6123. (Act Feb. 4, 1909, c. 65.) Tax on alcoholic compounds coming from Porto Rico.

Upon bay rum, or any article containing alcohol, hereafter brought from Porto Rico into the United States for consumption or sale there shall be paid a tax on the spirits contained therein of one dollar and ten cents per proof gallon, to be collected at the port of entry by the collector of internal revenue of the district in which the port is located. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make such rules and regulations as may be necessary to carry this Act into effect. (35 Stat. 594.)

Tax on imported merchandise, see ante, § 3749.

Notes of Decisions

Tax on manufactured articles.—See section 3749, ante.

Res judicata as to question of tax.—A conclusion in a prior suit between different parties that Porto Rican bay rum imported into the United States was not subject to customs duties or internal revenue tax was not res judicata of such question in a subsequent action, though it would be regarded as persuasive authority. Roche v. Jordan (C. C. 1909) 175 Fed. 234.

Statute as congressional declaration as to tax under prior statutes.—The imposition of a specific tax upon bay rum imported from Porto Rico made by this statute was not a congressional declaration that bay rum so imported was not subject to a tax under prior statutes. Jordan v. Roche (1913) 33 Sup. Ct. 573, 228 U. S. 436, 57 L. Ed. 908.

The Circuit Court of Appeals having previously determined that under Foraker Act April 12, 1900, § 3, ante, § 3749, providing for the taxation of imports from Porto Rico, Porto Rican bay rum was not subject to customs duties because not distilled spirits nor

the product of distillation, taxable under sections 5985, 5989, ante, such construction could not be affected by the subsequent passage of Act Feb. 4, 1909, c. 65, 35 Stat. 594. Roche v. Jordan (C. C. 1909) 175 Fed. 234.

§ 6124. (R. S. § 3329, as amended, Act May 28, 1880, c. 108, § 10.) Drawback on distilled spirits.

Distilled spirits upon which all taxes have been paid may be exported, with the privilege of drawback, and in distillers' original casks, packages containing not less than twenty wine-gallons each, on application of the owner thereof to the collector of customs at any port of entry, and under such rules and regulations, and after making such entry as may be prescribed by law and by the Secretary of the Treasury. The entry for such exportation shall be in triplicate, and shall contain the name of the person applying to export, the name of the distiller, the name of the district in which the spirits were distilled, the name of the vessel by which, and the name of the port to which, they are to be exported; and the form of the entry shall be as follows:

Export Entry of Distilled Spirits Entitled to Drawback.

Entry of spirits distilled by ——— ———, in ——— district, State of ———, to be exported by ——— ———, in the ———, whereof ——— ——— is master, bound to ———.

And the entry shall specify the whole number of casks or packages, the marks and serial numbers thereon, the quality or kind of spirits as known in commerce, the number of gauge or wine gallons and of proof-gallons; and the amount of the tax on such spirits shall be verified by the oath of the owner of the spirits, and that the tax has been paid thereon, and that they are truly intended to be exported to the port of ———, and not to be relanded within the limits of the United States. One bill of lading, duly signed by the master of the vessel, shall be deposited with said collector, to be filed at his office with the entry retained by him. One of said entries shall be, when the shipment is completed, transmitted to the Secretary of the Treasury, to be recorded and filed in his office. The lading on board said vessel shall be only after the receipt of an order or permit signed by the collector of customs and directed to a customs gauger, and after each cask or package shall have been distinctly marked or branded by said gauger as follows: "For export from U. S. A.," and the tax-paid stamps thereon obliterated. The casks or packages shall be inspected and gauged alongside of or on the vessel by the gauger designated by said collector, under such rules and regulations as the Secretary of the Treasury may prescribe; and on application of the said collector it shall be the duty of the surveyor of the port to designate and direct one of the custom-house inspectors to superintend such shipment. And the gauger aforesaid shall make a full return of such inspection and gauging in such form as may be prescribed by the Secretary of the Treasury, showing by whom each cask of such spirits was distilled, the serial number of the cask, and of the tax-paid stamp attached thereto, the proof and quantity of such spirits as per the original gauge-mark on each cask, and the quantity in proof and wine gallons as per the gauge then made by him. And said gauger shall certify on such return that the shipment has been made, in his presence, on board the vessel named in the entry for export, which return shall be indorsed by said custom-house inspector certifying that the casks or packages have been shipped under his supervision on board said vessel, and the tax-paid stamps obliterated; and the said inspector shall make a similar certificate to the surveyor of the port, indorsed on or to be attached to the entry in possession of the custom-house. A drawback shall be allowed upon distilled

spirits on which the tax has been paid and exported to foreign countries, under the provisions of this act, when exported as herein provided for. The drawback allowed shall include the taxes levied and paid upon the distilled spirits exported, (at the rate of ninety cents per proof-gallon) as per last gauge of said spirits prior to exportation, and shall be due and payable only after the proper entries have been made and filed, and all other conditions complied with as hereinbefore required, and on filing with the Secretary of the Treasury the proper claim, accompanied by the certificate of the collector of customs at the port of entry where the spirits are entered for export, that such spirits have been received into his custody and the tax-paid stamps thereon obliterated; and the Secretary of the Treasury shall prescribe such rules and regulations in relation thereto as may be necessary to secure the Treasury of the United States against frauds: Provided, That the drawback on spirits distilled prior to August one, eighteen hundred and seventy-two, shall not exceed sixty cents per proof-gallon.

Act July 20, 1868, c. 186, § 54, 15 Stat. 147. Act June 6, 1872, c. 315, § 12, 17 Stat. 241. Act May 28, 1880, c. 108, § 10, 21 Stat. 148.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "the privilege of drawback," the words "in quantities of not less than one thousand gallons," and by inserting after the words "original casks" the word "packages," and by inserting after the words "upon the distilled spirits exported," in place of the words "at the rate of seventy cents per proof gallon," the word "ninety," but evidently intending to substitute the word "ninety" for the word "seventy," merely, as set forth here, by Act May 28, 1880, c. 108, § 10, cited above.

The tax on distilled spirits was increased from 70 cents on each proof gallon to 90 cents on each proof gallon, or wine gallon when below proof, by Act March 3, 1875, c. 127, § 1, 18 Stat. 339, and was increased to $1.10 on each proof gallon, or wine gallon when below proof, by Act Aug. 27, 1894, c. 349, § 48, ante, § 5986.

Provisions allowing drawback upon exportation are contained in Title XXXIV, "Collection of Duties upon Imports," c. 9.

A drawback was not allowed upon the exportation of bottled spirits, by Act March 3, 1897, c. 379, § 3, ante, § 6072.

A drawback on the exportation of flavoring extracts, medicinal or toilet preparations, made in part from domestic tax-paid alcohol, was allowed by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, O, ante, § 5724, which re-enacted a similar provision made by the preceding tariff act.

Notes of Decisions

See notes under the following section.

Bona fide exportation.—To constitute a bona fide exportation it is necessary that the owner of the whisky should intend that it should not only be landed in a foreign port, but that it should enter into the commerce of some foreign country. (1908) 27 Op. Atty. Gen. 113.

Withdrawal and exportation to postpone payment of tax.—A withdrawal of whiskies from bonded warehouses under this and the following section, and transportation thereof to foreign ports with the intention of holding the same for a time and then having them returned as reimportations of manufactures of the United States, the purpose being to postpone payment of the taxes on the whiskies shipped, is not an exportation within the meaning of such sections. (1908) 27 Op. Atty. Gen. 113.

Such withdrawal, not being a bona fide exportation, is unlawful, and a forfeiture of the whiskies involved can be enforced if found within the jurisdiction of the United States. The parties withdrawing the same are also liable to punishment. Id.

Allowance of drawback.—This section and section 6125, post, taken together, show that, when spirits on which the tax has been paid are exported, they are regauged at the port of exportation, and the drawback allowed is determined by the amount of this gauge, notwithstanding a previous gauge may have shown a greater amount. The result is that the owner receives no drawback on any deficiency occurring prior to the last regauge. Thompson v. U. S. (1892) 12 Sup. Ct. 299, 301, 142 U. S. 471, 35 L. Ed. 1084.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Clay v. Swope (C. C. 1889) 38 Fed. 396, 399; Miles v. Johnson (C. C. 1893) 59 Fed. 38, 40.

§ 6125. (R. S. § 3330, as amended, Act May 28, 1880, c. 108, § 11.) Exportation of distilled spirits withdrawn from bonded warehouses.

Distilled spirits may be withdrawn from distillery bonded warehouses, at the instance of the owner of the spirits, for exportation in the original casks, or packages, without the payment of tax, under such regulations, and after making such entries and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury: Provided, That bonds given under this section shall be canceled under such regulations as the Secretary of the Treasury shall prescribe: And provided further, That the bonds required to be given for the exportation of distilled spirits shall be canceled upon the presentation of satisfactory proof and certificates that said distilled spirits have been landed at the port of destination named in the bill of lading, or upon satisfactory proof that after shipment the same were lost at sea without fault or neglect of the owner or shipper thereof.

All distilled spirits intended for export, as aforesaid, before being removed from the distillery warehouse, shall be marked as the Commissioner of Internal Revenue may prescribe, and shall have affixed to each cask an engraved stamp indicative of such intention, to be provided and furnished by the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner, and for the expense attending the providing and affixing such stamps [twenty-five] cents for each package so stamped shall be paid to the collector on making the entry for such transportation. When the owner of the spirits shall have made the proper entries, filed the bonds, and otherwise complied with all the requirements of the law and regulations as herein provided, the collector shall issue to him a permit for the removal and transportation of said spirits to the collector of the port from which the same are to be exported, accurately describing the spirits to be shipped, the amount of tax thereon, the State and district from which the same is to be shipped, the name of the distiller by whom distilled, the port to which the same are to be transported, the name of the collector of the port to whom the spirits are to be consigned, and the routes over which they are to be sent to the port of shipment. Such shipment shall be made over bonded routes whenever practicable. The collector of the port shall receive such spirits, and permit the exportation thereof, under the same rules and regulations as are prescribed for the exportation of spirits upon which the tax has been paid. And every person who fraudulently claims, or seeks, or obtains an allowance of drawback on any distilled spirits, or fraudulently claims any greater allowance or drawback than the tax actually paid thereon, shall forfeit and pay to the Government of the United States triple the amount wrongfully and fraudulently sought to be obtained, and shall be imprisoned not more than ten years; and every owner, agent, or master of any vessel or other person who knowingly aids or abets in the fraudulent collection or fraudulent attempts to collect any drawback upon, or knowingly aids or permits any fraudulent change in the spirits so shipped, shall be fined not exceeding five thousand dollars and imprisoned not more than one year, and the ship or vessel on board of which such shipment was made or pretended to be made shall be forfeited to the United States, whether a conviction of the master or owner be had or otherwise, and proceedings may be had in admiralty by libel for such forfeiture.

Every person who intentionally relands within the jurisdiction of the United States any distilled spirits which have been shipped for exportation under the provisions of this act, or who receives such relanded distilled spirits, and every person who aids or abets in such relanding or receiving of such spirits, shall be fined not exceeding five thousand dollars, and imprisoned not more than three years; and all distilled spirits so relanded, together with the vessel from which the same were relanded within the jurisdiction of the United States, and all boats, vehicles, horses, or other animals used in relanding and removing such distilled spirits, shall be forfeited to the United States.

Act July 20, 1868, c. 186, § 55, 15 Stat. 148. Act June 6, 1872, c. 315, § 12, 17 Stat. 242. Act March 3, 1873, c. 232, § 5, 17 Stat. 559, 560. Act May 28, 1880, c. 108, § 11, 21 Stat. 148.

This section, enacted in the Revised Statutes, was amended by striking out, after the words "for exportation in the original casks," the words "in quantities of not less than one thousand gallons," and inserting in place thereof the words "or packages," as set forth here, by Act May 28, 1880, c. 108, § 11, cited above.

The word "twenty-five," of this section, inclosed in brackets, was superseded by the reduction of the charge for providing and affixing stamps to ten cents, by Act June 9, 1874, c. 259, § 2, post, § 6127.

Notes of Decisions

See notes under the preceding section.

Constitutionality.—Spirits are not in process of exportation on the giving of the exportation bond under this section, so as to render applicable the constitutional inhibition of taxation of articles exported from the states. Thompson v. U. S. (1892) 12 Sup. Ct. 299, 301, 142 U. S. 471, 35 L. Ed. 1084.

Regulations of Secretary of the Treasury and Commissioner.—Regulations in circular No. 296 requiring that, where spirits covered by exportation bond were removed for exportation, the gauger should reinspect, and if an additional outage existed in any package reducing the number of taxable gallons as last previously reported, the collector should at once require payment on the taxable gallons reported by such reduction, though it was alleged that the loss was occasioned by casualty, were within the scope of the commissioner's authority to make regulations. Thompson v. U. S. (1892) 12 Sup. Ct. 299, 301, 142 U. S. 471, 35 L. Ed. 1084.

The Secretary of the Treasury has power to make a regulation under which distilled spirits may be permitted to remain in warehouse after the expiration of three years, upon the distiller or owner of the spirits filing a declaration of his purpose to export the same in good faith, and giving a bond to do so within a given period. (1884) 18 Op. Atty. Gen. 92.

Withdrawal for exportation to Panama and Colon for Canal Zone.—The effect of the order of the President of December 3, 1904, is to prevent the direct shipment of goods, wares, and merchandise into the Canal Zone of Panama; and distilled spirits withdrawn for shipment to Panama or Colon, although ultimately to go to the Canal Zone, are withdrawn for shipment to a foreign country within the letter and spirit of the statutes. (1905) 25 Op. Atty. Gen. 324.

Exportation bond.—Money recovered in a suit on an export bond given under the internal revenue laws belongs exclusively to the United States, the same as money recovered in a suit on any other contract with the government; and neither revenue officers nor informers can have any share therein. (1869) 13 Op. Atty. Gen. 116.

An export bond covering certain distilled spirits was subsequently canceled upon the production of a landing certificate, after which it turned out, on examination at the place of landing, that the barrels which contained the spirits were all, or nearly all, filled with water, in fraud of the revenue. Advised, that a claim which has since been preferred against the obligors in the bond, with respect to their liability in the matter (no suit or proceeding in court having been commenced), might be compromised by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. Id.

Where it was proposed to withdraw a quantity of whisky from bonded warehouse, under this section and Act June 9, 1874 (section 6126, post), and Act March 1, 1879 (section 6036, ante), in order to ship it to Bermuda, with the purpose, after landing it there, of transporting it back to this country and entering it either for warehousing or for consumption under section 2500, R. S., advised that such shipment, with the purpose mentioned, and the landing abroad fulfill the condition of the exportation bond, and discharge the whisky from the internal revenue tax thereon. (1883) 17 Op. Atty. Gen. 579.

Where the holders of distilled spir-

its, bonded for exportation, shall have failed within the seven months specified in the bond (given under the regulations of internal revenue circular No. 282) to withdraw such spirits in fact from the distillery warehouse, a forfeiture of the bond follows, and the spirits are not protected from the domestic tax. (1885) 18 Op. Atty. Gen. 246.

Upon application of the principal and sureties on such bond, and for good cause shown, the Commissioner of Internal Revenue may, under existing regulations, extend the time named in the bond beyond seven months. Id.

The spirits covered by an exportation bond, after the failure to withdraw them and after the forfeiture of the bond, are liable to distraint under the act of May 28, 1880 (21 Stat. 145). Id.

The condition of the bond having been broken by the failure to withdraw the spirits, the government may also proceed upon the bond. Id.

The spirits covered by an exportation bond, after the failure to withdraw them and after the forfeiture of the bond, are liable to distraint under the act of May 28, 1880 (21 Stat. 145). Id.

The condition of the bond having been broken by the failure to withdraw the spirits, the government may also proceed upon the bond. Id.

The Secretary of the Treasury has power to make a regulation under which distilled spirits may be permitted to remain in warehouse after the expiration of three years, upon the distiller or owner of the spirits filing a declaration of his purpose to export the same in good faith, and giving a bond to do so within a given period. (1884) 18 Op. Atty. Gen. 92.

Deficiency tax after giving of bond and removal.—The evident intention of Congress in sections 5982, 5985, and 6034, ante, was that the tax should attach as soon as spirits are produced, and should not be evaded except on satisfactory proof under section 5945, ante, of destruction by fire or other casualty, and so under this section and under Act May 28, 1880, § 17 (21 Stat. 149), relating to deficiency on withdrawal entry for exportation, the collector had power to assess a tax upon a deficiency accruing after the giving of an exportation bond and the actual removal under a later exportation. The spirits are not in process of exportation on the giving of the bond. Exportation is defined to be the act of carrying or sending merchandise abroad, and it cannot be considered as beginning until the spirits are removed from the warehouse for that purpose. Thompson v. U. S. (1892) 12 Sup. Ct. 299, 300, 142 U. S. 471, 35 L. Ed. 1084.

Distilled spirits are not in process of exportation on the giving of an exportation bond for their removal from bonded warehouses, so as to render applicable the constitutional inhibition of taxation of articles exported from the states; and the collector of internal revenue is not thereby deprived of his power to assess a tax on the deficiency accruing by reason of an evaporation, after the giving of one exportation bond, on a subsequent removal of the spirits under a second exportation bond. Id.

The "tax on deficiency" in the quantity of distilled spirits exported, when compared with the quantity withdrawn for exportation (see Acts June 9, 1874, c. 259, and March 1, 1879, c. 125), may be collected by distraint upon the property of the withdrawer of the spirits, as well as by suit upon the transportation bond. (1879) 16 Op. Atty. Gen. 634.

Reimportation of spirits withdrawn from bond.—Distilled spirits withdrawn from bond under this section, which authorizes withdrawals for export without payment of the internal revenue tax, and forbids the relanding of the goods in the United States, cannot be reimported on payment of the original tax, pursuant to R. S. § 2500. Flagler v. Kidd (1897) 78 Fed. 341, 24 C. C. A. 123, reversing Kidd v. Flagler (C. C. 1893) 54 Fed. 367.

Whisky withdrawn from bonded warehouse, under this section and acts of June 9, 1874 (section 6126, post), and March 1, 1879 (section 6036, ante), in order to ship it to Bermuda, with the purpose, after landing it there, of transporting it back to this country and entering it either for warehousing or for consumption under section 2500, R. S. would not be an exportation within the meaning of this section and the act of 1874, and would not, upon return to this country, be entitled to the rights and privileges of imported merchandise under the warehouse laws. (1883) 17 Op. Atty. Gen. 579.

Allowance for leakage.—Where, in 1863 and 1864, distillers ship spirits to different cities within the United States under bond for foreign exportation pursuant to section 47, Act July 1, 1862 (12 Stat. 432), and then change their minds and put the spirits on the home market, they will not be entitled to the allowance for leakage in transportation given by the proviso to section 12, Act March 3, 1863 (12 Stat. 723), in the case of spirits "removed for sale" to a home market. Gregg v. U. S. (1868) 4 Ct. Cl. 103.

Allowance for leakage held unauthorized under former statute. Dair v. U. S. (1868) 4 Ct. Cl. 172.

Exportation of oil under former law.—Robison v. Tyson (1863) 46 Pa. (10 Wright) 286.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; Clay v. Swope (C. C. 1889) 38 Fed. 396, 399; Swan & Finch Co. v. U. S. (1901) 37 Ct. Cl. 101.

§ 6126. (Act June 9, 1874, c. 259, § 1, as amended, Act March 1, 1879, c. 125, § 10.) Transportation bond on withdrawal of distilled spirits from bonded warehouse for exportation; export bond.

Whenever the owner or owners of distilled spirits shall desire to withdraw the same from any distillery bonded warehouse for exportation under existing law, such owner or owners may at their option, in lieu of executing an export bond as now provided by law, give a transportation bond with sureties satisfactory to the collector of internal revenue, and under such rules and regulations as the Secretary of the Treasury may prescribe, conditioned for the due delivery thereof on board ship at a port of exportation to be named therein; and for the due performance on the part of the exporter or owner at the port of export of all the requirements in regard to notice of export, entry, and the giving of bond hereinafter specified; and in such case, on arrival of the spirits at the port of export, the exporter or owner at that port shall immediately notify the collector of the port of the fact, setting forth his intention to export the same, and the name of the vessel upon which the same are to be laden, and the port to which they are intended to be exported. He shall, after the quantity of spirits has been determined by the gauger and inspector, file with the collector of the port an export-entry verified by his oath or affirmation. He shall also give bond to the United States, with at least two sureties, satisfactory to the collector of customs, conditioned that the principal named in said bond will export the spirits as specified in said entry to the port designated in said entry, or to some other port without the jurisdiction of the United States. And upon the lading of such spirits, the collector of the port, after proper bonds for the exportation of the same have been completed by the exporter or owner at the port of shipment thereof, shall transmit to the collector of internal revenue of the district from which the said spirits were withdrawn for exportation, a clearance certificate and a detailed report of the gauger, which report shall show the capacity of each cask in wine-gallons, and the contents thereof in wine-gallons, proof-gallons, and taxable gallons. Upon receipt of the certificate and report, and upon payment of tax on deficiency, if any, the collector of internal revenue shall cancel the transportation bond. The bond required to be given for the landing at a foreign port of distilled spirits shall be cancelled upon the presentation of satisfactory proof and certificates that said distilled spirits have been landed at the port of destination named in the bill of lading or any other port without the jurisdiction of the United States or upon satisfactory proof that after shipment the same were lost at sea without fault or neglect of the owner or shipper thereof. And whenever a distiller of spirits in bond shall desire to change the packages in which the same is contained in order to export them, the Commissioner of Internal Revenue shall be authorized, under regulations to be prescribed by him, and upon the execution of proper bonds with sufficient sureties, to permit the withdrawal of so much spirits from bond and in new packages as the distiller shall desire to export as aforesaid. (18 Stat. 64. 20 Stat. 342.)

This section and the section next following were an act entitled "An act to facilitate the exportation of distilled spirits, and amendatory of the acts in relation thereto."

This section as originally enacted, was amended by inserting, in the first clause of the section, after the words "conditioned for the due delivery thereof on board ship at a port of exportation to be named therein," the words "and for the due performance on the part of the exporter or owner at the port of export of all the requirements in regard to notice of export, entry, and the giving of bond hereinafter specified," and by adding, at the end of the section as originally enacted, the provisions beginning with the words "and whenever

a distiller of spirits in bond shall desire," etc., to the end of the section as set forth here, by Act March 1, 1879, c. 125, § 10, last cited above.

Provisions for allowance for leakage or loss on withdrawal of spirits from distillery warehouses for exportation were made by Act Dec. 20, 1879, c. 1, § 1, ante, § 6055.

Notes of Decisions

See notes under §§ 5908 and 6125, ante.

§ 6127. (Act June 9, 1874, c. 259, § 2.) Expense of providing and affixing stamps for casks for exportation.

On and after the first day of July, eighteen hundred and seventy-four, for the expense of providing and affixing the stamps to each cask containing distilled spirits for exportation, there shall be charged ten cents for each stamp instead of twenty-five cents as now required by law. (18 Stat. 64.)

See notes to the preceding section.

This section superseded a provision relating to this subject made by R. S. § 3330, ante, § 6125.

§ 6127a. (Act Sept. 8, 1916, c. 463, § 403.) Transfer in tanks or tank cars of distilled spirits for export.

That under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, alcohol or other distilled spirits of a proof strength of not less than one hundred and eighty degrees intended for export free of tax may be drawn from receiving cisterns at any distillery, or from storage tanks in any distillery warehouse, for transfer to tanks or tank cars for export from the United States, and all provisions of existing law relating to the exportation of distilled spirits not inconsistent herewith shall apply to spirits removed for export under the provisions of this Act. (39 Stat. 788.)

See § 6044, ante.

§ 6128. (R. S. § 3331.) Release of distillery before judgment, in what cases.

No distillery nor distilling-apparatus seized for any violation of law shall be released to the claimant or to any intervening party before judgment, except in case of a distillery for which bond has been given and which has a registered producing capacity of one hundred and fifty proof-gallons or more per day, on showing, by sufficient affidavits, that there are hogs or other live stock, not less than fifty head in number, depending for their feed on the products of said distillery, which would suffer injury if the business of such distillery is stopped. Such distillery, in that case, may be released to the claimant, or to any other intervening party, at the discretion of the court, on a bond to be given and approved in open court, with two or more sureties, for the full appraised value of all the property seized, to be ascertained by three competent appraisers designated and appointed by the court.

Act July 20, 1868, c. 186, § 42, 15 Stat. 142.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6129. (R. S. § 3332, as amended, Act March 1, 1879, c. 125, § 5.) Distillery to be destroyed in certain cases of forfeiture; witnesses of destruction; reimbursement.

When a judgment of forfeiture, in any case of seizure, is recovered against any distillery used or fit for use in the production of distilled spirits, because no bond has been given, or against any distillery used or fit for use in the production of spirits, having a registered producing capacity of less than one hundred and fifty gallons a day, for any violation of law, of whatever nature, every still, doubler,

worm, worm-tub, mash-tub, and fermenting-tub therein shall be so destroyed as to prevent the use of the same or of any part thereof for the purpose of distilling; and the materials shall be sold as in case of other forfeited property. And in case of seizure of a still, doubler, worm, worm-tub, mash-tub, fermenting-tub, or other distilling apparatus, having a less producing capacity than one hundred and fifty gallons per day, for any offense involving forfeiture of the same, where said apparatus shall be of less than five hundred dollar's value, and where it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same only so far as to prevent the use thereof, or any part thereof, for the purpose of distilling: Provided, That such destruction shall be in the presence of at least one credible witness, and that such witness shall unite with the said officer in a duly sworn report of said seizure and destruction, to be made to the Commissioner of Internal Revenue, in which report they shall set forth the grounds of the claim of forfeiture, the reasons for such seizure and destruction, their estimate of the fair cash value of the apparatus destroyed, and also of the materials remaining after such destruction, and a statement that, from facts within their own knowledge, they have no doubt whatever that said distilling apparatus was set up for use and not registered, or had been used in the unlawful distillation of spirits, and that it was impracticable to remove the same to a place of safe storage. Within one year after such destruction the owner of the apparatus so destroyed may make application to the Secretary of the Treasury, through the Commissioner of Internal Revenue, for reimbursement of the value of the same; and unless it shall be made to appear to the satisfaction of the Secretary and the Commissioner that said apparatus had been used in the unlawful distillation of spirits, the Secretary shall make an allowance to said owner, not exceeding the value of said apparatus, less the value of said materials as estimated in said report; and if the claimant shall thereupon satisfy said Secretary and Commissioner that said unlawful use of the apparatus had been without his consent or knowledge, he shall still be entitled to such compensation, but not otherwise. And in case of a wrongful seizure and destruction of property under the foregoing provisions, the owner thereof shall have right of action on the official bond of the officer who occasioned the destruction for all damages caused thereby.

Act July 20, 1868, c. 186, § 42, 15 Stat. 142. Act June 6, 1872, c. 315, § 12, 17 Stat. 240. Act March 1, 1879, c. 125, § 5, 20 Stat. 339.

This section, as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the provisions beginning with the words "And in case of seizure of a still, doubler, worm, worm-tub, mash-tub, fermenting-tub, or other distilling apparatus," etc., to the end of the section as set forth here, by Act March 1, 1879, c. 125, § 5, cited above.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6130. (R. S. § 3333.) When burden of proof is on claimant of spirits seized.

Whenever seizure is made of any distilled spirits found elsewhere than in a distillery or distillery warehouse, or other warehouse for distilled spirits authorized by law, or than in the store or place of business of a rectifier, or of a wholesale liquor-dealer, or than in transit from any one of said places; or of any distilled spirits found in any one of the places aforesaid, or in transit therefrom, which have not been received into or sent out therefrom in conformity to law, or in regard to which any of the entries required by law to be made in the books of the owner of such spirits, or of the store-keeper, wholesale dealer, or rectifier, have not been made at the time or in the

manner required, or in respect to which the owner or person having possession, control, or charge of said spirits, has omitted to do any act required to be done, or has done or committed any act prohibited in regard to said spirits, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed, and that all the requirements of the law in relation to the payment of the tax have been complied with.

Act July 20, 1868, c. 186, § 36, 15 Stat. 140.

Notes of Decisions

Burden of proof under former law.—A prima facie case in favor of a claimant held to have been completely overcome and the burden again fairly cast on the claimant under section 45 of Act July 13, 1866 (14 Stat. 163), providing that the burden is on the claimant to show that the requirements of the law have been complied with. Andre v. U. S. (1876) 94 U. S. 86, 89, 90, 24 L. Ed. 57.

Cited without definite application. Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6131. (R. S. § 3334, as amended, Act March 1, 1879, c. 125, § 5.) Spirits sold under judicial process subject to tax; sale of spirits for taxes.

All distilled spirits forfeited to the United States, sold by order of court, or under process of distraint, shall be sold subject to tax; and the purchaser shall immediately, and before he takes possession of said spirits, pay the tax thereon. And any distilled spirits heretofore condemned, and now in the possession of the United States, shall be sold as herein provided. If any tax-paid stamps are affixed to any cask or package so condemned, such stamps shall be obliterated and destroyed by the collector or marshal after forfeiture, and before such sale. Provided: That in all cases wherein it shall appear that any distilled spirits offered for sale on distraint for taxes, where the taxes, on such spirits have not been paid, or offered for sale for the benefit of the United States as forfeited spirits under order of court or under proceeding pursuant to section thirty-four hundred and sixty of the Revised Statutes, will not, by reason of such spirits being below proof, being a price equal to the tax due and payable thereon, but will bring a price equal to, or greater than, the tax on said spirits, computed only upon the proof-gallons contained in the packages, without regard to the greater number of wine-gallons contained therein, then, and in such case, upon sale being so made, tax-paid stamps to the amount required to stamp such spirits as if the tax thereon were only on the proof-gallons thereof, may, under such rules and regulations as the Commissioner of Internal Revenue shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered. Any collector using or furnishing stamps in manner aforesaid, on presenting vouchers satisfactory to the Commissioner of Internal Revenue, shall be allowed credit for the same in settling his stamp account with the department. In such cases, the officer selling the distilled spirits shall affix, or cause to be affixed, to the same the tax paid stamps so provided, and shall write across the face of such stamps the true number of proof and wine gallons contained in the package, the amount of tax actually paid thereon, and also the words "Affixed under provisions of act of ——— 1879" (inserting the date of the approval of this act).

Act July 20, 1868, c. 186, § 58, 15 Stat. 150. Act March 1, 1879, c. 125, § 5, 20 Stat. 340.

This section, as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the proviso as set forth here, by Act March 1, 1879, c. 125, § 5, cited above.

The word "being," after the words "by reason of such spirits being below proof," was evidently intended for the word "bring."

R. S. § 3460, mentioned in this section, is set forth post, § 6362.

Notes of Decisions

See notes under § 6034.

Forfeiture including stamps as well as property.—Under this section it was held that, where stamped liquors were forfeited for a violation of the internal revenue law, the forfeiture included the stamps as well as the property. Harkins v. Williard (1906) 146 Fed. 703, 77 C. C. A. 129.

Proceeds of sale of forfeited spirits.—The proceeds of a sale of spirits forfeited to the United States for violation of the internal revenue law belong exclusively to the government, and cannot be applied to the payment of the tax thereon. Harkins v. Williard (1906) 146 Fed. 703, 77 C. C. A. 129.

Proceeds of sale for nonpayment of tax.—On a seizure and sale of distilled spirits under the internal revenue law for nonpayment of the tax thereon, the proceeds are applicable on such tax, and, if sufficient, extinguish the same; and in an action by the government on a distiller's bond to recover a tax on spirits an answer containing allegations under which the defendant is entitled to prove such a state of facts is not demurrable. United States Fidelity & Guaranty Co. v. U. S. (1907) 158 Fed. 604, 85 C. C. A. 426, reversing judgment U. S. v. United States Fidelity & Guaranty Co. (D. C. 1906) 144 Fed. 866.

Right of district attorneys to commission.—District attorneys are entitled, under R. S. § 825, ante, § 1379, to a commission upon the "tax" required to be paid by the purchasers of forfeited property sold in pursuance of R. S. § 3334. (1876) 15 Op. Atty. Gen. 566.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558; U. S. v. South Branch Distilling Co. (C. C. 1878) Fed. Cas. No. 16,359.

§ 6132. (Act June 7, 1906, c. 3047, § 1.) Denatured alcohol for use in arts, etc., free of tax.

From and after January first, nineteen hundred and seven, domestic alcohol of such degree of proof as may be prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury, may be withdrawn from bond without the payment of internal-revenue tax, for use in the arts and industries, and for fuel, light, and power, provided said alcohol shall have been mixed in the presence and under the direction of an authorized Government officer, after withdrawal from the distillery warehouse, with methyl alcohol or other denaturing material or materials, or admixture of the same, suitable to the use for which the alcohol is withdrawn, but which destroys its character as a beverage and renders it unfit for liquid medicinal purposes; such denaturing to be done upon the application of any registered distillery in denaturing bonded warehouses specially designated or set apart for denaturing purposes only, and under conditions prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

The character and quantity of the said denaturing material and the conditions upon which said alcohol may be withdrawn free of tax shall be prescribed by the Commissioner of Internal Revenue, who shall, with the approval of the Secretary of the Treasury, make all necessary regulations for carrying into effect the provisions of this Act.

Distillers, manufacturers, dealers and all other persons furnishing, handling or using alcohol withdrawn from bond under the provisions of this Act shall keep such books and records, execute such bonds and render such returns as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. Such books and records shall be open at all times to the inspection of any internal-revenue officer or agent. (34 Stat. 217.)

This was the first section of the Denatured Alcohol Act, cited above.

Section 2 of the act is set forth post, § 6136.

For the employment of additional force, purchases of appliances and expenses incident to the execution of this act, the sum of $250,000 was appropriated, and for a period of two years, such force was required to be ap-

pointed, without compliance with the Civil Service Act, by section 3. And the Secretary of the Treasury was required to make a report to Congress of appointments and compensation, regulations prescribed, and as to additional legislation necessary, by section 4. These two sections are omitted, as temporary merely.

Further provisions relating to the subjects of this section were made by Act March 2, 1907, c. 2571, set forth post, §§ 6133–6135, and by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § 14, N, subsec. 2, post, § 6137.

Notes of Decisions

Meaning of term "alcohol."—The term "alcohol," as used in this section, and section 6066, ante, embraces the various grades of alcohol as reclassified in Internal Revenue Circular No. 723, and referred to therein as pure, neutral, or cologne spirits, and as commercial alcohol. (1909) 27 Op. Atty. Gen. 226.

Opinions of January 11, 1908, and March 25, 1908 (26 Op. Atty. Gen. 476, 542), dealt with the meaning of the terms under the food and drugs act, to secure regulations for branding spirits in conformity with the intent of that act, and have no application to the above section. Id.

Former statute as to use of alcohol in arts.—Section 61 of the act of August 27, 1894 (28 Stat. 509, 567, c. 349), provides that any manufacturer finding it necessary to use alcohol in the arts, etc., "may use the same under regulations to be prescribed by the secretary of the treasury, and on satisfying the collector * * * that he has complied with such regulation and has used such alcohol therein, and exhibiting and delivering up the stamps which show that a tax has been paid thereon, shall be entitled to receive" repayment of such tax. Held, that the making of such regulations was a condition precedent to the existence of any right of rebate, and, the secretary having found it impracticable to make any proper and enforceable regulations without further legislation by congress, which was never enacted, no right of rebate arose under the statute. Dunlap v. U. S. (1899) 19 Sup. Ct. 319, 173 U. S. 65, 43 L. Ed. 616, affirming judgment (1897) 33 Ct. Cl. 135.

Cited without definite application, U. S. v. Lamson (C. C. 1908) 165 Fed. 80, 85.

§ 6133. (Act March 2, 1907, c. 2571, § 1.) Denatured alcohol for manufacture of chemicals, free of tax; rum.

Notwithstanding anything contained in the Act entitled "An Act for the withdrawal from bond tax free of domestic alcohol when rendered unfit for beverage or liquid medicinal uses by mixture with suitable denaturing materials," approved June seventh, nineteen hundred and six, domestic alcohol when suitably denatured may be withdrawn from bond without the payment of internal-revenue tax and used in the manufacture of ether and chloroform and other definite chemical substances where said alcohol is changed into some other chemical substance and does not appear in the finished product as alcohol: Provided, That rum of not less than one hundred and fifty degrees proof may be withdrawn, for denaturation only, in accordance with the provisions of said Act of June seventh, nineteen hundred and six, and in accordance with the provisions of this Act. (34 Stat. 1250.)

This section and the two sections next following were part of the act to amend the Denatured Alcohol Act, cited above.

Section 4 of this act, relating to the use of cisterns or tanks in small distilleries producing alcohol for denaturation, was repealed by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, N, subsec. 2, post, § 6137.

Act June 7, 1906, c. 3047, mentioned in this section, is set forth ante, § 6132, and post, § 6136.

§ 6134. (Act March 2, 1907, c. 2571, § 2.) Central denaturing bonded warehouses authorized.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may authorize the establishment of central denaturing bonded warehouses, other than those at distilleries, to which alcohol of the required proof may be transferred from distilleries or distillery bonded warehouses without the payment of internal-revenue tax, and in which such alcohol may be stored and denatured. The establishment, operation, and custody of such warehouses shall be under such regulations and upon the execution of such bonds as

the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. (34 Stat. 1250.)

See notes to section 1 of this act, ante, § 6133.

Special warehouses for denaturing purposes were required by Act June 7, 1906, c. 3047, § 1, ante, § 6132.

§ 6135. (Act March 2, 1907, c. 2571, § 3, as amended by Act June 22, 1916, c. 163.) Transfer of alcohol for denaturation from distilleries to denaturing bonded warehouses or to central denaturing plants.

Alcohol of the required proof may be drawn off, for denaturation only, from receiving cisterns in the cistern room of any distillery for transfer by pipes direct to any denaturing bonded warehouse on the distillery premises or to closed metal storage tanks situated in the distillery bonded warehouse, or from such storage tanks to any denaturing bonded warehouse on the distillery premises, and denatured alcohol may also be transported from the denaturing bonded warehouse, in such manner and by means of such packages, tanks or tank cars, and on the execution of such bonds, and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. And further, alcohol to be denatured may be withdrawn without the payment of internal-revenue tax from the distillery bonded warehouse for shipment to central denaturing plants in such packages, tanks and tank cars, under such regulations, and on the execution of such bonds as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury:

Provided, That where alcohol is withdrawn from a distillery warehouse for shipment to a central denaturing bonded warehouse under the provisions of this Act it shall be lawful under such rules, regulations, and limitations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for an allowance to be made for leakage or loss by any accident, and without any fraud or negligence of the distiller, owner, carrier, or their agents or employees, occurring during transportation from a distillery warehouse to a central denaturing bonded warehouse. (34 Stat. 1250. 39 Stat. 233.)

See notes to section 1 of this act, ante, § 6133.

Act March 2, 1907, c. 2571, § 3, is amended by Act June 22, 1916, c. 163, by adding thereto the proviso set forth in the last paragraph as shown above.

§ 6136. (Act June 7, 1906, c. 3047, § 2.) Unlawful use of alcohol withdrawn, etc., punishable.

Any person who withdraws alcohol free of tax under the provisions of this Act and regulations made in pursuance thereof, and who removes or conceals same, or is concerned in removing, depositing or concealing same for the purpose of preventing the same from being denatured under governmental supervision, and any person who uses alcohol withdrawn from bond under the provisions of section one of this Act for manufacturing any beverage or liquid medicinal preparation, or knowingly sells any beverage or liquid medicinal preparation made in whole or in part from such alcohol, or knowingly violates any of the provisions of this Act, or who shall recover or attempt to recover by redistillation or by any other process or means, any alcohol rendered unfit for beverage or liquid medicinal purposes under the provisions of this Act, or who knowingly uses, sells, conceals, or otherwise disposes of alcohol so recovered or redistilled, shall on conviction of each offense be fined not more than five thousand dollars, or be imprisoned not more than five years, or both, and shall, in addition, forfeit to the United States all personal property used in connection with his business, together with the buildings and lots or parcels of ground constituting the premises on which said unlawful

acts are performed or permitted to be performed: Provided, That manufacturers employing processes in which alcohol, used free of tax under the provisions of this Act, is expressed or evaporated from the articles manufactured, shall be permitted to recover such alcohol and to have such alcohol restored to a condition suitable solely for reuse in manufacturing processes under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. (34 Stat. 217.)

See notes to section 1 of this act, ante, § 6132.

Cited without definite application, U. S. v. Lamson (C. C. 1908) 165 Fed. 80, 85.

§ 6137. (Act Oct. 3, 1913, c. 16, § IV, N, subsec. 2.) Manufacture of alcohol free of tax for denaturation.

Subsection 2. From and after the first day of January, nineteen hundred and fourteen, under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury may prescribe, any farmer or association of farmers, any fruit grower or association of fruit growers, or other person or persons may manufacture alcohol free of tax for denaturization only, out of any of the products of farms, fruit orchards, or any substance whatever, on condition that such alcohol shall be directly conveyed from the still by continuous closed pipes to locked and sealed receptacles in which the same may be rendered unfit for use as an intoxicating beverage by an admixture of such denaturing materials as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, or where such alcohol is of insufficient proof to be denatured, the same may be transferred in bond from such locked and sealed receptacles to a central distilling and denaturing plant as hereinafter provided.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may authorize the establishment of central distilling and denaturing plants to which alcohol produced under the provisions of this Act, free of tax, may be transferred, redistilled and denatured under such regulations, and upon the execution of such notices and bonds as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Any central distilling and denaturing plant provided for in section two of this Act may, in addition to the spirits produced under section one of this Act, use any of the products of farms, fruit orchards, or any substance whatever, for the manufacture of alcohol for denaturation only: Provided, That at such distilleries the use of cisterns or tanks of such size and construction as may be deemed expedient shall be permitted in lieu of distillery bonded warehouses under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Any person who under the provisions of this Act shall fail to register, or shall falsely register, any still or distilling apparatus used by him, or who shall fraudulently remove or conceal any distilled spirits produced by him, or who shall fail to comply with all the requirements of this Act, or any regulations issued pursuant thereto, respecting the production and denaturization of distilled spirits; and any person who shall recover or attempt to recover by redistillization or by any other process or means, any distilled spirits after the same has been denatured, shall, on conviction, for each offense, be fined not more than $5,000 or be imprisoned for not more than five years, or both, and shall in addition thereto forfeit to the United States all real and personal property used in connection therewith.

Subsection two of section thirty-two hundred and forty-four of

the Revised Statutes of the United States shall not apply to stills and worms manufactured for use in distilling, provided for in section one of this Act, but the manufacturer or owner of such distilling apparatus shall give notice to the collector of internal revenue of the district in which the said apparatus is made or to which it is removed, of each still, or worm, manufactured, sold, used, or exchanged under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Section four of the Act of March second, nineteen hundred and seven, amendatory of the Act of June seventh, nineteen hundred and six, is hereby repealed, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall exempt distillers operating under this Act from the provisions of sections thirty-two hundred and eighty-three and thirty-three hundred and nine of the Revised Statutes of the United States, and from such other provisions of existing laws relating to distilleries, including the giving of bonds, as may be deemed expedient by said officials: Provided, however, That the Commissioner of Internal Revenue shall assess and collect the tax on any spirits unlawfully produced or produced and not accounted for by any such distiller. (38 Stat. 199.)

This subsection was part of subdivision N of section IV of the Underwood Tariff Act, cited above.

See notes to subdivision A of said section, ante, § 5292.

The references in this subsection to "section two of this act" and to "section one of this act" were intended, evidently, for the second and first paragraphs, respectively, of this subsection.

R. S. § 3244, subsec. 2, and R. S. § 3283, mentioned in this subsection, are set forth ante, §§ 5971, 6024. R. S. § 3309, also mentioned in this subsection, is set forth ante, § 6089.

Section 4 of Act March 2, 1907, amendatory of the Denatured Alcohol Act of June 7, 1906, ante, § 6132, which section was repealed by this subsection, related to the use of cisterns or tanks in small distilleries producing alcohol for denaturation.

CHAPTER FIVE

Fermented Liquors

Sec.
6138. Gallon, definition of.
6139. Brewer's notice of business.
6140. Brewer's bond; renewals.
6141. Brewer's books and monthly statement.
6142. Monthly verification of entries in books.
6143. Tax on fermented liquors; fractional parts of a barrel, how estimated.
6144. Tax on fermented liquors; cancellation of stamps.
6144a. Tax on beer and other fermented liquor.
6145. Materials used in producing fermented liquors not to be assessed; fraud; evidence.
6146. Evading tax, making or procuring false entries, etc.; penalty.
6147. Stamps, how supplied and sold.
6148. Stamps, how procured, affixed, and canceled; penalty for fraud or neglect.
6149. Selling, removing, or buying fermented liquor in packages without stamp, or false stamp, or with twice-used stamp; penalty.
6150. Drawing fermented liquor from package without stamp, or with false stamp, or without defacing stamp; penalty.
6151. Removal for storage without stamps.
6152. Exportation of fermented liquors in bond; drawback not allowed.
6153. Making, selling, or using false stamps or dies; removing stamps, and using, etc., removed stamps; penalty.
6154. Sour malt liquors, removable in peculiar packages, without stamps.
6155. Brewers selling at retail at brewery, to affix stamps and keep account.
6156. Name of manufacturer, etc., to be marked on packages; penalty for removing marks, etc.
6157. Permit to carry on business at another place on account of accident.
6158. Unfermented worts sold to other brewers, how taxed.
6159. Possession of fermented liquor after removal from warehouse,

Sec.
when tax not paid, cause of forfeiture; absence of stamps to be notice and evidence.
6160. Removal or defacement of stamps by others than the owner; penalty.
Sec.
6161. Withdrawing liquor from unstamped packages for bottling or bottling on brewery premises; penalty; withdrawal by pipe line; payment of tax; regulations; penalties; forfeitures.

§ 6138. (Act March 1, 1879, c. 125, § 21.) Gallon, definition of.

The word "gallon," wherever used in the internal-revenue law, relating to beer, lager-beer, ale, porter, and other similar fermented liquors, shall be held and taken to mean a wine-gallon, the liquid measure containing two hundred and thirty-one cubic inches. (20 Stat. 351.)

This section was part of an act entitled "An act to amend the laws relating to internal revenue," cited above.

Cited without definite application,
Nichols v. Beard (C. C. 1883) 15 Fed. 435, 438.

§ 6139. (R. S. § 3335.) Brewer's notice of business.

Every brewer shall, before commencing or continuing business, file with the collector, or proper deputy collector, of the district in which he designs to carry it on a notice in writing, stating the name of the person, company, corporation, or firm, the names of the members of any such company or firm, the places of residence of such persons, a description of the premises on which the brewery is situated, and of his or their title thereto, and the name of the owner thereof.

Act July 13, 1866, c. 184, § 46, 14 Stat. 163. Act June 6, 1872, c. 315, § 16, 17 Stat. 245.

§ 6140. (R. S. § 3336, as amended, Act April 29, 1886, c. 64.) Brewer's bond; renewals.

Every brewer, on filing notice as aforesaid of his intention to commence or continue business, shall execute a bond to the United States, to be approved by the collector of the district, in a sum equal to three times the amount of the tax which, in the opinion of the collector, said brewer will be liable to pay during any one month, and conditioned that he shall pay, or cause to be paid, as herein provided, the tax required by law on all beer, lager beer, ale, porter, and other fermented liquors made by or for him, before the same is sold or removed for consumption or sale, except as hereinafter provided; and that he shall keep, or cause to be kept, a book, in the manner and for the purposes hereinafter specified, which shall be open to inspection by the proper officers, as by law required; and that he shall in all respects faithfully comply, without fraud or evasion, with all requirements of law relating to the manufacture and sale of any malt liquors aforesaid; and he shall execute a new bond once in four years and whenever required so to do by said collector, in the amount above named and conditioned as above provided, which bond shall be in lieu of any former bond or bonds of such brewer in respect to all liabilities accruing after its approval by said collector.

Act July 13, 1866, c. 184, § 47, 14 Stat. 164. Act June 6, 1872, c. 315, § 17, 17 Stat. 245. Act April 29, 1886, c. 64, 24 Stat. 15.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "to commence or continue business," the words "and on the first day of May in each succeeding year thereafter," and by striking out, after the words "in a sum equal to" the word "twice," and inserting in the place thereof the words "three times," and by adding at the end of the section as originally enacted the provision for the execution of new bonds as set forth here, by Act April 29, 1886, c. 64, cited above.

§ 6141. (R. S. § 3337.) Brewer's books and monthly statement.

Every person who owns or occupies any brewery, or premises used or intended to be used for the purpose of brewing or making such fermented liquors, or who has such premises under his control or superintendence, as agent for the owner or occupant, or has in his possession or custody any brewing materials, utensils, or apparatus, used or intended to be used on said premises in the manufacture of beer, lager-beer, ale, porter, or other similar fermented liquors, either as owner, agent, or superintendent, shall, from day to day, enter, or cause to be entered, in a book to be kept by him for that purpose, the kind of such malt liquors, the estimated quantity produced in barrels, and the actual quantity sold or removed for consumption or sale in barrels or fractional parts of barrels. He shall also, from day to day, enter, or cause to be entered, in a separate book to be kept by him for that purpose, an account of all materials by him purchased for the purpose of producing such fermented liquors, including grain and malt. And he shall render to the collector, or the proper deputy collector, on or before the tenth day of each month, a true statement, in writing, in duplicate, taken from his books, of the estimated quantity in barrels of such malt liquors brewed, and the actual quantity sold or removed for consumption or sale during the preceding month; and shall verify, or cause to be verified, the said statement, and the facts therein set forth, by oath, to be taken before the collector of the district, or proper deputy collector, according to the form required by law. Said books shall be open at all times for the inspection of any collector, deputy collector, inspector, or revenue agent, who may take memorandums and transcripts therefrom.

Act July 13, 1866, c. 184, § 49, 14 Stat. 164. Act June 6, 1872, c. 315, § 19, 17 Stat. 245.

This section was not to be construed to authorize an assessment on materials used in producing fermented liquors, by Act May 13, 1876, c. 95, post, § 6145.

Notes of Decisions

See note under § 5948, ante.

"Malt liquor" and "fermented liquor" synonymous.—The terms "malt liquor" and "fermented liquor" are used synonymously in Act June 6, 1872, and the brewer is expressly required to enter all malt liquors in his book, whether sold to other brewers or the public. U. S. v. Dooley (C. C. 1874) Fed. Cas. No. 14,984.

Book of general accounts as compliance with statute.—A book of general accounts, kept by a brewer in conducting his business, is not such a book as is required to be kept by section 49 of the act of 1866. U. S. v. Bellingstein (D. C. 1872) Fed. Cas. No. 14,566.

Ignorance or carelessness as excusing neglect to comply with statute.—Ignorance or carelessness will not excuse the neglect of a brewer to keep the prescribed books and accounts. Act July 13, 1866, § 49. U. S. v. Foster (C. C. 1871) Fed. Cas. No. 15,142.

Cited without definite application, Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Lamson (C. C. 1908) 165 Fed. 80.

§ 6142. (R. S. § 3338.) Monthly verification of entries in books.

The entries made in such books shall, on or before the tenth day of each month, be verified by the oath of the person by whom they are made. The said oath shall be written in the book at the end of such entries, and be certified by the officer administering the same, and shall be in form as follows: "I do swear (or affirm) that the foregoing entries were made by me; and that they state truly, according to the best of my knowledge and belief, the estimated quantity of the whole amount of such malt liquors brewed, and the actual quantity sold, and the actual quantity removed, from the brewery owned by ———, in the county of ———; and, further, that I have no knowledge of any matter or thing required by law to be stated in said entries which has been omitted therefrom." And the owner,

agent, or superintendent aforesaid shall also, in case the original entries made in his book were not made by himself, subjoin thereto the following oath, to be taken in manner as aforesaid: "I do swear (or affirm) that, to the best of my knowledge and belief, the foregoing entries fully set forth all the matters therein required by law; and that the same are just and true; and that I have taken all the means in my power to make them so."

Act July 13, 1866, c. 184, § 50, 14 Stat. 165. Act June 6, 1872, c. 315, § 20, 17 Stat. 246.

Cited without definite application, Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Lamson (C. C. 1908) 165 Fed. 80.

§ 6143. (R. S. § 3339.) Tax on fermented liquors; fractional parts of a barrel, how estimated.

[There shall be paid on all beer, lager-beer, ale, porter, and other similar fermented liquors, brewed or manufactured and sold, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, a tax of one dollar for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for any fractional part of a barrel.] In estimating and computing such tax, the fractional parts of a barrel shall be halves, thirds, quarters, sixths, and eighths; and any fractional part of a barrel containing less than one-eighth shall be accounted one-eighth; more than one-eighth, and not more than one-sixth, shall be accounted one-sixth; more than one-sixth, and not more than one-fourth, shall be accounted one-fourth; more than one-fourth, and not more than one-third, shall be accounted one-third; more than one-third, and not more than one-half, shall be accounted one-half; more than one-half, and not more than one barrel, shall be accounted one barrel; and more than one barrel, and not more than sixty-three gallons, shall be accounted two barrels, or a hogshead. The said tax shall be paid by the owner, agent, or superintendent of the brewery or premises in which such fermented liquors are made, and in the manner and at the time hereinafter specified.

Act July 13, 1866, c. 184, § 48, 14 Stat. 164. Act June 6, 1872, c. 315, § 18, 17 Stat. 245. Act March 2, 1867, c. 169, § 10, 14 Stat. 475. Act March 3, 1873, c. 254, 17 Stat. 586.

The materials used in producing fermented liquors were not subjected to assessment by anything contained in R. S. § 3337, by Act May 13, 1876, c. 95, post, § 6145.

The word "gallon," as used in the internal revenue law relating to fermented liquors, was defined by Act March 1, 1879, c. 125, § 21, ante, § 6138.

The tax on fermented liquors, imposed by this section, increased by the War Revenue Act of June 13, 1898, c. 448, § 1, 30 Stat. 448, to $2 a barrel, and afterwards reduced by an amendment of that act by Act March 2, 1901, c. 806, § 1, 31 Stat. 938, to $1.60 a barrel, was again reduced to $1 a barrel, and a like rate for any other quantity or for any fractional part of a barrel, as authorized and defined by this section, by a further amendment of Act June 13, 1898, c. 448, § 1, by Act April 12, 1902, c. 500, § 1, post, § 6144. The tax was increased to $1.50 per barrel by Act Sept. 8, 1916, c. 463, § 400, post, § 6144a.

The words in brackets are superseded by Act Oct. 22, 1914, c. 331, § 1, 38 Stat. 745, and Act Sept. 8, 1916, c. 463, § 400, post, § 6144a, amending this section.

Payment of tax on fermented liquors removed from brewery to bottling house by means of pipe or conduit is provided for in Act Sept. 8, 1916, c. 463, § 406, post, § 6161.

Notes of Decisions

Review of question as to tax.—In an action to recover the amount of internal revenue taxes which plaintiff was required to pay as a brewer and for beer stamps, tried by stipulation without a jury, it was stipulated that plaintiff manufactured a beverage from ingredients and in a manner stated, but it was a disputed question, upon which testimony was taken, whether such bev-

erage was a "fermentated liquor manufactured from malt, wholly or in part, or from any substitute therefor," within the meaning of section 5971, ante, which rendered plaintiff liable for special tax as a brewer, and which was subjected to tax under this section. Held, that requests to the court to hold as positions of law on the facts stipulated that plaintiff was not a brewer, and the beverage was not subject to tax under the statute, conceding the practice of requiring findings upon propositions of law in such cases to be permissible, involved a finding of the disputed question of fact whether the beverage was a fermented liquor, and, as such requests were not based on all the evidence, so as to be treated as a motion for judgment as matter of law on the entire case, the ruling of the court thereon was not reviewable on a writ of error. Davis v. Daugherty (1901) 105 Fed. 769, 45 C. C. A. 39.

Additional tax under the war revenue act of 1898.—See (1898) 22 Op. Atty. Gen. 279.

Construction of former law. — Construction of Act 1862, § 50, in relation to the taxation of beer. Shaefer v. Ketchum (C. C. 1867) Fed. Cas. No. 12,693.

Cited without definite application, Nunn v. William Gerst Brewing Co. (1900) 99 Fed. 939, 941, 40 C. C. A. 190.

§ 6144. (Act June 13, 1898, c. 448, § 1, as amended, Act March 2, 1901, c. 806, § 1, and Act April 12, 1902, c. 500, § 1.) Tax on fermented liquors; cancellation of stamps.

[There shall be paid on all beer, lager beer, ale, porter, and other similar fermented liquor, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, in lieu of the tax now imposed by law, a tax of one dollar for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for any fractional part of a barrel, as authorized and defined by section thirty-three hundred and thirty-nine of the Revised Statutes of the United States:] Provided, That in lieu of or in addition to the present requirements of law in that respect all stamps used for denoting the tax upon fermented liquors or other taxes may, in the discretion of the Commissioner of Internal Revenue, be canceled by perforations to be made in such manner and form as the Commissioner may, by regulations, prescribe.

Act June 13, 1898, c. 448, § 1, 30 Stat. 448. Act March 2, 1901, c. 806, § 1, 31 Stat. 938. Act April 12, 1902, c. 500, § 1, 32 Stat. 96.

This section, as originally enacted in the War Revenue Act of 1898, cited above, increased the tax on fermented liquors to $2 a barrel.

The two provisos at the end of the section, as originally enacted, provided for a discount upon sales of stamps to brewers, and for the collection of the tax on fermented liquors stored in warehouses.

It was amended by reducing the tax to $1.60 a barrel, and by omitting the provisos at end of the section and inserting the proviso set forth here, by Act March 2, 1901, c. 806, § 1, cited above.

It was further amended by reducing the tax to $1 a barrel, making the section read as set forth here, by Act April 12, 1902, c. 500, § 1, last cited above. But see Act Sept. 8, 1916, c. 463, § 400, post, § 6144a, increasing the tax to $1.50 per barrel, which superseded Act Oct. 22, 1914, c. 331, 38 Stat. 745.

R. S. § 3339, mentioned in this section, imposing the same tax and defining the fractional parts of a barrel for the purpose of computing the tax, is set forth ante, § 6143.

Previous provisions for the cancellation of stamps were made by R. S. § 3342, as amended by Act March 3, 1875, c. 154, post, § 6148.

The words in brackets are superseded by Act Sept. 8, 1916, c. 463, § 400, post, § 6144a.

§ 6144a. (Act Sept. 8, 1916, c. 463, § 400.) (400) Tax on beer and other fermented liquor.

That there shall be levied, collected, and paid a tax of $1.50 on all beer, lager beer, ale, porter, and other similar fermented liquor, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for the fractional parts of a barrel authorized and de-

fined by law. And section thirty-three hundred and thirty-nine of the Revised Statutes is hereby amended accordingly. (39 Stat. 783.)

See §§ 6143, 6144, ante, and notes thereunder.

This section superseded Act Oct. 22, 1914, c. 331, § 1, which read as above, with the addition of the following proviso:

"Provided, That the additional tax imposed in this section on all fermented liquors stored in warehouse to which a stamp has been affixed shall be assessed and collected in the manner now provided by law for the collection of taxes not paid by stamp: Provided further, That until appropriate stamps are prepared and furnished, the stamps heretofore used to denote the payment of the internal-revenue tax on fermented liquor may be stamped or imprinted with a suitable device to denote the new rate of tax herein imposed, and shall be affixed to all packages containing such liquors on which the tax imposed by this Act is paid. Any person having possession of unaffixed stamps heretofore issued for the payment of the tax on fermented liquors shall present the same to the collector of the district, who shall receive them at the price paid for such stamps by the purchaser and issue in lieu thereof new or imprinted stamps at the rate provided in this Act."

R. S. § 3339, referred to, is set forth ante, § 6143.

§ 6145. (May 13, 1876, c. 95.) Materials used in producing fermented liquors not to be assessed; fraud; evidence.

Nothing contained in section three thousand three hundred and thirty-seven of the Revised Statutes of the United States shall be so construed as to authorize an assessment upon the quantity of materials used in producing or purchased for the purpose of producing, fermented or malt liquors, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of liquor produced; but the tax on all beer, lager-beer, ale, porter, or other similar fermented liquor, brewed or manufactured, and sold or removed for consumption or sale, shall be paid as provided in section three thousand three hundred and thirty-nine of said statutes, and not otherwise: Provided, That this act shall not apply to cases of fraud. And provided further, That nothing in this act shall have the effect to change the present rules of law respecting evidence in any prosecution or suit. (19 Stat. 53.)

This was an act entitled "An act to define the tax on fermented or malt liquors."

R. S. §§ 3337, 3339, mentioned in this section, are set forth ante, §§ 6141, 6143.

§ 6146. (R. S. § 3340, as amended, Act March 1, 1879, c. 125, § 10.) Evading tax, making or procuring false entries, etc.; penalty.

Every owner, agent, or superintendent of any brewery, vessels, or utensils used in making fermented liquors, who evades, or attempts to evade, the payment of the tax thereon, or fraudulently neglects or refuses to make true and exact entry and report of the same in the manner required by law, or to do, or cause to be done, any of the things by law required to be done by him, or who intentionally makes false entry in said book or in said statement, or knowingly allows or procures the same to be done, shall forfeit, for every such offense, all the liquors made by him or for him, and all the vessels, utensils, and apparatus used in making the same, and be liable to a penalty of not less than five hundred nor more than one thousand dollars, to be recovered with costs of suit, and shall be deemed guilty of a misdemeanor, and be imprisoned for a term not exceeding one year. And every brewer who neglects to keep books, or refuses to furnish the account and duplicate thereof as provided by law, or refuses to permit the proper officer to examine the books in the manner provided, shall, for every such refusal or neglect, forfeit and pay the sum of three hundred dollars.

Act July 13, 1866, c. 184, § 51, 14 Stat. 165. Act June 6, 1872, c. 315, § 21, 17 Stat. 246. Act March 1, 1879, c. 125, § 10, 20 Stat. 342.

This section, as enacted in Revised Statutes, was amended by striking out, after the words "by law required to be done by him," the words "as aforesaid," to read as set forth here, by Act March 1, 1879, c. 125, § 10, cited above.

Notes of Decisions

See U. S. v. Belding (C. C. 1870) Fed. Cas. No. 14,562.

Forfeiture.—A brewery declared forfeited for fraudulent manufacture of ale. In re Smith (D. C. 1870) Fed. Cas. No. 12,980.

An entry by a brewer, knowingly, on his books, in any one day, of a less quantity of beer than that manufactured by him, will subject his brewery to forfeiture. Act 1864, §§ 48–51, amended May 13, 1866. U. S. v. Brewery Utensils (D. C. 1871) Fed. Cas. No. 14,641.

A prosecution to recover the penalty for neglect to keep books or refusal to furnish accounts should be by civil action and not by indictment. Fein v. U. S. (1875) 1 Wyo. 246.

Fines and penalties.—A brewer who neglects to enter in a book the materials purchased for producing fermented liquors is liable to the fine of $500, regardless of whether he intended to commit a fraud. Act July 13, 1866. U. S. v. Miller (D. C. 1872) Fed. Cas. No. 15,775.

The penalty of $300 (Act July 13, 1866, § 49) is imposed, not for the omission to make the proper entries, but for the failure to keep any books at all. U. S. v. Obermeyer (D. C. 1872) Fed. Cas. No. 15,907.

§ 6147. (R. S. § 3341, as amended, Act July 24, 1897, c. 11, § 9.) Stamps, how supplied and sold.

The Commissioner of Internal Revenue shall cause to be prepared, for the payment of such tax, suitable stamps denoting the amount of tax required to be paid on the hogsheads, barrels, and halves, thirds, quarters, sixths, and eighths of a barrel of such fermented liquors (and shall also cause to be prepared suitable permits for the purpose hereinafter mentioned), and shall furnish the same to the collectors of internal revenue, who shall each be required to keep on hand at all times a sufficient supply of permits and a supply of stamps equal in amount to two months' sales thereof, if there be any brewery or brewery warehouse in his district; and such stamps shall be sold, and permits granted and delivered by such collectors, only to the brewers of their district, respectively. Such collectors shall keep an account of the number of permits delivered and of the number and value of the stamps sold by them to each brewer.

Act July 13, 1866, c. 184, § 52, 14 Stat. 165. Act June 6, 1872, c. 315, § 22, 17 Stat. 246. Act July 24, 1897, c. 11, § 9, 30 Stat. 206.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words at the end of the section as set forth here, "of the stamps sold by them to each brewer," the further provisions of the section as originally enacted, "and the Commissioner of Internal Revenue shall allow upon all sales of such stamps to any brewer, and by him used in his business, a deduction of seven and a half per centum. And the amount paid into the Treasury by any collector on account of the sale of such stamps to brewers shall be included in estimating the commissions of such collector," by Act July 24, 1897, c. 11, § 9, cited above.

These provisions relating to including the sale of stamps to brewers in estimating the commissions of the collectors were superseded by the provision fixing the salary of collectors in lieu of salary and commissions contained in Act Feb. 8, 1875, c. 36, § 12, as amended by Act March 1, 1879, c. 125, § 2, ante, § 5850.

A discount of 7½ per cent. was allowed on sales of stamps by collectors to brewers by the War Revenue Act of June 13, 1898, c. 448, § 1. The provision for a discount was omitted in the amendment to said act, Act March 2, 1901, c. 806, § 1, and Act April 12, 1902, c. 500, § 1, ante, § 6144.

Notes of Decisions

Agency in sale of stamps as limited.—A collector has a limited agency in the sale of stamps, determined by the law in force at the time. American Brewing Co. v. U. S. (1898) 33 Ct. Cl. 348.

Sale by deputy outside of county.—The sale of United States revenue stamps is a mode of collecting United States taxes; and a deputy collector, appointed for a particular county, has no authority to sell stamps to brewers, distillers, etc., residing in parts of the collection district outside of his county. Schuster v. Weissman (1876) 63 Mo. 552.

Transactions for future delivery.—A collector's duty, as prescribed by this section is to keep on hand stamps

equal in amount to two months' sale thereof. The law does not permit transactions for future delivery. The agency is limited to the stock on hand. American Brewing Co. v. U. S. (1898) 33 Ct. Cl. 348.

Payment for stamps otherwise than in money.—A collector has no authority to receive in payment for stamps anything but money. American Brewing Co. v. U. S. (1898) 33 Ct. Cl. 348.

Stamps as merchandise.—The statute does not make the stamps merchandise; they are a means of paying a tax when the manufacturer wishes to put his product on the market. American Brewing Co. v. U. S. (1898) 33 Ct. Cl. 348.

Discount on sales of stamps under former law.—Under the provision of R. S. § 3341, before its amendment by the Dingley tariff act of 1897 (this section), allowing a discount of 7½ per cent. on beer stamps purchased by a brewer "and by him used in his business," as construed by the treasury department during the 30 years it remained in force, the purchaser of such stamps was entitled to the discount at the time of the purchase, where the stamps were afterwards used in his business; and where stamps were purchased on July 24, 1897, but before the signing by the president of the act containing the amendment, the purchaser is entitled to the discount, although the stamps, in due course of business, were used on later dates. Nunn v. William Gerst Brewing Co. (C. C. A. 1900) 99 Fed. 939.

The tariff act of 1897 (30 Stat. 206), which repealed the provision of R. S. § 3341 (this section), that the commissioner of internal revenue should allow upon all sales of internal revenue stamps to any brewer, and by him used in his business, a deduction of 7½ per cent., did not affect the tax-paying value of stamps purchased before it went into effect, and upon which the deduction was allowed, but not used until after it went into effect. Nassau Brewing Co. v. Moore (C. C. 1899) 97 Fed. 206.

The claimant offered to purchase revenue stamps to the amount of $25,000 from the collector, and deposited with him a certified check for $23,125, under this section, allowing a deduction of 7½ per cent. on stamps sold to brewers. The collector being temporarily out of stamps, they were not delivered, and subsequently the check was returned to claimant with the information that the act of July 24, 1897 (30 Stat. 206), in effect since the deposit was made, authorized the sale of stamps only on payment of their face value. Claimant sues on the ground that, by the government failing to deliver the stamps when ordered, he has lost the amount of the discount. Held that, since the stamps are not merchandise, but are simply a means of paying a tax when the manufacturer wishes to put his product on the market, and a collector has no authority to receive in payment for stamps anything but money, there was no actual sale of the stamps, and hence no liability on the part of the government. American Brewing Co. v. U. S. (1898) 33 Ct. Cl. 348.

Cited without definite application, Cincinnati Brewing Co. v. Bettman (C. C. 1900) 102 Fed. 16.

§ 6148. (R. S. § 3342, as amended, Act March 3, 1875, c. 154.) Stamps, how procured, affixed, and canceled; penalty for fraud or neglect.

That every brewer shall obtain, from the collector of the district in which his brewery or brewery-warehouse is situated, and not otherwise unless such collector shall fail to furnish the same upon application to him, the proper stamps, and shall affix, upon the spigot-hole in the head of every hogshead, barrel, keg, or other receptacle in which any fermented liquor is contained, when sold or removed from such brewery or warehouse, (except in case of removal under permit, as hereinafter provided,) a stamp denoting the amount of the tax required upon such fermented liquor, which stamp shall be destroyed by driving through the same the faucet through which the liquor is to be withdrawn, or an air-faucet of equal size, at the time the vessel is tapped, in case the vessel is tapped through the other spigot-hole, (of which there shall be but two, one in the head and one in the side,) and shall, also, at the time of affixing such stamp, cancel the same by writing or imprinting thereon the name of the person, firm, or corporation by whom such liquor was made, or the initial letters thereof, and the date when canceled. Every brewer who refuses or neglects to affix and cancel the stamps required by law in the manner aforesaid, or who affixes a false or fraudulent stamp thereto, or knowingly permits the same to be done, shall pay

a penalty of one hundred dollars for each barrel or package on which such omission or fraud occurs, and be imprisoned not more than one year.

Act July 13, 1866, c. 184, § 53, 14 Stat. 166. Act June 6, 1872, c. 315, § 23, 17 Stat. 247. Act March 3, 1875, c. 154, 18 Stat. 484.

This section, as enacted in the Revised Statutes, was amended by inserting at the beginning of the section the word "that," and by striking out, after the words "affix upon the spigot-hole," the words "or tap (of which there shall be but one,)" and inserting in place thereof the words "in the head," and by inserting, after the words "tax required upon such fermented liquor," in place of the words "in such a way that the said stamp will be destroyed upon the withdrawal of the liquor from such hogshead, barrel, keg, or other vessel, or upon the introduction of a faucet or other instrument for that purpose," the provision beginning with the words "which stamp shall" and ending with the words "one in the side," as set forth here, by Act March 3, 1875, c. 154, cited above.

The Commissioner of Internal Revenue was authorized to require the cancellation of stamps denoting the tax on fermented liquors by perforations, by an amendment of the War Revenue Act of June 13, 1898, c. 448, § 1, by Act March 2, 1901, c. 806, § 1, and Act April 12, 1902, c. 500, § 1, ante, § 6144.

Notes of Decisions

Penalty.—The words "shall be liable to," etc. (Act July 13, 1866, § 53), mark the extreme limit of the penalty, and leave it discretionary whether the whole penalty shall be imposed. U. S. v. Foster (C. C. 1871) Fed. Cas. No. 15,142.

Indictment.—An indictment for violating Act July 13, 1866, § 53, prohibiting more than one spigot hole in any package of fermented liquors, held not sustainable. U. S. v. McKechnie (D. C. 1871) Fed. Cas. No. 15,682.

§ 6149. (R. S. § 3343.) Selling, removing, or buying fermented liquor in packages without stamp, or false stamp, or with twice-used stamp; penalty.

Whenever any brewer, cartman, agent for transportation, or other person, sells, removes, receives, or purchases, or in any way aids in the sale, removal, receipt, or purchase, of any fermented liquor contained in any hogshead, barrel, keg, or other vessel from any brewery or brewery warehouse, upon which the stamp, or permit, in case of removal, required by law, has not been affixed, or on which a false or fraudulent stamp, or permit, in case of removal, is affixed, with knowledge that it is such, or on which a stamp, or permit, in case of removal, once canceled, is used a second time, he shall be fined one hundred dollars and imprisoned for not more than one year.

Act July 13, 1866, c. 184, § 54, 14 Stat. 166. Act June 6, 1872, c. 315, § 24, 17 Stat. 247.

Notes of Decisions

Intent to defraud.—The criminal liability of a brewer for selling beer and allowing its removal from his brewery without affixing the proper stamps is not dependent on his actual intent to defraud. U. S. v. Torge (D. C. 1871) Fed. Cas. No. 16,533.

Indictment.—An indictment for removing malt liquors without affixing or canceling the proper stamps (Act July 13, 1866) need not negative the cases where the law authorizes a removal without affixing a stamp. U. S. v. Schimer (D. C. 1870) Fed. Cas. No. 16,229.

§ 6150. (R. S. § 3344.) Drawing fermented liquor from package without stamp, or with false stamp, or without defacing stamp; penalty.

Whenever any retail dealer, or other person, withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel containing the same, without destroying or defacing the stamp affixed thereon, or withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel, upon which the proper stamp has not been affixed or on which a false or fraudulent stamp is affixed, he shall be fined one hundred dollars and imprisoned not more than one year.

Act July 13, 1866, c. 184, § 54, 14 Stat. 166. Act June 6, 1872, c. 315, § 24, 17 Stat. 247.

§ 6151. (R. S. § 3345.) Removal for storage without stamps.

Any brewer may remove or transport, or cause to be removed or transported, from his brewery or other place of manufacture to a depot, warehouse, or other place used exclusively for storage or sale in bulk, and occupied by him, in another part of the same collection-district, or in another collection-district, but to no other place, malt liquor of his own manufacture, known as lager-beer, in quantities of not less than six barrels in one vessel, and malt liquor of his own manufacture, known as ale or porter, or any other malt liquor of his own manufacture not heretofore mentioned, in quantities not less than fifty barrels at a time, without affixing the proper stamps on said vessels of lager-beer, ale, porter, or other malt liquor, at the brewery or place of manufacture, under a permit, which shall be granted, upon application, by the collector of the district in which said malt liquor is manufactured, and under such regulations as the Commissioner of Internal Revenue may prescribe; and thereafter the manufacturer of said malt liquor shall stamp the same, when it leaves such depot or warehouse, in the same manner and under the same penalties and liabilities as when stamped at the brewery as herein provided. And the collector of the district in which such depot or warehouse is situated shall furnish the manufacturer with the stamps for stamping the same, as if the said malt liquor had been manufactured in his district. And said permit must be affixed to every such vessel or cask so removed, and canceled or destroyed in such manner as the Commissioner of Internal Revenue may prescribe, and under the same penalties and liabilities as provided herein as to stamps.

Act July 13, 1866, c. 184, § 54, 14 Stat. 166. Act June 6, 1872, c. 315, § 24, 17 Stat. 248.

This was an act entitled "An act to provide for the exportation of fermented liquor in bond without payment of internal revenue tax."

§ 6152. (Act June 18, 1890, c. 432.) Exportation of fermented liquors in bond; drawback not allowed.

From and after the first day of January, eighteen hundred and ninety-one, fermented liquor may be removed from the place of manufacture, or storage, for export to a foreign country, without payment of tax, in such packages and under such regulations, and upon the giving of such notices, entries, bonds, and other security, as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may from time to time prescribe; and no drawback of tax shall be allowed on fermented liquor exported on and after the first day of January, eighteen hundred and ninety-one, unless entered for exportation prior to such date. (26 Stat. 162.)

This section repealed so much of R. S. § 3441, as amended by Act March 1, 1879, c. 125, § 17, 20 Stat. 350, as allowed a drawback on fermented liquors.

§ 6153. (R. S. § 3346, as amended, Act March 1, 1879, c. 125, § 5.) Making, selling, or using false stamps or dies; removing stamps, and using, etc., removed stamps; penalty.

Every person who makes, sells, or uses any false or counterfeit stamp or permit, or die for printing or making stamps or permits, which is in imitation of or purports to be a lawful stamp, permit, or die of the kind before mentioned in this chapter, or who procures the same to be done, and every person who shall remove, or cause to be removed, from any cask or package of fermented liquors, any stamp denoting the tax thereon, with intent to re-use such stamp, or who, with intent to defraud the revenue, knowingly uses, or permits to be used, any stamp removed from another cask or package, or receives, buys, sells, gives away, or has in his possession, any stamp so removed, or makes any fraudulent use of any stamp for

fermented liquors, shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than three years.

Act July 13, 1866, c. 184, § 54, 14 Stat. 166. Act June 6, 1872, c. 315, § 24, 17 Stat. 247. Act March 1, 1879, c. 125, § 5, 20 Stat. 340.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "or who procures the same to be done," the provisions beginning with the words "and every person," and ending with the words "use of any stamp for fermented liquors," and by changing the punishment of imprisonment for not less than one year nor more than five years to the punishment imposed by the section as set forth here, by Act March 1, 1879, c. 125, § 5, cited above.

§ 6154. (R. S. § 3347.) Sour malt liquors, removable in peculiar packages, without stamps.

When fermented liquor has become sour or damaged, so as to be incapable of use as such, brewers may sell the same for manufacturing purposes, and may remove the same to places where it may be used for such purposes, in casks, or other vessels, unlike those ordinarily used for fermented liquors, containing respectively not less than one barrel each, and having the nature of their contents marked upon them, without affixing thereon the permit, stamp or stamps required.

Act July 13, 1866, c. 184, § 54, 14 Stat. 167. Act June 6, 1872, c. 315, § 24, 17 Stat. 247.

§ 6155. (R. S. § 3348.) Brewers selling at retail at brewery, to affix stamps and keep account.

Every brewer who sells fermented liquor at retail at the brewery or other place where the same is made, shall affix and cancel the proper stamps upon the hogsheads, barrels, kegs, or other vessels in which the same is contained, and shall keep an account of the quantity so sold by him, and of the number and size of the hogsheads, barrels, kegs, or other vessels in which the same has been contained, and shall make a report thereof, verified by oath, monthly to the collector.

Act July 13, 1866, c. 184, § 54, 14 Stat. 166. Act June 6, 1872, c. 315, § 24, 17 Stat. 248.

§ 6156. (R. S. § 3349.) Name of manufacturer, etc., to be marked on packages; penalty for removing marks, etc.

Every brewer shall, by branding, mark or cause to be marked upon every hogshead, barrel, keg, or other vessel containing the fermented liquor made by him, before it is sold or removed from the brewery or brewery warehouse, or other place of manufacture, the name of the person, firm, or corporation by whom such liquor was manufactured, and the place of manufacture; and every person other than the owner thereof, or his agent authorized so to do, who intentionally removes or defaces such marks therefrom, shall be liable to a penalty of fifty dollars for each cask or other vessel from which the mark is so removed or defaced: Provided, That when a brewer purchases fermented liquor finished and ready for sale from another brewer, in order to supply the customers of such purchaser, the purchaser may, upon written notice to the collector of his intention so to do, and under such regulations as the Commissioner of Internal Revenue may prescribe, furnish his own vessels, branded with his name and the place where his brewery is situated, to be filled with the fermented liquor so purchased, and to be so removed; the proper stamps to be affixed and canceled, as aforesaid, by the manufacturer before removal.

Act July 13, 1866, c. 184, § 55, 14 Stat. 167. Act June 6, 1872, c. 315, § 25, 17 Stat. 248.

§ 6157. (R. S. § 3350.) Permit to carry on business at another place on account of accident.

Whenever, in the opinion of the collector of any district, it becomes requisite or proper, by reason of an accident to any brewery therein, by fire or flood, or of such brewery undergoing repairs, or of other circumstances, that the brewer carrying on the same shall be permitted to conduct his business wholly or in part at some other place within such district or an adjoining district for a temporary period, it shall be lawful for such collector, under such regulations and subject to such limitation of time as the Commissioner of Internal Revenue may prescribe, to issue a permit to such brewer, authorizing him to conduct his business wholly or in part, according to the circumstances, at such other place, for a period to be stated in such permit; and such brewer shall not be required to pay another special tax for the purpose.

Act June 6, 1872, c. 315, § 26, 17 Stat. 249.

§ 6158. (R. S. § 3351.) Unfermented worts sold to other brewers, how taxed.

When malt liquor or tun liquor, in the first stages of fermentation, known as unfermented worts, of whatever kind, is sold by one brewer to another for the purpose of producing fermentation or enlivening old or stale ale, porter, lager-beer, or other fermented liquors, it shall not be liable to a tax to be paid by the seller thereof, but the tax on the same shall be paid by the purchaser thereof, when the same, having been mixed with the old or stale beer, is sold by him as provided by law, and such sale or transfer shall be subject to such restrictions and regulations as the Commissioner of Internal Revenue may prescribe.

Act June 6, 1872, c. 315, § 27, 17 Stat. 249.

§ 6159. (R. S. § 3352.) Possession of fermented liquor after removal from warehouse, when tax not paid, cause of forfeiture; absence of stamps to be notice and evidence.

The ownership or possession by any person of any fermented liquor after its sale or removal from the brewery or warehouse, or other place where it was made, upon which the tax required has not been paid, shall render such liquor liable to seizure wherever found, and to forfeiture, removal under said permits excepted. And the absence of the proper stamps from any hogshead, barrel, keg, or other vessel containing fermented liquor, after its sale or removal from the brewery where it was made, or warehouse as aforesaid, shall be notice to all persons that the tax has not been paid thereon, and shall be prima-facie evidence of the non-payment thereof.

Act July 13, 1866, c. 184, § 57, 14 Stat. 167. Act June 6, 1872, c. 315, § 28, 17 Stat. 249.

Notes of Decisions

Seizure interfering with possession of sheriff in forfeiture proceedings in state court.—Where a lot of ale, while still within the brewery in which it was made, was seized under judicial process emanating from a state court as a forfeiture to the state, and is in the custody of the sheriff awaiting the judgment of the court, held, that the possession of the sheriff cannot be legally interfered with by internal revenue or other officers of the United States. Nor can those officers legally interfere with the sale of such property by the sheriff, in the execution of a judgment of condemnation by the court. (1874) 14 Op. Atty. Gen. 370.

When, however, the property passes from under the control of the court, and goes again into private hands, it may be dealt with under the internal revenue laws as such laws provide. Hence, in case it is removed from the brewery without the internal revenue tax thereon being paid, the United States officers may seize it after the sale by the State authorities, and when it passes into the possession of the purchaser, for nonpayment of such tax. Id.

§ 6160. (R. S. § 3353.) Removal or defacement of stamps by others than the owner; penalty.

Every person, other than the purchaser or owner of any fermented liquor, or person acting on his behalf, or as his agent, who intentionally removes or defaces the stamp or permit affixed upon the hogshead, barrel, keg, or other vessel, in which the same is contained, shall be liable to a fine of fifty dollars for each such vessel from which the stamp or permit is so removed or defaced, and to render compensation to such purchaser or owner for all damages sustained by him therefrom.

Act July 13, 1866, c. 184, § 56, 14 Stat. 167. Act June 6, 1872, c. 315, § 29, 17 Stat. 249.

§ 6161. (R. S. § 3354, as amended, Act June 18, 1890, c. 431, and Act Sept. 8, 1916, c. 463, § 406.) Withdrawing liquor from unstamped packages for bottling or bottling on brewery premises; penalty; withdrawal by pipe line; payment of tax; regulations; penalties; forfeitures.

Every person who withdraws any fermented liquor from any hogshead, barrel, keg, or other vessel upon which the proper stamp has not been affixed for the purpose of bottling the same, or who carries on or attempts to carry on the business of bottling fermented liquor in any brewery or other place in which fermented liquor is made, or upon any premises having communication with such brewery, or any warehouse, shall be liable to a fine of $500, and the property used in such bottling or business shall be liable to forfeiture: Provided, however, That this section shall not be construed to prevent the withdrawal and transfer of unfermented, partially fermented, or fermented liquors from any of the vats in any brewery by way of a pipe line or other conduit to another building or place for the sole purpose of bottling the same, such pipe line or conduit to be constructed and operated in such manner and with such cisterns, vats, tanks, valves, cocks, faucets, and gauges, or other utensils or apparatus, either on the premises of the brewery or the bottling house, and with such changes of or additions thereto, and such locks, seals, or other fastenings, and under such rules and regulations as shall be from time to time prescribed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, and all locks and seals prescribed shall be provided by the Commissioner of Internal Revenue at the expense of the United States: Provided further, That the tax imposed in section thirty-three hundred and thirty-nine of the Revised Statutes of the United States shall be paid on all fermented liquor removed from a brewery to a bottling house by means of a pipe or conduit, at the time of such removal, by the cancellation and defacement, by the collector of the district or his deputy, in the presence of the brewer, of the number of stamps denoting the tax on the fermented liquor thus removed. The stamps thus canceled and defaced shall be disposed of and accounted for in the manner directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. And any violation of the rules and regulations hereafter prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in pursuance of these provisions, shall be subject to the penalties above provided by this section. Every owner, agent, or superintendent of any brewery or bottling house who removes, or connives at the removal of, any fermented liquor through a pipe line or conduit, without payment of the tax thereon, or who attempts in any manner to defraud the revenue as above, shall

forfeit all the liquors made by and for him, and all the vessels, utensils, and apparatus used in making the same. (39 Stat. 789.)

Act July 13, 1866, c. 184, § 58, 14 Stat. 167. Act June 6, 1872, c. 315, § 30, 17 Stat. 249. Act June 18, 1890, c. 431, 26 Stat. 161. Act Sept. 8, 1916, c. 463, § 406, 39 Stat. 789.

This section, as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the two provisos as set forth here, by Act June 18, 1890, c. 431, cited above.

R. S. § 3339, mentioned in this section, is set forth ante, § 6143.

This section was § 406 of an act entitled "An act to increase the revenue, and for other purposes," cited above.

By § 5980m the above provision took effect the day after its passage.

The only change made by the amendment by Act Sept. 8, 1916, c. 463, § 406, consists of the insertion of the words "unfermented, partially fermented or" after the phrase "withdrawal and transfer of" in the first proviso.

Notes of Decisions

Forfeiture.—The forfeiture for an illicit sale of beer, or fraudulent intent, applies to all the raw materials, fixtures, and appliances of the brewery. U. S. v. Two Hundred and Fifty-Six Barrels of Beer (D. C. 1870) Fed. Cas. No. 16,579.

The forfeiture for an illicit sale of beer applies to all beer found in claimant's possession. Id.

The finding of an unstamped package of beer in the possession of a brewer, who has knowledge thereof, and does not satisfactorily explain it, is ground of forfeiture of all the beer and materials of the brewery. U. S. v. Brewery Utensils (D. C. 1871) Fed. Cas. No. 14,641.

CHAPTER SIX

Tobacco and Snuff

Sec.
6162. Tobacco manufacturer, definition of.
6163. Manufacturer's statement of business; bond and certificate; penalties.
6164. Sign to be put up by manufacturer; penalty for omission.
6165. Record of manufacturers to be kept by collector.
6166. Annual inventory of manufacturer; books and monthly abstracts; penalty.
6167. Dealers in leaf-tobacco to render statement of sales when demanded.
6168. Books of dealers in leaf-tobacco.
6169. Tobacco and snuff, how put up.
6170. Tobacco and snuff to be sold only in prescribed packages; penalty.
6171. Label and notice on packages of tobacco and snuff.
6172. Label on packages of tobacco and snuff.
6173. Purchasing tobacco not branded or marked; penalty.
6173a. Buying tobacco from a manufacturer who has not paid special tax.
6174. Tax on tobacco and snuff.
6175. Leaf-tobacco not subject to tax; dealers and retail dealers in leaf-tobacco.
6176. Dealers in leaf-tobacco; dealers in tobacco.
6177. Dealers in leaf-tobacco, manufacturers, and peddlers to register.
6178. Stamps, how prepared, furnished, and sold.
6179. Tobacco manufactured by one person for another or on shares; stamps, by whom affixed; fraud in such cases.
6180. Estimated tax on tobacco sold without stamps; notice of assessment.
6181. Removing unlawfully, selling without stamps, or payment of tax, or giving bond, making false entries, etc.
6182. Absence of stamp to be evidence of non-payment.
6183. Removing, except in proper packages, or without stamp; selling unlawfully, etc.
6184. Affixing false stamps or stamps twice used.
6185. Stamped portion of emptied packages to be destroyed; buying, selling, or using the same.
6186. Imported tobacco and snuff.
6187. Peddlers of tobacco.
6188. Peddlers of tobacco; notice of business.
6189. Peddlers of tobacco traveling with wagon.
6190. Peddler to obtain and exhibit certificate, etc.
6191. Peddling tobacco unlawfully; penalty.
6192. Exportation of manufactured tobacco, etc.

Sec.
6193. Exportation of manufactured tobacco, etc.; transportation in bond; export bond.
6194. Exportation of manufactured tobacco, etc.; regulations.
6195. Drawback on exported tobacco, etc.
6196. Fraudulently claiming drawback on manufactured tobacco; penalty.

§ 6162. (Act Aug. 27, 1894, c. 349, § 69.) Tobacco manufacturer, definition of.

Every person whose business it is to manufacture tobacco or snuff for himself, or who employs others to manufacture tobacco or snuff, whether such manufacture be by cutting, pressing, grinding, crushing, or rubbing of any raw or leaf-tobacco, or otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco or snuff, or the putting up for use or consumption of scraps, waste, clippings, stems, or deposits of tobacco resulting from any process of handling tobacco, or by the working or preparation of leaf-tobacco, tobacco-stems, scraps, clippings, or waste, by sifting, twisting, screening, or any other process, shall be regarded as a manufacturer of tobacco. Every person shall also be regarded as a manufacturer of tobacco whose business it is to sell leaf tobacco in quantities less than a hogshead, case or bale; or who sells directly to consumers, or to persons other than duly registered dealers in leaf tobacco, or duly registered manufacturers of tobacco, snuff or cigars, or to persons who purchase in packages for export; and all tobacco so sold by such persons shall be regarded as manufactured tobacco, and such manufactured tobacco shall be put up and prepared by such manufacturer in such packages only as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury shall prescribe: Provided, That farmers and growers of tobacco who sell leaf tobacco of their own growth and raising shall not be regarded as manufacturers of tobacco; and so much of section three thousand two hundred and forty-four of the Revised Statutes of the United States, and Acts amendatory thereof, as are in conflict with this Act are hereby repealed. (28 Stat. 568.)

This section was part of the Wilson Tariff Act, cited above.

The provisions of this section beginning with the words "Every person whose business it is to manufacture," and ending with the words "or any other process, shall be regarded as a manufacturer of tobacco," were identical with the provisions of R. S. § 3244, subsec. 9, superseded by the repeal of the special taxes upon manufacturers of tobacco, and requiring such manufacturers to register, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, post, § 6177. The remainder of this section was new legislation, and the provisions thereof, except the requirement that "such manufactured tobacco shall be put up and prepared in such packages only as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury shall prescribe," were superseded by the definition of dealer and retail dealer in leaf-tobacco and the repeal of inconsistent laws by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 35, post, § 6175.

R. S. § 3244, and the acts amendatory thereof, mentioned in this section, are set forth ante, § 5971.

The manner of putting up and preparing manufactured tobacco was prescribed by R. S. § 3362, as amended, post, § 6170.

Notes of Decisions

Laws as in force in Indian country.— The revenue laws imposing taxes on manufactured tobacco are in force in the Indian country. U. S. v. Tobacco Factory (D. C. 1870) Fed. Cas. No. 16,528.

§ 6163. (R. S. § 3355, as amended, Act Feb. 27, 1877, c. 69, § 1, and Act March 1, 1879, c. 125, § 14.) Manufacturer's statement of business; bond and certificate; penalties.

Every person, before commencing, or, if he has already commenced, before continuing, the manufacture of tobacco or snuff, shall furnish, without previous demand therefor, to the collector of the district where the manufacture is to be carried on, a statement

in duplicate, subscribed under oath, setting forth the place, and if in a city, the street and number of the street, where the manufacture is to be carried on; the number of cutting-machines, presses, snuff-mills, hand-mills, or other machines; the name, kind, and quality of the article manufactured or proposed to be manufactured; and when the same is manufactured by him as agent for any other person, or to be sold and delivered to any other person under a special contract, the name and residence and business or occupation of the person for whom the said article is to be manufactured, or to whom it is to be delivered; and he shall give a bond, to be approved by the collector of the district, in the sum of not less than two thousand nor more than twenty thousand dollars, to be fixed by the collector of the district, according to the quantum of business proposed to be done by the manufacturer, with right of appeal by the manufacturer to the Commissioner of Internal Revenue in respect to the amount of said bond, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the government of any tax on his manufactures; that he shall render truly and completely all the returns, statements, and inventories prescribed by law or regulations; that whenever he adds to the number of cutting-machines, presses, snuff-mills, hand-mills, or other mills or machines as aforesaid, he shall immediately give notice thereof to the collector of the district; that he shall stamp, in accordance with law, all tobacco and snuff manufactured by him before he removes any part thereof from the place of manufacture; that he shall not knowingly sell, purchase, expose, or receive for sale, any manufactured tobacco or snuff which has not been stamped as required by law; and that he shall comply with all the requirements of law relating to the manufacture of tobacco or snuff. Additional sureties may be required by the collector from time to time. And every manufacturer shall obtain a certificate from the collector of the district, who is hereby directed to issue the same, setting forth the kind and number of machines, presses, snuff mills, hand mills, or other mills and machines as aforesaid; which certificate shall be posted in a conspicuous place within the manufactory. And every tobacco-manufacturer who neglects or refuses to obtain such certificate, or to keep the same posted as hereinbefore provided, shall be fined not less than one hundred dollars nor more than five hundred dollars. And every person who manufactures tobacco or snuff of any description without first giving bond, as herein required, shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned for not less than one nor more than five years.

Act July 20, 1868, c. 186, § 63, 15 Stat. 153. Act June 6, 1872, c. 315, § 31, 17 Stat. 253. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248. Act March 1, 1879, c. 125, § 14, 20 Stat. 344.

This section, as enacted in the Revised Statutes, was amended by inserting after the words "shall be posted in a," in place of the word "conspicious," the word "conspicuous," by Act Feb. 27, 1877, c. 69, § 1, cited above.

It was further amended by inserting, after the words "and he shall give a bond, to be approved by the collector of the district," in place of the words "in the sum of two thousand dollars, with an addition to said sum of three thousand dollars for each cutting-machine kept for use, of one thousand dollars for each screw-press kept for use, in making plug or pressed tobacco, of five thousand dollars for each hydraulic press kept for use, of one thousand dollars for each snuff-mill kept for use, and of one thousand dollars for each hand-mill or other mill or machine kept for the grinding, cutting, or crushing of tobacco," the provision beginning with the words "in the sum of not less than two thousand dollars," and ending with the words "in respect to the amount of said bond," and by striking out, after the provision for additional sureties, the words "but the penal sum of said bond shall not be computed by him in excess of the sum of twenty thousand dollars, except under special instructions of the Commissioner of Internal Revenue," and by

striking out, after the words "other mills and machines as aforesaid," the words "for which the bond has been given," and by inserting, after the words "be fined not less than one thousand dollars," in place of the word "or," the word "nor," as set forth here, by Act March 1, 1879, c. 125, § 14, cited above.

Special taxes on manufacturers of tobacco were abolished by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, post, § 6177. This tax was revived by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 752, which act was repealed and supplanted by Act Sept. 8, 1916, c. 463, §§ 408–410, set forth ante, §§ 5980j–5980*l*.

Notes of Decisions

Constitutionality.—The acts of July 20, 1868 (15 Stat. 157), and June 6, 1872 (17 Stat. 254), so far as they relate to manufactured tobacco intended for exportation, do not impose a tax or duty on exports, within the meaning of that clause of the constitution which declares that "no tax or duty shall be laid on articles exported from any state." The stamp thereby required was a means devised for the prevention of fraud, by separating and identifying the tobacco intended for exportation, thus relieving it from the taxation to which other tobacco was subjected. The proper fees accruing in the due administration of the laws, and regulations necessary for the protection of the government against imposition and frauds likely to be committed under the pretext of exportation, are, in no sense, a duty on exports. They are simply the compensation given for services properly rendered. Pace v. Burgess (1875) 92 U. S. 372, 23 L. Ed. 657; Turpin v. Same (1886) 117 U. S. 504, 6 Sup. Ct. 835, 29 L. Ed. 988; Burwell v. Same (Va. 1879) 32 Grat. 472.

Effect as requiring stamps to be affixed and canceled.—In view of this and sections 6170 and 6181, post, a manufacturer desiring to put his product into a salable or removable or consumable condition must affix and cancel the proper stamps. Franks v. Robards Tobacco Co. (1901) 112 Fed. 784, 50 C. C. A. 527.

Bonds.—Liability of the sureties on the bond of a manufacturer of tobacco (Act March 3, 1863, § 34) does not cease upon the expiration of his license as such manufacturer. U. S. v. Truesdell (C. C. 1867) Fed. Cas. No. 16,543.

One may be convicted of keeping a tobacco press without a legal bond, on the sole testimony of the government officer that defendant told him he had used an extra press, which he had just removed. U. S. v. Martin (C. C. 1870) Fed. Cas. No. 15,730.

A bond given by W. and G., composing a firm, and C. and M. as sureties, for payment by the firm of taxes as manufacturers of tobacco, is the bond of the signers individually, and not of the firm. U. S. v. Lawrence (C. C. 1877) Fed. Cas. No. 15,574.

The seizure of the goods as forfeited is no defense to an action upon a tobacco manufacturer's bond to recover the tax. U. S. v. Barrowcliff (D. C. 1869) Fed. Cas. No. 14,528.

See, also, note under § 6193, post.

—— **Transportation bonds.**—An owner of tobacco filed a bond for its transportation from one district to another with sureties, conditioned to deliver a certain number of boxes and pounds of tobacco, and of the kind described. The boxes were not filled with tobacco, but the inspecting officer, without examining them, they being closed, duly branded them as containing plug tobacco. Held, that his carelessness, though it made the fraud easier of accomplishment, did not release the sureties on the transportation bond. Ryan v. U. S. (1873) 86 U. S. (19 Wall.) 514, 22 L. Ed. 172.

Sureties on a bond for the transportation of tobacco from one district to another, in the conditions of which the number of boxes and pounds of tobacco are given, and the kind of tobacco described, are responsible for the delivery at the proper place of the tobacco; and the fact that the principal filled the boxes with other substance than tobacco before they left his warehouse does not release the sureties from their obligation. Id.

§ 6164. (R. S. § 3356.) Sign to be put up by manufacturer; penalty for omission.

Every manufacturer of tobacco and snuff shall place and keep on the side or end of the building wherein his business is carried on, so that it can be distinctly seen, a sign, with letters thereon not less than three inches in length, painted in oil-colors or gilded, giving his full name and business. And every person who neglects to comply with the requirements of this section shall be fined not less than one hundred dollars or more than five hundred dollars.

Act July 20, 1868, c. 186, § 64, 15 Stat. 154.

§ 6165. (R. S. § 3357, as amended, Act June 9, 1880, c. 161, § 2, and Act Oct. 1, 1890, c. 1244, § 33.) Record of manufacturers to be kept by collector.

Every collector shall keep a record, in a book or books provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, including deputy collectors and internal-revenue agents, of the name and residence of every person engaged in the manufacture of tobacco or snuff in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer, a copy of every inventory required by law to be made by such manufacturer, and an abstract of his monthly returns; and he shall cause the several manufactories of tobacco or snuff in his district to be numbered consecutively, which numbers shall not be thereafter changed, except for reasons satisfactory to himself and approved by the Commissioner of Internal Revenue.

Act July 20, 1868, c. 186, § 65, 15 Stat. 154. Act Dec. 24, 1872, c. 13, § 1, 17 Stat. 401. Act June 9, 1880, c. 161, § 2, 21 Stat. 168. Act Oct. 1, 1890, c. 1244, § 33, 26 Stat. 620.

This section, as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the words "except for reasons satisfactory to himself and approved by the Commissioner of Internal Revenue," by Act June 9, 1880, c. 161, § 2, cited above.

It was further amended by inserting, after the words "open to the inspection," in place of the words "of any person," the words "of only the proper officers of internal revenue, including deputy collectors and internal revenue agents," as set forth here, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 33, last cited above.

Cited without definite application, Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658.

§ 6166. (R. S. § 3358.) Annual inventory of manufacturer; books and monthly abstracts; penalty.

Every person now or hereafter engaged in the manufacture of tobacco or snuff shall make and deliver to the collector of the district a true inventory, in such form as may be prescribed by the Commissioner of Internal Revenue, and verified by his own oath, of the quantity of each of the different kinds of tobacco, snuff-flour, snuff, stems, scraps, clippings, waste, tin-foil, licorice, sugar, gum, and other materials held or owned by him on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the first of January; setting forth what portion of said goods and materials, and what kinds were manufactured and produced by him, and what was purchased from others. The collector shall make personal examination of the stock sufficient to satisfy himself as to the correctness of the inventory, and shall verify the fact of such examination by oath, to be indorsed on or affixed to the inventory. And every such person shall keep a book or books, the forms of which shall be prescribed by the Commissioner of Internal Revenue, and enter therein daily an accurate account of all the articles aforesaid purchased by him, the quantity of tobacco, snuff, and snuff-flour, stems, scraps, clippings, waste, tin-foil, licorice, sugar, gum, and other material, of whatever description, manufactured, sold, consumed, or removed for consumption or sale, or removed from the place of manufacture in bond, and to what district removed; also the number of net pounds of lumps of plug tobacco made in the lump-room, and the number of packages and pounds thereof produced in the press-room each day. And he shall, on or before the tenth day of each month, furnish to the collector a true and complete abstract from such book, verifying the same by his oath, of all such purchases, sales, and removals made during the

month next preceding. And whenever any such person refuses or willfully neglects to deliver the inventory, or keep the account, or furnish the abstract aforesaid, he shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years.

Act July 20, 1868, c. 186, § 66, 15 Stat. 155.

Notes of Decisions

See notes under § 6174, post.

Former law.—Under Act July 13, 1866, § 9, a tobacco manufacturer was required to keep a book showing the goods manufactured as well as those sold. U. S. v. Quantity of Tobacco (D. C. 1871) Fed. Cas. No. 16,105.

Meaning of "manufactured goods."—Manufactured goods under Act 1864, § 90, means goods the manufacture of which is completed, so that the goods are in a condition to be sold. U. S. v. Quantity of Tobacco (D. C. 1871) Fed. Cas. No. 16,105.

Tobacco sold or removed for sale.—A tobacco manufacturer, removing his tobacco to a salesroom of his own for the purpose of selling it at retail himself, does not thereby make such a sale as to enable him to return for taxation that the tobacco "was sold or removed for sale." Lilienthal's Tobacco v. U. S. (1877) 97 U. S. 237, 24 L. Ed. 901.

Cited without definite application, Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658; U. S. v. Lamson (C. C. 1908) 165 Fed. 80.

§ 6167. (R. S. § 3359.) Dealers in leaf-tobacco to render statement of sales when demanded.

It shall be the duty of any dealer in leaf-tobacco, or in any material used in manufacturing tobacco or snuff, on demand of any officer of internal revenue, to render a true and complete statement, under oath, of the quantity and amount of such leaf-tobacco or materials sold or delivered to any person named in such demand; and in case of refusal or neglect to render such statement, or if there is cause to believe such statement to be incorrect or fraudulent, the collector shall make an examination of persons, books, and papers, in the manner provided in relation to frauds and evasions.

Act July 20, 1868, c. 186, § 66, 15 Stat. 155.

Provisions of the same nature were made by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 35, post, § 6175.

Cited without definite application, U. S. v. Lamson (C. C. 1908) 165 Fed. 80.

§ 6168. (R. S. § 3360, as amended, Act March 1, 1879, c. 125, § 14.) Books of dealers in leaf-tobacco.

Every dealer in leaf-tobacco shall make daily entries in two books kept for that purpose, one book to be furnished by the government, under such regulations as the Commissioner of Internal Revenue shall prescribe, of the number of hogsheads, cases, and pounds of leaf tobacco purchased or received by him on assignment, consignment, transfer, or otherwise, and of whom purchased or received, and the number of hogsheads, cases, or pounds sold by him, with the name and residence, in each instance, of the person to whom sold, and, if shipped, to whom shipped, and to what district; one of these books shall be kept at his place of business, and shall be open at all hours to the inspection of any internal-revenue officer or agent, and the other shall, at the end of each and every year, and upon the discontinuance of business of any leaf-dealer during any year, be handed over to the collector of his district for the use of the government. And every dealer in leaf-tobacco who willfully neglects or refuses to keep the books herein provided for, and in the manner which shall be prescribed by the Commissioner of Internal Revenue, or to transfer to the collector of his district, as herein provided, the duplicate copy containing his daily transactions, as aforesaid, shall be fined not less

than one hundred dollars nor more than five thousand dollars, and imprisoned not more than one year.

Act July 20, 1868, c. 186, § 76, 15 Stat. 158. Act March 1, 1879, c. 125, § 14, 20 Stat. 345.

This section, as enacted in the Revised Statutes, was as follows:

"Every dealer in leaf-tobacco shall enter daily in a book kept for that purpose, under such regulations as the Commissioner of Internal Revenue may prescribe, the number of hogsheads, cases, and pounds of leaf-tobacco purchased by him, and of whom purchased, and the number of hogsheads, cases, or pounds sold by him, with the name and residence, in each instance, of the person to whom sold, and if shipped, to whom shipped, and to what district. Such book shall be kept at his place of business, and shall be open at all hours to the inspection of any revenue officer; and every dealer in leaf-tobacco who neglects or refuses to keep such book shall be liable to a penalty of not less than five hundred dollars, and shall be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years."

It was amended to read as set forth here, by Act March 1, 1879, c. 125, § 14, cited above.

Special taxes upon dealers in leaf-tobacco were abolished by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, post, § 6177. The tax was revived by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 752, but was again repealed by Act Sept. 8, 1916, c. 463, § 410, ante, § 5980*l*.

Retail dealers in leaf-tobacco were required to keep books showing daily purchases and sales, by a provision of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 35, post, § 6175.

Notes of Decisions

Liability for failure to keep book and make proper returns.—A dealer in leaf tobacco is criminally responsible, under Act July 20, 1868, § 76, for the neglect of his bookkeeper to make the proper book entries. U. S. v. Auja (C. C. 1869) Fed. Cas. No. 14,478.

A person who keeps leaf tobacco for sale is a dealer, and a single sale is sufficient to fix his character as such, and to render him liable for the penalty of $500 for failure to keep a book, and make returns of purchases and sales. Act July 20, 1868, § 76. U. S. v. Damiani (D. C. 1869) Fed. Cas. No. 14,915.

(R. S. § 3361. Repealed.)

This section required farmers or planters producing and selling leaf-tobacco to render, on demand of any internal-revenue officer, statements of sales made. All provisions imposing restrictions of any kind upon farmers and growers of tobacco in regard to the sale of their leaf-tobacco, and the registration and report of such sales, were repealed by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 27, 26 Stat. 620. Provisions requiring the making of statements of sales were made by said section 27. Such requirements were stricken out, and R. S. § 3361, was repealed, by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 69, 28 Stat. 568.

§ 6169. (R. S. § 3362, as amended, Act Feb. 27, 1877, c. 69, § 1, Act March 1, 1879, c. 125, § 14, Act Jan. 9, 1883, c. 16, Act July 1, 1902, c. 1371, § 1, Act Aug. 5, 1909, c. 6, § 30.) Tobacco and snuff, how put up.

All manufactured tobacco shall be put up and prepared by the manufacturer for sale, or removal for sale or consumption, in packages of the following description and in no other manner:

All smoking tobacco, snuff, fine-cut chewing tobacco, all cut and granulated tobacco, all shorts, the refuse of fine-cut chewing, which has passed through a riddle of thirty-six meshes to the square inch, and all refuse scraps, clippings, cuttings, and sweepings of tobacco, and all other kinds of tobacco not otherwise provided for, in packages containing one-half ounce, three-fourths of an ounce, and further packages with a difference between each package and the one next smaller of one-fourth of an ounce up to and including four ounces, and packages of six ounces, seven ounces, eight ounces, ten ounces, twelve ounces, fourteen ounces, and sixteen ounces: Provided, That snuff may, at the option of the manufacturer, be put up in bladders and in jars containing not exceeding twenty pounds.

All cavendish, plug, and twist tobacco, in wooden packages not exceeding two hundred pounds net weight.

And every such wooden package shall have printed or marked thereon the manufacturer's name and place of manufacture, the registered number of the manufactory, and the gross weight, the tare, and the net weight of the tobacco in each package: Provided, That these limitations and descriptions of packages shall not apply to tobacco and snuff transported in bond for exportation and actually exported: And provided further, That perique tobacco, snuff flour, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco, may be sold in bulk as material, and without the payment of tax, by one manufacturer directly to another manufacturer, or for export, under such restrictions, rules, and regulations as the Commissioner of Internal Revenue may prescribe: And provided further, That wood, metal, paper, or other materials may be used separately or in combination for packing tobacco, snuff, and cigars, under such regulations as the Commissioner of Internal Revenue may establish.

Act July 20, 1868, c. 186, § 62, 15 Stat. 153. Act June 6, 1872, c. 315, § 31, 17 Stat. 252. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248. Act March 1, 1879, c. 125, § 14, 20 Stat. 345. Act Jan. 9, 1883, c. 16, 22 Stat. 401. Act July 1, 1902, c. 1371, § 1, 32 Stat. 714. Act Aug. 5, 1909, c. 6, § 30, 36 Stat. 108.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "and all refuse scraps, clippings, cuttings, and," in place of the word "sweeping," the word "sweepings," by Act Feb. 27, 1877, c. 69, § 1, cited above.

It was further amended by inserting in the provision "all snuff in packages containing one, two, four, six, eight, and sixteen ounces," after the word "containing," the words "one-half," and after the word "two," the word "three," and by inserting in the provision "all fine-cut chewing-tobacco, and all other kinds of tobacco not otherwise provided for, in packages containing one, two, four, eight and sixteen ounces," after the word "two," the word "three," and by inserting in the provision "and all refuse scraps, clippings, cuttings, and sweepings of tobacco, in packages containing two, four, eight, and sixteen ounces each," after the word "two," the word "three," by Act March 1, 1879, c. 125, § 14, cited above.

It was further amended by inserting in the second proviso, after the words "for export," the provision beginning with the words "and perique tobacco," and ending with the words "without the payment of tax," by Act Jan. 9, 1883, c. 16, cited above.

It was further amended by striking out all after the fifth paragraph thereof and inserting in lieu of the words so stricken out the provision "And every such wooden package," etc., to the end of the section, by Act July 1, 1902, c. 1371, § 1, cited above.

It was further amended by striking out the provisions after the word "manner" to the words "And every such wooden package," and inserting in lieu thereof the provisions set forth here, and by inserting the word "snuff flour," in the second proviso at the end of the section, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, cited above, which was saved from repeal by a proviso of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, S, ante, § 5316.

In lieu of the two, three, and four ounce packages of tobacco and snuff previously authorized, one and two-thirds, two and one-half, and three and one-third ounce packages, and one ounce packages of smoking tobacco, were authorized by the War Revenue Act of June 13, 1898, c. 448, § 3, 30 Stat. 449, and two, three, and four ounce packages of smoking tobacco were authorized by the amendment to said act by Act March 2, 1901, c. 806, § 4, 31 Stat. 940, repealed by Act April 12, 1902, c. 500, § 7, 32 Stat. 97.

Notes of Decisions

See notes under § 5959, ante.

Operation of former statute.—The proviso in section 31, c. 315, Act June 6, 1872, authorizing the use of wood, metal, paper, etc., separately or in combination, for packing tobacco, snuff, and cigars, under regulations of the Commissioner of Internal Revenue, does not by implication modify or in any way affect the requirement of Act July 20, 1868, § 89, post, § 6207, that certain numbers and names be burned into cigar boxes with a branding iron before removing them from the manufactory. (1875) 15 Op. Atty. Gen. 517.

Cigar clippings as "manufactured tobacco."—There is nothing in the provisions of R. S. §§ 3244, 3362, 3368, or Act March 1, 1879, c. 125, § 14, to justify or require classing tobacco composed of clippings from the ends of cigars or ends broken in course of

manufacture as "manufactured tobacco" within the meaning of the tariff statute, and such fragments are classified as tobacco unmanufactured, and not specially enumerated under Schedule F of the act of 1883. Seeberger v. Castro (1894) 14 Sup. Ct. 766, 767, 153 U. S. 32, 38 L. Ed. 624.

§ 6170. (R. S. § 3363, as amended, Act Oct. 1, 1890, c. 1244, § 31.) Tobacco and snuff to be sold only in prescribed packages; penalty.

No manufactured tobacco shall be sold or offered for sale unless put up in packages and stamped as prescribed in this chapter, except at retail by retail dealers from packages authorized by section thirty-three hundred and sixty-two of the Revised Statutes; and every person who sells or offers for sale any snuff or any kind of manufactured tobacco not so put up in packages and stamped shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years.

Act July 20, 1868, c. 186, § 78, 15 Stat. 159. Act Oct. 1, 1890, c. 1244, § 31, 26 Stat. 619.

This section, as enacted in the Revised Statutes, was amended by inserting after the words "by retail dealers," in place of the words "wooden packages stamped or provided in this chapter," the words "packages authorized by section thirty-three hundred and sixty-two of the Revised Statutes," as set forth here, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 31, cited above.

R. S. § 3362, mentioned in this section, is set forth ante, § 6169.

Notes of Decisions

See notes under § 5959, ante.

Duty to affix and cancel stamps.—In view of this and section 6163, ante, and section 6181, post, a manufacturer desiring to put his product into a salable or removable or consumable condition must affix and cancel the proper stamps. Franks v. Robards Tobacco Co. (1901) 112 Fed. 784, 50 C. C. A. 527.

Gist of offense under statute.—The gist of the offense is having in possession unstamped tobacco, irrespective of value, purpose, or payment of tax. U. S. v. Keyes (C. C. 1882) 10 Fed. 876, 878.

Sale by retailer from wooden package.—A retail dealer who, in the course of his business, sells at retail tobacco taken by him from a wooden package duly put up and stamped, whether taken at or before the sale, does not violate section 3363, R. S. U. S. v. Veazie (C. C. 1881) 6 Fed. 867.

A sale by a retail dealer, in the course of his business, from a wooden package properly stamped, of part of the tobacco to another retail dealer, who proposed to sell it again, is a retailing, within the excepting clause. The vendor is not answerable for the acts of the purchaser, and need not concern himself as to his intentions. U. S. v. Jenkinson (D. C. 1883) 15 Fed. 903.

Negativing exception in indictment.—The last clause of Act July 20, 1868, § 78, contains no exception which must be negatived in an indictment founded on that clause. U. S. v. Imsand (C. C. 1869) Fed. Cas. No. 15,439.

Cited without definite application, U. S. v. Neid (D. C. 1870) Fed. Cas. No. 15,860.

§ 6171. (R. S. § 3364.) Label and notice on packages of tobacco and snuff.

Every manufacturer of tobacco or snuff shall, in addition to all other requirements of this Title relating to tobacco, print on each package, or securely affix, by pasting, on each package containing tobacco or snuff manufactured by or for him, a label, on which shall be printed the proprietor's or manufacturer's name, the number of the manufactory, the district and State in which it is situated, and these words:

"Notice.—The manufacturer of this tobacco has complied with all requirements of law. Every person is cautioned, under the penalties of law, not to use this package for tobacco again."

Every manufacturer of tobacco who neglects to print on or affix such label to any package containing tobacco made by or for him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined fifty

dollars for each package in respect to which such offense shall be committed.

Act July 20, 1868, c. 186, § 68, 15 Stat. 156.

Further provisions relating to the label to be affixed to packages containing tobacco or snuff were made by Act March 3, 1883, c. 121, § 5, set forth post, § 6172.

Cited without definite application,
U. S. v. Green (D. C. 1905) 137 Fed. 179.

§ 6172. (Act March 3, 1883, c. 121, § 5.) Label on packages of tobacco and snuff.

From and after the passage of this act every manufacturer of tobacco or snuff shall, in addition to all other requirements of law, print on each package, or securely affix by pasting on each package containing tobacco or snuff manufactured by or for him, a label on which shall be printed the number of the manufactory, the district and State in which it is situated, and these words;

Notice.

The manufacturer of this tobacco has complied with all requirements of law. Every person is cautioned, under penalties of law, not to use this package for tobacco again. (22 Stat. 489.)

This section was part of an act to reduce internal revenue taxation, etc., cited above.

(R. S. § 3365. Temporary.)

This section authorized the Commissioner of Internal Revenue to allow snuff and smoking-tobacco manufactured before July 20, 1868, not in wooden packages, to be stamped and sold in the original packages. It is omitted as temporary merely.

§ 6173. (R. S. § 3366.) Purchasing tobacco not branded or marked; penalty.

Every person who purchases, or receives for sale, any manufactured tobacco or snuff which has not been branded or stamped according to law, shall be liable to a penalty of fifty dollars for each offense.

Act June 30, 1864, c. 173, § 92, 13 Stat. 263. Act July 13, 1866, c. 184, § 9, 14 Stat. 126. Act July 20, 1868, c. 186, § 71, 15 Stat. 156.

§ 6173a. (R. S. § 3367.) Buying tobacco from a manufacturer who has not paid special tax.

Every person who purchases, or receives for sale, any manufactured tobacco or snuff from any manufacturer who has not paid the special tax, shall be liable for each offense to a penalty of one hundred dollars, and to a forfeiture of all the articles aforesaid so purchased or received, or of the full value thereof.

Act June 30, 1864, c. 173, § 92, 13 Stat. 263. Act July 13, 1866, c. 184, § 9, 14 Stat. 126.

This section became inoperative by the repeal of special taxes upon manufacturers by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, post, § 6177. The tax having been revived by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 752, and Act Sept. 8, 1916, c. 463, § 408, set forth ante, § 5980j, this section may now be operative.

§ 6174. (R. S. § 3368, as amended, Act March 3, 1875, c. 127, § 2, Act March 3, 1883, c. 121, § 4, Act Oct. 1, 1890, c. 1244, § 30, Act June 13, 1898, c. 448, § 3, Act April 12, 1902, c. 500, § 3, and Act Aug. 5, 1909, c. 6, § 31.) Tax on tobacco and snuff.

Upon tobacco and snuff manufactured and sold, or removed for consumption or use, there shall be levied and collected the following taxes:

On snuff, manufactured of tobacco or any substitute for tobacco, ground, dry, damp, pickled, scented, or otherwise, of all descriptions,

when prepared for use, a tax of eight cents per pound. And snuff flour, when sold, or removed for use or consumption, shall be taxed as snuff, and shall be put up in packages and stamped in the same manner as snuff.

On all chewing and smoking tobacco, fine-cut, cavendish, plug, or twist, cut or granulated, of every description; on tobacco twisted by hand or reduced into a condition to be consumed, or in any manner other than the ordinary mode of drying and curing, prepared for sale or consumption, even if prepared without the use of any machine or instrument, and without being pressed or sweetened; and on all fine-cut shorts and refuse scraps, clippings, cuttings, and sweepings of tobacco, a tax of eight cents per pound.

Act July 20, 1868, c. 186, § 61, 15 Stat. 152. Act June 6, 1872, c. 315, § 31, 17 Stat. 250. Act March 3, 1875, c. 127, § 2, 18 Stat. 339. Act March 3, 1883, c. 121, § 4, 22 Stat. 489. Act Oct. 1, 1890, c. 1244, § 30, 26 Stat. 619. Act June 13, 1898, c. 448, § 3, 30 Stat. 449. Act April 12, 1902, c. 500, § 3, 32 Stat. 96. Act Aug. 5, 1909, c. 6, § 31, 36 Stat. 109.

This section, as enacted in the Revised Statutes, fixed the tax on tobacco and snuff at rates subsequently changed by the following amendatory and other acts, namely, Act March 3, 1875, c. 127, § 2, Act March 3, 1883, c. 121, § 4, Act Oct. 1, 1890, c. 1244, § 30, Act June 13, 1898, c. 448, § 3, and Act April 12, 1902, c. 500, § 3, cited above, which were superseded by the further amendment of the section by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 31, cited above. This amendment re-enacted the original section in the same language except the rates of tax.

This section was saved from repeal by a proviso of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, S, ante, § 5316.

Notes of Decisions

1. Effect as requiring stamps to be applied and canceled.
2. Law as in force in Indian country.
3. Effect of statute as abrogating Indian treaty.
4. Tobacco as to which increase of tax did not apply.
5. Sale or removal preliminary to tax.
6. Increase of tax on removal from factory to store.
7. Meaning of "granulated tobacco."
8. Scraps and scrapings as "manufactured tobacco."
9. Classification of fragments of tobacco.
10. Rebate of taxes.
11. War revenue act of 1898.

1. Effect as requiring stamps to be affixed and canceled.—See Venable v. Richards (1881) 105 U. S. 636, 26 L. Ed. 1196.

2. Law as in force in Indian country.—The revenue laws imposing taxes on manufactured tobacco are in force in the Indian country. U. S. v. Tobacco Factory (D. C. 1870) Fed. Cas. No. 16,528.

3. Effect of statute as abrogating Indian treaty.—The treaty of July 19, 1866, art. 10, with the Cherokee Nation, so far as repugnant to Act July 20, 1868, imposing taxes on manufactured tobacco, is thereby abrogated. U. S. v. Tobacco Factory (D. C. 1870) Fed. Cas. No. 16,528.

4. Tobacco as to which increase of tax did not apply.—In the forenoon of March 3, 1875, A. stamped, sold, and removed for consumption or use certain tobacco. On the afternoon of the same day the president approved an act (18 Stat. 339, amending R. S. § 3368) increasing the tax on tobacco, but providing that such increase should "not apply to tobacco on which the tax under existing laws shall have been paid when this act takes effect." Held, that the increase of tax under that act did not apply to the tobacco so stamped, sold, and removed. Burgess v. Salmon (1878) 97 U. S. 381, 24 L. Ed. 1104.

5. Sale or removal preliminary to tax.—A manufacturer of tobacco after April 14, 1898, placed stamps on a quantity of manufactured tobacco at the existing rate of tax of 6 cents per pound; and such tobacco remained in its factory at the time of the passage of the war revenue act of June 13, 1898, by section 3 of which the tax was increased to 12 cents per pound, with a proviso that upon articles manufactured and removed from the factory before the passage of the act, bearing tax stamps affixed and canceled subsequent to April 14th and which articles were at the time of the passage of the act held and intended for sale, a tax equal to one-half the difference between the tax paid and that levied by the act should be levied and collected. Held, that the affixing and canceling of stamps thereon amounted constructively to a removal of such tobacco for sale, within the meaning of the new act, and that it was subject only to an additional tax of 3 cents per pound, the same as could have been assessed upon it had it been physically removed from the factory. Robards Tobacco Co. v. Franks (C. C. 1900) 103 Fed. 276, judgment affirmed Franks v. Robards Tobacco Co. (1901) 112 Fed. 784, 50 C. C. A. 527.

An entry was made on the sales books of tobacco sold, and a check was taken for the amount, but subsequently the manufacturers gave their check to the purchaser for the same amount, and the tobacco did not pass from their possession, but was treated and disposed of as their own. Held, that the tobacco was illegally returned for tax. Act June 30, 1864, § 94. U. S. v. Quantity of Tobacco (D. C. 1871, 1872) Fed. Cases Nos. 16,105, 16,106.

It is illegal for a tobacco manufacturer to remove from the wholesale to the retail department a quantity of tobacco, and to make a return and pay tax on it as one sale instead of on the actual sales in the retail department. U. S. v. Quantity of Tobacco (D. C. 1872) Fed. Cas. No. 16,106.

Under Act June 30, 1864, §§ 90, 94, as amended by Acts July 13, 1866, and July 20, 1868, a completed sale or a completed removal of manufactured tobacco is a necessary preliminary to the accruing, assessment, and payment of the tax upon it. Id.

6. Increase of tax on removal from factory to store.—Tobacco removed from the manufacturers' factory to their store held not subject to increased duties under Act July 1, 1864. Gale v. Sauerwein (C. C. 1864) Fed. Cas. No. 5,191.

7. Meaning of "granulated tobacco."—Granulated tobacco is not snuff within the meaning of R. S. § 3368, imposing a tax of 32 cents per pound on snuff. Venable v. Richards (1881) 105 U. S. 636, 26 L. Ed. 1196.

The term "granulated tobacco" is not synonymous with "snuff," but refers only to chewing and smoking tobacco. Venable v. Richards (C. C. 1876) Fed. Cas. No. 16,913.

8. Scraps and scrapings as "manufactured tobacco."—By Act July 20, 1868, § 61 (15 Stat. 125), entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes," refuse scraps and scrapings of tobacco are classed as manufactured tobacco. (1884) 17 Op. Atty. Gen. 646.

9. Classification of fragments of tobacco.—See note under § 6169, ante.

10. Rebate of taxes.—Act April 12, 1902, c. 500, § 4, 32 Stat. 97, provides that on all original and unbroken factory packages of smoking and manufactured tobacco and snuff held by manufacturers or dealers on July 1, 1902, on which a higher tax has been paid than that provided by the preceding section of the act, there shall be allowed a drawback or rebate equal to the full amount of the difference between the tax paid and the tax imposed by the act, etc. The section also requires that the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, adopt such rules and regulations as may be necessary to carry the act into effect. Held, that a provision in such rules and regulations which made it an absolute prerequisite to the recovery of the rebate that the proofs offered the executive officer should be satisfactory to them, is invalid as applied to this case. U. S. v. Hyams (1906) 146 Fed. 15, 76 C. C. A. 523, affirming decree Hyams v. U. S. (C. C. 1905) 139 Fed. 997.

Where in a suit for tobacco rebate, as authorized by Act April 12, 1902, c. 500, § 4, 32 Stat. 97, claimant presented four witnesses, who testified explicitly to the amount of tobacco claimed for, and such testimony was uncontradicted, the mere fact that the government claimed that the space in the stores was obviously inadequate for holding the amount of tobacco testified to was insufficient to show that the claim was fraudulent. Hyams v. U. S. (C. C. 1905) 139 Fed. 997, decree affirmed U. S. v. Hyams (1906) 146 Fed. 15, 76 C. C. A. 523.

The rules and regulations prescribed by the Commissioner of Internal Revenue on April 28, 1902, providing for claims for rebate of taxes paid on manufactured tobacco and snuff, as authorized by Act April 12, 1902, c. 500, § 3, 32 Stat. 96, are not objectionable for unreasonableness. Powell v. U. S. (C. C. 1905) 135 Fed. 881.

A bankrupt's trustee was not entitled to recover rebates of internal revenue on tobacco and snuff manufactured by the bankrupt, as authorized by Act April 12, 1902, c. 500, § 3, 32 Stat. 96, where there was evidence tending to show that the bankrupt's claim was fraudulent, and there was a failure to comply with the rules and regulations prescribed therefor by the Commissioner of Internal Revenue. Id.

11. War revenue act of 1898.—It was within the power of congress to impose by the war revenue act of June 13, 1898, an additional excise upon manufactured tobacco on which the excise theretofore imposed by law had been paid, even though such tobacco had passed from the hands of the manufacturer, where it had not reached the consumer, and was, at the time of the passage of the act, held and intended for sale. Patton v. Brady (1902) 22 Sup. Ct. 493, 184 U. S. 608, 46 L. Ed. 713.

The tax levied on tobacco by the war revenue act of June 13, 1898, c. 448, § 3, 30 Stat. 449, "in lieu of the tax now imposed by law," is an excise, and not a direct tax upon property, which must be apportioned according to population. Id.

Under section 3 of the war revenue act of 1898, which increased the tax on manufactured tobacco from 6 to 12 cents per pound, but which further provided that all articles enumerated in the section, "manufactured, imported and removed from factory or cus-

tom house" before the passage of the act, bearing tax stamps canceled subsequent to April 14, 1898, and which articles were at the time of the passage of the act "held and intended for sale by any person," should pay a tax equal to one-half the difference between the tax already paid and that levied on the article by such act, a manufacturer of tobacco, who had lawfully paid the tax thereon after April 14th, and held the same for sale in his factory at the time of the passage of the act, could not be required to pay an additional tax of 6 cents per pound thereon, instead of 3 cents, merely because the same had not been physically "removed" from his factory. Franks v. Robards Tobacco Co. (1901) 112 Fed. 784, 50 C. C. A. 527, affirming judgment Robards Tobacco Co. v. Franks (C. C. 1900) 103 Fed. 276.

The collector having assessed and collected an additional tax of 6 cents per pound on such tobacco while it still remained in the factory, whereas it was not subject to the payment of any tax until its removal for consumption or sale, his action amounted to a finding of the jurisdictional fact that it had been removed and was being held for sale, which, as against the government, fixed its status for taxation under the act, and rendered the collection of any additional tax above 3 cents per pound illegal, and such excess recoverable by the taxpayer. Robards Tobacco Co. v. Franks (C. C. 1900) 103 Fed. 276, judgment affirmed Franks v. Robards Tobacco Co. (1901) 112 Fed. 784, 50 C. C. A. 527.

§ 6175. (Act Aug. 5, 1909, c. 6, § 35.) Leaf-tobacco not subject to tax; dealers and retail dealers in leaf-tobacco.

Unstemmed leaf tobacco in the natural leaf, in the hand, and not manufactured or altered in any manner, raised and grown in the United States, shall not be subject to any internal-revenue tax or charge of any kind whatsoever, and it shall be lawful for any person to buy and sell such unstemmed tobacco in the leaf, in the hand, without payment of tax of any kind: Provided, That any person, other than the farmer or producer of leaf tobacco, who sells leaf tobacco to manufacturers of tobacco, snuff or cigars shall be deemed and considered a dealer in leaf tobacco, and become subject to all the provisions of section thirty-two hundred and forty-four, as amended by section fourteen, Act of March first, eighteen hundred and seventy-nine, and also as amended by the Act of March third, eighteen hundred and eighty-three, and, further, shall be subject to all the provisions of section thirty-three hundred and sixty, as amended by section fourteen, Act of March first, eighteen hundred and seventy-nine, and of sections thirty-three hundred and fifty-nine and thirty-three hundred and ninety-one, United States Revised Statutes.

Every person shall be regarded as a retail dealer in leaf tobacco whose business it is to sell leaf tobacco in quantities of less than an original hogshead, case or bale; or who shall sell directly to consumers or to persons other than dealers in leaf tobacco or to manufacturers of tobacco, snuff or cigars, or to persons who purchase in original packages for export.

Every such retail dealer in leaf tobacco shall register with the collector of the district his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on; and a failure to register as herein required shall subject such person to a penalty of fifty dollars; and every retail dealer in leaf tobacco shall also keep a book and enter therein daily his purchases of leaf tobacco and his sales, where such sales amount to two pounds or more to one person in one day. Such record shall be kept written up to date and shall be in such form and contain such entries as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and such books shall be open at all times for the inspection of any internal-revenue officer or agent.

Any person who has duly qualified as a retail dealer in leaf tobacco may sell natural leaf tobacco grown or raised in the United States in its condition as cured on the farm, in the hand, and not manufactured in any way, except to manufacturers of tobacco, snuff or cigars, without the payment of any tax on such leaf tobacco whatsoever, and

so much of section sixty-nine, tariff Act of August twenty-seventh, eighteen hundred and ninety-four, which took effect the following day, and section thirty-two hundred and forty-four, United States Revised Statutes, or any other existing law, as is inconsistent with the provisions of this Act, is hereby repealed.

And it shall be the duty of every retail dealer in leaf tobacco, as herein described, under regulations to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, to furnish on demand to any internal-revenue officer or other authorized agent of the Treasury Department a true and correct statement, verified by his oath or affirmation, of all his sales of leaf tobacco in quantities of ten pounds or more to any one person in any one day, with the name and residence in each instance of the person to whom sold, and any such retail dealer in leaf tobacco who shall willfully refuse to furnish such information or keep the book as required herein, or who shall knowingly make any false statements or false entries in such book as to any of the facts aforesaid, shall be guilty of a misdemeanor, and on conviction shall be liable to a fine of fifty dollars for each offense: And provided further, That nothing in this Act shall be construed as imposing any restrictions whatsoever upon the farmers or growers of leaf tobacco in regard to the sales of their leaf tobacco. (36 Stat. 110.)

This section was part of the Payne-Aldrich Tariff Act of 1909, cited above.

R. S. § 3244, subd. 6, imposing a special tax on dealers in leaf tobacco, as amended by Act March 1, 1879, c. 125, § 14, 20 Stat. 343, mentioned in this section, was as follows:

"Sixth. Dealers in leaf-tobacco, except retail dealers in leaf-tobacco, as hereinafter defined, shall pay twenty-five dollars. Every person shall be regarded as a dealer in leaf-tobacco whose business it is, for himself or on commission, to sell, or offer for sale, or consign for sale on commission, leaf-tobacco; and payment of a special tax as dealer in tobacco, manufacturer of tobacco, manufacturer of cigars, or any other special tax, shall not exempt any person dealing in leaf-tobacco from the payment of the special tax therefor hereby required. But no farmer or planter, nor the executor or administrator of such farmer or planter, nor the guardian of any minor, shall be required to pay a special tax as a dealer in leaf-tobacco, for selling tobacco produced by said farmer or planter, or by said executor, administrator, or guardian, or received by either of them as rents from tenants who have produced the same on the land of said farmer, planter, or minor: Provided, That nothing in this section shall be construed to exempt from a special tax any farmer or planter who, by peddling or otherwise, sells leaf-tobacco at retail directly to consumers, or who sells or assigns, consigns, transfers, or disposes of, to persons other than those who have paid a special tax as leaf-dealers or manufacturers of tobacco, snuff, or cigars, or to persons purchasing leaf-tobacco for export.

"No sheriff or other officer acting under order or process of any court or magistrate, nor trustee, or other fiduciary, legally acting under the powers vested in him, shall be liable to said special tax as a dealer or retail dealer in selling tobacco under such authority. And no purchaser at any sale by such sheriff, officer, trustee, or fiduciary, shall be held liable to any other tax or restriction as to a sale of tobacco so purchased than he would have been had such purchaser been the producer thereof on his own land.

"Dealers in leaf-tobacco shall sell only to other dealers who have paid a special tax as such, and to manufacturers of tobacco, snuff, or cigars, and to such persons as are known to be purchasers of leaf-tobacco for export: Provided, it shall be lawful for any licensed manufacturer of cigars to purchase leaf-tobacco of any licensed dealer or other licensed manufacturer in quantities less than the original package, for use in his own manufactory exclusively."

Act March 3, 1883, c. 121, 22 Stat. 488, also mentioned in this section as amending R. S. § 3244, did not purport in terms to amend that section, but section 2 thereof made the following provisions:

"That on and after the first day of May, eighteen hundred and eighty-three, dealers in leaf tobacco shall annually pay twelve dollars; * * Retail dealers in leaf tobacco shall pay two hundred and fifty dollars, and thirty cents for each dollar on the amount of their monthly sales in excess of the rate of five hundred dollars per annum: Provided, That farmers and producers of tobacco may sell at the place of production tobacco of their own growth and raising at retail directly to consumers, to an amount not exceeding one hundred dollars annually."

The special tax provisions were repealed by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, post, § 6177. But see §§ 5980b–5980m, 6346a, post, and notes thereunder.

So much of R. S. § 3244, or any other existing law, as is inconsistent with this act was repealed by this section.

R. S. § 3360, as amended by Act March 1, 1879, c. 125, § 14, also mentioned in this section, is set forth ante, § 6168.

R. S. § 3359, also mentioned in this section, is set forth ante, § 6167.

R. S. § 3391, also mentioned in this section, is set forth post, § 6201.

Act Aug. 27, 1894, c. 349, § 69, repealed by this section so far as inconsistent with the provisions of this act, is set forth, ante, § 6162.

This section was saved from repeal by a proviso of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, S, ante, § 5316.

Dealers in leaf tobacco were required to keep books, by R. S. § 3360, ante, § 6168.

Dealers in leaf tobacco, etc., were required to register, by Act Oct. 1, 1890, c. 1244, § 26, post, § 6177.

Dealers in leaf-tobacco or materials used in manufacturing tobacco or snuff were required to render a statement of sales, by R. S. § 3359, ante, § 6167.

Dealers in leaf-tobacco or materials used in manufacturing cigars were required to render a statement of sales by R. S. § 3391, post, § 6201.

See notes to provisions of R. S. § 3244, ante, § 5971, and post, § 6176.

§ 6176. (R. S. § 3244.) Dealers in leaf-tobacco; dealers in tobacco.

Sixth * * Every person shall be regarded as a dealer in leaf tobacco, whose business it is, for himself or on commission, to sell, or offer for sale, or consign for sale on commission, leaf tobacco * *.

Eighth * * Every person, whose business it is, to sell or offer for sale, manufactured tobacco, snuff, or cigars, shall be regarded as a dealer in tobacco * *.

Act July 20, 1868, c. 186, § 59, 15 Stat. 150. Act June 6, 1872, c. 315, § 31, 17 Stat. 250.

These provisions were part of R. S. § 3244, which imposed special taxes upon dealers in leaf-tobacco and dealers in tobacco, and defined such dealers. The part of the section imposing such taxes was repealed, and the registration of dealers was required, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, post, § 6177. The part of the section imposing special taxes upon brewers, manufacturers of stills, rectifiers, and liquor dealers, is set forth ante, § 5971.

Retail dealers in leaf-tobacco were defined by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 35, ante, § 6175, a provision of which declared that "any person, other than the farmer or producer of leaf-tobacco, who sells leaf-tobacco to manufacturers of tobacco, snuff or cigars shall be deemed and considered a dealer in leaf-tobacco."

Notes of Decisions

See notes under § 6371d(2), post.

§ 6177. (Act Oct. 1, 1890, c. 1244, § 26.) Dealers in leaf-tobacco, manufacturers, and peddlers to register.

On and after the first day of May, eighteen hundred and ninety-one, all special taxes imposed by the laws now in force upon dealers in leaf tobacco, retail dealers in leaf tobacco, dealers in tobacco, [manufacturers of tobacco, manufacturers of cigars,] and peddlers of tobacco are hereby repealed: Every such dealer in leaf tobacco, retail dealer in leaf tobacco, manufacturer, and peddler shall, however, register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on, the same as though the tax had not been repealed, and a failure to register as herein required shall subject such person to a penalty of fifty dollars. (26 Stat. 618.)

This section was part of the McKinley Tariff Act, cited above.

This section, by repealing the special taxes upon dealers and retail dealers in leaf-tobacco, dealers in tobacco, manufacturers of tobacco and cigars, and peddlers, superseded the provisions relating to such taxes made by R. S. § 3244, subsecs. 6–11, as amended by Act March 1, 1879, c. 125, § 14, 20 Stat. 343, and Act March 3, 1883, c. 121, §§ 2, 3, 22 Stat. 488.

Tobacco manufacturers were defined by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 69, ante, § 6162.

Dealers in leaf-tobacco, and dealers in tobacco were defined by provisions of R. S. § 3244, ante, § 6176.

Provisions defining retail dealers in leaf-tobacco and requiring them to register were made by Act Aug. 5, 1909, c. 6, § 35, ante, § 6175.

Peddlers were defined by a provision of R. S. § 3244, post, § 6187.

The special taxes imposed on dealers in leaf-tobacco by Act June 13, 1898, c. 448, § 4, 30 Stat. 450, were repealed by Act April 12, 1902, c. 500, § 5, 32 Stat. 97.

The special taxes imposed on dealers in leaf tobacco, by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 752, were repealed by Act Sept. 8, 1916, c. 463, § 410, ante, § 5980*l*.

The words in brackets are superseded by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 752, and by Act Sept. 8, 1916, c. 463, § 408, set forth ante, § 5980*j*.

§ 6178. (R. S. § 3369.) Stamps, how prepared, furnished, and sold. The Commissioner of Internal Revenue shall cause to be prepared suitable and special stamps for the payment of the tax on tobacco and snuff, which shall indicate the weight and class of the article on which payment is to be made, and shall be affixed and canceled in the mode prescribed by the Commissioner of Internal Revenue, and stamps when used on any wooden package shall be canceled by sinking a portion of the same into the wood with a steel die, and also such export-stamps as are required by law. Such stamps shall be furnished to the collectors requiring them, and each collector shall keep at all times a supply equal in amount to three months' sale thereof, and shall sell the same only to the manufacturers of tobacco and snuff in their respective districts who have given bonds as required by law, and to owners or consignees of tobacco or snuff, upon the requisition of the proper custom-house officer having the custody of such tobacco or snuff; and to persons required by law to affix the same to tobacco or snuff on hand on the first day of January, eighteen hundred and sixty-nine. And every collector shall keep an account of the number, amount, and denominate values of stamps sold by him to each manufacturer or other person aforesaid: Provided, That such stamps as may be required to stamp tobacco, snuff, or cigars, sold under distraint by any collector of internal revenue, or for stamping any tobacco, snuff, or cigars which may have been abandoned, condemned, or forfeited, and sold by order of court or of any Government officer for the benefit of the United States, may, under such rules and regulations as the Commissioner of Internal Revenue shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other Government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered; and any revenue-collector using or furnishing stamps in manner as aforesaid, on presenting vouchers satisfactory to the Commissioner of Internal Revenue, shall be allowed credit for the same in settling his stamp-account with the Department: And provided further, That in case it shall appear that any abandoned, condemned, or forfeited tobacco, snuff, or cigars, when offered for sale, will not bring a price equal to the tax due and payable thereon, such goods shall not be sold for consumption in the United States; and upon application made to the Commissioner of Internal Revenue, he is authorized and directed to order the destruction of such tobacco, snuff, or cigars by the officer in whose custody and control the same may be at the time, and in such manner and under such regulations as the Commissioner of Internal Revenue may prescribe.

Act July 20, 1868, c. 186, § 67, 15 Stat. 155. Act June 6, 1872, c. 315, § 31, 17 Stat. 253.

Notes of Decisions

Purpose of sale.—Stamps are not sold to manufacturers in payment of tax, but for the purpose of being used when a tax becomes payable. American Tobacco Co. v. U. S. (1897) 32 Ct. Cl. 207.

Meaning of term "tax" in last clause.—The term "tax," as used in the last clause of this section, does not include import duties, and cigarettes, when forfeited, may be sold and delivered when they bring enough to pay the in-

ternal revenue tax, though they may not bring enough to pay that and the customs duties. U. S. v. Fifty-Nine Demijohns Aguadiente and Four Barrels of Cigarettes (D. C. 1889) 39 Fed. 401.

Affixing stamps to forfeited cigarettes.—Where cigarettes are to be sold and the proceeds paid to the department of customs, the internal revenue stamps should be affixed thereto in order that the amount due the internal revenue may be paid from the proceeds. U. S. v. Fifty-Nine Demijohns Aguadiente and Four Barrels of Cigarettes (D. C. 1889) 39 Fed. 401, 403.

Cited without definite application, Robards Tobacco Co. v. Franks (C. C. 1900) 103 Fed. 276, affirmed (1901) 112 Fed. 784, 50 C. C. A. 527.

§ 6179. (R. S. § 3370.) Tobacco manufactured by one person for another or on shares; stamps, by whom affixed; fraud in such cases.

Whenever tobacco or snuff of any description is manufactured, in whole or in part, upon commission or shares, or the material from which any such articles are made, or are to be made, is furnished by one person and made or manufactured by another, or the material is furnished or sold by one person with an understanding or agreement with another that the manufactured article is to be received in payment therefor or for any part thereof, the stamps required by law shall be affixed by the actual maker or manufacturer before the article passes from the place of making or manufacturing. And in case of fraud on the part of either of said persons in respect to said manufacture, or of any collusion on their part with intent to defraud the revenue, such material and manufactured articles shall be forfeited to the United States; and each party to such fraud or collusion shall be deemed guilty of a misdemeanor, and be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned for not less than six months nor more than three years.

Act July 20, 1868, c. 186, § 75, 15 Stat. 158.

§ 6180. (R. S. § 3371, as amended, Act March 1, 1879, c. 125, § 14.) Estimated tax on tobacco sold without stamps; notice of assessment.

Whenever any manufacturer of tobacco, snuff, or cigars, sells, or removes for sale or consumption, any tobacco, snuff, or cigars, upon which a tax is required to be paid by stamps, without the use of the proper stamps, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such sale or removal, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor, and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal: Provided, however, That no such assessment shall be made until and after notice to the manufacturer of the alleged sale and removal to show cause against said assessment; and the Commissioner of Internal Revenue shall, upon a full hearing of all the evidence, determine what assessment, if any should be made.

Act July 20, 1868, c. 186, § 60, 15 Stat. 152. Act June 6, 1872, c. 315, § 31, 17 Stat. 252. Act March 1, 1879, c. 125, § 14, 20 Stat. 346.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "of not more than two years after such sale or removal," in place of the words "upon such information as he can obtain," the words "upon satisfactory proof," and by adding, at the end of the section as originally enacted, the proviso, as set forth here, by Act March 1, 1879, c. 125, § 14, cited above.

A more comprehensive provision extending the right to estimate the tax on all articles required to be stamped which are sold without stamps was made by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 47, post, § 6348.

Notes of Decisions

See notes under § 6174, ante.

Assessment of tax on cigarettes.—Section 6204, post, classifies cigars and cigarettes for internal revenue duty, and imposes a stamp tax of 54 cents per thousand on cigarettes weighing

not more than three pounds to the thousand, and the wholesale value or price of which is not more than $2 per thousand, including the tax, and, if the value exceeds such sum, then they are required to carry a tax of $1.08 per thousand. Held that, where intestate manufactured cigarettes and sold them at wholesale at his storeroom to any one who might apply in reasonable wholesale quantities at $2 per thousand, the fact that the larger part of the cigarettes manufactured by him were purchased by his son at $2 per thousand and sold by him at wholesale with cigarettes of other manufacture for more than such price did not make the "wholesale price or value" of intestate's cigarettes more than $2 per thousand, and hence he was not subject to an assessment prescribed by this section for insufficient stamping. Epremiam v. Ward (C. C. 1909) 169 Fed. 691.

Cited without definite application, Robards Tobacco Co. v. Franks (C. C. 1900) 103 Fed. 276, affirmed (1901) 112 Fed. 784, 50 C. C. A. 527.

§ 6181. (R. S. § 3372.) Removing unlawfully, selling without stamps, or payment of tax, or giving bond, making false entries, etc.

Every manufacturer of tobacco or snuff who removes, otherwise than as provided by law, or sells, without the proper stamps denoting the tax thereon, [or without having paid the special tax,] or given bond as required by law, any tobacco or snuff, or who makes false and fraudulent entries of manufactures or sales of tobacco or snuff, or makes false or fraudulent entries of the purchase or sales of leaf-tobacco, tobacco-stems, or other material, or who affixes any false, forged, fraudulent, spurious, or counterfeit stamp, or imitation of any stamp, required by law, or any stamp required by law which has been previously used, to any box or package containing any tobacco or snuff, shall, in addition to the penalties elsewhere provided by law for such offenses, forfeit to the United States all the raw material and manufactured or partly manufactured tobacco and snuff, and all machinery, tools, implements, apparatus, fixtures, boxes, and barrels, and all other materials which may be found in his possession, in his manufactory, or elsewhere.

Act July 20, 1868, c. 186, § 69, 15 Stat. 156. Act June 6, 1872, c. 315, § 31, 17 Stat. 253.

The words of this section, "or without having paid the special tax," inclosed in brackets, were superseded by the repeal of special taxes upon tobacco manufacturers by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, ante, § 6177. They are revived, however, by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 752, and Act Sept. 8, 1916, c. 463, § 408, set forth ante, § 5980j, again imposing a special tax.

Notes of Decisions

Effect as requiring stamp to be affixed and canceled.—In view of this and sections 6163 and 6170, ante, a manufacturer desiring to put his product into a salable or removable or consumable condition must affix and cancel the proper stamps. Franks v. Robards Tobacco Co. (1901) 112 Fed. 784, 50 C. C. A. 527.

Cited without definite application, U. S. v. Two Hundred Barrels of Whisky (1877) 95 U. S. 571, 576, 24 L. Ed. 491; Snyder v. U. S. (1884) 5 Sup. Ct. 118, 112 U. S. 216, 28 L. Ed. 697.

§ 6182. (R. S. § 3373.) Absence of stamp to be evidence of non-payment.

The absence of the proper stamp on any package of manufactured tobacco or snuff shall be notice to all persons that the tax has not been paid thereon, and shall be prima-facie evidence of the non-payment thereof. And such tobacco or snuff shall be forfeited to the United States.

Act July 20, 1868, c. 186, § 70, 15 Stat. 156.

Notes of Decisions

Forfeiture.—Unstamped packages of tobacco and cigarettes, found in a tobacco store, are forfeited under this section. In re Quantity of Tobacco (D. C. 1871) Fed. Cas. No. 11,500.

Having on hand unstamped packages

of tobacco for the purpose of being sold without payment of tax is good ground for forfeiting the entire establishment. Id.

Cited without definite application, U. S. v. Green (D. C. 1905) 137 Fed. 179.

§ 6183. (R. S. § 3374.) Removing, except in proper packages, or without stamp; selling unlawfully, etc.

Every person who removes from any manufactory, or from any place where tobacco or snuff is made, any manufactured tobacco or snuff without the same being put up in proper packages, or without the proper stamp for the amount of tax thereon being affixed and canceled, as required by law; or, if the same be intended for export, without the proper export-stamp being affixed; or who uses, sells, or offers for sale, or has in possession, except in the manufactory, or while in transfer under bond or a collector's permit, from any manufactory, store, or warehouse, to a vessel for exportation to a foreign country, any manufactured tobacco or snuff, without proper stamps for the amount of tax thereon being affixed and canceled; or who sells, or offers for sale, for consumption in the United States, or uses, or has in possession, except in the manufactory, or while in transfer under bond or a collector's permit, from any manufactory, store, or warehouse, to a vessel for exportation to a foreign country, any manufactured tobacco or snuff on which only the stamp marking the same for export has been affixed, shall for each such offense, respectively, be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years.

Act July 20, 1868, c. 186, § 71, 15 Stat. 156. Act June 6, 1872, c. 315, § 31, 17 Stat. 253.

Notes of Decisions

Possession of unstamped manufactured tobacco.—A person is liable for having in his possession unstamped manufactured tobacco, whether the same is refuse or not, or whether it was purchased to be remanufactured into snuff, or whether a tax had been paid on it or not. U. S. v. Keyes (C. C. 1882) 10 Fed. 876.

Cited without definite application, U. S. v. Green (D. C. 1905) 137 Fed. 179.

§ 6184. (R. S. § 3375.) Affixing false stamps or stamps twice used.

Every person who affixes to any package containing tobacco or snuff, any false, forged, fraudulent, spurious, or counterfeit stamp, or a stamp which has been before used, shall be deemed guilty of a felony, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than two years nor more than five years.

Act July 20, 1868, c. 186, § 71, 15 Stat. 156.

Cited without definite application, Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658.

§ 6185. (R. S. § 3376.) Stamped portion of emptied packages to be destroyed; buying, selling, or using the same.

Whenever any stamped box, bag, vessel, wrapper, or envelope of any kind, containing tobacco or snuff, is emptied, the stamp or stamps thereon shall be destroyed by the person in whose hands the same may be. And every person who willfully neglects or refuses so to do shall, for each such offense, be fined fifty dollars, and imprisoned not less than ten days nor more than six months. And every person who sells or gives away, or who buys or accepts from another any such empty stamped box, bag, vessel, wrapper, or envelope of any kind, or the stamp or stamps taken from any such empty box, bag, vessel, wrapper, or envelope of any kind, shall, for each such offense, be fined one hundred dollars and imprisoned for not less than twenty days, and not more than one year. And every manufacturer or other person who puts tobacco or snuff into any such box, bag, vessel,

wrapper, or envelope, the same having been either emptied or partially emptied, or who has in his possession, or affixes to any box or other package, any stamp which has been previously used, or who sells, or offers for sale, any box or other package of tobacco, snuff, or cigars, having affixed thereto any fraudulent, spurious, imitation, or counterfeit stamp, or stamp that has been previously used, or sells from any such fraudulently stamped box or package, or has in his possession any box or package as aforesaid, knowing the same to be fraudulently stamped, shall, for each such offense, be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than one year nor more than three years.

Act July 20, 1868, c. 186, § 72, 15 Stat. 156. Act June 6, 1872, c. 315, § 31, 17 Stat. 253.

Notes of Decisions

Possession of parts of used stamps.—The possession of parts of internal revenue stamps, which had been previously used upon snuff jars, does not constitute an offense within the terms of this section relating to the fraudulent possession of canceled stamps, although the facts indicated a fraudulent purpose upon the part of the defendant. U. S. v. Loup (C. C. 1880) 1 Fed. 696, 698.

Refilling opium tin.—Refilling of an opium tin bearing a revenue stamp held an indictable offense under Act Oct. 1, 1890, § 39, and this section. U. S. v. Don Kee (D. C. 1911) 192 Fed. 733.

Forfeiture.—The intention on the part of those in charge of a tobacco store to violate the law in relation to the goods that were taxable by not canceling the stamps on packages that were sold, as required by Act July 20, 1868, § 72, will forfeit the whole establishment. In re Quantity of Tobacco (D. C. 1871) Fed. Cas. No. 11,500.

Indictment.—Under Act Oct. 1, 1890, § 39, and under this section, and indictment for possessing an opium tin bearing an undestroyed revenue stamp held insufficient. U. S. v. Don Kee (D. C. 1911) 192 Fed. 733.

An indictment under Act Oct. 1, 1890, § 39, for refilling an opium tin bearing an uneffaced revenue stamp, held insufficient for failing to state the time and place when and where the tin was refilled. Id.

Cited without definite application, Ripper v. U. S. (1910) 178 Fed. 24. 101 C. C. A. 152, rehearing denied (1910) 179 Fed. 497, 103 C. C. A. 478.

§ 6186. (R. S. § 3377, as amended, Act March 1, 1879, c. 125, § 14.) Imported tobacco and snuff.

All manufactured tobacco and snuff (not including cigars) imported from foreign countries shall, in addition to the import duties imposed on the same, pay the tax imposed by law on like kinds of tobacco and snuff manufactured in the United States, and have the same stamps respectively affixed. Such stamps shall be affixed and canceled on all such articles so imported by the owner or importer thereof, while they are in the custody of the proper custom-house officers, and such articles shall not pass out of the custody of said officers until the stamps have been affixed and canceled. Such tobacco and snuff shall be put up in packages, as prescribed by law for like articles manufactured in the United States before the stamps are affixed; and the owner or importer shall be liable to all the penal provisions prescribed for manufactures of tobacco and snuff manufactured in the United States. Whenever it is necessary to take any such articles, so imported, to any place for the purpose of repacking, affixing, and canceling such stamps, other than the public stores of the United States, the collector of customs of the port where they are entered shall designate a bonded warehouse to which they shall be taken, under the control of such customs officer as he may direct. And every officer of customs who permits any such articles to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of this section relating thereto, shall be deemed guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years. Provided, That scraps, cuttings, and clippings of tobacco imported from

any foreign country may, after the proper customs duty has been paid thereon, be withdrawn in bulk without the payment of the internal-revenue tax, and transferred as material directly to the factory of a manufacturer of tobacco or snuff, or of a cigar-manufacturer, under such restrictions and regulations as shall be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

Act July 20, 1868, c. 186, § 77, 15 Stat. 158. Act March 1, 1879, c. 125, § 14, 20 Stat. 346.

This section, as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the proviso as set forth here, by Act March 1, 1879, c. 125, § 14, cited above.

Cited without definite application, U. S. v. Fifty-Nine Demijohns Aguadiente and Four Barrels of Cigarettes (D. C. 1889) 39 Fed. 401, 402.

(R. S. §§ 3378–3380. Temporary.)

R. S. § 3378, provided for inventories of tobacco and snuff on hand before July 20, 1868. R. S. § 3379, provided for refunding the tax previously paid on tobacco, snuff, and cigars manufactured between July 20, 1868, and April 10, 1869. R. S. § 3380, imposed a penalty for selling tobacco as made and tax paid before July 20, 1868. These sections are omitted, as temporary merely.

§ 6187. (R. S. § 3244, as amended by Act Sept. 7, 1916, c. 453.) Peddlers of tobacco.

Eleventh. * * Any person who sells or offers to sell and deliver manufactured tobacco, snuff, or cigars, traveling from place to place, in the town or through the country, shall be regarded as a peddler of tobacco: * * Provided, That manufacturers of, jobbers and wholesale dealers in, manufactured tobacco, snuff, cigars, and cigarettes, and the agents or salesmen of such manufacturers, jobbers, and wholesale dealers, traveling from place to place, in the town or through the country, and selling and delivering or offering to sell and deliver such products only to dealers, shall not be construed to be peddlers. (39 Stat. 740.)

Act June 6, 1872, c. 315, § 31, 17 Stat. 251. Act Sept. 7, 1916, c. 453, 39 Stat. 740.

This provision was part of R. S. § 3244, other provisions of which imposed special taxes on peddlers of tobacco. The part of the section imposing such taxes was repealed, and the registration of peddlers was required, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, ante, § 6177. Other provisions of the section, imposing taxes upon brewers, etc., are set forth ante, § 5971.

§ 6188. (R. S. § 3381, as amended, Act Oct. 1, 1890, c. 1244, § 28.) Peddlers of tobacco; notice of business.

Every peddler of tobacco, before commencing, or, if he has already commenced, before continuing to peddle tobacco, shall furnish to the collector of his district a statement accurately setting forth the place of his residence, and, if in a city the street and number of the street where he resides, the State or States through which he proposes to travel; also whether he proposes to sell his own manufactures or the manufactures of others, and, if he sells for other parties, the person for whom he sells. He shall also give a bond in the sum of five hundred dollars, to be approved by the collector of the district, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on tobacco, snuff, or cigars; that he shall neither sell nor offer for sale any tobacco, snuff, or cigars, except in original and full packages, as the law requires the same to be put up and prepared by the manufacturer for sale, or for removal for sale or consumption, and except such packages of tobacco, snuff, and cigars as bear the manufacturer's label or

caution notice, and his legal marks and brands, and genuine internal-revenue stamps which have never before been used.

Act June 6, 1872, c. 315, § 31, 17 Stat. 251. Act Oct. 1, 1890, c. 1244, § 28, 26 Stat. 618.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "the State or States through which he proposes to travel," the words "the mode of travel, whether on foot, with one, two, or more horses, mules, or other animals, or by public conveyance," and by changing the words "He shall also give a bond in the sum of two thousand dollars," to the words "He shall also give a bond in the sum of five hundred dollars," as set forth here, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 28, cited above.

The manufacturer's label or caution notice referred to here was prescribed by R. S. § 3364, and Act March 3, 1883, c. 121, § 5, ante, §§ 6171, 6172.

Cited without definite application,
Guckenheimer v. Sellers (C. C. 1897) 81 Fed. 997, 998.

§ 6189. (R. S. § 3382.) Peddlers of tobacco traveling with wagon.

Every peddler of tobacco, snuff, or cigars, traveling with a wagon, shall affix and keep on the same, in a conspicuous place, a sign painted in oil-colors, or gilded, giving his full name, business, and collection-district.

Act June 6, 1872, c. 315, § 31, 17 Stat. 251.

Cited without definite application,
U. S. v. Loup (C. C. 1880) 1 Fed. 696.

§ 6190. (R. S. § 3383, as amended, Act March 1, 1879, c. 125, § 15, and Act Oct. 1, 1890, c. 1244, § 29.) Peddler to obtain and exhibit certificate, etc.

Every peddler of tobacco shall obtain a certificate from the collector of his collection district, who is hereby authorized and directed to issue the same, giving the name of the peddler, his residence, and the fact of his having filed the required bond; and shall on demand of any officer of internal revenue produce and exhibit his certificate. And whenever any peddler refuses to exhibit his certificate, as aforesaid, on demand of any officer of internal revenue, said officer may seize the horse or mule, wagon, and contents, or pack, bundle, or basket, of any person so refusing; and the collector of the district in which the seizure occurs may, on ten days' notice, published in any newspaper in the district, or served personally on the peddler, or at his dwelling house, require such peddler to show cause, if any he has, why the horses or mules, wagons, and contents, pack, bundle, or basket so seized shall not be forfeited. In case no sufficient cause is shown, proceedings for the forfeiture of the property seized shall be taken under the general provisions of the internal-revenue laws relating to forfeitures. Any internal-revenue agent may demand production of and inspect the collector's certificate for peddlers, and refusal or failure to produce the same, when so demanded, shall subject the party guilty thereof to a fine of not more than five hundred dollars and to imprisonment for not more than twelve months.

Act June 6, 1872, c. 315, § 31, 17 Stat. 252. Act Dec. 24, 1872, c. 13, §§ 1, 6, 17 Stat. 401, 403. Act March 1, 1879, c. 125, § 15, 20 Stat. 346. Act Oct. 1, 1890, c. 1244, § 29, 26 Stat. 618.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "produce and exhibit said certificate," the words "and his special-tax stamp," and by inserting, after the words "refuses to exhibit," in place of the words "his special stamp," the words "his special-tax stamp and certificate, or either of them," and by adding, at the end of the section as originally enacted, the words "Any internal-revenue agent may demand production of and inspect the peddler's special-tax stamp and the collector's certificate for peddlers; and refusal or failure to produce the same, or either of them, when so demanded, shall subject the party guilty thereof to a fine of not less than fifty dollars nor more than five hundred dollars, and to imprisonment for not less than thirty days nor more than twelve months," by Act March 1, 1879, c. 125, § 15, cited above.

It was further amended by striking out, after the words "his residence," the words "the class of his special-tax stamp," and by inserting, after the words "produce and exhibit," in place of the words "said certificate and his special-tax stamp, and unless he shall do so, may be deemed not to have paid the special tax, nor otherwise to have complied with the law," the words "his certificate," and by inserting, after the words "any peddler refuses to exhibit," in place of the words "his special-tax stamp and certificate or either of them," the words "his certificate," and by changing the provisions added at the end of the section by Act March 1, 1879, c. 125, § 15, as given above, to read as set forth here, by Act Oct. 1, 1890, c. 1244, § 29, cited above.

Special taxes on peddlers, were abolished by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, ante, § 6177.

Notes of Decisions

Peddlers.—Liability of a peddler for carrying on business without payment of the special tax after application for a license, where he stopped business before the tax was assessed, and refused to pay it. U. S. v. Pressy (D. C. 1869) Fed. Cas. No. 16,086.

§ 6191. (R. S. § 3384, as amended, Act March 1, 1879, c. 125, § 15.) Peddling tobacco unlawfully; penalty.

Every person who is found peddling tobacco, snuff, or cigars, without having given the bond, or without having previously obtained the collector's certificate as herein provided, or who sells tobacco, snuff, or cigars otherwise than in original and full packages as put up by the manufacturer; or who has in his possession any internal-revenue stamp which has been removed from any box or other package of tobacco, snuff, or cigars, or any empty or partially emptied box or other package which has been used for tobacco, snuff, or cigars, the stamp or stamps on which have not been destroyed; or who fails to have affixed to his wagon, in a conspicuous place, a sign, painted in oil-colors, or gilded, giving his full name, business, and collection-district, shall, for each such offense, be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned not less than six months nor more than one year, or both, at the discretion of the court. And any collector or deputy collector finding such peddler in the act of offending as to either of the offenses mentioned in this section, may seize the horse or horses, mule or mules, wagon and contents, or pack, bundle, or basket, of any such person; and the collector shall thereupon proceed upon such seizure as provided in section thirty-three hundred and eighty-three.

Act June 6, 1872, c. 315, § 31, 17 Stat. 252. Act March 1, 1879, c. 125, § 15, 20 Stat. 346.

This section, as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, the provisions beginning with the words "And any collector or deputy collector finding such peddler," as set forth here, by Act March 1, 1879, c. 125, § 15, cited above.

§ 6192. (R. S. § 3385, as amended by Act June 9, 1880, c. 161, § 1, Act Aug. 8, 1882, c. 468, and Act Jan. 13, 1883, c. 24.) Exportation of manufactured tobacco, etc.

Manufactured tobacco, snuff, and cigars intended for immediate exportation may, after being properly inspected, marked, and branded, be removed from the manufactory in bond without having affixed thereto the stamps indicating the payment of the tax thereon. The removal of such tobacco, snuff, and cigars from the manufactory shall be made under such regulations, and after making such entries, and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. There shall be affixed to each package of tobacco, snuff, and cigars intended for immediate export, before it is removed from the manufactory, an engraved stamp indicative of such intention. Such stamps shall be provided and furnished to the several

collectors as in the case of other stamps, and they shall account for the use of the same. When the manufacturer has made the proper entries, filed the bonds, and otherwise complied with the requirements of law and the regulations as herein provided, the collector shall issue to him a permit for the removal, accurately describing the tobacco, snuff, and cigars, to be shipped, the number and kinds of packages, the number of pounds, the marks and brands, the State and collection district from which the same are shipped, the number of the manufactory and the manufacturer's name, the port from which the said tobacco, snuff, and cigars are to be exported, and the route or routes over which the same are to be sent to the port of shipment. Upon the presentation to the collector of internal revenue of a detailed report from the inspectors of customs, and a certificate of the collector of customs at the port from which the goods are to be exported that the goods removed from the manufactory under bond and described in the permit of the collector of internal revenue have been received by the said collector of customs, and that the said goods were duly laden on board of a foreign-bound vessel, naming the vessel, and that the said merchandise was entered on the outward manifest of said vessel, and that the said vessel and cargo were duly cleared from said port, and on the payment of the tax or deficiency, if any, the bonds, which have been given or shall hereafter be required to be given under the provisions of this section shall be canceled. But when the goods are exported to an adjacent foreign territory, by vessel or otherwise, said bonds shall be canceled upon such proofs of exportation as may be prescribed by the commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Every person who, with the intent to defraud the revenue laws of the United States, relands or causes to be relanded within the jurisdiction of the United States any manufactured tobacco, snuff, or cigars which have been shipped for exportation under the provisions of this act, without properly entering such tobacco, snuff, or cigars at the custom-house, and paying the proper customs and internal-revenue tax thereon, or who receives such relanded tobacco, snuff, or cigars, and every person who aids or abets in such relanding or receiving such tobacco, snuff or cigars, shall, on conviction, be fined not exceeding five thousand dollars, or imprisoned not more than three years, and all tobacco, snuff, or cigars so relanded shall be forfeited to the United States.

Act July 20, 1868, c. 186, § 73, 15 Stat. 157. Act June 6, 1872, c. 315, § 31, 17 Stat. 254. Act June 9, 1880, c. 161, § 1, 21 Stat. 167. Act Aug. 8, 1882, c. 468, 22 Stat. 372. Act Jan. 13, 1883, c. 24, 22 Stat. 402.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "the route or routes over which the same are to be sent to the port of shipment," in place of the words "and the name of the vessel or line by which they are to be conveyed to the foreign port. The bonds required to be given for the exportation of the tobacco, snuff, and cigars shall be canceled upon the presentation of the proper certificates that said tobacco, snuff, and cigars have been landed at any port without the jurisdiction of the United States, or upon satisfactory proof that after shipment the same were lost at sea," the provisions beginning with the words "Upon the presentation to the collector of internal revenue of a detailed report," to the end of the section, by Act June 9, 1880, c. 161, § 1, cited above.

It was further amended by inserting, after the words "Such stamps shall be provided and furnished to the several collectors as in the case of other stamps," in place of the words "and be charged to them and accounted for in the same manner; and for the expense attending the providing and affixing thereof, ten cents for each package so stamped shall be paid to the collector on making the entry for such transportation," the words "and they shall account for the use of the same," and by re-enacting the amendment by Act June 9, 1880, c. 161, § 1, cited above, by Act Aug. 8, 1882, c. 468, cited above.

It was further amended by inserting, after the words "required to be given under the provisions of this section shall be canceled," in the amendment by Act June 9, 1880, c. 161, § 1, cited above, and re-enacted by Act Aug.

8, 1882, c. 468, cited above, the provision beginning with the words "But when the goods are exported," to the end of the sentence, as set forth here, by Act Jan. 13, 1883, c. 24, last cited above.

The amendment made by Act Jan. 13, 1883, c. 24, cited above, was declared to be an amendment to this section as amended by Act June 9, 1880, c. 161, § 1, cited above, though the latter amendment was superseded by Act Aug. 8, 1882, c. 468, cited above.

Provisions authorizing manufacturers of tobacco removing the same for exportation to give transportation bonds were made by Act Feb. 8, 1875, c. 36, § 24, set forth post, § 6193.

Provisions authorizing the exportation of tobacco without payment of the tax under regulations prescribed by the Commissioner of Internal Revenue were made by Act Aug. 4, 1886, c. 896, § 1, post, § 6194.

Notes of Decisions

Constitutionality.—The requirement as to placing stamps on packages of manufactured tobacco intended for exportation does not violate the provision in the Constitution declaring that no tax or duty shall be laid on articles exported from any state. Pace v. Burgess (1875) 92 U. S. 372, 374, 23 L. Ed. 657.

The excise on tobacco before removal from the factory is not a duty on "exports" nor on "'articles exported," within the prohibition of the Constitution. Turpin v. Same (1886) 6 Sup. Ct. 835, 836, 117 U. S. 504, 29 L. Ed. 988.

Application to filled cheese tax.—The exception of articles manufactured for export contained in this section was not made applicable to the tax on filled cheese imposed by Act June 6, 1896, c. 337, § 9 (section 6248, post) of which provided that the provisions governing the engraving, etc., of stamps relating to tobacco and snuff should apply to stamps provided for by that section. Cornell v. Coyne (1904) 24 Sup. Ct. 383, 385, 192 U. S. 418, 48 L. Ed. 504.

No exemption of filled cheese manufactured for export from the manufacturing tax imposed by section 6248, post, was effected by the provision thereof that "the tax levied by this section shall be represented by coupon stamps, and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section," although by this section exported manufactured tobacco and snuff are relieved from the manufacturing tax. Id.

Effect as to commissions of collectors.—Act July 20, 1868, c. 186, §§ 73, 74, 15 Stat. 157, were not intended to change the rule prescribed by Act July 13, 1866, c. 184, § 24, 14 Stat. 153, as amended by Act March 2, 1867, c. 169, 14 Stat. 473, for the allowance of commissions to collectors of internal revenue upon taxes collected by them for articles removed from one district to a bonded warehouse in another. The act is intended to throw around the removal of manufactured tobacco greater security against evasion of payment of the tax upon it than had existed before, but it did not attempt to deal with collectors' commissions, nor relieve collectors from any of the duties incumbent upon them before. U. S. v. Wilcox (1877) 95 U. S. 661, 663, 24 L. Ed. 536.

Tax on tobacco withdrawn from bonded warehouse.—Act July 20, 1868, § 1 (15 Stat. 152), imposed a tax of 32 cents per pound on manufactured tobacco. The same act provided for a system of export bonded warehouses for the storage of manufactured tobacco in bond intended for exportation, but permitted its withdrawal for sale or consumption on payment of the prescribed tax. Act June 6, 1872, § 31 (15 Stat. 152), declared that "on and after" July 1, 1872, manufactured tobacco should be taxed 20 cents per pound. Held, that manufactured tobacco, shipped in bond from the factory and stored in an export bonded warehouse prior to July 1, 1872, was subject to the tax of 32 cents prescribed by the act of 1868, though withdrawn for sale after that date. Jones v. Blackwell (1879) 100 U. S. 599, 25 L. Ed. 752.

Entry on outward manifest of ship.—Act June 9, 1880 (21 Stat. 167), provides that exported articles shall be entered on the outward manifest of the ship taking them abroad, but is silent as to who shall perform that duty. Held, that where goods are consigned to the collector of customs at the port of shipment, to be by him shipped abroad, and he gives a personal receipt therefor, reciting that "the said merchandise was duly inspected and marked at this port, and laden on board the foreign-bound steamer W., * * * and that said vessel and cargo were duly cleared from this port," the exporters had a right to presume that the goods had been entered on the ship's outward manifest, and the fact that they had not been so entered was not a breach of the export bond. The fact that in the collector's receipt, which was on a printed form, the clause expressing the entry of the goods on the outward manifest is struck out, is immaterial when such receipt is not given until after the vessel has cleared. U. S. v. Allen (D. C. 1889) 39 Fed. 100.

Bond for transportation from one district to another.—Sureties on a bond for

the transportation of tobacco from one district to another, in the conditions of which the number of boxes and pounds of tobacco are given, and the kind of tobacco described, are responsible for the delivery at the proper place of the tobacco; and the fact that the principal filled the boxes with other substance than tobacco before they left his warehouse does not release the sureties from their obligation. Ryan v. U. S. (1873) 86 U. S. (19 Wall.) 514, 22 L. Ed. 172.

An owner of tobacco filed a bond for its transportation from one district to another with sureties, conditioned to deliver a certain number of boxes and pounds of tobacco, and of the kind described. The boxes were not filled with tobacco, but the inspecting officer, without examining them, they being closed, duly branded them as containing plug tobacco. Held, that his carelessness, though it made the fraud easier of accomplishment, did not release the sureties on the transportation bond. Id.

Cited without definite application, Fairbank v. U. S. (1901) 21 Sup. Ct. 648, 656, 181 U. S. 283, 45 L. Ed. 862.

§ 6193. (Act Feb. 8, 1875, c. 36, § 24.) Exportation of manufactured tobacco, etc.; transportation in bond; export bond.

Whenever any manufacturer of tobacco shall desire to withdraw the same from his factory for exportation under existing laws, such manufacturer may, at his option, in lieu of executing an export bond, as now provided by law, give a transportation bond, with sureties satisfactory to the collector of internal revenue, and under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, conditioned for the due delivery thereof on board ship at a port of exportation to be named therein; and in such case, on arrival of the tobacco at the port of export, the exporter or owner at that port shall immediately notify the collector of the port of the fact, setting forth his intention to export the same, the name of the vessel upon which the same is to be laden, and the port to which it is intended to be exported. He shall, after the quantity and description of tobacco have been verified by the inspector, file with the collector of the port an export entry verified by affidavit. He shall also give bond to the United States, with at least two sureties, satisfactory to the collector of customs, conditioned that the principal named in said bond will export the tobacco as specified in said entry, to the port designated in said entry, or to some other port without the jurisdiction of the United States. And upon the lading of such tobacco, the collector of the port, after proper bonds for the exportation of the same have been completed by the exporter or owner at the port of shipment thereof, shall transmit to the collector of internal revenue of the district from which the said tobacco was withdrawn for exportation, a clearance certificate and a detailed report of the inspector; which report shall show the quantity and description of manufactured tobacco, and the marks thereof. Upon the receipt of the certificate and report, and upon payment of tax on deficiency, if any, the collector of internal revenue shall cancel the transportation bond. The bonds required to be given for the landing at a foreign port of such manufactured tobacco shall be canceled upon the presentation of satisfactory proof and certificates that said tobacco has been landed at the port of destination named in the bill of lading, or any other port without the jurisdiction of the United States, or upon satisfactory proof that after shipment the same was lost at sea without fault or neglect of the owner or exporter thereof. (18 Stat. 312.)

This section was part of an act to amend existing customs and internal revenue laws, etc., cited above.

Notes of Decisions

Bond for transportation from one district to another.—The sureties on a bond for the transportation of tobacco from one district to another are responsible for the delivery at the proper place of the tobacco, and the fraud of the principal in filling the boxes with other substances than tobacco before they left the warehouse does not release them from liability, and the care-

lessness of the inspecting officer does not excuse them. Ryan v. U. S. (1873) 19 Wall. 514, 517, 22 L. Ed. 172.

Cited without definite application, U. S. v. Dominici (1897) 78 Fed. 334, 336, 24 C. C. A. 116.

§ 6194. (Act Aug. 4, 1886, c. 896, § 1.) Exportation of manufactured tobacco, etc.; regulations.

Manufactured tobacco, snuff, and cigars may be removed for export to a foreign country without payment of tax, under such regulations, and the making of such entries, and the filing of such bonds and bills of lading as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. (24 Stat. 218.)

This was the first section of an act to provide for the inspection of tobacco, cigars, and snuff, and to repeal R. S. § 3151.

Section 2 of the act repealed said R. S. § 3151.

Section 3 of the act provided that the act should take effect on the 1st day of the second calendar month succeeding that on which it was approved.

§ 6195. (R. S. § 3386, as amended, Act March 1, 1879, c. 125, § 16.) Drawback on exported tobacco, etc.

There shall be an allowance of drawback on tobacco, snuff, and cigars on which the tax has been paid by suitable stamps affixed thereto before removal from the place of manufacture, when the same are exported, equal in amount to the value of the stamps found to have been so affixed; the evidence that the stamps were so affixed, and the amount of tax so paid, and of the subsequent exportation of the said tobacco, snuff, and cigars, to be ascertained under such regulations as shall be prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury. Any sums found to be due under the provisions of this section shall be paid by the warrant of the Secretary of the Treasury on the Treasurer of the United States, out of any money arising from internal duties not otherwise appropriated: Provided, That no claim for an allowance of drawback shall be entertained or allowed until a certificate from the collector of customs at the port from which the goods have been exported, or other evidence satisfactory to the Commissioner of Internal Revenue, has been furnished, that the stamps affixed to the tobacco, snuff, or cigars entered and cleared for export to a foreign country were totally destroyed before such clearance; nor until the claimant has filed a bond, with good and sufficient sureties, to be approved by the collector of the district from which the goods are shipped, in a penal sum double the amount of the tax for which said claim is made, that he will procure, within a reasonable time, evidence satisfactory to the Commissioner of Internal Revenue that said tobacco, snuff, or cigars have been landed at any port without the jurisdiction of the United States, or that after shipment the same were lost at sea, and have not been relanded within the limits of the United States.

Act July 20, 1868, c. 186, § 74, 15 Stat. 157. Act June 6, 1872, c. 315, § 31, 17 Stat. 254. Act March 1, 1879, c. 125, § 16, 20 Stat. 347.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "Provided that no claim for an allowance of drawback shall be entertained or allowed," in place of the words "for a sum less than fifty dollars, nor except upon evidence satisfactory to the Commissioner of Internal Revenue that the stamps affixed to the tobacco, snuff, or cigars alleged to have been exported were totally destroyed before the shipment thereof, and that the same have been landed in a foreign country or lost at sea, and have not been relanded within the limits of the United States," the words beginning "until a certificate from the collector of customs," to the end of the section as set forth here, by Act March 1, 1879, c. 125, § 16, cited above.

Fraudulently claiming drawback on manufactured tobacco was punishable by Act Feb. 8, 1875, c. 36, § 25, set forth post, § 6196.

Notes of Decisions

See notes under § 6192, ante, and § 6195, post.

Effect of prior amendment.—Effect of the amendment of the seventy-fourth

section of the act of July 20, 1868, chap. 186, made by the thirty-first section of the act of June 6, 1872 (chapter 315), in regard to the internal revenue tax on tobacco, considered. (1872) 14 Op. Atty. Gen. 110.

All tobacco stored in bonded warehouses, and withdrawn for sale or consumption before the 1st of July, 1872, is, notwithstanding that amendment, subject to taxes imposed by the act of July 20, 1868. Id.

But all tobacco in bonded warehouses on the 1st of July, 1872, and withdrawn after that date for the same purposes, is by virtue of that amendment subject to the tax imposed by the act of June 6, 1872. Id.

Cited without definite application, Fairbank v. U. S. (1901) 21 Sup. Ct. 648, 656, 181 U. S. 283, 45 L. Ed. 862; U. S. v. Dominici (1897) 78 Fed. 334, 336, 24 C. C. A. 116.

§ 6196. (Act Feb. 8, 1875, c. 36, § 25.) Fraudulently claiming drawback on manufactured tobacco; penalty.

If any person or persons shall fraudulently claim or seek to obtain an allowance or drawback of duties on any manufactured tobacco, or shall fraudulently claim any greater allowance or drawback thereon than the duty actually paid, such person or persons shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of five hundred dollars, at the election of the Secretary of the Treasury, to be recovered as in other cases of forfeiture provided for in the internal revenue laws. (18 Stat. 312.)

This section was part of an act to amend existing customs and internal revenue laws, etc., cited above.

Similar general provisions regarding fraudulent claims of drawback were made by R. S. § 3443, post, § 6337.

CHAPTER SEVEN

Cigars

Sec.
6197. Manufacturer's statement and bond.
6198. Manufacturer's sign.
6199. Record of manufacturers.
6200. Annual inventory, book entries, and monthly abstracts of manufacturer.
6201. Dealers in material for cigars to make sworn statement, when demanded.
6202. How cigars are to be packed.
6203. Label and notice on cigars.
6204. Tax on cigars and cigarettes.
6205. Stamps, how prepared, furnished, and accounted for.
6206. Inspection of cigars, etc.
6207. Removal without properly boxing, stamping, or branding; using false stamps, etc.; cigars for export.
6208. Absence of stamp evidence of non-payment of tax.
6209. Cigars manufactured on shares, commission, or contract; how stamped; fraud.
6210. Forfeiture of property for selling, etc., contrary to law, using false stamps, etc.
6211. Imported cigars to pay tax; stamps, when and by whom affixed.
6212. Selling imported cigars not packed as required by law.
6213. Purchasing cigars not branded or stamped.
6213a. Buying cigars from a manufacturer who has not paid a special tax.
6214. Stamps on emptied cigar-boxes to be destroyed; penalty for neglect, etc.

§ 6197. (R. S. § 3387, as amended, Act March 1, 1879, c. 125, § 16, and Act Oct. 1, 1890, c. 1244, § 35.) Manufacturer's statement and bond.

Every person before commencing, or, if he has already commenced, before continuing, the manufacture of cigars, shall furnish, without previous demand therefor, to the collector of the district a statement in duplicate, under oath, setting forth the place, and, if in a city, the street and number of the street, where the manufacture is to be carried on; and when the same are to be manufactured for, or to be sold and delivered to, any other person, the name and residence and

business or occupation of the person for whom they are to be manufactured, or to whom they are to be delivered; and shall give a bond, in conformity with the provisions of this Title, in such penal sum as the collector may require, not less than one hundred dollars, and the sum of said bond may be increased from time to time and additional sureties required, at the discretion of the collector, or under the instructions of the Commissioner of Internal Revenue. Said bond shall be conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on his manufactures; that he shall render correctly all the returns, statements, and inventories prescribed; that whenever he shall add to the number of cigar-makers employed by him he shall immediately give notice thereof to the collector of the district; that he shall stamp, in accordance with law, all cigars manufactured by him before he offers the same or any part thereof for sale, and before he removes any part thereof from the place of manufacture; that he shall not knowingly sell, purchase, expose, or receive for sale, any cigars which have not been stamped as required by law; and that he shall comply with all the requirements of law relating to the manufacture of cigars. Every cigar-manufacturer shall obtain from the collector of the district, who is hereby required to issue the same, a certificate setting forth the number of cigar-makers for which the bond has been given, and shall keep the same posted in a conspicuous place within the manufactory; and every cigar-manufacturer who neglects or refuses to obtain such certificate, or to keep the same posted as hereinbefore provided, shall be fined one hundred dollars. And every person who manufactures cigars of any description, without first giving bond as herein required, shall be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than five years. Cigarettes and cheroots shall be held to be cigars under the meaning of this chapter.

Act July 20, 1868, c. 186, § 82, 15 Stat. 160. Act March 1, 1879, c. 125, § 16, 20 Stat. 347. Act Oct. 1, 1890, c. 1244, § 35, 26 Stat. 620.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words in the second sentence, "Said bond shall be conditioned," the words "that he shall not employ any person to manufacture cigars who has not been duly registered as a cigar-maker," by Act March 1, 1879, c. 125, § 16, cited above.

It was further amended by striking out, after the words "in such penal sum as the collector may require, not less than," the words "five hundred dollars, with an addition of one hundred dollars for each person proposed to be employed by him in making cigars," and inserting in place thereof the words "one hundred dollars," as set forth here, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 35, last cited above.

Special taxes on manufacturers of cigars abolished by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, ante, § 6177, and again imposed by the War Revenue Act of June 13, 1898, c. 448, § 4, 30 Stat. 450, were abrogated by the repeal of the last-mentioned section by Act April 12, 1902, c. 500, § 5, 32 Stat. 97. The taxes were again revived by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 753, which act was repealed, and a new tax imposed, by Act Sept. 8, 1916, c. 463, § 408, set forth ante, § 5980j.

Notes of Decisions

See notes under §§ 5959, 6206, ante, and §§ 6206, 6207, post.

Pledge of unstamped cigars.—A pledge of unstamped cigars does not come within the provisions of this section and section 6214, post, requiring cigars manufactured and sold, or removed for consumption and use, to be stamped. Combs v. Tuchelt (1878) 24 Minn. 423.

Punishment for omission to pack cigarettes as directed.—This section, as originally enacted, prescribed the method of packing and marking boxes of cigars, together with a criminal punishment for a violation thereof. As amended by Act 1879, c. 125, § 60, and by Act 1890, c. 1244, the section is changed by allowing cigars to be packed in larger boxes; by allowing the use of sample boxes containing a dozen cigars; by prohibiting packing less than the allowed number of cigars in each box; by omitting the minimum fine and imprisonment; by providing for the packing of cigarettes in quantities other than the quantities appointed for cigars, and for the affixing of suitable stamps

on packages of cigarettes, and the cancellation thereof, and that imported cigarettes shall be governed by the same rules. Held, in view of this section, declaring that cigarettes shall be held to be cigars, that while cigarettes are by the amendment excepted from the purview as to packing, they are not excepted from the remaining provisions, and hence the punishment provided in the purview applies to any omission to pack as directed in the proviso relating to cigarettes. U. S. v. Sapinkow (C. C. 1898) 90 Fed. 654.

Cited without definite application, U. S. v. Neid (D. C. 1870) Fed. Cas. No. 15,860.

§ 6198. (R. S. § 3388.) Manufacturer's sign.

Every cigar-manufacturer shall place and keep on the side or end of the building within which his business is carried on, so that it can be distinctly seen, a sign, with letters thereon not less than three inches in length, painted in oil-colors or gilded, giving his full name and business. Any person neglecting to comply with the requirements of this section shall, on conviction, be fined not less than one hundred dollars nor more than five hundred dollars.

Act July 20, 1868, c. 186, § 83, 15 Stat. 160.

Notes of Decisions

See notes under § 5959, ante.

Sale of cigars in violation of law.—The propriety of submitting to the jury the question whether an alleged sale of goods by a vendor to his brother was fraudulent as to creditors was not obviated by the fact, if it existed, that the sale of cigars (which were among the goods) was made in violation of the revenue law, since the sale embraced property not covered by those laws. Wessels v. Beeman (1887) 66 Mich. 343, 33 N. W. 510.

§ 6199. (R. S. § 3389, as amended, Act March 1, 1879, c. 125, § 16, and Act Oct. 1, 1890, c. 1244, § 34.) Record of manufacturers.

Every collector shall keep a record, in a book provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, including deputy collectors and internal-revenue agents, of the name and residence of every person engaged in the manufacture of cigars in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer an abstract of his inventory and monthly returns; and he shall cause the several manufacturers of cigars in the district to be numbered consecutively, which number shall not thereafter be changed.

Act July 20, 1868, c. 186, § 84, 15 Stat. 161. Act March 1, 1879, c. 125, § 16, 20 Stat. 347. Act Oct. 1, 1890, c. 1244, § 34, 26 Stat. 620.

This section, as enacted in the Revised Statutes, was amended by striking out, after the words "the place where such manufacture is carried on, the number of the manufactory," the words "and the names and residences of every cigar-maker employed in his district," by Act March 1, 1879, c. 125, § 16, cited above.

It was further amended by inserting, after the words "a book provided for that purpose, to be open to the inspection," in place of the words "of any person," the words "of only the proper officers of internal revenue, including deputy collectors and internal-revenue agents," and by inserting, after the words "under the name of each manufacturer an abstract of his," in the place of the word "inventories," the word "inventory," as set forth here, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 34, last cited above.

§ 6200. (R. S. § 3390.) Annual inventory, book entries, and monthly abstracts of manufacturer.

Every person now or hereafter engaged in the manufacture of cigars shall make and deliver to the collector of the district a true inventory, in such form as may be prescribed by the Commissioner of Internal Revenue, of the quantity of leaf tobacco, cigars, stems, scraps, clippings, and waste, and of the number of cigar-boxes and the capacity of each box, held or owned by him on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the first of January; setting forth what portion and kinds of said goods were manufactured or

produced by him, and what were purchased from others, and shall verify said inventory by his oath indorsed thereon. The collector shall make personal examination of the stock sufficient to satisfy himself as to the correctness of the inventory; and shall verify the fact of such examination by oath to be indorsed on the inventory. Every such person shall also enter daily in a book, the form of which shall be prescribed by the Commissioner of Internal Revenue, an accurate account of all the articles aforesaid purchased by him, the quantity of leaf-tobacco, cigars, stems, or cigar-boxes, of whatever description, manufactured, sold, consumed, or removed for consumption or sale, or removed from the place of manufacture; and shall, on or before the tenth day of each and every month, furnish to the collector of the district a true and accurate abstract from such book, verified by his oath, of all such purchases, sales, and removals made during the month next preceding. In case of refusal or willful neglect to deliver the inventory or keep the account, or furnish the abstract aforesaid, he shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years.

Act July 20, 1868, c. 186, § 86, 15 Stat. 161.

Notes of Decisions

See notes under § 5959, ante, and § 6207, post.

What manufacturer must return.—A cigar manufacturer must not only return the sales of cigars manufactured by him, but of those purchased by him and resold. U. S. v. Cohn (C. C. 1868) Fed. Cas. No. 14,827.

Explanation of undue consumption of leaf tobacco.—The commissioner of internal revenue may require a tobacco manufacturer to give explanation of the undue consumption of leaf tobacco in the manufacture of cigars, and, where the manufacturer refuses, may base the amount of tax upon the average amount of tobacco used by other manufacturers. U. S. v. Appel (D. C. 1876) Fed. Cas. No. 14,462.

Cited without definite application, Allen v. Arguimbau (1905) 25 Sup. Ct. 622, 624, 198 U. S. 149, 49 L. Ed. 990; U. S. v. Neid (D. C. 1870) Fed. Cas. No. 15,860.

§ 6201. (R. S. § 3391.) Dealers in material for cigars to make sworn statement, when demanded.

It shall be the duty of every dealer in leaf-tobacco or material used in manufacturing cigars, on demand of any officer of internal revenue, to render to such officer a true and correct statement, under oath, of the quantity and amount of such leaf-tobacco or materials sold or delivered to any person named in such demand, and in case of refusal or neglect to render such statement, or if there is cause to believe such statement to be incorrect or fraudulent, the collector shall make an examination of persons, books, and papers in the manner provided in this Title in relation to frauds and evasions.

Act July 20, 1868, c. 186, § 86, 15 Stat. 162.

§ 6202. (R. S. § 3392, as amended, Act March 1, 1879, c. 125, § 16, Act Oct. 1, 1890, c. 1244, § 32, Act Aug. 5, 1909, c. 6, § 32, and Act Feb. 10, 1913, c. 34.) How cigars are to be packed.

All cigars weighing more than three pounds per thousand shall be packed in boxes not before used for that purpose containing, respectively, five, ten, twelve, thirteen, twenty-five, fifty, one hundred, two hundred, two hundred and fifty, or five hundred cigars each; and every person who sells, or offers for sale, or delivers, or offers to deliver, any cigars in any other form than in new boxes as above described, or who packs in any box any cigars in excess of or less than the number provided by law to be put in each box, respectively, or who falsely brands any box, or affixes a stamp on any box denoting a less amount of tax than that required by law, shall be fined for each offense not more than one thousand dollars, and be imprisoned not more than two years: Provided, That nothing in this section

shall be construed as preventing the sale of cigars at retail by retail dealers from boxes packed, stamped, and branded in the manner prescribed by law: Provided further, That each employee of a manufacturer of cigars shall be permitted to use, for personal consumption and for experimental purposes, not to exceed twenty-one cigars per week without the manufacturer of cigars being required to pack the same in boxes or to stamp or pay any internal-revenue tax thereon, such exemption to be allowed under such rules and regulations as the Secretary of the Treasury may prescribe: And provided further, That every manufacturer of cigarettes shall put up all the cigarettes that he manufactures or has manufactured for him and sells or removes for consumption or use in packages or parcels containing five, eight, ten, fifteen, twenty, fifty, or one hundred cigarettes each, and shall securely affix to each of said packages or parcels a suitable stamp denoting the tax thereon, and shall properly cancel the same prior to such sale or removal for consumption or use, under such regulations as the Commissioner of Internal Revenue shall prescribe; and all cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in like manner, in addition to the import stamp indicating inspection of the custom-house before they are withdrawn therefrom.

Act July 20, 1868, c. 186, § 86, 15 Stat. 161. Act March 1, 1879, c. 125, § 16, 20 Stat. 347. Act Oct. 1, 1890, c. 1244, § 32, 26 Stat. 619. Act Aug. 5, 1909, c. 6, § 32, 36 Stat. 109. Act Feb. 10, 1913, c. 34, 37 Stat. 664.

This section, as enacted in the Revised Statutes, was amended by adding, at the end of the section as originally enacted, a new proviso, by Act March 1, 1879, c. 125, § 16, cited above.

It was further amended by inserting, after the words "five hundred cigars each," a proviso as to "sample boxes," and by changing the proviso added at the end of the section by Act March 1, 1879, c. 125, § 16, cited above, by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 32, also cited above.

It was further amended by inserting the words "weighing more than three pounds per thousand," by reducing the minimum size of the boxes or packages, and by omitting the proviso as to "sample boxes," by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 32, also cited above.

It was further amended by inserting the proviso as to allowances to employés, making the section read as set forth here, by Act Feb. 10, 1913, c. 34, last cited above.

Notes of Decisions

See notes under § 5959, ante, and § 6206, post.

Effect as recognition of cigarettes as legitimate article of commerce.—In view of section 5970, ante, providing that the payment of internal revenue for carrying on any business shall not authorize it to be carried on in states by whose laws it is prohibited, this section is not a recognition of them as a legitimate article of commerce. Austin v. State (1898) 48 S. W. 305, 101 Tenn. 563, 50 L. R. A. 478, 70 Am. St. Rep. 703, affirmed (1900) 21 Sup. Ct. 132, 179 U. S. 343, 45 L. Ed. 224.

Repacking cigars in other and new boxes.—Where cigars are repacked in other and new boxes, they become liable to the same tax which was imposed when they were first packed. American West Indies Trading Co. v. U. S. (1910) 45 Ct. Cl. 488.

Cigars sold at place of manufacture.—This section has no relation to cigars sold by the manufacturer at the place of manufacture. Ludloff v. U. S. (1883) 2 Sup. Ct. 475, 481, 108 U. S. 176, 27 L. Ed. 693.

A circular by the commissioner of internal revenue required that a cigar factory shall be at least an entire room, separated by walls and partitions from the rest of the building, and that the factory shall not, any part of it, even though marked off and separated from the remainder by a railing, counter, bench, screen, or curtain, be used as a store, where the manufacturer can sell his cigars otherwise than in legal boxes properly branded and stamped. Plaintiffs having paid special taxes both as retail dealers and as manufacturers, disregarded the order, and continued to sell at retail from the front part of the room in the rear part of which was their manufactory. Held, that the order was within the authority of the commissioner, under R. S. § 3396, post, § 6206, to prescribe regulations for the inspection of cigars, and that the sales were illegal, under R. S. §§ 3392, 3397, 3400, post, §§ 6207, 6210, and this sec-

tion, being removals of cigars from the place where they were manufactured without being packed in boxes and properly stamped. Id.

See, also, notes under § 6207, post.

Cited without definite application, Felsenheld v. U. S. (1902) 22 Sup. Ct. 740, 743, 186 U. S. 126, 46 L. Ed. 1085; Sexton v. California (1903) 23 Sup. Ct. 543, 544, 189 U. S. 319, 47 L. Ed. 833; Guckenheimer v. Sellers (C. C. 1897) 81 Fed. 997, 998.

§ 6203. (R. S. § 3393, as amended, Act March 1, 1879, c. 125, § 16.) Label and notice on cigars.

Every manufacturer of cigars shall securely affix, by pasting on each box containing cigars manufactured by or for him, a label, on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words:

Notice.—The manufacturer of the cigars herein contained has complied with all the requirements of law. Every person is cautioned not to use either this box for cigars again, or the stamp thereon again, nor to remove the contents of this box without destroying said stamp, under the penalties provided by law in such cases.

Every manufacturer of cigars who neglects to affix such label to any box containing cigars made by or for him; or sold or offered for sale by or for him, and every person who removes any such label, so affixed, from any such box, shall be fined fifty dollars for each box in respect to which such offense is committed.

Act July 20, 1868, c. 186, § 88, 15 Stat. 162. Act April 10, 1869, c. 18, § 1, 16 Stat. 43. Act March 1, 1879, c. 125, § 16, 20 Stat. 348.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "a label, on which shall be printed," in place of the words "together with the proprietor's or manufacturer's name, the number of the manufactory," the words "besides the number of the manufactory," as set forth here, by Act March 1, 1879, c. 125, § 16, cited above.

Cited without definite application, Allen v. Arguimbau (1905) 25 Sup. Ct. 622, 624, 198 U. S. 149, 49 L. Ed. 990.

§ 6204. (R. S. § 3394, as amended, Act March 3, 1875, c. 127, § 2, Act July 24, 1897, c. 11, § 10, Act July 1, 1902, c. 1371, § 2, and Act Aug. 5, 1909, c. 6, § 33.) Tax on cigars and cigarettes.

Upon cigars and cigarettes which shall be manufactured and sold, or removed for consumption or sale, there shall be assessed and collected the following taxes, to be paid by the manufacturer thereof: On cigars of all descriptions made of tobacco or any substitute therefor and weighing more than three pounds per thousand, three dollars per thousand; on cigars, made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, seventy-five cents per thousand; on cigarettes, made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, three dollars and sixty cents per thousand; on cigarettes, made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, one dollar and twenty-five cents per thousand: Provided, That all rolls of tobacco, or any substitute therefor, wrapped with tobacco, shall be classed as cigars; and all rolls of tobacco, or any substitute therefor, wrapped in paper or any substance other than tobacco, shall be classed as cigarettes.

And the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall provide dies and stamps for cigars weighing not more than three pounds per thousand; and for cigarettes at the rates of tax imposed by this section: Provided, That such stamps shall be in denominations of five, eight, ten, fifteen, twenty, fifty, and one hundred; and the laws and regulations governing the packing and removal for sale of cigarettes, and the affixing and canceling of the stamps on the packages thereof, shall apply to cigars weighing not more than three pounds per thousand.

No packages of manufactured tobacco, snuff, cigars, or cigarettes,

prescribed by law, shall be permitted to have packed in, or attached to, or connected with, them, nor affixed to, branded, stamped, marked, written, or printed upon them, any paper, certificate, or instrument purporting to be or represent a ticket, chance, share or interest in, or dependent upon, the event of a lottery, nor any indecent or immoral picture, representation, print, or words; and any violation of the provisions of this paragraph shall subject the offender to the penalties and punishments provided by section thirty-four hundred and fifty-six of the Revised Statutes.

Act July 20, 1868, c. 186, § 81, 15 Stat. 160. Act March 3, 1875, c. 127, § 2, 18 Stat. 339. Act July 24, 1897, c. 11, § 10, 30 Stat. 206. Act July 1, 1902, c. 1371, § 2, 32 Stat. 715. Act Aug. 5, 1909, c. 6, § 33, 36 Stat. 110.

This section, as enacted in the Revised Statutes, was amended by changing the tax on cigars from $6 per thousand to $5 per thousand, by changing the tax on cigarettes weighing not more than three pounds per thousand from $1.75 to $1.50 per thousand, and on cigarettes weighing more from $6 to $5 per thousand, by Act March 3, 1875, c. 127, § 2, cited above.

It was further amended by changing the rates of the tax and by adding provisions as to what shall be classified as cigars and cigarettes, and for stamps, dies, and contents of packages, by Act July 24, 1897, c. 11, § 10, also cited above, which superseded changes in the tax made by Act March 3, 1883, c. 121, § 4, 22 Stat. 489.

It was further amended by substituting for the last paragraph, prescribing the contents of packages, the provision "No packages of manufactured tobacco, snuff, cigars, or cigarettes, prescribed by law," etc., by Act July 1, 1902, c. 1371, § 2, also cited above.

. It was further amended by fixing the tax on cigars and cigarettes, by modifying the provision as to dies and stamps, and by incorporating the amendment of the last paragraph by Act July 1, 1902, c. 1371, § 2, cited above, making the section read as set forth here, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 33, last cited above.

The tax on cigars and cigarettes was changed by the War Revenue Act of June 13, 1898, c. 448, § 3, 30 Stat. 449, and its amendments, Act March 2, 1901, c. 806, § 3, 31 Stat. 939, and Act April 12, 1902, c. 500, § 3, 32 Stat. 96, the provisions of which were superseded by Act Aug. 5, 1909, c. 6, § 33, cited above.

R. S. § 3456, mentioned in this section, is set forth post, § 6358.

Cigars manufactured in whole of tobacco imported from any one country, made and manufactured in bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported, and the payment of the internal revenue tax on such cigars, by a proviso annexed to the provisions for bonded warehouses made by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, M, ante, § 5672.

Special taxes are imposed by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 753, and Act Sept. 8, 1916, c. 463, § 408, set forth ante, § 5980j.

Notes of Decisions

Constitutionality.—No unconstitutional regulation is made by the provision of Act July 24, 1897, c. 11, § 10, cl. 3, prohibiting packing in, attaching to, or connecting with, packages of tobacco "any article or thing whatsoever," other than certain specified labels and stamps, although such provision is construed to prohibit the insertion in such packages of a coupon printed on thin paper of inappreciable weight and without intrinsic value, which does not affect in any way the ascertaining of the proper tax payable upon the package, or interfere in any way with the collection of such tax. Felsenheld v. U. S. (1902) 22 Sup. Ct. 740, 186 U. S. 126, 46 L. Ed. 1085.

Act July 24, 1897, c. 11, § 10, cl. 3, providing that "none of the packages of smoking tobacco and fine cut chewing tobacco and cigarettes prescribed by law shall be permitted to have packed in, or attached to, or connected with, them, any article or thing whatsoever, other than the manufacturers' wrappers and labels, the internal revenue stamp and the tobacco or cigarettes, respectively, put up therein, on which tax is required to be paid under the internal revenue laws," is constitutional and valid, and the placing of coupons in packages of smoking tobacco, which, when returned in certain numbers, entitle the holders to premiums, is a violation of such statute, which subjects the manufacturer to the fine and forfeiture provided by R. S. § 3456, post, § 6358. U. S. v. 288 Packages of Merry World Tobacco (D. C. 1900) 103 Fed. 453.

A doubt existing as to the right of the government to enforce section 10 of the act of July 24, 1897 (30 Stat. 206), which excludes from packages of manufactured tobacco, cigars, cigarettes,

etc., everything, except the wrapper, label, internal revenue stamps, and the tobacco or cigarettes, etc., inclosed therein, a test case should be presented to the courts for judicial determination of the questions involved. (1898) 22 Op. Atty. Gen. 181.

Conflicting presumptions as to violation of law.—A defense being in case of a seizure of cigars in boxes alleged to be not properly stamped, the presumption of defendant's innocence makes it incumbent on the government's counsel to show that they were not taken out of the original and properly stamped boxes and put into those in which they were when seized, held, that such an act could not have been done without violating some of the several stringent provisions of the revenue laws, and subjecting the offender to criminal punishment. The presumptions in favor of innocence, therefore, neutralize each other. Jackson v. U. S. (C. C. 1884) 21 Fed. 35.

Sale of cigarettes.—Where intestate manufactured cigarettes and sold them at wholesale at his storeroom to any one who might apply in reasonable wholesale quantities at $2 per thousand, the fact that the larger part of the cigarettes manufactured by him were purchased by his son at $2 per thousand and sold by him at wholesale with cigarettes of other manufacture for more than such price did not make the "wholesale price or value" of intestate's cigarettes more than $2 per thousand, and hence he was not subject to an assessment prescribed by section 6180, ante, for insufficient stamping. Epremiam v. Ward (C. C. 1909) 169 Fed. 691.

Insertion of coupons in packages in general.—The insertion, in a package of smoking and chewing tobacco, of a coupon printed on thin paper of inappreciable weight and without intrinsic value, which does not affect in any way the ascertaining of the proper tax payable upon the package, or interfere in any way with the collection of such tax, is forbidden by Act July 24, 1897, c. 11, § 10, cl. 3, which prohibits packing in, attaching to, or connecting with such a package "any article or thing whatsoever," other than certain specified labels and stamps. Felsenheld v. U. S. (1902) 22 Sup. Ct. 740, 186 U. S. 126, 46 L. Ed. 1085.

The insertion in a package of smoking and chewing tobacco of a coupon printed on thin paper of nonappreciable weight and without intrinsic value, which does not affect the ascertainment of the tax payable upon the package or interfere with its collection, is forbidden by clause 3. Id.

The scheme of the American Tobacco Company to inclose in each package of their cigarettes a coupon or certificate upon which the company agrees to pay a premium for the return of each complete set of coupons, numbered from 1 to 10, there being but one complete set in each thousand coupons issued, is a violation of section 2 of the act of July 1, 1902 (32 Stat. 714), such coupon being a "certificate, or instrument purporting to be or represent a ticket, chance, share, or interest in, or dependent upon, the event of a lottery." (1904) 25 Op. Atty. Gen. 266.

"Lottery" or "event of a lottery" defined.—Under the provisions of R. S. § 3394, as amended by Act Aug. 5, 1909, § 33 (this section), that no packages of manufactured tobacco shall be permitted to have packed in them "any paper, certificate or instrument purporting to be or represent a ticket, chance, share or interest in, or dependent upon, the event of a lottery," the definition of a lottery is not limited to a scheme whereby the value of the certificate or ticket is dependent upon lot or chance, but includes as well a scheme, whereby the possession of a certificate or prize, having a fixed value, is made to depend on lot or chance, and the statute is violated by concealing in 1 out of each 100 five-cent cuts of plug tobacco a tag redeemable by the maker for 50 cents. U. S. v. One Box of Tobacco, "Foot Prints" (1911) 190 Fed. 731, 111 C. C. A. 459.

The phrase "event of a lottery," in section 2 of the act of July 1, 1902 (32 Stat. 714), was not intended by Congress to refer to a drawing alone, but to any scheme or plan whereby the value of the certificate is made to depend upon lot or chance. (1904) 25 Op. Atty. Gen. 266.

Tin tags in plug tobacco.—The question as to whether or not a scheme to conceal in one of a large number of plugs of tobacco a tin tag entitling the finder to a prize is a violation of section 2 of the act of July 1, 1902 (32 Stat. 714), admits of considerable doubt and should be judicially determined. (1904) 25 Op. Atty. Gen. 266.

Cited without definite application, U. S. v. Sapinkow (C. C. 1898) 90 Fed. 654, 658.

§ 6205. (R. S. § 3395.) Stamps, how prepared, furnished, and accounted for.

The Commissioner of Internal Revenue shall cause to be prepared, for payment of the tax upon cigars, suitable stamps denoting the tax thereon. Such stamps shall be furnished to collectors requiring them, and collectors shall, if there be any cigar-manufacturers within their respective districts, keep on hand at all times a supply equal in

amount to two months' sales thereof, and shall sell the same only to the cigar-manufacturers who have given bonds and paid the special tax, as required by law, in their districts, respectively, and to importers of cigars, who are required to affix the same to imported cigars in the custody of customs officers, and to persons required by law to affix the same to cigars on hand after the first day of April, eighteen hundred and sixty-nine. Every collector shall keep an account of the number, amount, and denominate values of the stamps sold by him to each cigar-manufacturer, and to other persons above described.

Act July 20, 1868, c. 186, § 87, 15 Stat. 162.

Cited without definite application, In re Kollock (1897) 17 Sup. Ct. 444, 448, 165 U. S. 526, 41 L. Ed. 813; Dougherty v. U. S. (1901) 108 Fed. 56, 58, 47 C. C. A. 195 (writ of certiorari certiorari denied [1901] 21 Sup. Ct. 926, 181 U. S. 622, 45 L. Ed. 1033); U. S. v. Fifty-Nine Demijohns Aguadiente and Four Barrels of Cigarettes (D. C. 1889) 39 Fed. 401, 402.

§ 6206. (R. S. § 3396.) Inspection of cigars, etc.

The Commissioner of Internal Revenue may prescribe such regulations for the inspection of cigars, cheroots, and cigarettes, and the collection of the tax thereon, as he may deem most effective for the prevention of frauds in the payment of such tax.

Act July 20, 1868, c. 186, § 81, 15 Stat. 160.

Notes of Decisions

Regulations authorized.—A circular by the commissioner of internal revenue required that a cigar factory shall be at least an entire room, separated by walls and partitions from the rest of the building, and that the factory shall not, any part of it, even though marked off and separated from the remainder by a railing, counter, bench, screen, or curtain, be used as a store, where the manufacturer can sell his cigars otherwise than in legal boxes properly branded and stamped. Plaintiffs, having paid special taxes both as retail dealers and as manufacturers, disregarded the order, and continued to sell at retail from the front part of the room in the rear part of which was their manufactory. Held, that the order was within the authority of the commissioner, under this section, to prescribe regulations for the inspection of cigars, and that the sales were illegal, under R. S. §§ 3392, 3397, 3400, ante, § 6202, and post, §§ 6207, 6210, being removals of cigars from the place where they were manufactured without being packed in boxes and properly stamped. Ludloff v. U. S. (1883) 2 Sup. Ct. 475, 108 U. S. 176, 27 L. Ed. 693.

§ 6207. (R. S. § 3397, as amended, Act March 1, 1879, c. 125, § 16.) Removal without properly boxing, stamping, or branding; using false stamps, etc.; cigars for export.

Whenever any cigars are removed from any manufactory, or place where cigars are made, without being packed in boxes as required by the provisions of this chapter, or without the proper stamp thereon denoting the tax, or without stamping, indenting, burning, or impressing into each box, in a legible and durable manner, the number of the cigars contained therein, the number of the manufactory, and the number of the district and the State, or without properly affixing thereon and canceling the stamp denoting the tax on the same, or are sold, or offered for sale, not properly boxed and stamped, they shall be forfeited to the United States. And every person who commits any of the above-described offenses shall be fined for each such offense not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than two years. And every person who packs cigars in any box bearing a false or fraudulent or counterfeit stamp, or who affixes to any box containing cigars a stamp in the similitude or likeness of any stamp required to be used by the laws of the United States, whether the same be a customs or internal-revenue stamp, or who buys, receives, or has in his possession any cigars on which the tax to which they are liable has not been paid, or who removes, or causes to be re-

moved, from any box any stamp denoting the tax on cigars, with intent to use the same, or who uses, or permits any other person to use, any stamp so removed, or who receives, buys, sells, gives away, or has in his possession any stamp so removed, or who makes any other fraudulent use of any stamp intended for cigars, or who removes from the place of manufacture any cigars not properly boxed and stamped as required by law, shall be deemed guilty of a felony, and shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than three years: Provided, That cigars packed expressly for export, and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury, shall be exempt from the provisions of this section, and also from the provisions of section thirty-three hundred and ninety-three of the Revised Statutes, requiring a label to be affixed to each box.

Act July 20, 1868, c. 186, § 89, 15 Stat. 162. Act June 6, 1872, c. 315, § 31, 17 Stat. 255. Act March 1, 1879, c. 125, § 16, 20 Stat. 348.

This section, as enacted in the Revised Statutes, was amended by inserting, after the words "stamp thereon denoting the tax," in place of the words "or without burning into each box with a branding iron," the words "or without stamping, indenting, burning, or impressing into each box, in a legible and durable manner," and by inserting, after the words "of the cigars contained therein," in place of the words "the name of the manufacturer," the words "the number of the manufactory," and by adding at the end of the section as originally enacted the proviso as set forth here, by Act March 1, 1879, c. 125, § 16, last cited above.

Notes of Decisions

See notes under § 5959, ante.

Adoption of Hamilton-Brooks cigar stamp and regulations relating thereto.—The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may adopt the device known as the Hamilton-Brooks cigar stamp, and prescribe regulations for its use, cancellation, and destruction, in accordance with the design of its inventor, if deemed expedient. (1881) 17 Op. Atty. Gen. 111.

Cigarettes as within meaning of statute.—R. S. § 3397 was amended by Act 1879, c. 125, § 16, which struck out said section, and substituted therefor a provision for "stamping, indenting," burning. "or impressing," into each box, "in a legible and durable manner, [with a burning iron,] the number of cigars contained therein, [the name of the manufacturer,] the number of the manufacturer, and the number of the district and the state." The quoted words are in the new section and not in the old and the words in brackets are in the old section and not in the new. Held, in view of the provision in section 6197, ante, that cigarettes shall be held to be cigars under the meaning of chapter 7, that this section is a part of the chapter, so as to bring cigarettes within its provisions by virtue of the definition of cigars contained in section 6197, ante. U. S. v. Sapinkow (C. C. 1898) 90 Fed. 654.

Selling or removing cigars not boxed, stamped, and branded in general.—The punishment imposed for selling unstamped cigars (Act July 20, 1868, § 89) is not confined to importers and manufacturers, though they alone are required to pack the cigars and affix the stamp. U. S. v. Edwards (D. C. 1873) Fed. Cas. No. 15,025.

The proviso in section 31, c. 315, Act June 6, 1872, authorizing the use of wood, metal, paper, etc., separately or in combination, for packing tobacco, snuff, and cigars, under regulations of the Commissioner of Internal Revenue, does not by implication modify or in any way affect the requirement of Act July 20, 1868, c. 186, § 89, that certain numbers and names be burned into cigar boxes with a branding iron before removing them from the manufactory. (1875) 15 Op. Atty. Gen. 517.

A sale of a lot of cigars at the factory where made before they are all boxed, or any of them stamped, and delivery of possession, will not be invalid between the parties, under the act of congress imposing a forfeiture for selling or offering to sell cigars before they are boxed and stamped, where the contract of sale provides that they shall be stamped, as the law requires, before their removal. Straus v. Minzesheimer (1875) 78 Ill. 492.

Keeping for sale cigars not properly stamped.—Where the owner of unstamped cigars intended to sell them if an opportunity offered, he is guilty of violating the law in keeping cigars for sale not properly stamped, though he intended to stamp them before consummating a sale. U. S. v. Woolheim (D. C. 1870) Fed. Cas. No. 16,761.

The propriety of submitting to the jury the question whether an alleged

sale of goods by a vendor to his brother was fraudulent as to creditors was not obviated by the fact, if it existed, that the sale of cigars (which were among the goods) was made in violation of the United States revenue laws, since the sale embraced property not covered by those laws. Wessels v. Beeman (1887) 66 Mich. 343, 33 N. W. 510.

Cigars sold at place of manufacture.—A circular by the commissioner of internal revenue required that a cigar factory shall be at least an entire room, separated by walls and partitions from the rest of the building, and that the factory shall not, any part of it, even though marked off and separated from the remainder by a railing, counter, bench, screen, or curtain, be used as a store, where the manufacturer can sell his cigars otherwise than in legal boxes properly branded and stamped. Plaintiffs, having paid special taxes both as retail dealers and as manufacturers, disregarded the order, and continued to sell at retail from the front part of the room in the rear part of which was their manufactory. Held, that the order was within the authority of the commissioner, under section 6206, ante, to prescribe regulations for the inspection of cigars, and that the sales were illegal, under R. S. §§ 3392, 3397, 3400, this section and ante, § 6202, and post, § 6210, being removals of cigars from the place where they were manufactured without being packed in boxes and properly stamped. Ludloff v. U. S. (1883) 2 Sup. Ct. 475, 108 U. S. 176, 27 L. Ed. 693.

Where cigars are made in the back part of a room and sold in the front part thereof, the back part is to be regarded as a manufactory, and they cannot be removed to the front part without first branding and stamping. U. S. v. Neid (D. C. 1870) Fed. Cas. No. 15,860.

Possession of unstamped cigars brought by passenger from foreign country.—Under the regulations of the treasury department permitting a passenger entering the United States to bring in free of duty, as personal effects, not exceeding 50 cigars, Mexican cigars so brought into this country by passengers or travelers are not subject to internal revenue tax; and one to whom such cigars have been given may retain the same in his possession unstamped, or may give them away, without being subject to the penalty imposed by this section on every person "who buys, receives or has in his possession any cigars on which the tax to which they are liable has not been paid." Nichols v. U. S. (1901) 106 Fed. 672, 46 C. C. A. 405.

Affixing simulated stamps to boxes.—The offense of affixing simulated customs stamps to boxes of cigars may be committed by affixing to a box of domestic cigars a likeness of a customs stamp. U. S. v. Jacoby (C. C. 1875) Fed. Cas. No. 15,462.

Forfeiture and penalty.—In case of seizure of cigars alleged to be in boxes other than such as should have contained them according to the revenue laws, the natural and reasonable inference is that the cigars were removed from the factory in the condition in which they were found. Jackson v. U. S. (C. C. 1884) 21 Fed. 35.

Section 3397, R. S., as amended by section 16 of the act of March 1, 1879 (this section), requires that each of the items mentioned must be branded or impressed upon boxes of cigars before removal from the factory, and, for the omission of either item required, cigars are forfeited, and may be seized in the hands of bona fide purchasers. U. S. v. Seventy-Six Thousand One Hundred and Twenty-Five Cigars (D. C. 1883) 18 Fed. 147, judgment affirmed Cunard S. S. Co. v. Robertson (1884) 5 Sup. Ct. 247, 112 U. S. 580, 28 L. Ed. 798.

Where boxes of cigars had impressed upon them all the items required, but the number of the factory was false, held, that the section required the factory number to be truly stated, and for not complying therewith the cigars became forfeited. Id.

The amendment of 1879 for the first time required the statement of the factory number, and the omission of a correct statement of the factory number became, by the amendment, a new ground of forfeiture. Held, therefore, condemnation could not be had upon this ground, upon an information based upon section 6207 only. Id.

A jury having been waived, and the case tried by consent before the court, and no further evidence being desired to be put in by the claimant, held, that the plaintiff's application to amend the information in substance by inserting a count upon the omission of the factory number under the act of 1879 should be allowed upon terms. Id.

A dealer in cigars would not be liable to any penalty under existing laws (see this section and section 6214, post) for refusal or neglect to detach the coupons from the stamp known as the Hamilton-Brooks stamp, at the time contemplated by that device, should such stamp be adopted in pursuance of the provisions of section 6343, post. He would under existing laws incur liability for not destroying the stamp when the box is emptied, but not for refusal or neglect to do so previously thereto. (1880) 16 Op. Atty. Gen. 443.

Any failure to use, cancel, and destroy the Hamilton-Brooks cigar stamp, as directed by such regulations, would make the party chargeable with the failure amenable to the penalties existing March 1, 1879 (20 Stat. 351),

as to the stamps then in use. (1881) 17 Op. Atty. Gen. 111.

If cigars are offered for sale contrary to the revenue laws of the United States, a right of forfeiture and seizure by the government arises, and, if the cigars are actually sold pursuant to such offer, a subsequent seizure by the government operates to vest the title of the government thereby acquired as of the time of the offer of sale, and to devest the paper title made by the sale pursuant to the offer. Gethner v. Salomon (1910) 157 Ill. App. 196.

Where the United States took no steps to enforce a forfeiture of goods for violation of the internal revenue laws, a sale of such goods will pass a good title, as the title of the government to goods forfeited does not vest until after judicial condemnation, though then it relates back to the time the offense was committed. Wessels v. Beeman (1891) 87 Mich. 481, 49 N. W. 483.

Indictment.—Offenses under this section which arise out of the same transaction, though some of them are designated as felonies and some not, may be charged in different counts of the same indictment, under section 1690, ante. U. S. v. Jacoby (C. C. 1875) Fed. Cas. No. 15,462.

In an indictment for removing cigars not packed in boxes, it is unnecessary to aver an intent to defraud the United States. Id.

An indictment under this section charging that defendant "did buy, receive, and have in his possession" cigars on which the tax was not paid, warrants a conviction on proof of possession alone. U. S. v. Millard (C. C. 1876) Fed. Cas. No. 15,769.

The words "as required by law," as used in an indictment for selling cigars not properly boxed and stamped, dispenses with the necessity of alleging that the cigars were not within the excepted classes. U. S. v. Edwards (D. C. 1873) Fed. Cas. No. 15,025.

Cited without definite application, Allen v. Arguimbau (1905) 25 Sup. Ct. 622, 624, 198 U. S. 149, 49 L. Ed. 990; Jackson v. U. S. (C. C. 1884) 21 Fed. 35.

§ 6208. (R. S. § 3398.) Absence of stamp evidence of non-payment of tax.

The absence of the proper revenue-stamp on any box of cigars sold, or offered for sale, or kept for sale, shall be notice to all persons that the tax has not been paid thereon, and shall be prima-facie evidence of the non-payment thereof, and such cigars shall be forfeited to the United States.

Act July 20, 1868, c. 186, § 90, 15 Stat. 163.

Cited without definite application, U. S. v. Two Hundred Barrels of Whisky (1877) 95 U. S. 571, 576, 24 L. Ed. 491.

§ 6209. (R. S. § 3399.) Cigars manufactured on shares, commission, or contract; how stamped; fraud.

Whenever cigars of any description are manufactured, in whole or in part, upon commission or shares, or the material is furnished by one party and manufactured by another, or the material is furnished or sold by one party with an understanding or agreement with another that the cigars are to be received in payment therefor, or for any part thereof, the stamps required by law shall be affixed by the actual maker before the cigars are removed from the place of manufacturing. And in case of fraud on the part of either of said parties in respect to said manufacture, or of any collusion on their part with intent to defraud the revenue, such material and cigars shall be forfeited to the United States; and every person engaged in such fraud or collusion shall be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned for not less than six months nor more than three years.

Act July 20, 1868, c. 186, § 91, 15 Stat. 163.

Cited without definite application, In re Riggsbee (D. C. 1907) 151 Fed. 701.

§ 6210. (R. S. § 3400.) Forfeiture of property for selling, etc., contrary to law, using false stamps, etc.

Every manufacturer of cigars who removes or sells any cigars [without payment of the special tax] as a cigar-manufacturer, or without having given bond as such, or without the proper stamps denot-

ing the tax thereon; or who makes false or fraudulent entries of the manufacture or sale of any cigars; or makes false or fraudulent entries of the purchase or sale of leaf-tobacco, tobacco-stems, or other material used in the manufacture of cigars; or who affixes any false, forged, spurious, fraudulent, or counterfeit stamp, or imitation of any stamp, required by law to any box containing any cigars, shall, in addition to the penalties elsewhere provided in this Title for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco and cigars, and all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession, or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging.

Act July 20, 1868, c. 186, § 92, 15 Stat. 163.

The words of this section, "without payment of the special tax," inclosed in brackets, were superseded by the abolition of the special tax by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, ante, § 6177. These words, however, are revived by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 753, and Act Sept. 8, 1916, c. 463, § 408, set forth ante, § 5980j, imposing a special tax.

Notes of Decisions

See notes under § 5959, ante.

Mortgage as affecting forfeiture.—The existence of a bona fide mortgage on materials or other personal property which is allowed to remain in the possession of the manufacturer, and to be used by him in his business, will not prevent the forfeiture of such property, the risk of which the mortgagee must be held to have assumed, as the provision for forfeiture of such property is not limited, like that relating to real estate, to the interest of the offender therein. U. S. v. 246½ Pounds of Tobacco (D. C. 1900) 103 Fed. 791.

Leased machinery as subject to forfeiture.—Under this section the fact that machinery used by a manufacturer guilty of a violation of the law was leased from a third person, who was ignorant of such violation, will not prevent its forfeiture, but the owner must be held to have acted with the knowledge that the property would be subject to forfeiture if the business was unlawfully conducted, and to have taken the risk. U. S. v. Two Hundred and Twenty Patented Machines (D. C. 1900) 99 Fed. 559.

Cigars sold at place of manufacture.—A circular by the commissioner of internal revenue required that a cigar factory shall be at least an entire room, separated by walls and partitions from the rest of the building, and that the factory shall not, any part of it, even though marked off and separated from the remainder by a railing, counter, bench, screen, or curtain, be used as a store, where the manufacturer can sell his cigars otherwise than in legal boxes properly branded and stamped. Plaintiffs, having paid special taxes both as retail dealers and as manufacturers, disregarded the order, and continued to sell at retail from the front part of the room in the rear part of which was their manufactory. Held, that the order was within the authority of the commissioner, under section 6206, ante, to prescribe regulations for the inspection of cigars, and that the sales were illegal, under Rev. St. §§ 3392, 3397, 3400, this section, and ante, §§ 6202, 6207, being removals of cigars from the place where they were manufactured without being packed in boxes and properly stamped. Ludloff v. U. S. (1883) 2 Sup. Ct. 475, 108 U. S. 176, 27 L. Ed. 693.

(R. S. § 3401. Temporary.)

This section imposed a penalty for falsely representing cigars to have been made prior to July 20, 1868. It is omitted, as temporary merely.

§ 6211. (R. S. § 3402.) Imported cigars to pay tax; stamps, when and by whom affixed.

All cigars imported from foreign countries shall pay, in addition to the import duties imposed thereon, the tax prescribed by law for cigars manufactured in the United States, and shall have the same stamps affixed. The stamps shall be affixed and canceled by the owner or importer of the cigars while they are in the custody of the proper custom-house officers, and the cigars shall not pass out of the custody of such officers until the stamps have been so affixed and

canceled, but shall be put up in boxes containing quantities as prescribed in this chapter for cigars manufactured in the United States, before the stamps are affixed. And the owner or importer of such cigars shall be liable to all the penal provisions of this Title prescribed for manufacturers of cigars manufactured in the United States. Whenever it is necessary to take any cigars so imported to any place other than the public stores of the United States, for the purpose of affixing and canceling such stamps, the collector of customs of the port where such cigars are entered shall designate a bonded warehouse to which they shall be taken, under the control of such customs officer as such collector may direct. And every officer of customs who permits any such cigars to pass out of his custody or control, without compliance by the owner or importer thereof with the provisions of this section relating thereto, shall be deemed guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years.

Act July 20, 1868, c. 168, § 93, 15 Stat. 163.

The importation of cigars was regulated by R. S. § 2804, ante, § 5500.

Notes of Decisions

Cigars shipped from Philippine Islands.—Cigars shipped from the Philippine Islands to the United States are not subject to internal revenue tax under this section. (1902) 24 Op. Atty. Gen. 120.

Prior to the passage of the act of July 1, 1902 (32 Stat. 691), the Philippine Islands were "within the exterior boundaries of the United States" within the meaning of section 6350, post, and subject to its provisions; but since its passage the provisions of that section have been inoperative in those islands, section 1 of that act providing in effect that the laws of the United States shall not apply to the Philippine Islands. No internal revenue tax therefore can be imposed under the laws of the United States on cigars shipped into this country from the Philippine Islands. Id.

Exclusion of agent of owner or importer from custom house premises.—Though the owner or importer of cigars may by his agent lawfully affix and cancel the internal revenue stamps required by this section to be affixed and canceled while such cigars are in the custom house, yet the collector of the port may in his discretion exclude such an agent from resorting to the public stores for that purpose; and, in the absence of legislation by congress or regulation by the treasury department, no action accrues thereby to the agent thus excluded. Slaight v. Hedden (C. C. 1888) 39 Fed. 103.

It is a fair interpretation of this section to construe it as warranting the adoption of such reasonable regulations touching the admission of agents to the premises of the custom house as the collector may see fit to approve of. Id.

Cited without definite application, U. S. v. Sapinkow (C. C. 1898) 90 Fed. 654, 658; U. S. v. Fifty-Nine Demijohns Aguadiente and Four Barrels of Cigarettes (D. C. 1889) 39 Fed. 401, 402.

§ 6212. (R. S. § 3403.) Selling imported cigars not packed as required by law.

Every person who sells or offers for sale any imported cigars, or cigars purporting or claimed to have been imported, not put up in packages and stamped as provided by this chapter, shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years.

Act July 20, 1868, c. 186, § 94, 15 Stat. 164.

A provision of this section, preceding that set forth here, that all cigars of every description, on hand after April 1, 1869, should be taken to have been either manufactured or imported after the passage of the internal revenue act of July 20, 1868, and should be stamped accordingly, is omitted as temporary merely, and executed.

§ 6213. (R. S. § 3404.) Purchasing cigars not branded or stamped.

Every person who purchases or receives for sale any cigars which

have not been branded or stamped according to law, shall be liable to a penalty of fifty dollars for each such offense.

Act June 30, 1864, c. 173, § 92, 13 Stat. 263. Act July 13, 1866, c. 184, § 9, 14 Stat. 126. Act July 20, 1868, c. 186, § 89, 15 Stat. 162.

Cited without definite application,
Nichols v. U. S. (1901) 106 Fed. 672, 46 C. C. A. 405.

§ 6213a. (R. S. § 3405.) Buying cigars from a manufacturer who has not paid a special tax.

Every person who purchases or receives for sale any cigars from any manufacturer who has not paid the special tax shall be liable for each offense to a penalty of one hundred dollars, and to a forfeiture of all the said articles so purchased or received, or of the full value thereof.

Act June 30, 1864, c. 173, § 92, 13 Stat. 263. Act July 13, 1866, c. 184, § 9, 14 Stat. 126.

This section became inoperative by the repeal of special taxes by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 26, ante, § 6177. It was revived by Act Oct. 22, 1914, c. 331, § 4, 38 Stat. 753, and Act Sept. 8, 1916, c. 463, § 408, set forth ante, § 5980j, imposing a special tax.

§ 6214. (R. S. § 3406.) Stamps on emptied cigar-boxes to be destroyed; penalty for neglect, etc.

Whenever any stamped box containing cigars, cheroots, or cigarettes, is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps thereon. And any person who willfully neglects or refuses so to do shall, for each such offense, be fined not exceeding fifty dollars and imprisoned not less than ten days nor more than six months. And any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing cigars, cheroots, or cigarettes, any such stamped box, shall for each such offense be fined not exceeding one hundred dollars and be imprisoned not more than one year. Any revenue officer may destroy any emptied cigar-box upon which a cigar-stamp is found.

Act March 2, 1867, c. 169, § 32, 14 Stat. 484. Act July 20, 1868, c. 186, §§ 72, 89, 15 Stat. 156, 162. Act June 6, 1872, c. 315, § 33, 17 Stat. 255.

Notes of Decisions

Permission to violate law.—Permission from the commissioner of internal revenue will not justify an unlawful act. So one who has cut the stamps on boxes of cigars and taken out and repacked the cigars in the same boxes, with intent to dispose of them without adding new stamps, cannot justify himself by permission to do so from the commissioner. U. S. v. Four Thousand One Hundred and Seventy-Five Cigars (C. C. 1879) Fed. Cas. No. 15,-154.

Pledge of unstamped cigars.—A pledge of unstamped cigars does not come within the provisions of this section and section 6197, ante, requiring cigars manufactured and sold, or removed for consumption and use, to be stamped. Combs v. Tuchelt (1878) 24 Minn. 423.

Intention to violate law as ground of forfeiture.—The intention on the part of those in charge of a tobacco store to violate the law in relation to the goods that were taxable by not canceling the stamps on packages that were sold, as required by Act July 20, 1868, § 72, ante, § 6185, will forfeit the whole establishment. In re Quantity of Tobacco (D. C. 1871) Fed. Cas. No. 11,500.

Liability to penalty.—A dealer in cigars would not be liable to any penalty under existing laws (see this section and section 6207, ante), for refusal or neglect to detach the coupons from the stamp known as the Hamilton-Brooks stamp, at the time contemplated by that device, should such stamp be adopted in pursuance of the provisions of section 6343, post. He would under existing laws incur liability for not destroying the stamp when the box is emptied, but not for refusal or neglect to do so previously thereto. (1880) 16 Op. Atty. Gen. 443.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may adopt the device known as the Hamilton-Brooks cigar stamp, and prescribe regulations for its use, cancellation, and destruction, in accordance with the design of its inventor, if deemed expedient. (1881) 17 Op. Atty. Gen. 111.

Any failure to use, cancel, and destroy such stamp, as directed by such regulations, would make the party

chargeable with the failure amenable to the penalties existing March 1, 1879 (20 Stat. 351) as to the stamps then in use. Id.

Cited without definite application, Ripper v. U. S. (1910) 178 Fed. 24. 101 C. C. A. 152, rehearing denied (1910) 179 Fed. 497, 103 C. C. A. 478.

CHAPTER SEVEN A

Oleomargarine, Adulterated Butter, and Process or Renovated Butter

This chapter, inserted here as additional to the chapters of this Title in the Revised Statutes, includes provisions of the Oleomargarine Act of Aug. 2, 1886, c. 840, 24 Stat. 209, and subsequent acts amendatory thereof or relating to adulterated butter and process or renovated butter.

Sec.
6215. Butter, definition of.
6216. Oleomargarine, definition of.
6217. Manufacturer's statement of business, inventories, bonds, books, returns.
6218. Oleomargarine, how put up and how retailed; penalty.
6219. Label and notice on packages of oleomargarine; penalty.
6220. Tax on oleomargarine.
6221. Assessment of tax on oleomargarine sold without stamps.
6222. Imported oleomargarine.
6223. Purchasing oleomargarine not branded or stamped; penalty.
6224. Purchasing oleomargarine from manufacturer who has not paid special tax; penalty.
6225. Stamps on emptied packages to be destroyed; penalty for neglect, etc.
6226. Appointment of chemists, etc.; salary; decision as to substance liable to tax, etc.
6227. Forfeiture of unstamped or deleterious oleomargarine; removal of stamps, etc.; penalty.
6228. Exportation of oleomargarine; regulations.
6229. Fraud by manufacturer of oleomargarine; penalty.
6230. Failure to comply with law; penalty; forfeiture.
6231. Recovery of fines, etc.
6232. Regulations.
6233. Butter, adulterated butter, and process or renovated butter, definition of.
6234. Manufacturer's statement of business, inventories, books, returns, and signs.
6235. Adulterated butter, how packed and sold; penalty.
6236. Label and notice on package of adulterated butter; penalty.
6237. Tax on adulterated or renovated butter; stamps.
6238. Provisions relating to oleomargarine applicable to adulterated butter.
6239. Inspection of process or renovated butter; marks; punishments.
6240. Sanitary regulation of renovated butter factories.
6241. Wholesale dealers to keep books and render returns; penalty.

§ 6215. (Act Aug. 2, 1886, c. 840, § 1.) Butter, definition of.

For the purposes of this act the word "butter" shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter. (24 Stat. 209.)

This was the first section of the Oleomargarine Act of Aug. 2, 1886, cited above.

Section 2 and sections 5–20 of the act are set forth post, §§ 6216–6232.

Sections 3 and 4 of the act, relating to special taxes upon manufacturers and dealers, are set forth ante, §§ 5967, 5977.

Section 21 of the act, prescribing the time of taking effect of the act, and providing for the tax on oleomargarine found on the premises of any dealer thereafter, is omitted as temporary merely, and executed.

The definition of the word "butter," in this section, was adopted, and the terms "adulterated butter," "process butter," and "renovated butter" were defined, for the purposes of Act May 9, 1902, c. 784, amending this act, by section 4 of that act, set forth post, § 6233.

Provisions similar to those relating to manufacturers of and dealers in oleomargarine and to the manufacture and sale of oleomargarine, made by sections 3–8 of this act, were enacted, applying to manufacturers of and dealers in, and to the manufacture and sale of process or renovated butter and adulterated butter, and the provisions of sections 9–21 of this act were made ap-

plicable to manufacturers of adulterated butter, to an extent necessary to enforce the marking, etc., and the regulation of the exportation and importation of adulterated butter, by Act May 9, 1902, c. 784, § 4, set forth post, §§ 6233–6238.

Notes of Decisions

Authority of Secretary of Treasury or subordinate officers.—There is nothing in section 384, ante, which authorizes the secretary or subordinate officers to repeal, amend, modify, or extend any of the provisions of the act of 1902, relating to the adulteration of butter. U. S. v. 11,150 Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463.

Construction and operation of law in general.—This act of August 2, 1886, and the sections of the Revised Statutes adopted by it and made applicable mean that oleomargarine shall only be sold in the manner and according to the regulations prescribed. Ripper v. U. S. (1910) 178 Fed. 24, 101 C. C. A. 152, rehearing denied (1910) 179 Fed. 497, 103 C. C. A. 478.

Act Aug. 2, 1886, relating to the sale of oleomargarine, is a revenue act by its express terms, and with its penal provisions is to be liberally construed; and the courts, in construing it, will not inquire into the motives which led to its enactment. Prather v. U. S. (1896) 9 App. D. C. 82.

Law as regulation of interstate commerce.—Act Aug. 2, 1886 (24 Stat. 209, c. 840), entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation and exportation of oleomargarine," was not intended as a regulation of commerce among the states. Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 156, 155 U. S. 461, 39 L. Ed. 223.

State laws relating to same subject.—Section 5977, ante, imposes special taxes on manufactures of oleomargarine, and wholesale and retail dealers therein, and section 5977, ante, declares that sections 5955–5959, 5961–5964, 5970, ante, are, so far as applicable, made to extend to and include such taxes, and the persons on whom they are imposed. Section 5970, ante, provides that the payment of any tax imposed by the internal revenue laws for carrying on any business shall not exempt any person from any penalty provided by the laws of a state for carrying on the same within such state, or authorize such business contrary to the laws of such state, or in places prohibited by municipal law, nor prohibit any state from placing a tax on the same business. Held, that section 5977, ante, was not intended to interfere with the exercise by the states of any authority they can rightfully exercise over the sale of oleomargarine therein. Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223.

By Act Aug. 2, 1886, oleomargarine was recognized as an article of commerce and put under the control of a national law regulating its sale, following it not only through the course of manufacture, and regulating that, but following it also into the hands of the wholesale dealers, and further into the hands of the retail dealer, and it is the duty of the court to assume that the act will be enforced and that its provisions made to prevent fraud will be effective. Oleomargarine brought into a state in original packages is within the protection of the federal constitution, and can be sold in the packages entirely independently of a state statute, and subject only to the provisions of the national law. But the instant an original package is opened and its contents exposed to retail they thereby become mingled with the property of the state, and subject in every respect to its law. In re Worthen (C. C. 1891) 58 Fed. 467, 469.

Act Aug. 2, 1886, having declared oleomargarine to be a salable article, and having regulated its sale, Act Pa. May 21, 1885, in so far as it prohibits the sale of oleomargarine imported into that state in original packages, is in conflict with the constitution of the United States empowering congress to regulate commerce between the states, and is therefore void to that extent. Commonwealth v. Paul (Pa. 1890) 9 Pa. Co. Ct. R. 196.

Congress having, by Act Aug. 2, 1886, declared oleomargarine to be a merchantable article, and having regulated its sale, the prohibition, under a penalty, of its manufacture and sale, by Act Pa. May 21, 1885, does not apply to a sale in its original package of oleomargarine manufactured in another state, and brought therefrom in such original package, as the sale of goods so imported into the state, though it may be regulated, cannot be prohibited, by the state. Commonwealth v. Paul (Pa. 1890) 10 Pa. Co. Ct. R. 332.

Act Aug. 2, 1886, providing for licensing by the internal revenue department of the sale of oleomargarine, does not render the prohibition or regulation of such traffic by state legislation unconstitutional. Commonwealth v. Crane (1893) 158 Mass. 218, 33 N. E. 388.

Cited without definite application, McCray v. U. S. (1904) 24 Sup. Ct. 769, 771, 195 U. S. 27, 49 L. Ed. 78, 1 Ann. Cas. 561.

§ 6216. (Act Aug. 2, 1886, c. 840, § 2.) Oleomargarine, definition of.

For the purposes of this act certain manufactured substances, certain extracts, and certain mixtures and compounds,

including such mixtures and compounds with butter, shall be known and designated as "oleomargarine," namely: All substances heretofore known as oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef-fat, suet, lard, lard-oil, vegetable-oil annotto, and other coloring matter, intestinal fat, and offal fat made in imitation or semblance of butter, or when so made, calculated or intended to be sold as butter or for butter. (24 Stat. 209.)

See notes to section 1 of this act, ante, § 6215.

Notes of Decisions

Application of definition.—See, also, notes under § 6220, post.

A food product known as "Fruit of the Meadow," composed of leaf lard and beef fat, bathed in salt ice water to take away the fat and lard odor, but not having any ingredient to give it a butter flavor, or coloring matter to give it a butter appearance, although put up and sold in pound packages, is not taxable as oleomargarine, under the statute, which is intended to apply only to products made in conscious imitation of butter. Braun & Fitts v. Coyne (C. C. 1899) 125 Fed. 331.

The various simple and compound substances mentioned in this section, known as oleomargarine, must be "made in imitation or semblance of butter, or, when so made, calculated or intended to be sold as butter or for butter," before any of them can be regarded as taxable under that act. (1886) 18 Op. Atty. Gen. 489.

Cited without definite application, McCray v. U. S. (1904) 24 Sup. Ct. 769, 771, 195 U. S. 27, 49 L. Ed. 78, 1 Ann. Cas. 561.

§ 6217. (Act Aug. 2, 1886, c. 840, § 5.) Manufacturer's statement of business, inventories, bonds, books, returns.

Every manufacturer of oleomargarine shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of materials and products, shall put up such signs and affix such number of his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than five thousand dollars; and the sum of said bond may be increased from time to time, and additional sureties required at the discretion of the collector, or under instructions of the Commissioner of Internal Revenue. (24 Stat. 210.)

See notes to section 1 of this act, ante, § 6215.

Similar provisions relating to process or renovated butter were made by Act May 9, 1902, c. 784, § 4, post, § 6234.

Notes of Decisions

See note under §§ 5896, 5898, and 5899.

Cited without definite application, U. S. v. Eaton (1892) 12 Sup. Ct. 764, 767, 144 U. S. 677, 36 L. Ed. 591; McCray v. U. S. (1904) 24 Sup. Ct. 769, 771, 195 U. S. 27, 49 L. Ed. 78, 1 Ann. Cas. 561; U. S. v. Lamson (C. C. 1908) 165 Fed. 80, 82.

§ 6218. (Act Aug. 2, 1886, c. 840, § 6.) Oleomargarine, how put up and how retailed; penalty.

All oleomargarine shall be packed by the manufacturer thereof in firkins, tubs, or other wooden packages not before used for that purpose, each containing not less than ten pounds, and marked, stamped, and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all sales made by manufacturers of oleomargarine, and wholesale dealers in oleomargarine shall be in original stamped pack-

ages. Retail dealers in oleomargarine must sell only from original stamped packages, in quantities not exceeding ten pounds, and shall pack the oleomargarine sold by them in suitable wooden or paper packages, which shall be marked and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden or paper packages as above described, or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than one thousand dollars, and be imprisoned not more than two years. (24 Stat. 210.)

See notes to section 1 of this act, ante, § 6215.

Similar provisions relating to process or renovated butter were made by Act May 9, 1902, c. 784, § 4, post, § 6235.

Notes of Decisions

Constitutionality. — The provisions that the marks, brands, and stamps required to be placed on packages of oleomargarine, the omission of which is made a criminal offense, shall be designated by the commissioner of internal revenue, involve no unconstitutional delegation of power to determine what acts shall be criminal, since the offense is fully defined by the act, and the designation of the marks, brands, and stamps is merely an administrative function, needful to the operation of the machinery of the law. In re Kollock (1897) 17 Sup. Ct. 444, 446, 165 U. S. 526, 41 L. Ed. 813.

In so far as this section provides for marking, stamping, and branding packages used by retail dealers in oleomargarine, it is not merely a police regulation, and as such unconstitutional, as such requirement must be regarded as a means to effect the objects of the act in raising revenue, and, so regarded, it is clearly within the constitutional power of congress. Dougherty v. U. S. (1901) 108 Fed. 56, 47 C. C. A. 195, affirming judgment U. S. v. Dougherty (D. C. 1900) 101 Fed. 439, and writ of certiorari denied Dougherty v. U. S. (1901) 21 S. Ct. 926, 181 U. S. 622, 45 L. Ed. 1033.

Constitutionality of state law.—Oleomargarine is a lawful subject of commerce, and a state statute (Act Minn. April 19, 1899, § 16) which prohibits the sale of oleomargarine so colored as to resemble butter is unconstitutional and void in so far as it applies to a sale within the state of oleomargarine manufactured in another state, and imported by the agent of the manufacturer, and sold by him in the original and unbroken packages of importation, stamped and marked as required by the act of August 2, 1886 (24 Stat. 209), the product being composed of the materials described in said act as constituting lawful oleomargarine of commerce. In re Brundage (C. C. 1899) 96 Fed. 963.

Sale by retailers.—The penal clause applies to retailers as well as others. Dougherty v. U. S. (1901) 108 Fed. 56, 47 C. C. A. 195, affirming judgment U. S. v. Dougherty (D. C. 1900) 101 Fed. 439, and writ of certiorari denied Dougherty v. U. S. (1901) 21 Sup. Ct. 926, 181 U. S. 622, 45 L. Ed. 1033.

The penalty prescribed in this section does not apply to that part of the section prohibiting retailers from selling in quantities exceeding 10 pounds, such offense being subject to punishment by a fine of $1,000 without imprisonment, as prescribed by section 6230, post. Ripper v. U. S. (1910) 178 Fed. 24, 101 C. C. A. 152, rehearing denied (1910) 179 Fed. 497, 103 C. C. A. 478.

Section 5977, ante, regulating the sale of oleomargarine, authorizes three classes of persons to conduct the business of manufacturing and selling oleomargarine, viz., the manufacturer is authorized to sell his own products in his place of business in his own packages with stamps denoting payment of the tax on the contents, the wholesale dealer is defined to be one permitted to sell in the manufacturer's original packages, and the retail dealer, one who sells in less quantities than 10 pounds at one time (section 5977, ante); and this section declares that retail dealers must sell only from original stamped packages in quantities not exceeding 10 pounds. Held, that the restriction on retail dealers violates no constitutional right, and that persons selling oleomargarine at retail in original packages in quantities greater than 10 pounds at any one time are violators of the law, and do not form a class outside its provisions. Id.

The required approval of the Secretary of the Treasury being merely as to the kind of marks to be used, an indictment may be had for neglect to

conform therewith. U. S. v. Ford (D. C. 1892) 50 Fed. 467, distinguishing U. S. v. Eaton (1892) 12 Sup. Ct. 764, 144 U. S. 677, 36 L. Ed. 591.

The term "every person" in this section includes a retail dealer. U. S. v. Dougherty (D. C. 1900) 101 Fed. 439, 441, affirmed (1901) 108 Fed. 56, 47 C. C. A. 195.

A suitable package is such as the dealer himself may reasonably find to be convenient and proper according to the usages and demands of the trade. Id.

A regulation made by the Commissioner of Internal Revenue permits retail dealers to take the oleomargarine from the original stamped package in advance of sales, and put it up in retail packages, marked and branded as prescribed by law and regulations, and offer the same for sale, provided such prepared retail packages remain till sold in or on the manufacturer's original package; a retail dealer, however, to be subject to a fine if he remove his prepared packages from the original package and sell them separated from and independently of the manufacturer's stamped package. Held in view of this section and this regulation, that a manufacturer's stamped package is not "emptied," within section 6225, post, making it the duty, subject to a fine for violation thereof, of the person in whose hands the package is when emptied, to destroy the stamps thereof, where it still contains a pound package put up by the retailer out of its original contents. U. S. v. Knott (D. C. 1907) 151 Fed. 925.

Indictment.—An indictment charging that a person, at a place and time stated, did "knowingly, willfully, unlawfully, and fraudulently remove a certain brand from a certain package then and there containing oleomargarine, to wit, sixty pounds of oleomargarine, to wit, the word 'Oleomargarine,' which was then and there required, and was then and there, under the requirements of law, branded upon the aforesaid package, then and there containing oleomargarine as aforesaid, contrary," etc., sufficiently charged an offense under the statute. Wilkins v. U. S. (1899) 96 Fed. 837, 37 C. C. A. 588.

Regulations made by an executive department, in pursuance of authority delegated by congress have the force of law, and the courts will take judicial notice of their existence and provisions; hence an indictment charging a violation of such a regulation, which is made an offense by statute, need not set out such regulation, but is sufficient if it avers that an act done in pursuance of such regulation was done under the requirements of law. Id.

A count in an indictment under this section charged a retail dealer with knowingly, willfully, and unlawfully selling oleomargarine "packed in a plain wrapper, and not in a new and suitable wooden or paper package or packages," as required by the act, and not "marked and branded" as prescribed. Held to sufficiently describe the offense, and the fact that it charged more than required to constitute a single offense was no objection thereto. Dougherty v. U. S. (1901) 108 Fed. 56, 47 C. C. A. 195, affirming judgment U. S. v. Dougherty (D. C. 1900) 101 Fed. 439, and writ of certiorari denied Dougherty v. U. S. (1901) 21 Sup. Ct. 926, 181 U. S. 622, 45 L. Ed. 1033.

An indictment for a violation of this section by packing oleomargarine in packages which had previously been used for that purpose considered, and held sufficient. Morris v. U. S. (1908) 161 Fed. 672, 88 C. C. A. 532, judgment reversed on rehearing (1909) 168 Fed. 682, 94 C. C. A. 168, writ of certiorari denied (1909) 29 Sup. Ct. 704, 214 U. S. 527, 53 L. Ed. 1068.

An indictment, averring that both defendants named therein "unlawfully and knowingly did sell and deliver" at a time and place and to a person named a one-pound package of oleomargarine wrapped in a paper wrapper, without being then and there marked and branded in the manner required by this section was sufficient. Goll v. U. S. (1908) 166 Fed. 419, 92 C. C. A. 171.

The manufacturer and dealer are the subject of regulation by this section, and the words "every person" should be construed to refer solely to manufacturers and dealers previously mentioned, so that an indictment for violating this section, failing to charge that accused was either a manufacturer or dealer in oleomargarine, and as such packed product in a manner violative of the statute, stated no offense. Morris v. U. S. (1909) 168 Fed. 682, 94 C. C. A. 168, reversing judgment (1908) 161 Fed. 672, 88 C. C. A. 532, writ of certiorari denied (1909) 29 Sup. Ct. 704, 214 U. S. 527, 53 L. Ed. 1068.

In indictments under this section for neglect to properly mark the package of oleomargarine, the regulation covering marks and brands made by the commissioner of internal revenue should be pleaded in substance. U. S. v. Ford (D. C. 1892) 50 Fed. 467.

An indictment is good which charges defendant with packing oleomargarine "in packages not marked in accordance with the regulations of the commissioner," without regard to the kind of package used. U. S. v. Dougherty (D. C. 1900) 101 Fed. 439, judgment affirmed Dougherty v. U. S. (1901) 108 Fed. 56, 47 C. C. A. 195, writ of certiorari denied (1901) 21 Sup. Ct. 926, 181 U. S. 622, 45 L. Ed. 1033.

The sale or delivery of oleomargarine in packages that are not new, being an indictable offense, under this section and the word "suitable" used

in the statute, in respect to the kind of packages in which sales must be made, being indefinite, such word may be disregarded as surplusage in an indictment charging defendant with selling and delivering oleomargarine in packages not "new and suitable." Id.

An indictment is good which charges a retail dealer with selling, delivering, and packing oleomargarine in packages which are not "new and suitable" wooden or paper packages. Id.

An indictment charging generally that defendants did knowingly, willfully, and unlawfully sell and offer for sale, deliver and offer to deliver, oleomargarine in other form than in new wooden or paper packages marked, stamped, and branded as required by law, without alleging whether the sales were at wholesale or at retail, and in what respect the packages were not in the form prescribed, and what stamps, marks, or brands required by law they did not have thereon, was insufficient. U. S. v. Joyce (D. C. 1905) 138 Fed. 457.

An indictment alleging that defendants willfully, etc., defaced the stamps, marks, and brands upon two certain packages containing oleomargarine, which packages were in their possession for sale, but which failed to show that they were such as were prescribed by the statute, was insufficient. Id.

An indictment founded on this section charging a retail dealer with having violated said section and the regulations prescribed thereunder by failing to pack oleomargarine sold by him as therein required, must describe the package used with reasonable certainty so as to advise the defendant of the particular offense charged, and a general averment that "the said oleomargine was not then and there packed in new, suitable wooden or paper packages having marked or branded thereon the name and address of him, * * * the words 'pound' and 'oleomargarine' and the quantity of oleomargarine so sold as aforesaid," but which fails to specify in which respect the package used was unlawful, is insufficient as being too indefinite and uncertain. U. S. v. Lockwood (D. C. 1908) 164 Fed. 772.

Evidence.—Where G. was not shown to have ordered, or had knowledge of a sale of oleomargarine by another not under G.'s control without being properly printed or branded, G. could not be convicted of the sale. Goll v. U. S. (1908) 166 Fed. 419, 92 C. C. A. 171.

Where G. and K. were charged with the sale of oleomargarine not properly marked, evidence that K. stated to witness immediately after the sale of the package in question that he was working for G. was inadmissible to prove interest or complicity in the offense on G.'s part. Id.

Admission by accused of an unlawful sale of oleomargarine during previous operations was without force to charge complicity in a subsequent unlawful sale by another. Id.

On the trial in a United States court of a person indicted for selling unstamped or unmarked packages of oleomargarine, it is not necessary for the government to prove the departmental regulations prescribed in pursuance of the statute. The court will take judicial notice of them. Prather v. U. S. (1896) 9 App. D. C. 82.

Trial, instructions.—Where two defendants, jointly indicted, were both convicted under proper instructions on five separate counts of violations of this section, and each was sentenced to pay a fine of $1,000 and to be imprisoned for six months, which was less than might have been imposed under any one of such counts, they could not be prejudiced by instructions given on the trial relating solely to other counts. Hartman v. U. S. (1909) 168 Fed. 30, 94 C. C. A. 124.

Under Act Aug. 2, 1886, §§ 6–13, instruction predicating unlawful act on part of revenue officers on destruction of revenue stamps on tubs containing oleomargarine, held properly refused; the evidence justifying an inference that the tubs had been refilled. Kercheval v. Allen (1915) 220 Fed. 262, 135 C. C. A. 1.

Cited without definite application, McCray v. U. S. (1904) 24 Sup. Ct. 769, 771, 195 U. S. 27, 49 L. Ed. 78, 1 Ann. Cas. 561; Schick v. U. S. (1904) 24 Sup. Ct. 826, 829, 195 U. S. 65, 49 L. Ed. 99, 1 Ann. Cas. 585 (in dissenting opinion of Harlan, J.); U. S. v. Chamberlin (1907) 156 Fed. 881, 889, 84 C. C. A. 461, 13 Ann. Cas. 720, reversed (1911) 31 Sup. Ct. 155, 219 U. S. 250, 55 L. Ed. 204; Hardesty v. U. S. (1911) 184 Fed. 269, 106 C. C. A. 411; U. S. v. 11,150 Pounds of Butter (D. C. 1911) 188 Fed. 157, affirmed (1912) 195 Fed. 657, 115 C. C. A. 463.

§ 6219. (Act Aug. 2, 1886, c. 840, § 7.) Label and notice on packages of oleomargarine; penalty.

Every manufacturer of oleomargarine shall securely affix, by pasting, on each package containing oleomargarine manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words:

"Notice.—The manufacturer of the oleomargarine herein contained has complied with all the requirements of law. Every per-

son is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

Every manufacturer of oleomargarine who neglects to affix such label to any package containing oleomargarine made by him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined fifty dollars for each package in respect to which such offense is committed. (24 Stat. 210.)

See notes to section 1 of this act, ante, § 6215.

Similar provisions relating to process or renovated butter were made by Act May 9, 1902, c. 784, § 4, post, § 6236.

Notes of Decisions

Indictment based on statute.—An indictment alleging that defendants willfully, etc., defaced the stamps, marks, and brands upon two certain packages containing oleomargarine, which packages were in their possession for sale, but which failed to show that they were such as were prescribed by the statute, was insufficient. U. S. v. Joyce (D. C. 1905) 138 Fed. 457.

Cited without definite application, McCray v. U. S. (1904) 24 Sup. Ct. 769, 771, 195 U. S. 27, 49 L. Ed. 78, 1 Ann. Cas. 561; Schick v. U. S. (1904) 24 Sup. Ct. 826, 829, 195 U. S. 65, 49 L. Ed. 99, 1 Ann. Cas. 585 (in dissenting opinion of Harlan, J.); Schafer v. Craft (D. C. 1906) 144 Fed. 907, affirmed (1907) 153 Fed. 175, 82 C. C. A. 349.

§ 6220. (Act Aug. 2, 1886, c. 840, § 8, as amended, Act May 9, 1902, c. 784, § 3.) Tax on oleomargarine.

Upon oleomargarine which shall be manufactured and sold, or removed for consumption or use, there shall be assessed and collected a tax of ten cents per pound, to be paid by the manufacturer thereof; and any fractional part of a pound in a package shall be taxed as a pound: Provided, When oleomargarine is free from artificial coloration that causes it to look like butter of any shade of yellow said tax shall be one-fourth of one cent per pound. The tax levied by this section shall be represented by coupon stamps; and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section. (24 Stat. 210. 32 Stat. 194.)

See notes to section 1 of this act, ante, § 6215.

This section, as enacted in Act Aug. 2, 1886, c. 840, § 8, cited above, was amended by increasing the tax from two cents to ten cents per pound, and by inserting a provision relating to the tax on oleomargarine, free from artificial coloration, of one-fourth of 1 cent per pound, as set forth here, by Act May 9, 1902, c. 784, § 3, last cited above.

A tax on adulterated butter and on process or renovated butter was imposed by a provision of section 4 of the amendatory act, set forth post, § 6237.

The provisions governing the issuance, sale, accountability, and destruction of stamps relating to tobacco and snuff were made by R. S. §§ 3369–3376, ante, §§ 6178–6185.

Notes of Decisions

Constitutionality. — Congress having imposed a tax on oleomargarine and recognized it as a proper subject of foreign and interstate commerce, it cannot be totally excluded from a state because it is subject to adulteration with substances injurious to health. Schollenberger v. Pennsylvania (1898) 18 Sup. Ct. 757, 761, 171 U. S. 1, 43 L. Ed. 49.

Any implied constitutional prohibition which may prevent the destruction by Congress of fundamental rights which it is the duty of every free government to safeguard cannot be invoked to invalidate the excise imposed on artificially colored oleomargarine by this section, because the effect of the tax may be to suppress the manufacture of the article. McCray v. U. S. (1904) 24 Sup. Ct. 769, 195 U. S. 27, 49 L. Ed. 78, 1 Ann. Cas. 561.

The excise on artificially colored oleomargarine imposed by this section does not infringe the constitutional guaranty of due process of law because the effect of the tax may be to suppress the manufacture of that article. Id.

Due process of law is not denied by

this section, because Congress has not chosen to tax natural butter artificially colored. Id.

The motives or purposes of Congress in enacting the tax imposed by this section are not open to judicial inquiry in considering the power of that body to enact such legislation. Id.

The fact that the tax on artificially colored oleomargarine imposed by this section is so great that its enforcement will destroy or restrict the manufacture of that article does not make its enactment invalid as exceeding the power to levy excises. Id.

Tax on article "free from artificial coloration."—The fact that before the enactment of Act May 9, 1902, the proviso contained the words "or ingredient" after the word "coloration," which words were stricken out by the amendment, indicates the intention of Congress that a coloration imparted by the addition of naturally colored butter does not subject the article to the higher tax, but does not indicate that the same result would follow from its coloration by the use of artificially colored butter. McCray v. U. S. (1904) 24 Sup. Ct. 769, 773, 195 U. S. 27, 49 L. Ed. 78, 1 Ann. Cas. 561.

Oleomargarine, whose yellow color is produced by the employment as an ingredient of butter which itself is artificially colored, is not "free from artificial coloration," within the meaning of the proviso to this section, although the statute treats butter, whether artificially colored or not, as an authorized ingredient of oleomargarine. Id.

Artificially colored oleomargarine, whose color is imparted in its manufacture by the use of an artificially colored and authorized ingredient, is not within the proviso to this section, because of a provision that persons adding to, or mixing with, oleomargarine any artificial coloration shall be held to be manufacturers of oleomargarine. Id.

Oleomargarine containing a small quantity of a vegetable oil, serving only to give it a yellow shade resembling butter, is not within this proviso, on the theory that the use of a substance recognized by section 6216, ante, as a possible ingredient, cannot be artificial coloration, since the enumeration of possible ingredients specifically includes coloring matter. Cliff v. U. S. (1904) 25 Sup. Ct. 1, 2, 195 U. S. 159, 49 L. Ed. 139.

A finding that the use of palm oil as an ingredient of oleomargarine was substantially only for coloring purposes will not be disturbed on appeal, where it is based on testimony that, out of a total of 160 ounces, only 1½ ounces were palm oil, and that this quantity imparted the yellow shade which caused the product to resemble butter. Id.

Oleomargarine made to look like butter of a shade of yellow by the use of one-half of 1 per cent. of palm oil, a vegetable oil recognized as a possible ingredient by section 6216, ante, is not "free from artificial coloration" within the meaning of the proviso in this section, although the addition of such palm oil may give the product a slightly better grain of texture, and a slightly better physiological effect upon those who eat it, where, but for its coloring power, it probably would not have been used. Wm. J. Moxley v. Hertz (1910) 30 Sup. Ct. 305, 216 U. S. 344, 54 L. Ed. 510.

Section 6216, ante, permits the use of palm oil in the manufacture of oleomargarine as a "statutory ingredient," and this section imposes a tax of 10 cents a pound on oleomargarine containing artificial coloration, but provides that oleomargarine "free from artificial coloration" shall be taxed at one-fourth of one cent a pound. By treasury regulations promulgated June, 1902, it was provided that if butter free from artificial coloration or any other of the compounds that might be legally used in the manufacture of the finished product has naturally a shade of yellow, in no way produced by artificial coloration, and through its use the finished product looks like butter of any shade of yellow, the product shall be taxed at one-fourth of a cent a pound as free from artificial coloration. Held, that where a small percentage of palm oil was used in the manufacture of oleomargarine, its sole purpose being to color the substance to represent the color of butter, though the oil was itself free from artificial coloration, its use did not render the product subject to the lower rate of taxation, since the regulation, if so construed, would be invalid as in excess of the jurisdiction of the treasury officials. William J. Moxley v. Hertz (1911) 185 Fed. 757, 108 C. C. A. 95, affirming judgment (C. C. 1906) 173 Fed. 728.

A food product known as "Fruit of the Meadow," composed of leaf lard and beef fat, bathed in salt ice water to take away the fat and lard odor, but not having any ingredient to give it a butter flavor, or coloring matter to give it a butter appearance, although put up and sold in pound packages, is not taxable as oleomargarine, under the statute, which is intended to apply only to products made in conscious imitation of butter. Braun & Fitts v. Coyne (C. C. 1899) 125 Fed. 331.

Cited without definite application, U. S. v. Chamberlin (1907) 156 Fed. 881, 889, 84 C. C. A. 461, 13 Ann. Cas. 720 (reversed [1911] 31 Sup. Ct. 155, 219 U. S. 250, 55 L. Ed. 204); May v. U. S. (1912) 199 Fed. 42, 117 C. C. A. 420 (in dissenting opinion).

§ 6221. (Act Aug. 2, 1886, c. 840, § 9.) Assessment of tax on oleomargarine sold without stamps.

Whenever any manufacturer of oleomargarine sells, or removes for sale or consumption, any oleomargarine upon which the tax is required to be paid by stamps, without the use of the proper stamps, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such sale or removal, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal. (24 Stat. 211.)

See notes to section 1 of this act, ante, § 6215.

The provisions of this section and the eleven sections next following were made applicable to adulterated butter by a provision of Act May 9, 1902, c. 784, § 4, post, § 6237.

The Commissioner was required to estimate the tax on any article sold without the use of proper stamps, by Act Aug. 27, 1894, c. 349, § 47, post, § 6348.

Cited without definite application, U. S. v. Chamberlin (1907) 156 Fed. 881, 889, 84 C. C. A. 461, 13 Ann. Cas. 720 (reversed [1911] 31 Sup. Ct. 155, 219 U. S. 250, 55 L. Ed. 204); Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658.

§ 6222. (Act Aug. 2, 1886, c. 840, § 10.) Imported oleomargarine.

All oleomargarine imported from foreign countries shall, in addition to any import duty imposed on the same, pay an internal revenue tax of fifteen cents per pound, such tax to be represented by coupon stamps as in the case of oleomargarine manufactured in the United States. The stamps shall be affixed and canceled by the owner or importer of the oleomargarine while it is in the custody of the proper custom-house officers; and the oleomargarine shall not pass out of the custody of said officers until the stamps have been so affixed and canceled, but shall be put up in wooden packages, each containing not less than ten pounds, as prescribed in this act for oleomargarine manufactured in the United States, before the stamps are affixed; and the owner or importer of such oleomargarine shall be liable to all the penal provisions of this act prescribed for manufacturers of oleomargarine manufactured in the United States. Whenever it is necessary to take any oleomargarine so imported to any place other than the public stores of the United States for the purpose of affixing and canceling such stamps, the collector of customs of the port where such oleomargarine is entered shall designate a bonded warehouse to which it shall be taken, under the control of such customs officer as such collector may direct; and every officer of customs who permits any such oleomargarine to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of this section relating thereto, shall be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years. Every person who sells or offers for sale any imported oleomargarine, or oleomargarine purporting or claimed to have been imported, not put up in packages and stamped as provided by this act, shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years. (24 Stat. 211.)

See notes to sections 1 and 9 of this act, ante, §§ 6215, 6221.

Provisions for inspection, and for regulation of importation and trans-

portation, of adulterated foods, etc., are collected under Title LVI B, "Regulations of Interstate and Foreign Commerce, as to Particular Subjects," c. B.

Notes of Decisions

Indictment based on statute.—An indictment alleging that defendants willfully, etc., defaced the stamps, marks, and brands upon two certain packages containing oleomargarine, which packages were in their possession for sale, but which failed to show that they were such as were prescribed by the statute, was insufficient. U. S. v. Joyce (D. C. 1905) 138 Fed. 457.

Cited without definite application, Schick v. U. S. (1904) 24 Sup. Ct. 826, 829, 195 U. S. 65, 49 L. Ed. 99, 1 Ann. Cas. 585 (in dissenting opinion of Harlan, J.); Schafer v. Craft (D. C. 1906) 144 Fed. 907, affirmed (1907) 153 Fed. 175, 82 C. C. A. 349.

§ 6223. (Act Aug. 2, 1886, c. 840, § 11.) Purchasing oleomargarine not branded or stamped; penalty.

Every person who knowingly purchases or receives for sale any oleomargarine which has not been branded or stamped according to law shall be liable to a penalty of fifty dollars for each such offense. (24 Stat. 211.)

See note to sections 1 and 9 of this act, ante, §§ 6215, 6221.

Notes of Decisions

Trial by jury.—A court is fully organized and competent for the transaction of business without the presence of a jury, and there is no public policy forbidding the waiver of a jury in the trial of petit offenses, and one prosecuted under this section, may waive a jury. Schick v. U. S. (1904) 24 Sup. Ct. 826, 828, 195 U. S. 65, 49 L. Ed. 99, 1 Ann. Cas. 585.

Persons prosecuted by information in a federal District Court, under this section, may waive the jury to which they are entitled by Const. Amend. 6, since the mandate of article 3, § 2, cl. 3, that "the trial of all crimes, except in cases of impeachment, shall be by jury," does not include such petty offenses, and there is no congressional legislation or rule of public policy requiring a jury in such cases. Schick v. U. S. (1904) 24 Sup. Ct. 826, 828, 195 U. S. 65, 49 L. Ed. 99, 1 Ann. Cas. 585.

The fact that other sections describe more serious offenses with heavier penalties does not indicate that the offense herein described is a crime within the meaning of the constitutional provisions providing for a trial by jury. Id.

Review of finding on appeal.—A finding that the use of palm oil as an ingredient of oleomargarine was substantially only for coloring purposes will not be disturbed on appeal, where it is based on testimony that, out of a total of 160 ounces, only 1½ ounces were palm oil, and that this quantity imparted the yellow shade which caused the product to resemble butter. Cliff v. U. S. (1904) 25 Sup. Ct. 1, 195 U. S. 159, 49 L. Ed. 139.

Cited without definite application, Low v. U. S. (1909) 169 Fed. 86, 94 C. C. A. 1; Schafer v. Craft (D. C. 1906) 144 Fed. 907, affirmed (1907) 153 Fed. 175, 82 C. C. A. 349.

§ 6224. (Act Aug. 2, 1886, c. 840, § 12.) Purchasing oleomargarine from manufacturer who has not paid special tax; penalty.

Every person who knowingly purchases or receives for sale any oleomargarine from any manufacturer who has not paid the special tax shall be liable for each offense to a penalty of one hundred dollars, and to a forfeiture of all articles so purchased or received, or of the full value thereof. (24 Stat. 211.)

See notes to sections 1 and 9 of this act, ante, §§ 6215, 6221.

Cited without definite application, Schafer v. Craft (D. C. 1906) 144 Fed. 907, affirmed (1907) 153 Fed. 175, 82 C. C. A. 349.

§ 6225. (Act Aug. 2, 1886, c. 840, § 13.) Stamps on emptied packages to be destroyed; penalty for neglect, etc.

Whenever any stamped package containing oleomargarine is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps thereon; and any person who willfully neglects or refuses so to do shall for each such offense be fined not exceeding fifty dollars, and imprisoned not less than ten days nor more than six months. And any person who

fraudulently gives away or accepts from another, or who sells, buys, or uses for packing oleomargarine, any such stamped package, shall for each such offense be fined not exceeding one hundred dollars, and be imprisoned not more than one year. Any revenue officer may destroy any emptied oleomargarine package upon which the tax-paid stamp is found. (24 Stat. 211.)

See notes to sections 1 and 9 of this act, ante, §§ 6215, 6221.

Notes of Decisions

Offense in general.—To constitute an offense under this section, the package must have been stamped, denoting the payment of the tax, it must have been emptied of its tax paid contents and been in defendants' possession in its emptied condition, and defendants must have neglected or refused to destroy the stamp during such possession. Vermont v. U. S. (1909) 174 Fed. 792, 98 C. C. A. 500, writ of certiorari denied (1910) 30 Sup. Ct. 695, 217 U. S. 605, 54 L. Ed. 899.

Section 6218, ante, provides that all oleomargarine shall be packed by the manufacturer in packages containing not less than 10 pounds, and stamped, and that retail dealers must sell only from original stamped packages, in quantities not exceeding 10 pounds, and shall pack the oleomargarine sold by them in suitable packages, which shall be marked as prescribed. A regulation made by the Commissioner of Internal Revenue permits retail dealers to take the oleomargarine from the original stamped package in advance of sales, and put it up in retail packages, marked and branded as prescribed by law and regulations, and offer the same for sale, provided such prepared retail packages remain till sold in or on the manufacturer's original package; a retail dealer, however, to be subject to a fine if he remove his prepared packages from the original package and sell them separated from and independently of the manufacturer's stamped package. Held, that a manufacturer's stamped package is not "emptied," within this section. U. S. v. Knott (D. C. 1907) 151 Fed. 925.

Indictment.—An indictment for using for packing oleomargarine stamped packages which had previously contained oleomargarine in violation of this section is good, at least after verdict, although it does not charge that the packages were "fraudulently" used. Morris v. U. S. (1908) 161 Fed. 672, 88 C. C. A. 532, judgment reversed on rehearing (1909) 168 Fed. 682, 94 C. C. A. 168, writ of certiorari denied (1909) 29 Sup. Ct. 704, 214 U. S. 527, 53 L. Ed. 1068.

To constitute the offense of neglect or refusal to destroy the stamp from an emptied oleomargarine package, it need only appear that the package had a stamp on it denoting the payment of a tax; that it was emptied of its contents; that it was in defendant's possession in its emptied condition; and that he willfully neglected or refused to destroy the stamp while the empty package was in his possession; and hence an indictment for such offense was not defective for failure to charge that the package was emptied while in defendant's possession. Ripper v. U. S. (1910) 178 Fed. 24, 101 C. C. A. 152, rehearing denied 179 Fed. 497, 103 C. C. A. 478.

Evidence.—Evidence held to sustain a conviction of willfully refusing to remove the stamps from oleomargarine packages on removal of the contents therefrom, in violation of this section. Vermont v. U. S. (1909) 174 Fed. 792, 98 C. C. A. 500, writ of certiorari denied (1910) 30 S. Ct. 695, 217 U. S. 605, 54 L. Ed. 899.

Cited without definite application, Schick v. U. S. (1904) 24 Sup. Ct. 826, 830, 195 U. S. 65, 49 L. Ed. 99, 1 Ann. Cas. 585 (in dissenting opinion of Harlan, J.); Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Ripper v. U. S. (1910) 179 Fed. 497, 103 C. C. A. 478; Schafer v. Craft (D. C. 1906) 144 Fed. 907 (affirmed [1907] 153 Fed. 175, 82 C. C. A. 349); Grier v. Tucker (C. C. 1907) 150 Fed. 658.

§ 6226. (Act Aug. 2, 1886, c. 840, § 14.) Appointment of chemists, etc.; salary; decision as to substance liable to tax, etc.

There shall be in the office of the Commissioner of Internal Revenue an analytical chemist and a microscopist, who shall each be appointed by the Secretary of the Treasury, and shall each receive a salary of two thousand five hundred dollars per annum; and the Commissioner of Internal Revenue may, whenever in his judgment the necessities of the service so require, employ chemists and microscopists, to be paid such compensation as he may deem proper, not exceeding in the aggregate any appropriation made for that purpose. And such Commissioner is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed under

this act; and his decision in matters of taxation under this act shall be final. The Commissioner may also decide whether any substance made in imitation or semblance of butter, and intended for human consumption, contains ingredients deleterious to the public health; but in case of doubt or contest his decisions in this class of cases may be appealed from to a board hereby constituted for the purpose, and composed of the Surgeon-General of the Army, the Surgeon-General of the Navy, and the Commissioner of Agriculture; and the decisions of this board shall be final in the premises. (24 Stat. 212.)

See notes to sections 1 and 9 of this act, ante, §§ 6215, 6221.

Cited without definite application,
Cliff v. U. S. (1904) 25 Sup. Ct. 1, 2, 195 U. S. 159, 49 L. Ed. 139.

§ 6227. (Act Aug. 2, 1886, c. 840, § 15.) Forfeiture of unstamped or deleterious oleomargarine; removal of stamp, etc.; penalty.

All packages of oleomargarine subject to tax under this act, that shall be found without stamps or marks as herein provided, and all oleomargarine intended for human consumption which contains ingredients adjudged, as hereinbefore provided, to be deleterious to the public health, shall be forfeited to the United States. Any person who shall willfully remove or deface the stamps, marks, or brands on package containing oleomargarine taxed as provided herein shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than two thousand dollars, and by imprisonment for not less than thirty days nor more than six months. (24 Stat. 212.)

See notes to sections 1 and 9 of this act, ante, §§ 6215, 6221.

Notes of Decisions

Indictment.—An indictment charging that a person, at a place and time stated, did "knowingly, willfully, unlawfully, and fraudulently remove a certain brand from a certain package then and there containing oleomargarine, to wit, sixty pounds of oleomargarine, to wit, the word 'Oleomargarine,' which was then and there required, and was then and there, under the requirements of law, branded upon the aforesaid package, then and there containing oleomargarine as aforesaid, contrary," etc., sufficiently charged an offense under the statute. Wilkins v. U. S. (1899) 96 Fed. 837, 37 C. C. A. 588.

An indictment alleging that defendants willfully, etc., defaced the stamps, marks, and brands upon two certain packages containing oleomargarine, which packages were in their possession for sale, but which failed to show that they were such as were prescribed by the statute, was insufficient. U. S. v. Joyce (D. C. 1905) 138 Fed. 457.

Cited without definite application,
Schick v. U. S. (1904) 24 Sup. Ct. 826, 830, 195 U. S. 65, 49 L. Ed. 99, 1 Ann. Cas. 585 (in dissenting opinion of Harlan, J.).

§ 6228. (Act Aug. 2, 1886, c. 840, § 16.) Exportation of oleomargarine; regulations.

Oleomargarine may be removed from the place of manufacture for export to a foreign country without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Every person who shall export oleomargarine shall brand upon every tub, firkin, or other package containing such article the word "oleomargarine," in plain Roman letters not less than one-half inch square. (24 Stat. 212.)

See notes to sections 1 and 9 of this act, ante, §§ 6215, 6221.

§ 6229. (Act Aug. 2, 1886, c. 840, § 17.) Fraud by manufacturer of oleomargarine; penalty.

Whenever any person engaged in carrying on the business of manufacturing oleomargarine defrauds, or attempts to defraud,

the United States of the tax on the oleomargarine produced by him, or any part thereof, he shall forfeit the factory and manufacturing apparatus used by him, and all oleomargarine and all raw material for the production of oleomargarine found in the factory and on the factory premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years. (24 Stat. 212.)

See notes to sections 1 and 9 of this act, ante, §§ 6215, 6221.

Notes of Decisions

To whom statute applies.—This section held applicable to a manufacturer who did not make white oleomargarine, but mixed artificial coloration therewith and thereby became a "manufacturer" by Act May 9, 1902. May v. U. S. (1912) 199 Fed. 42, 117 C. C. A. 420.

This section held not limited to persons who have received a license to manufacture oleomargarine. Id.

The offense of defrauding, or attempting to defraud, the United States of the tax on oleomargarine, denounced by this section may be committed by a corporation. U. S. v. Orr (D. C. 1915) 223 Fed. 222.

Persons not in the business of manufacturing oleomargarine cannot commit the offense denounced by this section, unless they aid and abet the act of one so engaged or otherwise come within Cr. Code, § 332, post, § 10506. Id.

Indictment against officers, agents, and employés of the corporation for violating this section held insufficient, notwithstanding section 5977, ante, and Cr. Code, § 332, post, § 10506. Id.

Seizure and forfeiture under statute.—Seizure of articles, papers, and notes by internal revenue officers under a search warrant while making a raid on defendants' place of business for alleged violation of this section held not a violation of defendant's constitutional right to be free from unlawful searches and seizures. May v. U. S. (1912) 199 Fed. 53, 117 C. C. A. 431.

An information for the forfeiture of an oleomargarine plant, under this section, is sufficient, which charges in the language of the statute that the claimant was engaged in the business of manufacturing oleomargarine, and defrauded and attempted to defraud the United States of the tax on the oleomargarine produced by it, or a part thereof. U. S. v. Manufacturing Apparatus, etc., of New Jersey Melting & Churning Co. (D. C. 1905) 141 Fed. 475.

Conspiracy to defraud.—See note post, § 6230.

Purpose of employés, agents, or officers of corporation to evade payment of tax on oleomargarine, due from the corporation, held to supply intent to defraud, essential to conspiracy to defraud the United States. U. S. v. Orr (D. C. 1915) 223 Fed. 220.

Indictment.—Under this section it was held that an indictment which, after showing defendant to have been a manufacturer within the statute, charges in the language of the statute that he attempted to defraud the United States of the tax, is sufficient, without setting out the particular acts relied on. Hardesty v. U. S. (1909) 168 Fed. 25, 93 C. C. A. 417.

Under this section it was held that, since the tax on oleomargarine is leviable when the substance is manufactured and sold or removed for consumption and use, an indictment alleging a manufacture and sale of oleomargarine without payment of the tax, and with intent to defraud the United States of the same and that it should not be paid, in the language of the statute, was not invalid, in the absence of an application for a bill of particulars, for failure to allege the specific means by which defendant attempted or intended to attempt to defraud the United States. Enders v. U. S. (1911) 187 Fed. 754, 109 C. C. A. 502, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

Where an indictment for an attempt to defraud the United States of a tax on oleomargarine, in violation of this section, contained a general charge in the language of the statute, it was not objectionable for failure to affirmatively allege that the tax was assessable, as the defendant was notified by such general charge that the government intended to prove either that the oleomargarine had been sold, or that it had been removed for sale and consumption, without payment of the tax. Id.

An indictment for attempting to defraud the United States of the tax imposed on colored oleomargarine under this section held not defective for failure to charge that the substance had been sold or removed for consumption or use under section 8. May v. U. S. (1912) 199 Fed. 42, 117 C. C. A. 420.

Nor for failure to allege the manner in which the attempt was committed. Id.

An indictment for violating this section held not objectionable for duplicity in joining a charge of defrauding and a charge of attempting to defraud. Id.

Where two counts of an indictment under this section both charged the same offense, a conviction on the second count could not be sustained. Id.

Indictment held to charge employés, agents, or officers of corporation with conspiracy to defraud the United

States, under Cr. Code, § 37, post, § 10201, and not conspiracy to violate this section, and hence it was sufficient. U. S. v. Orr (D. C. 1915) 223 Fed. 220.

An indictment for conspiracy to defraud the United States by the removal of oleomargarine from a factory without payment of the tax need not allege that the defrauding was to be accomplished by deceit, misrepresentation, or concealment. Tillinghast v. Richards (D. C. 1915) 225 Fed. 226.

An indictment in the Southern district of New York for conspiracy to defraud the United States by removing oleomargarine from a factory in Providence, R. I., without payment of tax, and alleging as overt acts only such acts as buying palm oil in New York, held bad. Id.

Allegations of overt acts that defendants had bought palm oil, etc., held too uncertain to make possible a construction of an indictment for conspiracy to defraud United States by removing oleomargarine from factory untaxed as charging conspiracy to defraud by unlawful or covert manufacture. Id.

Where an overt act alleged in an indictment for conspiracy must be qualified by circumstances to make it relevant to the particular conspiracy charged, it should be pleaded with the circumstances which make it relevant. Id.

Where the jurisdiction of the court depends solely upon an overt act alleged in an indictment for conspiracy, it must be alleged with all the certainty of any other jurisdictional fact, and the connection between the overt act and the conspiracy must be made to appear specifically. Id.

Evidence.—An indictment charging defendants with an attempt to defraud the United States of the tax on oleomargarine is sustained by evidence that they were dealers in oleomargarine, that they bought uncolored oleomargarine, colored it to resemble butter, and repacked it in empty packages before used and stamped as containing the colored product, and that they had previously systematically done the same thing, and sold the article so colored without paying the additional tax required thereon. Hardesty v. U. S. (1909) 168 Fed. 25, 93 C. C. A. 417.

Rulings on the admission of evidence in the prosecution of defendants for a violation of this section, considered, and held not erroneous. Wesoky v. U. S. (1910) 175 Fed. 333, 99 C. C. A. 121.

Evidence held sufficient to sustain a conviction of manufacturing oleomargarine by the addition of artificial coloration, and that the same had been sold or removed for sale and consumption without payment of the required tax with intent to defraud the United States. Enders v. U. S. (1911) 187 Fed. 754, 109 C. C. A. 502, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

Evidence held to sustain a conviction. May v. U. S. (1912) 199 Fed. 42, 117 C. C. A. 420.

Evidence held to sustain a conviction of engaging in the business of manufacturing colored oleomargarine with intent to defraud the United States of the tax thereon in violation of this section. May v. U. S. (1912) 199 Fed. 53, 117 C. C. A. 431.

The introduction of certain notes obtained by internal revenue officers in a raid on defendants' place of business for alleged violation of this section was not objectionable as compelling him to testify against himself. Id.

An internal revenue regulation giving the whole calendar month in which to pay the license tax was inadmissible. Id.

Cited without definite application, Schick v. U. S. (1904) 24 Sup. Ct. 826, 830, 195 U. S. 65, 49 L. Ed. 99, 1 Ann. Cas. 585 (in dissenting opinion of Harlan, J.); Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658; Schafer v. Craft (D. C. 1906) 144 Fed. 907, affirmed (1907) 153 Fed. 175, 82 C. C. A. 349.

§ 6230. (Act Aug. 2, 1886, c. 840, § 18.) Failure to comply with law; penalty; forfeiture.

If any manufacturer of oleomargarine, any dealer therein or any importer or exporter thereof shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything by this act prohibited, if there be no specific penalty or punishment imposed by any other section of this act for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall pay a penalty of one thousand dollars; and if the person so offending be the manufacturer of or a wholesale dealer in oleomargarine, all the oleomargarine owned by him, or in which he has any interest as owner, shall be forfeited to the United States. (24 Stat. 212.)

See notes to sections 1 and 9 of this act, ante, §§ 6215, 6221.

Notes of Decisions

Offenses punishable under statute.—A regulation of the commissioner of internal revenue requiring wholesale dealers in oleomargarine to keep certain

books, and make certain prescribed returns of their sales, although proper under section 6232, post, cannot render one violating it liable to the penalty imposed by this section, in the absence of a statute distinctly making such neglect a criminal offense. U. S. v. Eaton (1892) 12 Sup. Ct. 764, 144 U. S. 677, 36 L. Ed. 591.

The penalty prescribed in section 6218, ante, does not apply to that part of the section prohibiting retailers from selling in quantities exceeding 10 pounds, such offense being subject to punishment by a fine of $1,000 without imprisonment, as prescribed by this section. Ripper v. U. S. (1910) 178 Fed. 24, 101 C. C. A. 152, rehearing denied (1910) 179 Fed. 497, 103 C. C. A. 478.

Cited without definite application, U. S. v. 11,150 Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463; U. S. v. Lamson (C. C. 1908) 165 Fed. 80, 82; Schafer v. Craft (D. C. 1906) 144 Fed. 907, affirmed (1907) 153 Fed. 175, 82 C. C. A. 349; U. S. v. Matthews (D. C. 1906) 146 Fed. 306.

§ 6231. (Act Aug. 2, 1886, c. 840, § 19.) Recovery of fines, etc.

All fines, penalties, and forfeitures imposed by this act may be recovered in any court of competent jurisdiction. (24 Stat. 212.)

See notes to sections 1 and 9 of this act, ante, §§ 6215, 6221.

Notes of Decisions

Compromise of cases.—The officers of the Treasury Department are authorized, in accordance with the provisions of section 5952, ante, to compromise a case involving a violation of the "oleomargarine" statutes, upon terms which, in their judgment, are just and reasonable. (1907) 26 Op. Atty. Gen. 282.

Cited without definite application, Schick v. U. S. (1904) 24 Sup. Ct. 826, 829, 195 U. S. 65, 49 L. Ed. 99, 1 Ann. Cas. 585 (in dissenting opinion of Harlan, J.); Tucker v. Grier (1908) 160 Fed. 611, 87 C. C. A. 513; Grier v. Tucker (C. C. 1907) 150 Fed. 658; Schafer v. Craft (D. C. 1906) 144 Fed. 907, affirmed (1907) 153 Fed. 175, 82 C. C. A. 349.

§ 6232. (Act Aug. 2, 1886, c. 840, § 20.) Regulations.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may make all needful regulations for the carrying into effect of this act. (24 Stat. 212.)

See notes to sections 1 and 9 of this act, ante, §§ 6215, 6221.

Notes of Decisions

See notes under § 6230, ante, and §§ 6233, 6237, 6239, and 6241, post.

Validity of regulations in general.—A regulation that butter containing 16 per cent. or more of water, milk, or cream should be classified as "adulterated butter" was valid, not being an exercise of judicial power, but merely a determination as a question of fact of what constitutes an "abnormal" quantity of water, etc. Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595.

A regulation which has the effect to subject classes of property to forfeiture and classes of persons to fines and penalties excluded therefrom by statute is void. U. S. v. 11,150 Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463.

Construing statute.—Under this section the treasury officials may not by regulation so construe the act as to nullify its provisions as legally interpreted. William J. Moxley v. Hertz (1911) 185 Fed. 757, 108 C. C. A. 95, affirming judgment (C. C. 1906) 173 Fed. 728.

Though this section authorized the Secretary of the Treasury to prescribe rules and regulations for carrying the law into effect, it did not authorize him to promulgate a rule construing section 6233, post, declaring that butter should be confiscated if it contained an abnormal quantity of moisture, by providing that it should be confiscated if it contained more moisture than 16 per cent. U. S. v. 11,150 Pounds of Butter (D. C. 1911) 188 Fed. 157, judgment affirmed (1912) 195 Fed. 657, 115 C. C. A. 463.

Modifying statute.—A regulation modifying any act of Congress is void. U. S. v. 11,150 Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463.

Inconsistent with statute.—A regulation inconsistent with any act of Congress is void. U. S. v. 11,150 Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463.

Construction of regulations.—Regulations as to adulterated butter construed. Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 147, 89 C. C. A. 595; U. S. v. 11,150 Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463.

Penalty for violation.—A regulation of the commissioner of internal revenue requiring wholesale dealers in oleomargarine to keep certain books, and make certain prescribed returns of their sales, although proper under this sec-

tion, cannot render one violating it liable to the penalty imposed by section 6230, ante, in the absence of a statute distinctly making such neglect a criminal offense. U. S. v. Eaton (1892) 12 Sup. Ct. 764, 144 U. S. 677, 36 L. Ed. 591.

Indictment for violation.—Regulations made by an executive department, in pursuance of authority delegated by congress have the force of law, and the courts will take judicial notice of their existence and provisions; hence an indictment charging a violation of such a regulation, which is made an offense by statute, need not set out such regulation, but is sufficient if it avers that an act done in pursuance of such regulation was done under the requirements of law. Wilkins v. U. S. (1899) 96 Fed. 837, 37 C. C. A. 588.

Cited without definite application, U. S. v. Matthews (D. C. 1906) 146 Fed. 306.

§ 6233. (Act May 9, 1902, c. 784, § 4.) Butter, adulterated butter, and process or renovated butter, definition of.

For the purpose of this Act "butter" is hereby defined to mean an article of food as defined in "An Act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August second, eighteen hundred and eighty-six; that "adulterated butter" is hereby defined to mean a grade of butter produced by mixing, reworking, rechurning in milk or cream, refining, or in any way producing a uniform, purified, or improved product from different lots or parcels of melted or unmelted butter or butter fat, in which any acid, alkali, chemical, or any substance whatever is introduced or used for the purpose or with the effect of deodorizing or removing therefrom rancidity, or any butter or butter fat with which there is mixed any substance foreign to butter as herein defined, with intent or effect of cheapening in cost the product or any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk, or cream; that "process butter" or "renovated butter" is hereby defined to mean butter which has been subjected to any process by which it is melted, clarified or refined and made to resemble genuine butter, always excepting "adulterated butter" as defined by this Act. (32 Stat. 194.)

These provisions were the first paragraph of section 4 of the Oleomargarine Act of 1902, cited above.

Section 1 of the act provided that all articles known as oleomargarine, butterine, imitation, process, renovated, or adulterated butter, or imitation cheese, or any substance in the semblance of butter or cheese, not the usual product of the dairy, and not made exclusively of pure and unadulterated milk or cream, transported into any State, etc., and remaining therein for use, consumption, sale, or storage therein, should be subject to the laws of such State, etc., enacted in the exercise of its police powers, and should not be exempt therefrom by reason of being introduced in original packages or otherwise. It is set forth post, under Title LVI B, "Regulation of Interstate and Foreign Commerce as to Particular Subjects," c. B, § 8740.

Sections 2 and 3 of the act amended sections 3 and 8, respectively, of the Oleomargarine Act of Aug. 2, 1886, c. 840, and are incorporated into the sections so amended as set forth ante, §§ 5977, 6220.

The paragraphs of this section immediately following the first paragraph thereof set forth here, imposing special taxes upon manufacturers of and dealers in process or renovated butter and adulterated butter, are set forth ante, §§ 5968, 5978.

The remaining paragraphs of this section, and sections 5 and 6 of this act, are set forth post, §§ 6234–6239, 6241.

Section 7 of the act provided that the act should take effect July 1, 1902.

Act Aug. 2, 1886, c. 840, § 1, mentioned in this section as defining butter, is set forth ante, § 6215. Many of the provisions of sections 3–8 of that act, relating to manufacturers of and dealers in oleomargarine and to the manufacture and sale of oleomargarine, were similar to those of further paragraphs of this section, post, §§ 6234–6238.

Notes of Decisions

What is "adulterated butter."—In the provision of this section defining adulterated butter as including "any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the

absorption of abnormal quantities of water, milk or cream," the word "absorption" is not used in the sense of chemical absorption, and any butter is within the definition which contains an abnormal quantity of water, whether by chemical absorption or by incorporation. Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595.

Under Act May 9, 1902, imposing a special tax on adulterated butter, butter containing abnormal quantity of water, milk, or cream is "adulterated butter," only when some process or material is used with the intent or effect of introducing into the butter by absorption an abnormal quantity of water, milk, or cream. U. S. v. Eleven Thousand One Hundred and Fifty Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463, affirming judgment (D. C. 1911) 188 Fed. 157.

Proof of the presence of abnormal quantity of moisture in butter and of a removal thereof without a compliance with regulations as to taxing and branding adulterated butter held insufficient to sustain its forfeiture as adulterated butter, for failure to pay the special tax. Id.

Rules and regulations.—A regulation that butter containing 16 per cent. or more of water, milk, or cream should be classified as "adulterated butter" was valid, being neither an exercise of legislative or judicial power, but a determination as a question of fact of what constitutes an "abnormal" quantity of water. Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595.

Whether or not a regulation of the Commissioner of Internal Revenue has the force of law as a conclusive determination of the fact, it furnishes a working rule for the guidance of officers and the information of manufacturers, and on the trial of an action by a manufacturer to recover taxes exacted on butter claimed to contain more than 16 per cent. of water the submission to the jury of the question whether such a percentage of water was "abnormal" was not an error of which the plaintiff could complain. Id.

A regulation modifying any act of Congress is void. U. S. v. 11,150 Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463.

Though the preceding section authorized the Secretary of the Treasury to prescribe rules and regulations for carrying the law into effect, it did not authorize him to promulgate a rule construing this section, declaring that butter should be confiscated if it contained an abnormal quantity of moisture, by providing that it should be confiscated if it contained more moisture than 16 per cent. U. S. v. 11,150 Pounds of Butter (D. C. 1911) 188 Fed. 157, judgment affirmed (1912) 195 Fed. 657, 115 C. C. A. 463.

§ 6234. (Act May 9, 1902, c. 784, § 4.) Manufacturer's statement of business, inventories, books, returns, and signs.

Every manufacturer of process or renovated butter or adulterated butter shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of material and products, shall put up such signs and affix such number of his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than five hundred dollars; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner of Internal Revenue. (32 Stat. 194.)

See notes to the first paragraph of this section, ante, § 6233.

Cited without definite application, Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595; U. S. v. Frank (D. C. 1911) 189 Fed. 195.

§ 6235. (Act May 9, 1902, c. 784, § 4.) Adulterated butter, how packed and sold; penalty.

All adulterated butter shall be packed by the manufacturer thereof in firkins, tubs, or other wooden packages not before used for that purpose, each containing not less than ten pounds, and marked, stamped, and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all sales made by manufacturers of adulterated butter shall be in original stamped packages.

Dealers in adulterated butter must sell only original or from original stamped packages, and when such original stamped packages are broken the adulterated butter sold from same shall be placed in suitable wooden or paper packages, which shall be marked and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any adulterated butter in any other form than in new wooden or paper packages as above described, or who packs in any package any adulterated butter in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than one thousand dollars and be imprisoned not more than two years. (32 Stat. 194.)

See notes to the first paragraph of this section, ante, § 6233.

Cited without definite application, Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595.

§ 6236. (Act May 9, 1902, c. 784, § 4.) Label and notice on package of adulterated butter; penalty.

Every manufacturer of adulterated butter shall securely affix, by pasting, on each package containing adulterated butter manufactured by him a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "Notice.—That the manufacturer of the adulterated butter herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases." Every manufacturer of adulterated butter who neglects to affix such label to any package containing adulterated butter made by him, or sold or offered for sale for or by him, and every person who removes any such label so affixed from any such package shall be fined fifty dollars for each package in respect to which such offense is committed. (32 Stat. 194.)

See notes to the first paragraph of this section, ante, § 6233.

Cited without definite application, Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595.

§ 6237. (Act May 9, 1902, c. 784, § 4.) Tax on adulterated or renovated butter; stamps.

Upon adulterated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of ten cents per pound, to be paid by the manufacturer thereof, and any fractional part of a pound shall be taxed as a pound, and that upon process or renovated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of one-fourth of one cent per pound, to be paid by the manufacturer thereof, and any fractional part of a pound shall be taxed as a pound. The tax to be levied by this section shall be represented by coupon stamps, and the provisions of existing laws governing engraving, issuing, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to the stamps provided by this section. (32 Stat. 194.)

See notes to the first paragraph of this section, ante, § 6233.

The provisions governing the issuance, sale, accountability, and destruction of stamps relating to tobacco and snuff were made by R. S. §§ 3369–3376, ante, §§ 6178–6185.

Notes of Decisions

Butter subject to tax.—Butter containing an abnormal quantity of water is subject to the tax imposed by such act; the intent of the manufac-

turer being immaterial. Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595.

Regulation as to classification.—A regulation that butter containing 16 per cent. or more of water, milk, or cream should be classified as "adulterated butter" was valid, being neither an exercise of legislative or judicial power, but a determination as a question of fact of what constitutes an "abnormal" quantity of water. Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C A. 595.

Removal of stamps and caution notices.—This section imposes a special tax on renovated butter, represented by coupon stamps; and section 6239, post, declares that all applicable parts of Act Aug. 13, 1890 (section 8683 et seq., post), providing for inspection of meats for export, and of Act March 3, 1891, as amended March 2, 1895 (section 8709 et seq., post), providing for the inspection of live cattle, etc., carcasses, meat products, etc., which are the subject of interstate commerce, shall apply to process or renovated butter. Section 8711, post, requires inspected meat products to be stamped and labeled, and declares that any person who shall knowingly and wrongfully deface and destroy any such stamps, according to the regulations of the Secretary of Agriculture, shall be guilty of a misdemeanor. Held, that such section 8711, post, was applicable to the oleomargarine act, so that the removal of stamps and caution notices attached to original packages of renovated butter, which is the subject of interstate commerce, constituted an offense. U. S. v. Green (D. C. 1905) 137 Fed. 179.

§ 6238. (Act May 9, 1902, c. 784, § 4.) Provisions relating to oleomargarine applicable to adulterated butter.

The provisions of sections nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, and twenty-one of "An Act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August second, eighteen hundred and eighty-six, shall apply to manufacturers of "adulterated butter" to an extent necessary to enforce the marking, branding, identification, and regulation of the exportation and importation of adulterated butter. (32 Stat. 194.)

See notes to the first paragraph of this section, ante, § 6233.

Act Aug. 2, 1886, c. 840, §§ 9–20, mentioned in this paragraph, are set forth ante, §§ 6221–6232. Section 21 of that act provided that the act should take effect July 1, 1902.

Cited without definite application, Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595.

§ 6239. (Act May 9, 1902, c. 784, § 5.) Inspection of process or renovated butter; marks; punishments.

All parts of an Act providing for an inspection of meats for exportation, approved August thirtieth, eighteen hundred and ninety, and of an Act to provide for the inspection of live cattle, hogs, and the carcasses and products thereof which are the subjects of interstate commerce, approved March third, eighteen hundred and ninety-one, and of amendment thereto approved March second, eighteen hundred and ninety-five, which are applicable to the subjects and purposes described in this section shall apply to process or renovated butter. And the Secretary of Agriculture is hereby authorized and required to cause a rigid sanitary inspection to be made, at such times as he may deem proper or necessary, of all factories and storehouses where process or renovated butter is manufactured, packed, or prepared for market, and of the products thereof and materials going into the manufacture of the same. All process or renovated butter and the packages containing the same shall be marked with the words "Renovated Butter" or "Process Butter" and by such other marks, labels, or brands and in such manner as may be prescribed by the Secretary of Agriculture, and no process or renovated butter shall be shipped or transported from its place of manufacture into any other State or Territory or the District of Columbia, or to any for-

eign country, until it has been marked as provided in this section. The Secretary of Agriculture shall make all needful regulations for carrying this section into effect, and shall cause to be ascertained and reported from time to time the quantity and quality of process or renovated butter manufactured, and the character and the condition of the material from which it is made. And he shall also have power to ascertain whether or not materials used in the manufacture of said process or renovated butter are deleterious to health or unwholesome in the finished product, and in case such deleterious or unwholesome materials are found to be used in product intended for exportation or shipment into other States or in course of exportation or shipment he shall have power to confiscate the same. Any person, firm, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment not less than one month nor more than six months, or by both said punishments, in the discretion of the court. (32 Stat. 196.)

See notes to the first paragraph of section 4 of this act, ante, § 6233.

Act Aug. 30, 1890, c. 839, Act March 3, 1891, c. 555, and Act March 2, 1895, c. 169, mentioned in this section, are set forth post, under Title 56 B, "Regulation of Interstate and Foreign Commerce as to Particular Subjects," c. A.

Notes of Decisions

Application to corporations.—A corporation is a "person" within the meaning of section 6241, post, although this section applies in express terms to corporations and gives the court discretionary power to punish either by fine or imprisonment or both. U. S. v. Union Supply Co. (1909) 30 Sup. Ct. 15, 215 U. S. 50, 54 L. Ed. 87.

This section provides that any person, firm, or corporation violating any of its provisions should, on conviction, be punished by a fine or imprisonment or both, while section 6241, post, declares that wholesale dealers shall keep books and make such returns as is required by the Commissioner of Internal Revenue, and that "any person who willfully violates the provisions of the section" shall be fined not less than $50 and not exceeding $500, and be imprisoned not less than 30 days nor more than 6 months. Held that, since in case of a conviction for violating section 6241, post, the court is bound to include imprisonment as a part of the punishment which could not be imposed on a corporation, such section is not applicable to a corporation. U. S. v. Braun & Fitts (D. C. 1907) 158 Fed. 456.

Regulations.—The purpose of this section is to provide for the sanitary inspection and the marking and branding of such butter at the place of manufacture, to the end that none shall be shipped from the factory which can in any way be injurious to the health of the consumer, and the section authorizes the Secretary of Agriculture to cause such inspection to be made, and to "make all needful regulations for carrying this section into effect." A regulation, however, which prohibits a dealer, receiving or handling such butter after it has been duly inspected, marked, and branded, and shipped from the factory, from obliterating the marks or brands thereon has no relation to such sanitary purpose, and finds no warrant in the statute, being calculated only to prevent fraud on the part of the dealer in his relations with his customers, and there is nothing in the statute which will support an indictment or information for the violation of such a regulation. U. S. v. Bohl (D. C. 1903) 125 Fed. 625.

Application of other statutes.—Act May 9, 1902, provides for the inspection of renovated butter, imposes a special tax thereon, represented by coupon stamps (section 6237, ante); and section 5 (this section) declares that all applicable parts of Act Aug. 30, 1890 (section 8683 et seq., post), providing for inspection of meats for export, and of Act March 3, 1891, as amended March 2, 1895 (section 8709 et seq., post), providing for the inspection of live cattle, etc., carcasses, meat products, etc., which are the subject of interstate commerce, shall apply to process or renovated butter. Section 8711, post, requires inspected meat products to be stamped and labeled, and declares that any person who shall knowingly and wrongfully deface and destroy any such stamps, according to the regulations of the Secretary of Agriculture, shall be guilty of a misdemeanor. Held, that such section 8711, post, was applicable to the oleomargarine act, so that the removal of stamps and caution notices attached to original packages of renovated butter,

which is the subject of interstate commerce, constituted an offense. U. S. v. Green (D. C. 1905) 137 Fed. 179.

Cited without definite application, U. S. v. Pacific Live Stock Co. (D. C. 1910) 192 Fed. 443.

§ 6240. (Act Aug. 10, 1912, c. 284.) Sanitary regulation of renovated butter factories.

The sanitary provisions for slaughtering, meat canning, or similar establishments, as set forth in the Act of June thirtieth, nineteen hundred and six (Thirty-fourth Statutes, page six hundred and seventy-six), are hereby extended to cover renovated butter factories as defined in the Act of May ninth, nineteen hundred and two (Thirty-second Statutes, page one hundred and ninety-six), under such regulations as the Secretary of Agriculture may prescribe. (37 Stat. 273.)

This was a proviso following an appropriation for expenses for investigations and experiments in the dairy industry, inspection of renovated butter, factories, and markets, in the appropriation act for the Department of Agriculture for the fiscal year 1913, cited above.

The sanitary provisions for slaughtering, etc., establishments, of Act June 30, 1906, c. 3913, mentioned in this proviso, were re-enacted in the provisions of Act March 4, 1907, c. 2907, set forth post, § 8681.

Act May 9, 1902, c. 784, also mentioned in this section, is set forth or referred to ante, §§ 6233–6239.

§ 6241. (Act May 9, 1902, c. 784, § 6.) Wholesale dealers to keep books and render returns; penalty.

Wholesale dealers in oleomargarine, process, renovated, or adulterated butter shall keep such books and render such returns in relation thereto as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require; and such books shall be open at all times to the inspection of any internal-revenue officer or agent. And any person who willfully violates any of the provisions of this section shall for each such offense be fined not less than fifty dollars and not exceeding five hundred dollars, and imprisoned not less than thirty days nor more than six months. (32 Stat. 197.)

See notes to the first paragraph of section 4 of this act, ante, § 6233.

This section superseded similar provisions relating to wholesale dealers in oleomargarine made by the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 41, 26 Stat. 621.

Notes of Decisions

Statute as applying to corporations.—A corporation is a "person" within the meaning of this section, although section 6239, ante, applies in express terms to corporations, and gives the court discretionary power to punish either by fine or imprisonment or both. U. S. v. Union Supply Co. (1909) 30 Sup. Ct. 15, 215 U. S. 50, 54 L. Ed. 87.

This section copies its requirements from Act Oct. 1, 1890, c. 1244, § 41, 26 Stat. 567, 621, which did not contain the penal clause. In its earlier form the enactment clearly applied to corporations, and when the same words were repeated in the later act, it is not to be supposed that their meaning was changed. Id.

Section 6239, ante, provides that any person, firm, or corporation violating any of the provisions of the section should, on conviction, be punished by a fine or imprisonment or both, while this section declares that wholesale dealers shall keep books and make such returns as is required by the Commissioner of Internal Revenue, and that "any person who willfully violates the provisions of the section" shall be fined not less than $50 and not exceeding $500, and be imprisoned not less than 30 days nor more than 6 months. Held that, since in case of a conviction for violating this section, the court is bound to include imprisonment as a part of the punishment which could not be imposed on a corporation, such section is not applicable to a corporation. U. S. v. Braun & Fitts (D. C. 1907) 158 Fed. 456.

Regulations.—See notes under §§ 6230, 6232, ante.

This section, in requiring wholesale dealers to keep such books and render such returns as the Commissioner of Internal Revenue may by regulation require under prescribed penalties for its violation, has no relation to the tax to be assessed on such dealer, and the regulations made thereunder and in force prior to their revision in 1907, in requiring an oath to the returns, do not have the force of law in such sense that a false oath to a return subjects the maker to prosecution for perjury under section 10295, post. U. S. v. Lamson (C. C. 1908) 165 Fed. 80.

Under the regulations made by the Commissioner of Internal Revenue pursuant to this section, and in force prior

to 1907, which require wholesale dealers to make returns showing among other things, the names and addresses of all persons to whom sales have been made, and that "the recapitulation should be signed by the firm name * * * and the person swearing to the return should sign on the dotted lines below the right hand of the printed affidavit," the oath required is to the recapitulation only, and not to the list of customers, contained in the return. Id.

Upon a reasonable construction of the regulations made by the Commissioner of Internal Revenue in December, 1904, governing the keeping of books and making returns by wholesale dealers in oleomargarine, pursuant to this section, the entries required to be made in the books may be made by an agent of the dealer, and an indictment for failure to make such entries should aver that the dealer did not make, and did not cause to be made, such entries. U. S. v. Lamson (C. C. 1908) 162 Fed. 165.

The requirement that dealers shall "make monthly returns on form 217 * * * showing in detail the number of packages and the number of pounds of oleomargarine received, * * * also the quantity disposed of with the name and address of each person to whom sold or consigned," does not require a statement in detail of the number of packages and the number of pounds disposed of to each person, and the forms furnished for such returns cannot impose additional requirements to those of the statute or regulations which will have the force of law, and a failure to comply with which will constitute a criminal offense. Id.

The former revised regulations made by the commissioner of internal revenue in December, 1904, governing the keeping of books and the making of returns by wholesale dealers in oleomargarine, pursuant to this section, do not require the entry on the books of the number of packages and pounds of oleomargarine disposed of at any specified time and the failure to make such entries on the same day or during the same month when the goods are disposed of is not a criminal offense under said section 6. Id.

The oleomargarine regulations of December, 1904, require monthly wholesale dealers' returns, showing in detail the number of packages and pounds of oleomargarine received from manufacturers and wholesale dealers, also the quantity disposed of, with the names and addresses of each person to whom sold or consigned Held that, where the names of the purchasers as given in a wholesale dealer's return were wholly or partly fictitious or erroneous, there was a violation of the regulation, though the quantity disposed of was correctly disclosed. U. S. v. Lamson (C. C. 1909) 173 Fed 673.

This section and the regulation requiring monthly reports by oleomargarine dealers do not make the sufficiency of the returns depend on their conformity to the books, but on their conformity to the facts; such dealers being required to make both their books and returns a correct record of the facts. Id.

The oleomargarine regulations of December, 1904, requiring wholesale dealers to make monthly returns showing the names and addresses of purchasers, was reasonable. Id.

This section authorizes the commissioner to require returns as to both dealers in oleomargarine and in process, renovated, or adulterated butter; and hence a regulation requiring monthly returns from dealers in oleomargarine only was not objectionable because it did not apply to dealers in process, renovated, or adulterated butter. Id.

This section does not so limit the power of the commissioner as to authorize only the making of regulations requiring returns as to the contents of the books required to be kept by wholesale dealers; but he is authorized to adopt a regulation requiring such dealers to make monthly returns showing the packages and pounds of oleomargarine received, the quantity disposed of, and the names and addresses of the consignees. Id.

Indictment.—Counts of an indictment against a wholesale dealer in oleomargarine, charging a failure to make a return of purchases and sales for a particular month under oleomargarine regulations of December, 1904, requiring such monthly returns, were not objectionable for uncertainty. U. S. v. Lamson (C. C. 1909) 173 Fed. 673.

Where an indictment for violating the oleomargarine regulations charged in several counts a failure to make any return for a particular month, whether such counts could be supported by evidence of the making of a false or incomplete return for that month could not be considered on a motion to quash the indictment. Id.

Cited without definite application, U. S. v. Pacific Livestock Co. (D. C. 1910) 192 Fed. 443.

CHAPTER SEVEN B

Filled Cheese

This chapter, inserted here as additional to the chapters of this Title in the Revised Statutes, includes provisions of the Filled Cheese Act of June 6, 1896, c. 337, 29 Stat. 253.

Sec.
6242. Cheese, definition of.
6243. Filled cheese, definition of.
6244. Manufacturer's statement of business, inventory, bonds, books, returns; penalty.
6245. Filled cheese, how put up and how retailed: penalty.
6246. Dealers' signs; penalty.
6247. Label and notice on packages of filled cheese; penalty.
6248. Tax on filled cheese.
6249. Assessment of tax on filled cheese sold without stamps.
6250. Imported filled cheese.
6251. Purchasing filled cheese not branded or stamped; penalty.
6252. Purchasing filled cheese from manufacturer who has not paid special tax; penalty.
6253. Stamps on emptied packages to be destroyed; penalty for neglect, etc.
6254. Tests if deleterious to health; decision of Commissioner; appeals.
6255. Forfeiture of unstamped or deleterious filled cheese.
6256. Recovery of fines, etc.
6257. Regulations.

§ 6242. (Act June 6, 1896, c. 337, § 1.) Cheese, definition of.

For the purposes of this Act, the word "cheese" shall be understood to mean the food product known as cheese, and which is made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter. (29 Stat. 253.)

This was the first section of the Filled Cheese Act of 1896, cited above.

Sections 2 and 5–18 of the act are set forth post, §§ 6243–6257.

Sections 3 and 4 of the act, imposing special taxes upon manufacturers and dealers in filled cheese, are set forth ante, §§ 5969, 5979.

Section 19 of the act, prescribing the time of taking effect of the act, and providing for the tax on filled cheese found on the premises of any dealer thereafter, is omitted as temporary merely, and executed.

Imitation cheese or any substance in the semblance of cheese not the product of the dairy, and not made exclusively of pure and unadulterated milk or cream, transported into any State, etc., and remaining therein for use, consumption, sale, or storage therein, was made subject to the laws of such State, etc., enacted in the exercise of its police powers, and was not to be exempt therefrom by reason of being introduced in original packages or otherwise, by provisions of Act May 9, 1902, c. 784, § 1, post, § 8740.

Cited without definite application,
Hartman v. U. S. (1909) 168 Fed. 30, 94 C. C. A. 124.

§ 6243. (Act June 6, 1896, c. 337, § 2.) Filled cheese, definition of.

For the purposes of this Act certain substances and compounds shall be known and designated as "filled cheese," namely: All substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. (29 Stat. 253.)

§ 6244. (Act June 6, 1896, c. 337, § 5.) Manufacturer's statement of business, inventory, bonds, books, returns; penalty.

Every manufacturer of filled cheese shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of materials and products, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. But the bond required

of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than five thousand dollars; and the amount of said bond may be increased from time to time, and additional sureties required, at the discretion of the collector or under instructions of the Commissioner of Internal Revenue. Any manufacturer of filled cheese who fails to comply with the provisions of this section or with the regulations herein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than five hundred nor more than one thousand dollars. (29 Stat. 254.)

Cited without definite application, Hartman v. U. S. (1909) 168 Fed. 30, 94 C. C. A. 124; U. S. v. Lamson (C. C. 1908) 165 Fed. 80.

§ 6245. (Act June 6, 1896, c. 337, § 6.) Filled cheese, how put up and how retailed; penalty.

Filled cheese shall be packed by the manufacturers in wooden packages only, not before used for that purpose, and marked, stamped, and branded with the words "filled cheese" in black-faced letters not less than two inches in length, in a circle in the center of the top and bottom of the cheese; and in black-faced letters of not less than two inches in length in line from the top to the bottom of the cheese, on the side in four places equidistant from each other; and the package containing such cheese shall be marked in the same manner, and in the same number of places, and in the same description of letters as above provided for the marking of the cheese; and all sales or consignments made by manufacturers of filled cheese to wholesale dealers in filled cheese or to exporters of filled cheese shall be in original stamped packages. Retail dealers in filled cheese shall sell only from original stamped packages, and shall pack the filled cheese when sold in suitable wooden or paper packages, which shall be marked and branded in accordance with rules and regulations to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. Every person who knowingly sells or offers to sell, or delivers or offers to deliver, filled cheese in any other form than in new wooden or paper packages, marked and branded as hereinbefore provided and as above described, or who packs in any package or packages filled cheese in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall upon conviction thereof be fined for each and every offense not less than fifty dollars and not more than five hundred dollars or be imprisoned not less than thirty days nor more than one year. (29 Stat. 254.)

Cited without definite application, Cornell v. Coyne (1904) 24 Sup. Ct. 383, 386, 192 U. S. 418, 48 L. Ed. 504.

§ 6246. (Act June 6, 1896, c. 337, § 7.) Dealers' signs; penalty.

All retail and wholesale dealers in filled cheese shall display in a conspicuous place in his or their sales room a sign bearing the words "Filled cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his or their business is conducted; and any wholesale or retail dealer in filled cheese who fails or neglects to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined for each and every offense not less than fifty dollars and not more than two hundred dollars. (29 Stat. 255.)

§ 6247. (Act June 6, 1896, c. 337, § 8.) Label and notice on packages of filled cheese; penalty.

Every manufacturer of filled cheese shall securely affix, by pasting

on each package containing filled cheese manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words:

"Notice.—The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

Every manufacturer of filled cheese who neglects to affix such label to any package containing filled cheese made by him or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined fifty dollars for each package in respect to which such offense is committed. (29 Stat. 255.)

§ 6248. (Act June 6, 1896, c. 337, § 9.) Tax on filled cheese.

Upon all filled cheese which shall be manufactured there shall be assessed and collected a tax of one cent per pound, to be paid by the manufacturer thereof; and any fractional part of a pound in a package shall be taxed as a pound. The tax levied by this section shall be represented by coupon stamps; and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section. (29 Stat. 255.)

The provisions governing the issuance, sale, accountability, and destruction of stamps relating to tobacco and snuff were made by R. S. §§ 3369–3376, ante, §§ 6178–6185.

Notes of Decisions

See note under § 6192, ante.

Constitutionality.—The tax imposed by this section on cheese manufactured for export is not obnoxious to the prohibition of Const. art. 1, § 9, cl. 5, against the levy of a tax or duty on articles exported from any state. Cornell v. Coyne (1904) 24 Sup. Ct. 383, 384, 192 U. S. 418, 48 L. Ed. 504.

Exemption from tax.—No exemption of filled cheese manufactured for export from the manufacturing tax imposed by this section was effected by the provision that "the tax levied by this section shall be represented by coupon stamps, and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section," although by section 6192, ante, exported manufactured tobacco and snuff are relieved from the manufacturing tax. Cornell v. Coyne (1904) 24 Sup. Ct. 383, 385, 192 U. S. 418, 48 L. Ed. 504.

§ 6249. (Act June 6, 1896, c. 337, § 10.) Assessment of tax on filled cheese sold without stamps.

Whenever any manufacturer of filled cheese sells or removes for sale or consumption any filled cheese upon which the tax is required to be paid by stamps, without paying such tax, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such sale or removal, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid and to make an assessment therefor and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal. (29 Stat. 255.)

The Commissioner was required to estimate the tax on any article sold without the use of the proper stamps by Act Aug. 27, 1894, c. 349, § 47, post, § 6348.

Cited without definite application, U. S. v. Chamberlin (1907) 156 Fed. 881, 888, 84 C. C. A. 461, 13 Ann. Cas. 720, reversed (1911) 31 Sup. Ct. 155, 219 U. S. 250, 55 L. Ed. 204.

§ 6250. (Act June 6, 1896, c. 337, § 11.) Imported filled cheese.

All filled cheese as herein defined imported from foreign countries shall, in addition to any import duty imposed on the same, pay an internal-revenue tax of eight cents per pound, such tax to be represented by coupon stamps; and such imported filled cheese and the packages containing the same shall be stamped, marked, and branded, as in the case of filled cheese manufactured in the United States. (29 Stat. 255.)

Provisions for inspection, and for regulation of importation and transportation, of adulterated foods, etc., are collected under Title LVI B, "Regulations of Interstate and Foreign Commerce as to Particular Subjects," c. B.

Cited without definite application,
Cornell v. Coyne (1904) 24 Sup. Ct. 383, 384, 192 U. S. 418, 48 L. Ed. 504.

§ 6251. (Act June 6, 1896, c. 337, § 12.) Purchasing filled cheese not branded or stamped; penalty.

Any person who knowingly purchases or receives for sale any filled cheese which has not been branded or stamped according to law, or which is contained in packages not branded or marked according to law, shall be liable to a penalty of fifty dollars for each such offense. (29 Stat. 256.)

§ 6252. (Act June 6, 1896, c. 337, § 13.) Purchasing filled cheese from manufacturer who has not paid special tax; penalty.

Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax herein provided for shall be liable, for each offense, to a penalty of one hundred dollars and to a forfeiture of all articles so purchased or received, or of the full value thereof. (29 Stat. 256.)

Cited without definite application,
Hartman v. U. S. (1909) 168 Fed. 80, 94 C. C. A. 124.

§ 6253. (Act June 6, 1896, c. 337, § 14.) Stamps on emptied packages to be destroyed; penalty for neglect, etc.

Whenever any stamped package containing filled cheese is emptied it shall be the duty of the person in whose hands the same is to destroy the stamps thereon; and any person who willfully neglects or refuses so to do shall, for each such offense, be fined not exceeding fifty dollars or imprisoned not less than ten days nor more than six months. (29 Stat. 256.)

Cited without definite application,
Ripper v. U. S. (1910) 178 Fed. 24, 101 C. C. A. 152, rehearing denied (1910) 179 Fed. 497, 103 C. C. A. 478.

§ 6254. (Act June 6, 1896, c. 337, § 15.) Tests if deleterious to health; decision of Commissioner; appeals.

The Commissioner of Internal Revenue is authorized to have applied scientific tests, and to decide whether any substances used in the manufacture of filled cheese contain ingredients deleterious to health. But in case of doubt or contest his decision in this class of cases may be appealed from to a board hereby constituted for the purpose, and composed of the Surgeon-General of the Army, the Surgeon-General of the Navy, and the Secretary of Agriculture, and the decision of this board shall be final in the premises. (29 Stat. 256.)

See note to section 11 of this act, ante, § 6250.

§ 6255. (Act June 6, 1896, c. 337, § 16.) Forfeiture of unstamped or deleterious filled cheese.

All packages of filled cheese subject to tax under this Act shall be found without stamps or marks as herein provided, and all filled cheese intended for human consumption which contains ingredients

adjudged as hereinbefore provided to be deleterious to the public health, shall be forfeited to the United States. (29 Stat. 256.)

§ 6256. (Act June 6, 1896, c. 337, § 17.) Recovery of fines, etc.

All fines, penalties, and forfeitures imposed by this Act may be recovered in any court of competent jurisdiction. (29 Stat. 256.)

Cited without definite application, U. S. v. Chamberlin (1907) 156 Fed. 881, 888, 84 C. C. A. 461, 13 Ann. Cas. 720 (reversed [1911] 31 Sup. Ct. 155, 219 U. S. 250, 55 L. Ed. 204); Hartman v. U. S. (1909) 168 Fed. 30, 94 C. C. A. 124.

§ 6257. (Act June 6, 1896, c. 337, § 18.) Regulations.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful regulations for the carrying into effect the provisions of this Act. (29 Stat. 256.)

CHAPTER SEVEN C

Mixed Flour

This chapter, inserted here as additional to the chapters of this Title in the Revised Statutes, includes provisions of the War Revenue Act of June 13, 1898, c. 448, 30 Stat. 467–470, and subsequent acts amendatory thereof relating to mixed flour.

Sec.
6258. Mixed flour, definition of.
6259. Branding packages of mixed flour; inserting card showing contents, etc.; penalty.
6260. Mixed flour, how put up and retailed; penalty.
6261. Label and notice on packages; penalty.
6262. Tax on mixed flour.
6263. Assessment of tax on mixed flour sold without stamps.
6264. Imported mixed flour.
6265. Purchasing, etc., mixed flour from manufacturer, etc., who has not paid tax; penalty.
6266. Exportation of mixed flour.
6267. Stamps on emptied mixed flour packages to be destroyed; penalty for neglect.
6268. Recovery of fines, etc.
6269. Regulations; employment of additional clerks and agents.
6270. Penalty for second offense.

§ 6258. (Act June 13, 1898, c. 448, § 35, as amended, Act March 2, 1901, c. 806, § 13, and Act April 12, 1902, c. 500, § 9.) Mixed flour, definition of.

For the purposes of this Act, the words "mixed flour" shall be taken and construed to mean the food product resulting from the grinding or mixing together of wheat, or wheat flour, as the principal constituent in quantity, with any other grain, or the product of any other grain, or other material, except such material, and not the product of any grain, as is commonly used for baking purposes: Provided, That when the product resulting from the grinding or mixing together of wheat or wheat flour with any other grain, or the product of any other grain, of which wheat or wheat flour is not the principal constituent as specified in the foregoing definition, is intended for sale, or is sold, or offered for sale as wheat flour, such product shall be held to be mixed flour within the meaning of this Act. (30 Stat. 467. 31 Stat. 949. 32 Stat. 99.)

This section was part of the War Revenue Act of June 13, 1898, cited above.

Section 36 of this act, imposing special taxes upon manufacturers and packers of mixed flour, is set forth ante, § 5980.

Sections 37–48 of the act are set forth post, §§ 6259–6270.

This section, as originally enacted, was as follows:

"For the purposes of this act the words 'mixed flour' shall be understood to mean the food product made from wheat mixed or blended in whole or in part with any other grain or other material, or the manufactured product of any other grain or other material than wheat."

It was amended by changing the language of the section and by adding a proviso by Act March 2, 1901, c. 806, § 13, cited above.

It was further amended by omitting, after the words "except such material," the words "not exceeding five per centum in quantity," contained in the section as amended by Act March 2, 1901, c. 806, § 13, cited above, making the section read as set forth here, by Act April 12, 1902, c. 500, § 9, cited above.

§ 6259. (Act June 13, 1898, c. 448, § 37.) Branding packages of mixed flour; inserting card showing contents; penalty.

Every person, firm, or corporation making, packing, or repacking mixed flour shall plainly mark or brand each package containing the same with the words "mixed flour" in plain black letters not less than two inches in length, together with the true weight of such package, the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed. In addition thereto, such maker or packer shall place in each package a card not smaller than two inches in width by three inches in length, upon which shall be printed the words "mixed flour," together with the names of the ingredients composing the same, and the name of the maker or packer, and the place where made or packed. Any person, firm, or corporation making, packing, or repacking mixed flour hereunder, failing to comply with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or be imprisoned not less than sixty days nor more than one year. (30 Stat. 467.)

§ 6260. (Act June 13, 1898, c. 448, § 38.) Mixed flour, how put up and retailed; penalty.

All sales and consignments of mixed flour shall be in packages not before used for that purpose; and every person, firm, or corporation knowingly selling or offering for sale any mixed flour in other than marked and branded packages, as required by the provisions of this Act relating to the manufacture and sale of mixed flour, or who packs in any package or packages any mixed flour in any manner contrary to the provisions relating to the manufacture and sale of mixed flour of this Act, or who falsely marks or brands any package or packages containing mixed flour, or unlawfully removes such marks or brands, shall, for each such offense, be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or by imprisonment not less than thirty days nor more than one year. (30 Stat. 468.)

§ 6261. (Act June 13, 1898, c. 448, § 39.) Label and notice on packages; penalty.

In addition to the branding and marking of mixed flour as herein provided, there shall be affixed to the packages containing the same a label in the following words:

"Notice.—The (manufacturer or packer, as the case may be) of the mixed flour herein contained has complied with all the requirements of law. Every person is cautioned not to use this package or label again or to remove the contents without destroying the revenue stamp thereon, under the penalty prescribed by law in such cases."

Every person, firm, or corporation failing or neglecting to affix such label to any package containing mixed flour made or packed by him or them, or who removes from any such package any label so affixed, shall, upon conviction thereof, be fined not less than fifty dollars for each label so removed. (30 Stat. 468.)

§ 6262. (Act June 13, 1898, c. 448, § 40.) Tax on mixed flour.

Barrels or other packages in which mixed flour may be packed shall contain not to exceed one hundred and ninety-six pounds; that upon the manufacture and sale of mixed flour there shall be levied a tax of four cents per barrel or other package containing one hundred and ninety-six pounds or more than ninety-eight pounds; two cents on every half barrel or other package containing ninety-eight pounds or more than forty-nine pounds; one cent on every quarter barrel or other package containing forty-nine pounds or more than twenty-four and one-half pounds; and one-half cent on every one-eighth barrel or other package containing twenty-four and a half pounds or less, to be paid by the person, firm, or corporation making or packing said flour. The tax levied by this section shall be represented by coupon stamps, and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff shall, so far as applicable, be made to apply to stamps provided in this section: Provided, That when mixed flour, on the manufacture and sale of which the tax herein imposed has been paid, is sold and then repacked without the addition of any other material, such repacked flour shall not be liable to any additional tax; but the packages containing such repacked flour shall be branded or marked as required by the provisions of section thirty-seven of this Act, and shall contain the card provided for in section thirty-seven hereof; and in addition thereto the person, firm, or corporation repacking mixed flour shall place on the packages containing the same a label in the following words:

"Notice.—The contents of this package have been taken from a regular statutory package, upon which the tax has been duly paid."

Any person violating the provisions of this section shall, upon conviction thereof, be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or by imprisonment not to exceed one year. (30 Stat. 468.)

Provisions governing the issue, sale, accountability and destruction of stamps relating to tobacco and snuff were made by R. S. §§ 3369–3376, ante, §§ 6178–6185.

Section 37 of this act, mentioned in this section, is set forth ante, § 6259.

Cited without definite application, U. S. v. Chamberlin (1907) 156 Fed. 881, 888, 84 C. C. A. 461, 13 Ann. Cas. 720, reversed (1911) 31 Sup. Ct. 155, 219 U. S. 250, 55 L. Ed. 204.

§ 6263. (Act June 13, 1898, c. 448, § 41.) Assessment of tax on mixed flour sold without stamps.

Whenever any person, firm, or corporation sells, consigns, or removes for sale, consignment, or consumption any mixed flour upon which the tax required by this Act has not been paid, it shall be the duty of the Commissioner of Internal Revenue, for a period of not more than one year after such sale, consignment, or removal, upon satisfactory proof, to estimate the amount of tax which should have been paid, and to make an assessment therefor and certify the same to the collector of the proper district. The tax so assessed shall be in addition to the penalties imposed by this Act for an unauthorized sale or removal. (30 Stat. 469.)

The Commissioner was required to estimate the tax on any article sold without the use of proper stamps, by Act Aug. 27, 1894, c. 349, § 47, post, § 6348.

Cited without definite application, U. S. v. Chamberlin (1907) 156 Fed. 881, 888, 84 C. C. A. 461, 13 Ann. Cas. 720, reversed (1911) 31 Sup. Ct. 155, 219 U. S. 250, 55 L. Ed. 204.

§ 6264. (Act June 13, 1898, c. 448, § 42.) Imported mixed flour.

All mixed flours, imported from foreign countries, shall, in addition to any import duties imposed thereon, pay an internal rev-

enue tax equal in amount to the tax imposed under section forty of this Act, such tax to be represented by coupon stamps, and the packages containing such imported mixed flour shall be marked, branded, labeled, and stamped as in the case of mixed flour made or packed in the United States. Any person, firm, or corporation purchasing or receiving for sale or repacking any such mixed flour which has not been branded, labeled, or stamped, as required by this Act, or which is contained in packages which have not been marked, branded, labeled, or stamped, as required by this Act, shall, upon conviction, be fined not less than fifty dollars nor more than five hundred dollars. (30 Stat. 469.)

Provisions for inspection, and for regulation of importation and transportation, of adulterated foods, etc., are collected under Title LVI B, "Regulations of Interstate and Foreign Commerce as to Particular Subjects," c. B.

§ 6265. (Act June 13, 1898, c. 448, § 43.) Purchasing, etc., mixed flour from manufacturer, etc., who has not paid tax; penalty.

Any person, firm, or corporation knowingly purchasing or receiving for sale or for repacking and resale any mixed flour from any maker, packer, or importer, who has not paid the tax herein provided, shall, for each offense, be fined not less than fifty dollars, and forfeit to the United States all the articles so purchased or received, or the full value thereof. (30 Stat. 469.)

§ 6266. (Act June 13, 1898, c. 448, § 44.) Exportation of mixed flour.

Mixed flour may be removed from the place of manufacture or from the place where packed for export to a foreign country without payment of tax or affixing stamps or label thereto, under such regulation and the filing of such bond and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Every person, firm, or corporation who shall export mixed flour shall plainly mark on each package containing the same the words "mixed flour," and the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed, in accordance with the provisions of sections thirty-six to forty-five, inclusive, of this Act. (30 Stat. 469.)

§ 6267. (Act June 13, 1898, c. 448, § 45.) Stamps on emptied mixed flour packages to be destroyed; penalty for neglect.

Whenever any package containing mixed flour is emptied it shall be the duty of the person in whose possession it is to destroy the stamp thereon. Any person disposing of such package without first having destroyed the stamp or mark or marks thereon shall, upon conviction, be punished by a fine not exceeding the sum of twenty-five dollars. (30 Stat. 469.)

Cited without definite application, Ripper v. U. S. (1910) 178 Fed. 24, 101 C. C. A. 152, rehearing denied (1910) 179 Fed. 497, 103 C. C. A. 478.

§ 6268. (Act June 13, 1898, c. 448, § 46.) Recovery of fines, etc.

All fines, penalties, and forfeitures imposed by section thirty-six to section forty-five, both inclusive, of this Act may be recovered in any court of competent jurisdiction. (30 Stat. 469.)

Cited without definite application, U. S. v. Chamberlin (1907) 156 Fed. 881, 888, 84 C. C. A. 461, 13 Ann. Cas. 720, reversed (1911) 31 Sup. Ct. 155, 219 U. S. 250, 55 L. Ed. 204.

§ 6269. (Act June 13, 1898, c. 448, § 47.) Regulations; employment of additional clerks and agents.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying into effect the provisions relating to the manu-

facture and sale of mixed flour, being section thirty-five to section forty-nine, both inclusive, of this Act, and the said Commissioner of Internal Revenue, by and with the approval of the Secretary of the Treasury, for the purpose of carrying said last-mentioned provisions of this Act into effect, is hereby authorized to employ such additional clerks and agents as may be necessary for that purpose, not to exceed twenty in number. (30 Stat. 469.)

The provisions of this section for employment of additional agents were superseded by provisions for appointment of twenty additional internal revenue agents, to be in lieu of the agents provided for in section 3 of this act, and in this section, and to be the only internal revenue agents employed in addition to those provided for in R. S. § 3152, which were made by Act Feb. 25, 1903, c. 755, § 1, ante, § 5858.

§ 6270. (Act June 13, 1898, c. 448, § 48.) Penalty for second offense.

Any person, firm, or corporation found guilty of a second or any subsequent violation of any of the provisions of section thirty-six to section forty-five, both inclusive, relating to the manufacture and sale of mixed flour as aforesaid, of this Act shall, in addition to the penalties herein imposed, be imprisoned not less than thirty days nor more than ninety days. (30 Stat. 470.)

CHAPTER SEVEN D

White Phosphorus Matches

This chapter, inserted here as additional to the chapters of this Title in the Revised Statutes, includes the provisions of Act April 9, 1912, c. 75, 37 Stat. 81, relating to white phosphorus matches.

Sec.
6271. White phosphorus, definition of.
6272. Manufacturer to register, etc.; books; returns; bond.
6273. Packages of matches, and tax thereon; stamps; penalty.
6274. Selling, etc., unstamped matches; penalty.
6275. Affixing insufficient stamp; penalty.
6276. Removal, defacement, or reuse of stamps; penalty.
6277. Fraud; forfeiture.
6278. Stamps, how prepared, furnished, accounted for, etc.
6279. Assessment of tax on matches sold without stamps.
6280. Importation of matches.
6281. Exportation of matches.
6282. Factory number, label, and notice on packages of matches.
6283. Penalty for omitting things required, and for doing things forbidden.
6284. Recovery of fines, etc.
6285. Regulations.
6286. Internal revenue laws applicable.
6287. Time of taking effect of act.

§ 6271. (Act April 9, 1912, c. 75, § 1.) White phosphorus, definition of.

For the purposes of this Act the words "white phosphorus" shall be understood to mean the common poisonous white or yellow phosphorus used in the manufacture of matches and not to include the nonpoisonous forms or the nonpoisonous compounds of white or yellow phosphorus. (37 Stat. 81.)

This section and the sixteen sections next following were provisions of an act entitled "An act to provide for a tax upon white phosphorus matches, and for other purposes," cited above.

Nothing in the Underwood Tariff Act of Oct. 3, 1913, c. 16, § I, par. 345, relating to the duty on matches, was to be held to repeal or modify this act, by a proviso annexed to said paragraph, set forth ante, § 5291, par. 345.

§ 6272. (Act April 9, 1912, c. 75, § 2.) Manufacturer to register, etc.; books; returns; bond.

Every manufacturer of white phosphorus matches shall register with the collector of internal revenue of the district his name or style,

place of manufactory, and the place where such business is to be carried on; and a failure to register as herein provided and required shall subject such person to a penalty of not more than five hundred dollars. Every manufacturer of white phosphorus matches shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns in relation to the business, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require. The bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue and in the penal sum of not less than one thousand dollars; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner of Internal Revenue. (37 Stat. 81.)

§ 6273. (Act April 9, 1912, c. 75, § 3.) Packages of matches, and tax thereon; stamps; penalty.

All white phosphorus matches shall be packed by the manufacturer thereof in packages containing one hundred, two hundred, five hundred, one thousand, or one thousand five hundred matches each, which shall then be packed by the manufacturer in packages containing not less than fourteen thousand four hundred matches, and upon white phosphorus matches manufactured, sold, or removed there shall be levied and collected a tax at the rate of two cents per one hundred matches, which shall be represented by adhesive stamps, and this tax shall be paid by the manufacturer thereof, who shall affix to every package containing one hundred, two hundred, five hundred, one thousand, or one thousand five hundred matches such stamp of the required value and shall place thereon the initials of his name and the date on which such stamp is affixed, so that the same may not again be used. Every person who fraudulently makes use of an adhesive stamp to denote any tax imposed by this section without so effectually canceling such stamp shall forfeit the sum of fifty dollars for every stamp in respect to which such offense is committed. (37 Stat. 81.)

§ 6274. (Act April 9, 1912, c. 75, § 4.) Selling, etc., unstamped matches; penalty.

Every manufacturer of matches who manufactures, sells, removes, distributes, or offers to sell or distribute white phosphorus matches without there being affixed thereto an adhesive stamp, denoting the tax required by this Act, effectually canceled as provided by the preceding section, shall for each offense be fined not more than one thousand dollars and be imprisoned not more than two years. Every manufacturer of matches who, to evade the tax chargeable thereon or any part thereof, hides or conceals, or causes to be hidden or concealed, or removes or conveys away, or deposits or causes to be removed or conveyed away from or deposited in any place any white phosphorus matches, shall for each offense be fined not more than one thousand dollars and be imprisoned not more than two years, or both, and all such matches shall be forfeited. (37 Stat. 82.)

§ 6275. (Act April 9, 1912, c. 75, § 5.) Affixing insufficient stamp; penalty.

Every person who affixes a stamp on any package of white phosphorus matches denoting a less amount of tax than that required by law shall for each offense be fined not more than one thousand dollars or be imprisoned not more than two years, or both. (37 Stat. 82.)

§ 6276. (Act April 9, 1912, c. 75, § 6.) Removal, defacement, or reuse of stamps; penalty.

Every person who removes, defaces, or causes or permits or suffers the removal or defacement of any such stamp, or who uses any stamp or any package to which any stamp is affixed to cover any other white phosphorus matches than those originally contained in such package with such stamp when first used, to evade the tax imposed by this Act, shall for every such package in respect to which any such offense is committed be fined fifty dollars, and all such matches shall also be forfeited. (37 Stat. 82.)

§ 6277. (Act April 9, 1912, c. 75, § 7.) Fraud; forfeiture.

Every manufacturer of white phosphorus matches who defrauds or attempts to defraud the United States of the tax imposed by this Act, or any part thereof, shall forfeit the factory and manufacturing apparatus used by him and all the white phosphorus matches and all raw material for the production of white phosphorus matches found in the factory and on the factory premises, or owned by him, and shall be fined not more than five thousand dollars or be imprisoned not more than three years, or both. All packages of white phosphorus matches subject to tax under this Act that shall be found without stamps as herein provided shall be forfeited to the United States. (37 Stat. 82.)

§ 6278. (Act April 9, 1912, c. 75, § 8.) Stamps, how prepared, furnished, accounted for, etc.

The Commissioner of Internal Revenue shall cause to be prepared suitable and special stamps for payment of the tax on white phosphorus matches provided for by this Act. Such stamps shall be furnished to collectors, who shall sell the same only to duly qualified manufacturers. Every collector shall keep an account of the number and denominate values of the stamps sold by him to each manufacturer. All the provisions and penalties of existing laws governing the engraving, issuing, sale, affixing, cancellation, accountability, effacement, destruction, and forgery of stamps provided for internal revenue are hereby made to apply to stamps provided for by this Act. (37 Stat. 82.)

Notes of Decisions

Former law.—On a sale of stamps to proprietors of friction matches, the commissioner of internal revenue must pay in money 10 per cent. of the amount of matches purchased exceeding $500, and this right of the proprietor will not be affected by construction of the revenue by the commissioner allowing him to pay such commission in stamps at their face value; such construction not having been acquiesced in by the proprietor. Swift & C. & B. Co. v. U. S. (1881) 105 U. S. 691, 693, 26 L. Ed. 1108.

Section 3425 of the Revised Statutes provides, in effect, that the commissioner of internal revenue may, from time to time, deliver to any manufacturer of friction matches a suitable quantity of adhesive stamps, such as are required in that business by law, without requiring prepayment therefor, on a credit of 60 days, upon such security as he may deem sufficient. Held, that a person who is a member of a firm engaged in the manufacture of friction matches is a manufacturer of friction matches, with whom the government may deal as such. U. S. v. Weedon (C. C. 1880) 3 Fed. 623.

Commissions to purchasers of internal revenue stamps, under R. S. § 3425, must be paid in cash, whether the stamps purchased are paid for in cash, or the purchaser obtains a credit of 60 days and gives bond as provided by such section. U. S. v. Fielding (C. C. 1882) 17 Fed. 572.

§ 6279. (Act April 9, 1912, c. 75, § 9.) Assessment of tax on matches sold without stamps.

Whenever any manufacturer of white phosphorus matches sells or removes any white phosphorus matches without the use of the stamps required by this Act, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such sale or removal, upon satisfactory proof, to estimate the

amount of tax which has been omitted to be paid, and to make an assessment therefor and certify the same to the collector, who shall collect the same according to law. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal. (37 Stat. 82.)

§ 6280. (Act April 9, 1912, c. 75, § 10.) Importation of matches.

On and after January first, nineteen hundred and thirteen, white phosphorus matches, manufactured wholly or in part in any foreign country, shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited. All matches imported into the United States shall be accompanied by such certificate of official inspection by the government of the country in which such matches were manufactured as shall satisfy the Secretary of the Treasury that they are not white phosphorus matches. The Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of the provisions of this section. (37 Stat. 83.)

§ 6281. (Act April 9, 1912, c. 75, § 11.) Exportation of matches.

After January first, nineteen hundred and fourteen, it shall be unlawful to export from the United States any white phosphorus matches. Any person guilty of violation of this section shall be fined not less than one thousand dollars and not more than five thousand dollars, and any white phosphorus matches exported or attempted to be exported shall be confiscated to the United States and destroyed in such manner as may be prescribed by the Secretary of the Treasury, who shall have power to issue such regulations to customs officers as are necessary to the enforcement of this section. (37 Stat. 83.)

§ 6282. (Act April 9, 1912, c. 75, § 12.) Factory number, label, and notice on packages of matches.

Every manufacturer of matches shall mark, brand, affix, stamp, or print, in such manner as the Commissioner of Internal Revenue shall prescribe, on every package of white phosphorus matches manufactured, sold, or removed by him, the factory number required under section two of this Act. Every such manufacturer who omits to mark, brand, affix, stamp, or print such factory number on such package shall be fined not more than fifty dollars for each package in respect of which such offense is committed. Every manufacturer of white phosphorus matches shall securely affix by pasting on each original package containing stamped packages of white phosphorus matches manufactured by him a label, on which shall be printed, besides the number of the manufactory and the district in which it is situated, these words: "Notice.—The manufacturer of the white phosphorus matches herein contained has complied with all the requirements of law. Every person is cautioned not to use again the stamps on the packages herein contained under the penalty provided by law in such cases." Every manufacturer of white phosphorus matches who neglects to affix such label to any original package containing stamped packages of white phosphorus matches made by him or sold or removed by or for him, and every person who removes any such label so affixed from any such original package, shall be fined not more than fifty dollars for each package in respect of which such offense is committed. (37 Stat. 83.)

Section 2 of this act, mentioned in this section, is set forth ante, § 6272.

§ 6283. (Act April 9, 1912, c. 75, § 13.) Penalty for omitting things required, and for doing things forbidden.

If any manufacturer of white phosphorus matches, or any importer or exporter of matches, shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or con-

ducting his business, or shall do anything by this Act prohibited, if there be no specific penalty or punishment imposed by any other section of this Act for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall be fined one thousand dollars for each offense, and all the white phosphorus matches owned by him or in which he has any interest as owner shall be forfeited to the United States. (37 Stat. 83.)

§ 6284. (Act April 9, 1912, c. 75, § 14.) Recovery of fines, etc.

All fines, penalties, and forfeitures imposed by this Act may be recovered in any court of competent jurisdiction. (37 Stat. 83.)

§ 6285. (Act April 9, 1912, c. 75, § 15.) Regulations.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may make all needful regulations for the carrying into effect of this Act. (37 Stat. 83.)

Notes of Decisions

Regulations under former law.—A bond of indemnity for the cost of manufacture, in advance of orders, of an estimated three-months supply of private die stamps, made in accordance with a regulation of the commissioner of internal revenue, and given by the obligor in order to obtain an accommodation which the commissioner might properly extend, but was not legally required to grant, is not void upon the ground that it was exacted colore officii, or for want of consideration. Diamond Match Co. v. U. S. (C. C. 1887) 31 Fed. 271.

The bond required by circular No. 136, of date September 30, 1875, issued from the office of the United States commissioner of internal revenue, which requires manufacturers of matches to indemnify the government for the expense of printing stamps in anticipation of the requirements of the trade, in case such stamps are not needed by the manufacturers ordering them, though not prescribed, is not prohibited by any statute; and, the object of the bond being to protect the United States against loss in the printing of stamps from private dies, authorized by R. S. § 3423, the authority to make the regulations contained in the circular, and to take the bond, is incident to the exercise of the duties of the commissioner. U. S. v. Diamond Match Co. (D. C. 1886) 30 Fed. 108.

§ 6286. (Act April 9, 1912, c. 75, § 16.) Internal revenue laws applicable.

Sections thirty-one hundred and sixty-four to thirty-one hundred and seventy-seven, thirty-one hundred and seventy-nine to thirty-two hundred and forty-three, thirty-three hundred and forty-six as amended, thirty-four hundred and twenty-nine as amended, thirty-four hundred and forty-five to thirty-four hundred and forty-eight, thirty-four hundred and fifty to thirty-four hundred and sixty-three, all inclusive, of the Revised Statutes of the United States, and all other provisions and penalties of existing law relating to internal revenue so far as applicable, are hereby made to extend to and include and apply to the taxes imposed by this Act and to the articles upon which and to the persons upon whom they are imposed. (37 Stat. 83.)

R. S. §§ 3164–3177, 3179–3243, 3346, mentioned in this section are set forth ante, §§ 5844–5970.

R. S. § 3429, also mentioned in this section, as amended by Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248, and by Act March 1, 1879, c. 125, § 17, 20 Stat. 349, to read as there set forth, was re-enacted, without material change in the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 42, set forth post, § 6314, to which the provision of this section may be regarded as applying.

R. S. §§ 3445–3448, 3450–3463, also mentioned in this section, are set forth post, §§ 6342, 6343, 6349, 6350, 6352–6365.

§ 6287. (Act April 9, 1912, c. 75, § 17.) Time of taking effect of act.

This Act shall take effect on July first, nineteen hundred and thirteen, except as previously provided in this Act; and except as to its application to the sale or removal of white phosphorus matches by the manufacturers, as to which it shall take effect on January first, nineteen hundred and fifteen. (37 Stat. 84.)

CHAPTER SEVEN E

Opium for Smoking

Sec.
6287a. Tax on opium manufactured for smoking purposes; manufacturer to be a citizen and give bond; manufacturer, definition of.
6287b. Manufacturer to file notices, etc.; books and returns; signs, etc.; surveillance of officers, etc.; sureties on and amount of bond.
6287c. Stamps.
6287d. Laws relating to stamps for tobacco and snuff made applicable.
6287e. Penalty for violations of provisions of act; forfeiture of opium prepared for smoking found without stamps.
6287f. Provisions of Act Oct. 1, 1890, c. 1244, relating to manufacture of smoking opium, repealed.

§ 6287a. (Act Jan. 17, 1914, c. 10, § 1.) Tax on opium manufactured for smoking purposes; manufacturer to be a citizen and give bond; manufacturer, definition of.

An internal-revenue tax of $300 per pound shall be levied and collected upon all opium manufactured in the United States for smoking purposes; and no person shall engage in such manufacture who is not a citizen of the United States and who has not given the bond required by the Commissioner of Internal Revenue. Every person who prepares opium suitable for smoking purposes from crude gum opium, or from any preparation thereof, or from the residue of smoked or partially smoked opium, commonly known as yen shee, or from any mixture of the above, or any of them, shall be regarded as a manufacturer of smoking opium within the meaning of this Act. (38 Stat. 277.)

See §§ 8797–8801f, post, relating to importation of opium. See, also, §§ 6287g–6287q, post.

Notes of Decisions

Purpose and application of former law.—The purpose of Act 1890, c. 1244, §§ 36–41, superseded by this Act of 1914, was to tax and regulate the manufacture of smoking opium, and applied to any process by which crude opium is converted into a product fit for smoking. Marks v. U. S. (1912) 196 Fed. 476, 116 C. C. A. 250.

The provisions thereof applied to every case where as a matter of fact a man engages in the manufacture of smoking opium in the United States, regardless of whether it was imported before or after Act Feb. 9, 1909, c. 100, and one desiring to engage in the manufacture of smoking opium was required to do it in accordance therewith. Id.

Manufacture of smoking opium.—The reconversion of the residuum of opium remaining after smoking into a form fit for resmoking is not a manufacture of opium for smoking purposes within the meaning of Act Oct. 1, 1890, c. 1244, § 36, 26 Stat. 567, levying an internal revenue tax upon all opium manufactured in the United States for smoking purposes, and prohibiting any person from engaging in such manufacture who is not a citizen of the United States, and who has not given the bond required by the Commissioner of Internal Revenue. U. S. v. Shelley (1913) 33 Sup. Ct. 635, 229 U. S. 239, 57 L. Ed. 1167.

Any process by which crude opium is converted into a product fit for smoking held to constitute a "manufacture" of smoking opium. Marks v. U. S. (1912) 196 Fed. 476, 116 C. C. A. 250.

The mere mixing of smoking opium with the residue of opium that has been smoked and heating the same held not a "manufacture of opium for smoking purposes." Shelley v. U. S. (1912) 198 Fed. 88, 117 C. C. A. 294.

Smoking opium is produced from crude opium by a process which constitutes a manufacture within the statute. Id.

Adding water to an extract of opium itself smokable held not to constitute a manufacture of smoking opium. Seidler v. U. S. (C. C. A. 1915) 228 Fed. 336.

Failure to give bond.—The government, on prosecution for manufacturing smoking opium without giving bond, must show the Commissioner of Internal Revenue required a bond.

Chin Sing v. U. S. (C. C. A. 1915) 227 Fed. 397.

Evidence in prosecution under statute.—The fact that one accused of manufacturing smoking opium smoked it himself is relevant. Tam Shi Yan v U. S. (1915) 224 Fed. 422, 140 C. C. A. 116.

§ 6287b. (Act Jan. 17, 1914, c. 10, § 2.) Manufacturer to file notices, etc.; books and returns; signs, etc.; surveillance of officers, etc.; sureties on and amount of bond.

Every manufacturer of such opium shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of material and products, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than $100,000; and the sum of said bond may be increased from time to time and additional sureties required, at the discretion of the collector or under instructions of the Commissioner of Internal Revenue. (38 Stat. 277.)

Notes of Decisions

Failure to comply with regulations.—The government, on prosecution for manufacturing smoking opium without complying with regulations made by the Commissioner of Internal Revenue, must show the making of the regulations. Chin Sing v. U. S. (1915) 227 Fed. 397, 142 C. C. A. 93.

§ 6287c. (Act Jan. 17, 1914, c. 10, § 3.) Stamps.

All opium prepared for smoking manufactured in the United States shall be duly stamped in such a permanent manner as to denote the payment of the internal-revenue tax thereon. (38 Stat. 278.)

Notes of Decisions

Manufacture without stamping.—The government, on prosecution for manufacturing smoking opium without stamping to show payment of internal revenue tax, must show existence of a stamp therefor. Chin Sing v. U. S. (1915) 227 Fed. 397, 142 C. C. A. 93.

§ 6287d. (Act Jan. 17, 1914, c. 10, § 4.) Laws relating to stamps for tobacco and snuff made applicable.

The provisions of existing laws covering the engraving, issue, sale, accountability, effacement, cancellation, and the destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by the preceding section. (38 Stat. 278.)

§ 6287e. (Act Jan. 17, 1914, c. 10, § 5.) Penalty for violations of provisions of act; forfeiture of opium prepared for smoking found without stamps.

A penalty of not less than $10,000 or imprisonment for not less than five years, or both, in the discretion of the court, shall be imposed for each and every violation of the preceding sections of this Act relating to opium by any person or persons; and all opium prepared for smoking wherever found within the United States without the stamps required by this Act shall be forfeited and destroyed. (38 Stat. 278.)

§ 6287f. (Act Jan. 17, 1914, c. 10, § 6.) Provisions of Act Oct. 1, 1890, c. 1244, relating to manufacture of smoking opium, repealed.

The provisions of the Act of October first, eighteen hundred and ninety (Twenty-sixth Statutes, page fifteen hundred and sixty-seven), in so far as they relate to the manufacture of smoking opium, are hereby repealed. (38 Stat. 278.)

CHAPTER SEVEN F

Opium, Coca Leaves, and Compounds, Manufacturers, etc., thereof

Sec.
6287g. Producers, importers, manufacturers, dealers, etc., to register and pay special tax; employés and certain officers, etc., excepted; transactions without registering and paying tax unlawful; person, definition of; laws relating to special taxes made applicable; regulations for carrying act into effect.
6287h. Sale, etc., of aforesaid drugs unlawful, except in pursuance of written order on blank forms; orders and duplicates to be preserved for inspection; certain sales, dispensing, distribution, etc., of said drugs excepted; preparation, distribution, and sale of forms, and restrictions on use thereof; places to which provisions of act to apply; administration of act in Porto Rico, the Philippine Islands, and the Canal Zone.
6287i. Statements by person registered under act as to aforesaid drugs received by him.
6287j. Sending, shipping, carrying, etc., from one State, etc., to another State, etc., of aforesaid drugs, by person not registered under act, unlawful; common carriers, employés, and certain officers, etc., excepted.
6287k. Duplicate order forms, etc., and statements, etc., required under act, open to inspection by certain officers, etc., and certified copies of statements, etc., filed, to be furnished to them; disclosure of information contained therein, except as provided, etc., punishable; certified copies of names of special taxpayers under act.
6287l. Provisions of act not to apply to sale, etc., of certain preparations and remedies.
6287m. Internal revenue laws made applicable.
6287n. Possession or control of aforesaid drugs by person not registered, etc., under act, unlawful; possession by certain persons, for certain purposes, etc., excepted; pleading and proof of exemptions.
6287o. Violations of act; punishment.
6287p. Appointment of agents and officers, etc., to enforce provisions.
6287q. Provisions of Food and Drug Act of 1906, or of act of 1909 to prohibit importation and use of opium, not affected by this act.

§ 6287g. (Act Dec. 17, 1914, c. 1, § 1.) Producers, importers, manufacturers, dealers, etc., to register and pay special tax; employés and certain officers, etc., excepted; transactions without registering and paying tax unlawful; person, definition of; laws relating to special taxes made applicable; regulations for carrying act into effect.

On and after the first day of March, nineteen hundred and fifteen, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name or style, place of business, and place or places where such business is to be carried on: Provided, That the office, or if none, then the residence of any person shall be considered for the purposes of this Act to be his place of business. At the time of such registry and on or before the first day of July, annually thereafter, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs shall pay to the said collector a special tax at the rate of $1 per annum: Provided, That no employee of any person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs, acting within the scope of his employment, shall be required to register or to pay the special tax provided by this section: Provided

further, That the person who employs him shall have registered and paid the special tax as required by this section: Provided further, That officers of the United States Government who are lawfully engaged in making purchases of the above-named drugs for the various departments of the Army and Navy, the Public Health Service, and for Government hospitals and prisons, and officers of any State government, or of any county or municipality therein, who are lawfully engaged in making purchases of the above-named drugs for State, county, or municipal hospitals or prisons, and officials of any Territory or insular possession or the District of Columbia or of the United States who are lawfully engaged in making purchases of the above-named drugs for hospitals or prisons therein shall not be required to register and pay the special tax as herein required.

It shall be unlawful for any person required to register under the terms of this Act to produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away any of the aforesaid drugs without having registered and paid the special tax provided for in this section.

That the word "person" as used in this Act shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person; and all provisions of existing law relating to special taxes, so far as applicable, including the provisions of section thirty-two hundred and forty of the Revised Statutes of the United States are hereby extended to the special tax herein imposed.

That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying the provisions of this Act into effect. (38 Stat. 785.)

R. S. § 3240, above referred to, is set forth ante, § 5963.

Notes of Decisions

Constitutionality.—Act Dec. 17, 1914, imposing a special tax on dealers in opium, requiring dealers to register with collectors of internal revenue, and making it unlawful for any person who has not registered and paid the tax to have opium in his possession, held within the power of Congress. U. S. v. Brown (D. C. 1915) 224 Fed. 135.

Act Dec. 17, 1914, regulating traffic in opium or coca leaves, etc., held within the power of Congress, even though not designed to protect the revenues. U. S. v. Charter (D. C. 1915) 227 Fed. 331.

Construction of statute in general.—This statute requiring persons who import or deal in opium or coca leaves to register and pay a special tax, and punishing infractions thereof, is a criminal statute, and must be strictly construed. U. S. v. Wilson (D. C. 1915) 225 Fed. 82.

Application to consumers.—This section and section 6287n, post, held not to require consumers of drugs therein specified to register or pay a tax, nor to make their possession thereof unlawful. U. S. v. Woods (D. C. 1915) 224 Fed. 278.

Nature of license.—The license exacted by the statute is a mere form of imposing an internal revenue tax and implies nothing more than that the licensee shall not be subject to the penalties of the act. Tucker v. Williamson (D. C. 1915) 229 Fed. 201.

Departmental regulations.—Validity of departmental regulations promulgated under the statute, considered. Tucker v. Williamson (D. C. 1915) 229 Fed. 201.

Violation of statute.—Since section 6287n, post, refers only to the persons enumerated in this section, the mere keeping of a small amount of opium for personal use does not constitute an offense within the statute. U. S. v. Wilson (D. C. 1915) 225 Fed. 82.

Indictment.—See, also, notes under § 6287h, post.

Indictment for possessing smoking opium without registering and paying the tax held fatally defective for failure to show that defendants were within the statute. U. S. v. Woods (D. C. 1915) 224 Fed. 278.

Under this section and sections 6287h and 6287n, post, an indictment charging defendant with conspiring to have opium in the possession of M. held insufficient, in absence of a charge that M. had it in his possession for any of the purposes for which he

would have to register and pay the tax. U. S. v. Jin Fuey Moy (D. C. 1915) 225 Fed. 1003.

Under this section and section 6287n, post, indictment charging sale of morphine sulphate tablets held to charge offense; but, when charged as violation of this section proof of registration and payment of special tax would be complete defense. U. S. v. Curtis (D. C. 1916) 229 Fed. 288.

Evidence.—See, also, notes under § 6287n.

Under section 6287n, post, upon proof that defendant was doing any of the things mentioned in the first clause of this section, he is presumptively guilty if a narcotic is found in his possession, when the burden is upon him to show affirmatively that he is not within the prohibition of the statute. U. S. v. Wilson (D. C. 1915) 225 Fed. 82.

In a prosecution under this statute, evidence held to overcome the presumption of guilt arising from the possession of opium under section 6287n, post. Id.

§ 6287h. (Act Dec. 17, 1914, c. 1, § 2.) Sale, etc., of aforesaid drugs unlawful, except in pursuance of written order on blank forms; orders and duplicates to be preserved for inspection; certain sales, dispensing, distribution, etc., of said drugs excepted; preparation, distribution, and sale of forms, and restrictions on use thereof; places to which provisions of act to apply; administration of act in Porto Rico, the Philippine Islands, and the Canal Zone.

It shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid drugs, shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section five of this Act. Every person who shall give an order as herein provided to any other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned. Nothing contained in this section shall apply—

(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only: Provided, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this Act.

(b) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under this Act: Provided, however, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: And provided further, That such dealer shall preserve such prescription for a period of two years from the day on

which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned.

(c) To the sale, exportation, shipment, or delivery of any of the aforesaid drugs by any person within the United States or any Territory or the District of Columbia or any of the insular possessions of the United States to any person in any foreign country, regulating their entry in accordance with such regulations for importation thereof into such foreign country as are prescribed by said country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

(d) To the sale, barter, exchange, or giving away of any of the aforesaid drugs to any officer of the United States Government or of any State, territorial, district, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, territorial district, county, or municipal or insular hospitals or prisons.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall cause suitable forms to be prepared for the purposes above mentioned, and shall cause the same to be distributed to collectors of internal revenue for sale by them to those persons who shall have registered and paid the special tax as required by section one of this Act in their districts, respectively; and no collector shall sell any of such forms to any persons other than a person who has registered and paid the special tax as required by section one of this Act in his district. The price at which such forms shall be sold by said collectors shall be fixed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, but shall not exceed the sum of $1 per hundred. Every collector shall keep an account of the number of such forms sold by him, the names of the purchasers, and the number of such forms sold to each of such purchasers. Whenever any collector shall sell any of such forms, he shall cause the name of the purchaser thereof to be plainly written or stamped thereon before delivering the same; and no person other than such purchaser shall use any of said forms bearing the name of such purchaser for the purpose of procuring any of the aforesaid drugs, or furnish any of the forms bearing the name of such purchaser to any person with intent thereby to procure the shipment or delivery of any of the aforesaid drugs. It shall be unlawful for any person to obtain by means of said order forms any of the aforesaid drugs for any purpose other than the use, sale, or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate practice of his profession.

The provisions of this Act shall apply to the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, the insular possessions of the United States, and the Canal Zone. In Porto Rico and the Philippine Islands the administration of this Act, the collection of the said special tax, and the issuance of the order forms specified in section two shall be performed by the appropriate internal-revenue officers of those governments, and all revenues collected hereunder in Porto Rico and the Philippine Islands shall accrue intact to the general governments thereof, respectively. The courts of first instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under this Act in said islands. The President is authorized and directed to issue such Executive orders as will carry into effect in the Canal Zone the intent and purpose of this Act by providing for the registration and the imposition of a special tax upon all persons in the Canal Zone who produce, import, compound, deal in, dispense, sell,

distribute, or give away opium or coca leaves, their salts, derivatives, or preparations. (38 Stat. 786.)

Notes of Decisions

Physicians dispensing narcotics.—This section does not limit the amount of the enumerated drugs a physician may prescribe. U. S. v. Friedman (D. C. 1915) 224 Fed. 276.

This section, construed with respect to the rights and duties of physicians in dispensing narcotics to patients. Tucker v. Williamson (D. C. 1915) 229 Fed. 201.

Physician, issuing prescription for unusually large amount of drugs to which this section applies, or dealer filling it, held guilty of offense, unless prescription indicates necessity for such unusual quantity. U. S. v. Curtis (D. C. 1916) 229 Fed. 288.

Failure to keep duplicate order or record.—Section 6287n, post, relative to having possession of opium or coca leaves, etc., held to have no relation to failure to keep duplicate order or record, as required by this section. U. S. v. Charter (D. C. 1915) 227 Fed. 331.

Indictment.—As this section does not limit the amount of the enumerated drugs a physician may prescribe, an indictment charging the prescribing not in good faith more than was necessary is demurrable. U. S. v. Friedman (D. C. 1915) 224 Fed. 276.

Under this section indictment charging physician with failure to preserve duplicate of order for drugs specified and failure to keep record of the amount dispensed held not in the alternative or duplicitous. U. S. v. Charter (D. C. 1915) 227 Fed. 331.

§ 6287i. (Act Dec. 17, 1914, c. 1, § 3.) Statements by person registered under act as to aforesaid drugs received by him.

Any person who shall be registered in any internal-revenue district under the provisions of section one of this Act shall, whenever required so to do by the collector of the district, render to the said collector a true and correct statement or return, verified by affidavit, setting forth the quantity of the aforesaid drugs received by him in said internal-revenue district during such period immediately preceding the demand of the collector, not exceeding three months, as the said collector may fix and determine; the names of the persons from whom the said drugs were received; the quantity in each instance received from each of such persons, and the date when received. (38 Stat. 787.)

§ 6287j. (Act Dec. 17, 1914, c. 1, § 4.) Sending, shipping, carrying, etc., from one State, etc., to another State, etc., of aforesaid drugs, by person not registered under act, unlawful; common carriers, employés, and certain officers, etc., excepted.

It shall be unlawful for any person who shall not have registered and paid the special tax as required by section one of this Act to send, ship, carry, or deliver any of the aforesaid drugs from any State or Territory or the District of Columbia, or any insular possession of the United States, to any person in any other State or Territory or the District of Columbia or any insular possession of the United States: Provided, That nothing contained in this section shall apply to common carriers engaged in transporting the aforesaid drugs, or to any employee acting within the scope of his employment, of any person who shall have registered and paid the special tax as required by section one of this Act, or to any person who shall deliver any such drug which has been prescribed or dispensed by a physician, dentist, or veterinarian required to register under the terms of this Act, who has been employed to prescribe for the particular patient receiving such drug, or to any United States, State, county, municipal, District, Territorial, or insular officer or official acting within the scope of his official duties. (38 Stat. 788.)

"Section one of this act," above referred to, is set forth ante, § 6287g.

§ 6287k. (Act Dec. 17, 1914, c. 1, § 5.) Duplicate order forms, etc., and statements, etc., required under act, open to inspection by certain officers, etc., and certified copies of statements, etc., filed, to be furnished to them; disclosure of information contained therein, except as provided, etc., punishable; certified copies of names of special taxpayers under act.

The duplicate-order forms and the prescriptions required to be preserved under the provisions of section two of this Act, and the statements or returns filed in the office of the collector of the district, under the provisions of section three of this Act, shall be open to inspection by officers, agents, and employees of the Treasury Department duly authorized for that purpose; and such officials of any State or Territory, or of any organized municipality therein, or of the District of Columbia, or any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the sale, prescribing, dispensing, dealing in, or distribution of the aforesaid drugs. Each collector of internal revenue is hereby authorized to furnish, upon written request, certified copies of any of the said statements or returns filed in his office to any of such officials of any State or Territory or organized municipality therein, or the District of Columbia, or any insular possession of the United States, as shall be entitled to inspect the said statements or returns filed in the office of the said collector, upon the payment of a fee of $1 for each one hundred words or fraction thereof in the copy or copies so requested. Any person who shall disclose the information contained in the said statements or returns or in the said duplicate-order forms, except as herein expressly provided, and except for the purpose of enforcing the provisions of this Act, or for the purpose of enforcing any law of any State or Territory or the District of Columbia, or any insular possession of the United States, or ordinance of any organized municipality therein, regulating the sale, prescribing, dispensing, dealing in, or distribution of the aforesaid drugs, shall, on conviction, be fined or imprisoned as provided by section nine of this Act. And collectors of internal revenue are hereby authorized to furnish upon written request, to any person, a certified copy of the names of any or all persons who may be listed in their respective collection districts as special-tax payers under the provisions of this Act, upon payment of a fee of $1 for each one hundred names or fraction thereof in the copy so requested. (38 Stat. 788.)

"Section two of this act," referred to above, is set forth ante, § 6287h. Section 9 is set forth post, § 6287o.

§ 6287l. (Act Dec. 17, 1914, c. 1, § 6.) Provisions of act not to apply to sale, etc., of certain preparations and remedies.

The provisions of this Act shall not be construed to apply to the sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semisolid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substitute for them: Provided, That such remedies and preparations are sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this Act. The provisions of this Act shall not apply to decocainized coca leaves or

preparations made therefrom, or to other preparations of coca leaves which do not contain cocaine. (38 Stat. 789.)

Notes of Decisions

Violation of statute.—Sale or dispensing of large and unusual quantities of drugs, without explanation as to necessity, held evasion of the law, and unlawful, under this section. U. S. v. Curtis (D. C. 1916) 229 Fed. 288.

§ 6287m. (Act Dec. 17, 1914, c. 1, § 7.) Internal revenue laws made applicable.

All laws relating to the assessment, collection, remission, and refund of internal-revenue taxes, including section thirty-two hundred and twenty-nine of the Revised Statutes of the United States, so far as applicable to and not inconsistent with the provisions of this Act, are hereby extended and made applicable to the special taxes imposed by this Act. (38 Stat. 789.)

R. S. § 3229, referred to above, is set forth ante, § 5952.

§ 6287n. (Act Dec. 17, 1914, c. 1, § 8.) Possession or control of aforesaid drugs by person not registered, etc., under act, unlawful; possession by certain persons, for certain purposes, etc., excepted; pleading and proof of exemptions.

It shall be unlawful for any person not registered under the provisions of this Act, and who has not paid the special tax provided for by this Act, to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, and also of a violation of the provisions of section one of this Act: Provided, That this section shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this Act, having such possession or control by virtue of his employment or occupation and not on his own account; or to the possession of any of the aforesaid drugs which has or have been prescribed in good faith by a physician, dentist, or veterinary surgeon registered under this Act; or to any United States, State, county, municipal, District, Territorial, or insular officer or official who has possession of any said drugs, by reason of his official duties, or to a warehouseman holding possession for a person registered and who has paid the taxes under this Act; or to common carriers engaged in transporting such drugs: Provided further, That it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the defendant. (38 Stat. 789.)

Notes of Decisions

Persons to whom statute applies.—This section, making possession of prohibited drugs by "any person" not registered thereunder unlawful, held not limited to persons required to register under section 6287g, ante, but to apply to all persons not excepted thereby. Wilson v. U. S. (1916) 229 Fed. 344.

Keeping for personal use.—Since this section refers only to the persons enumerated in section 6287g, ante, the mere keeping of a small amount of opium for personal use does not constitute an offense within the act. U. S. v. Wilson (D. C. 1915) 225 Fed. 82.

Evidence.—Under this section, upon proof that defendant was doing any of the things mentioned in the first clause of section 6287g, ante, he is presumptively guilty if a narcotic is found in his possession, when the burden is upon him to show affirmatively that he is not within the prohibition of the statute. U. S. v. Wilson (D. C. 1915) 225 Fed. 82.

In a prosecution under the statute, evidence held to overcome the presumption of guilt arising from the possession of opium under this section. Id.

§ 6287o. (Act Dec. 17, 1914, c. 1, § 9.) Violations of act; punishment.

Any person who violates or fails to comply with any of the requirements of this Act shall, on conviction, be fined not more than

$2,000 or be imprisoned not more than five years, or both, in the discretion of the court. (38 Stat. 789.)

§ 6287p. (Act Dec. 17, 1914, c. 1, § 10.) Appointment of agents and officers, etc., to enforce provisions.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to appoint such agents, deputy collectors, inspectors, chemists, assistant chemists, clerks, and messengers in the field and in the Bureau of Internal Revenue in the District of Columbia as may be necessary to enforce the provisions of this Act. (38 Stat. 789.)

Section 11 of the above act makes an appropriation to carry the act into effect.

§ 6287q. (Act Dec. 17, 1914, c. 1, § 12.) Provisions of Food and Drugs Act of 1906, or of act of 1909 to prohibit importation and use of opium, not affected by this act.

Nothing contained in this Act shall be construed to impair, alter, amend, or repeal any of the provisions of the Act of Congress approved June thirtieth, nineteen hundred and six, entitled "An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded, or poisonous, or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," and any amendment thereof, or of the Act approved February ninth, nineteen hundred and nine, entitled "An Act to prohibit the importation and use of opium for other than medicinal purposes," and any amendment thereof. (38 Stat. 790.)

Act June 30, 1906, referred to, is set forth post, §§ 8717–8728.

CHAPTER EIGHT

Banks and Bankers

Sec.
6288. Definition of words "bank," "banker."
6289. Tax on circulation of banks other than national banks.
6290. Tax on notes of State banks, municipal corporations, etc., used as circulation.
6291. Banks' returns; payment of tax; penalties.
6292. Tax on circulation.
6293. Taxes, when payable.
6294. Circulation, when exempted from tax.
6295. Banks' and bankers' monthly returns.
6296. In default of return, Commissioner to estimate, etc.
6297. State banks converted into national banks; returns, how made.
6298. Provisions for bank tax and returns not to apply to national banks.
6299. Insolvent bank exempt from tax.

§ 6288. (R. S. § 3407.) Definition of words "bank," "banker."

Every incorporated or other bank, and every person, firm, or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale, shall be regarded as a bank or as a banker.

Act June 30, 1864, c. 173, § 79, 13 Stat. 251. Act July 13, 1866, c. 184, § 9, 14 Stat. 115.

Notes of Decisions

Bank or banker within meaning of statute in general.—Associations incorporated or not having a place of business where credits are opened by the deposit or collection of money subject to payment on draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange,

or promissory notes, or where stock, bonds, bullion, bills of exchange, or promissory notes are received for discount or sale, are banks subject to taxation. Oulton v. German Sav. & L. Soc. (1872) 17 Wall. 109, 116, 21 L. Ed. 618.

A corporation held not to be a banker within the meaning of this section. Selden v. Equitable Trust Co. (1876) 94 U. S. 419, 24 L. Ed. 249.

One whose business is buying and selling stocks for his customers, and who employs capital in his business, and has a regular place for transacting it, is a "banker." Richmond v. Blake (1890) 10 Sup. Ct. 204, 132 U. S. 592, 33 L. Ed. 481.

A corporation, whose sole business consists in loaning and investing its capital on mortgages of real estate, in selling the mortgage securities, and guarantying the payment thereof, is not taxable as a "bank or banker," under this section. Equitable Trust Co. v. Seldon (C. C.) Fed. Cas. No. 4,508.

What are banking institutions within Int. Rev. Act, § 110, providing a tax on deposits. German Savings & Loan Soc. v. Oulton (C. C. 1871) Fed. Cas. No. 5,362.

National bank.—The provisions of the acts of Congress carried into this section and sections 6292-6298, post, did not when and as originally passed relate to national banks or to the circulation of national banks, but related to state and private banks. Merchants' Nat. Bank v. U. S. (1909) 29 Sup. Ct. 593, 596, 214 U. S. 33, 53 L. Ed. 899.

Branch of foreign bank.—A bank in Canada, which has established a branch in Chicago, must be held to carry on a banking business, within the provisions of this section, defining a bank, and of section 6292, post, imposing a tax on capital employed; it having a place of business where credits were opened by the deposit of money, subject to be paid or remitted upon draft, check, or order, and where bills of exchange were issued and sold. U. S. v. Bank of Montreal (C. C. 1884) 21 Fed. 236.

Loan and trust company.—A loan and trust company which issues certificates of deposit, and makes loans on stocks, bonds, and other security is "engaged in the business of banking," so as to be liable for the payment of a duty of $1/24$ of 1 per cent. for each month upon the average amount of its deposits, as provided by Act 1864, § 110. U. S. v. Farmers' Loan & Trust Co. (C. C. 1866) Fed. Cas. No. 15,070.

Cited without definite application, U. S. v. Bank of America (C. C. 1883) 15 Fed. 730, 731.

§ 6289. (Act Feb. 8, 1875, c. 36, § 19.) Tax on circulation of banks other than national banks.

Every person, firm, association other than national bank associations, and every corporation, State bank, or State banking association, shall pay a tax of ten per centum on the amount of their own notes used for circulation and paid out by them. (18 Stat. 311.)

This and the two sections next following were provisions of an act to amend existing customs and internal revenue laws, cited above.

Notes of Decisions

1. Notes taxable in general.
1½. Constitutionality.
2. Doubt as to meaning of statute.
3. Reissued notes.
4. Clearing house certificates.
5. Certificates of indebtedness.
6. Wages certificates.
7. Orders payable in merchandise.
8. Tickets issued by ice companies.
9. Notes prohibited by section 10848.
10. Action under statute.

1. Notes taxable in general.—Only such notes as are in law negotiable so as to carry title in their circulation from hand to hand are the subjects of taxation imposed. Hollister v. Zion's Co-operative Mercantile Inst. (1884) 4 Sup. Ct. 263, 264, 111 U. S. 62, 28 L. Ed. 352.

Under this section only negotiable promissory notes payable in money are taxable, and an order for the payment of money in merchandise is not within the purview of the act. Willis v. Belleville Nail Co. (1884) 4 Sup. Ct. 265, 111 U. S. 62, 28 L. Ed. 354; Hollister v. Zion's Co-operative Mercantile Inst. (1884) 4 Sup. Ct. 263, 111 U. S. 62, 28 L. Ed. 352.

The tax imposed by this section upon "notes used for circulation" is a charge upon such notes only as are intended to circulate as money. The act bears no reference to the so-called notes issued by mercantile firms to be redeemed in goods. U. S. v. White (C. C. 1884) 19 Fed. 723.

This section must be construed as limited in its effect to notes payable in money; otherwise all sorts of negotiable paper, such as "grain receipts," fare tickets, and the like, might be subject to the same taxation. In re Aldrich (D. C. 1883) 16 Fed. 369.

Where a company or corporation made and paid out its own notes in the ordinary course of its business, not intending them to be used for circulation as money or currency, their use as such by other persons after they were paid out, without approval by the maker of such use, would not subject

the maker to the tax. (1888) 19 Op. Atty. Gen. 98.

A national bank paying out on checks and otherwise the notes of a bank chartered in a foreign country is subject to tax of 10 per cent. under this and the following section, upon the total amount of all notes which it has received and used as a circulating medium. (1893) 20 Op. Atty. Gen. 530.

The tax on state banks imposed by this section applies only to promissory notes, and not to other negotiable or quasi negotiable paper. (1893) 20 Op. Atty. Gen. 681.

The papers submitted are not notes within the meaning of that act. Id.

1½. Constitutionality.—This statute is constitutional. Veazie Bank v. Fenno (1869) 75 U. S. (8 Wall.) 533, 540, 19 L. Ed. 482.

2. Doubt as to meaning of statute.—If there is any doubt as to the meaning of a statute imposing this tax, the doubt must be resolved in favor of exemption. (1893) 20 Op. Atty. Gen. 681.

3. Reissued notes.—Where the notes when taken up are reissued, every such issue is a new issue thereof, and becomes a part of the amount of the notes so used for circulation, and subject to the tax. U. S. v. Warrick (C. C. 1885) 25 Fed. 138.

That the notes were under the amount of one dollar each will not prevent their being taxable. Id.

4. Clearing house certificates.—A clearing house certificate upon which neither the clearing house nor the bank could be sued in an action at common law and a money judgment recovered by proving and introducing the paper alone without further evidence is not a note within the meaning of the statute. (1893) 20 Op. Atty. Gen. 681.

5. Certificates of indebtedness.—This section does not apply to certificates of indebtedness, bearing interest and payable to bearer on a certain day therein named, issued in denominations of five and ten dollars each, and paid out by a railroad company to its employés for wages, and providing that they would be received by the company at or before maturity for any debts due the company. These notes or certificates, having been issued only to the employés of the company on account of wages, and when paid by the company having been canceled and not reissued, were not "used for circulation," and that they were used afterwards by those to whom they were issued to discharge their debts to others, or to purchase subsistence for themselves, does not affect the character imposed upon them by the company. Philadelphia & R. R. Co. v. Pollock (C. C. 1884) 19 Fed. 401.

6. Wages certificates.—The obligations issued by the Philadelphia & Reading Railroad Company, called "wages certificates," in sums of $10 each, payable in money to the bearer thereof, and receivable in payment of debts due the company (a copy of which instrument is given in the opinion) are "notes used for circulation," within the meaning of this and the following section, and subject to taxation thereunder. (1879) 16 Op. Atty. Gen. 342.

Semble that certain obligations issued by Knapp, Stout & Co., of similar character, payable in merchandise, are within the mischief intended to be remedied by that act; wherefore it is advised that the tax be exacted upon them, as it has heretofore been, under the sections aforesaid. Id.

7. Orders payable in merchandise.—An order on a state bank payable in merchandise silver bullion, which cannot be used as money without danger of total loss to whoever may take it, is not subject to the tax imposed by this and the following section. (1896) 21 Op. Atty. Gen. 336.

Orders payable in merchandise, even though paid out and used as a circulating medium, are not taxable under this section. Zion's Co-op. Mercantile Inst. v. Hollister (Utah, 1873) 3 Pac. 87.

8. Tickets issued by ice companies.—The tickets issued by certain ice companies (copies of which are given in the opinion) are not "notes" within the meaning of that term as used in this section, and therefore are not subject to the 10 per centum tax. (1888) 19 Op. Atty. Gen. 98.

9. Notes prohibited by section 10348.—No tax, as such, is imposed on notes prohibited by section 10348, post. The violation of that section is vindicated by fine or imprisonment, or both. (1888) 19 Op. Atty. Gen. 98.

10. Action under statute.—In an action under this section it must be shown that the defendant intended to put his notes in circulation as money, and paid them out for that purpose; but, in showing such intention, his declarations when he paid out the notes are not the only proper evidence thereof, and it is not error to instruct the jury that paying out the notes, knowing that they would be used and circulated as money, is evidence from which they may infer the intention to pay them out for that purpose. U. S. v. Warrick (C. C. 1885) 25 Fed. 138.

In an action under this section recovery may be had without an assessment of the taxes by the commissioner of internal revenue. Id.

§ 6290. (Act Feb. 8, 1875, c. 36, § 20.) Tax on notes of State banks, municipal corporations, etc., used as circulation.

Every such person, firm, association, corporation, State bank, or State banking association, and also every national banking association, shall pay a like tax of ten per centum on the amount of notes of any person, firm, association other than a national banking association, or of any corporation, State bank, or State banking association, or of any town, city, or municipal corporation, used for circulation and paid out by them. (18 Stat. 311.)

This section superseded R. S. §§ 3412, 3413.

Notes of Decisions

See notes under the preceding section.

Constitutionality.—Act July 13, 1866 (14 Stat. 146), imposing a tax of 10 per cent. upon notes of state banks, etc., used for circulation, does not violate the constitution. The tax cannot be held invalid for being so excessive as to indicate a purpose to destroy the franchise of the state banks. The judiciary cannot set aside a tax laid in the exercise of an acknowledged power of congress on the ground that the power has been exercised oppressively. Moreover, as congress has, in the exercise of its constitutional powers, undertaken to provide a banking currency for the entire country, it may restrain by suitable enactments the circulation as money of any notes not issued under its authority. Veazie Bank v. Fenno (1869) 75 U. S. (8 Wall.) 533, 19 L. Ed. 482.

Act July 13, 1866, requiring all banks to pay a tax of 10 per cent. on the amount of notes of any state bank paid out after a certain day, does not impose a direct tax within Const. art. 1, § 9. Id.

The tax is not objectionable upon any principle that congress cannot tax a franchise granted by a state. Franchises are property, and, when not conferred for the purpose of giving effect to some reserved power of a state, are as properly objects of taxation as any other property. Moreover, the tax in question is laid, not upon the franchises of the state banks, but upon contracts made under it—upon the circulating notes. Id.

R. S. § 3413, was constitutional. Merchants' Nat. Bank v. U. S. (1879) 101 U. S. 1, 25 L. Ed. 979.

In commenting upon the case of National Bank v. U. S. (1879) 101 U. S. 1, 25 L. Ed. 979, holding section 3413, R. S. to be unconstitutional, Solicitor General Conrad said: "Had this decision been made before the passage of the act of February 8, 1875, Congress might have deemed it unnecessary to amend section 3413, R. S., by adding the words 'used for circulation,' for the Supreme Court, in that opinion, very clearly indicated that the banker who pays out notes thereby helps to keep up their use as a circulating medium." (1897) 21 Op. Atty. Gen. 557, 561.

Term "person" as including state.—The term "person," as used in the ninth section of the internal revenue act of July 13, 1866 (chapter 184), and as explained in the forty-fourth section of that act, did not include a State. (1867) 12 Op. Atty. Gen. 176.

"State banking associations" defined.—The phrase "state banking associations" used in the sixth section of the internal revenue act of March 3, 1865 (chapter 78), as amended by the act of July 13, 1866 (chapter 184), comprehends not only associations organized under state banking laws, but associations or partnerships formed by private agreement for the purpose of carrying on the business of banking. And it may also be taken to include a railroad company issuing scrip in the form of currency, where the issue by the company possesses the essential characteristics of a banking operation. (1874) 14 Op. Atty. Gen. 373.

Application of tax.—Banks of the United States are liable for the tax of 10 per cent. on the circulating notes issued by banks in Canada, for circulation in Canada, which have passed over the line and been received by such United States banks and paid out by them within the United States. (1897) 21 Op. Atty. Gen. 557.

The intent and meaning of this section was to apply the tax to the amount of the circulating notes issued by any of the persons or corporations named in the statute, and used by the banks and other persons therein named. Id.

What effect this section could possibly have except to impose a tax on the amount of other notes than its own, paid out by a bank as circulation, is difficult to see. Id.

Notes taxable under former law.—Notes of a state bank or state banking association used for circulation, and paid out by it, whether previously issued or not, are liable to the tax of 10 per cent. (R. S. § 3412.) Deposit Sav. Ass'n v. Mayer (C. C. 1876) Fed. Cas. No. 3,813; Same v. Marks (C. C. 1877) Fed. Cas. No. 3,812.

The certificates or receipts issued by the State of Alabama, under authority of the act of its legislature of February 19, 1867, are not subject to the tax of 10 per cent. imposed by Act

March 26, 1867, c. 8. (1867) 12 Op. Atty. Gen. 176.

The provisions of the sixth section of the act of March 3, 1865 (chapter 78), imposing on national banking associations, state banks, or state banking associations a tax of 10 per cent. upon the amount of notes of any person, state bank, or state banking association, used for circulation and paid out by them, apply as well to the notes of a state bank or banking association which are by itself paid out, as to any others falling within the above description. (1872) 14 Op. Atty. Gen. 98.

Penalty for nonpayment of tax.—The penalty incurred under this and the following sections 20 and 21 of the act of February 8, 1875 (18 Stat. 311), for nonpayment of taxes due on the circulating notes issued by banks in Canada for circulation in Canada, but which have passed over the line and been received by banks in the United States and paid out by them within the United States, may be compromised under section 5952, ante, by the Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury. (1897) 21 Op. Atty. Gen. 558.

Cited without definite application, Hollister v. Zion's Co-operative Mercantile Inst. (1884) 4 Sup. Ct. 263, 264, 111 U. S. 62, 28 L. Ed. 352; Bank of Iron Gate v. Brady (1902) 22 Sup. Ct. 529, 184 U. S. 665, 46 L. Ed. 739; Merchants' Nat. Bank v. U. S. (1909) 29 Sup. Ct. 593, 596, 214 U. S. 33, 53 L. Ed. 899; U. S. v. Dominici (1897) 78 Fed. 334, 336, 24 C. C. A. 116; U. S. v. White (C. C. 1884) 19 Fed. 723, 724; U. S. v. Lamson (C. C. 1908) 165 Fed. 80; In re Aldrich (D. C. 1883) 16 Fed. 369, 372.

§ 6291. (Act Feb. 8, 1875, c. 36, § 21.) Banks' returns; payment of tax; penalties.

The amount of such circulating notes, and of the tax due thereon, shall be returned, and the tax paid at the same time, and in the same manner, and with like penalties for failure to return and pay the same, as provided by law for the return and payment of taxes on deposits, capital, and circulation, imposed by the existing provisions of internal revenue law. (18 Stat. 311.)

The time for payment of taxes was prescribed by R. S. § 3409, post, § 6293.

Monthly returns were required by R. S. § 3414, post, § 6295.

Insolvent banks were not to be required to pay the tax, by Act March 1, 1879, c. 125, § 22, post, § 6299.

§ 6292. (R. S. § 3408.) Tax on circulation.

There shall be levied, collected, and paid, as hereafter provided:

* * * * * * * *

Third. A tax of one-twelfth of one per centum each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or to be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and an additional tax of one-sixth of one per centum each month upon the average amount of such circulation, issued as aforesaid, beyond the amount of ninety per centum of the capital of any such bank, association, corporation, company, or person.

In the case of banks with branches, the tax herein provided shall be assessed upon the circulation of each branch severally, and the amount of capital of each branch shall be considered to be the amount allotted to it.

* * * * * * * *

Act June 30, 1864, c. 173, § 110, 13 Stat. 277. Act July 13, 1866, c. 184, § 9, 14 Stat. 137. Act June 6, 1872, c. 315, § 37, 17 Stat. 256.

This section, as enacted in the Revised Statutes, contained three subsections. The first imposed a tax on deposits, the second on capital, and the third is set forth here. The subsections were followed by a provision exempting savings banks from the tax on deposits. This provision was amended by Act March 1, 1879, c. 125, § 22, 20 Stat. 351. The taxes imposed by the first and second subsections were repealed by Act March 3, 1883, c. 121, § 1, 22 Stat. 488. The provision as to savings banks, as amended, was also superseded by said section.

Taxation of national banks was provided for by R. S. §§ 5214–5219, post, §§ 9779–9784.

National banking associations having circulating notes secured otherwise than by bonds of the United States were required to pay a tax on such

notes by Act May 30, 1908, c. 229, § 9, as amended by the Federal Reserve Act of Dec. 23, 1913, c. 6, § 27, post, § 9743.

The special taxes imposed on bankers by the War Revenue Act of June 13, 1898, c. 448, § 2, 30 Stat. 448, and the amendment thereto by Act March 2, 1901, c. 806, § 2, 31 Stat. 938, were abrogated by the repeal of that section by Act April 12, 1902, c. 500, § 2, 32 Stat. 96. These taxes were revived by Act Oct. 22, 1914, c. 331, § 3, 38 Stat. 750, but this act was repealed by Act Sept. 8, 1916, c. 463, § 410, set forth ante, § 5980*l*. See, also, § 5980a, ante, and note thereunder.

The Secretary of the Treasury was authorized to adjust and remit certain taxes and penalties claimed to be due from mining and other corporations by Act March 3, 1875, c. 167, 18 Stat. 507.

Notes of Decisions

See notes under § 6288, ante.

Purpose of tax.—The purpose of the tax on the state banks was revenue, coupled with the policy of ultimately compelling the retirement of state bank notes. Merchants' National Bank of Baltimore v. U. S. (1906) 42 Ct. Cl. 6.

Direct tax.—Act July 13, 1866, c. 184, § 9, did not lay a direct tax. Veazie Bank v. Fenno (1869) 8 Wall. 533, 540, 19 L. Ed. 482.

Tax on average amount of circulation in general.—The tax upon the average amount of circulation "issued" applies both to the making of notes and the putting of them in circulation. Deposit Sav. Ass'n v. Mayer (C. C. 1876) Fed. Cas. No. 3,813.

Certificate of indebtedness as circulation.—Certificates of indebtedness issued by a railroad company, not calculated or intended to circulate or be used as money, are not taxable as "circulation," under this section. U. S. v. Wilson (1883) 2 Sup. Ct. 85, 106 U. S. 620, 27 L. Ed. 310.

Check marked "good" as certified check.—A check marked "good" is a certified check, and a stamp, such as is required for the acceptance of a draft, is not required on such certification, as certified checks are taxed specifically in another way. Merchants' Nat. Bank v. State Nat. Bank (1870) 10 Wall. 604, 648, 19 L. Ed. 1008.

Circulation of branch banks.—The meaning and intent of the whole of this section, providing for a tax upon the circulation of branch banks severally, was to assume that the active moneys employed by an incorporated bank were represented by its capital, and that the capital of a branch bank was the amount which was allotted to it, or which it was permitted to use; and the branch, for the purpose of this tax on capital, was deemed a separate entity. U. S. v. Bank of Montreal (C. C. 1884) 21 Fed. 236.

Tax on capital and deposits under this section as originally enacted in the Revised Statutes.—See, also, notes under § 6288, ante.

The term "capital," within the internal revenue act as amended by Act July 13, 1866, imposing a tax of one twenty-fourth of 1 per centum on the capital of banks, does not include money borrowed temporarily in the course of business, but only the property or funds of the banker set apart from other uses. Bailey v. Clark (1846) 88 U. S. (21 Wall.) 284, 22 L. Ed. 651, affirming Clark v. Bailey (C. C. 1874) Fed. Cas. No. 2,814.

The term "capital" embraces only the fixed capital employed in the business of banking, as distinguished from deposits and temporary loans made in the regular course of business. Bailey v. Clark (1874) 21 Wall. 284, 286, 22 L. Ed. 651.

Savings banks held to be "engaged in the business of banking" within the meaning of the first clause of section 110 of the Revenue Act of June 30, 1864, which enacted that "there shall be levied, collected and paid a duty of $^1/_{24}$ of 1 per cent. each month upon the average amount of the deposits of money * * * with any person, bank, association, corporation or company engaged in the business of banking." Bank for Savings v. The Collector (1865) 70 U. S. (3 Wall.) 495, 510, 18 L. Ed. 207.

On the repeal of the proviso to section 110 of the Revenue Act of June 30, 1864, which declared that it should not apply "to any savings bank having no capital stock, and whose business is confined to receiving deposits and loaning the same on interest for the benefit of the depositors only, and which do no other business of banking," such savings bank became subject to the duty imposed by the principal enactment. Id.

Moneys received by such banks from depositors become "deposits" within the meaning of the act as soon as they are received, and as such are immediately subject to taxation. Id.

An agreement between a savings bank and a depositor that money deposited shall be reimbursed only out of the first disposable funds that shall come into the hands of the bank after demand, being a regulation adopted only for an emergency, and not one that essentially impairs the just claim of the depositor, did not relieve the bank from taxation on the deposit. Oulton v. Savings Inst. (1872) 84 U. S. (17 Wall.) 109, 21 L. Ed. 618.

Savings banks having a capital stock, or doing other business than receiving deposits to be lent or invested for the sole benefit of the person making them,

are not within the proviso to Act June 30, 1864, § 110, as amended by Act July 13, 1866, excepting from taxation on deposits savings banks having no capital stock and doing no other business than that specified. Id.

Under Act June 30, 1864, § 110, as amended by Act July 13, 1866, taxing deposits in banks which are subject to payment by check or draft, or represented by certificate of deposit or otherwise, an entry made in a depositor's pass book of a deposit or payment is "a certificate of deposit," or "check or draft," within the section. Id.

An entry made in a depositor's passbook of a deposit or payment is a certificate of deposit, or check, or draft, within the statute. Id.

Savings banks were not exempt from taxation where they had capital stock, or where they did any other business than receiving deposits to be loaned or invested for the benefit of depositors, and an agreement between a savings bank and a depositor that money deposited should be reimbursed only out of the first disposable funds coming into the hands of the bank after demand did not change the case. Oulton v. German Sav. & L. Soc. (1872) 17 Wall. 109, 119, 21 L. Ed. 618.

Capital of a state bank invested abroad and in foreign countries held taxable under this section as enacted in the Revised Statutes. Nevada Bank v. Sedgwick (1881) 104 U. S. 111, 26 L. Ed. 703.

R. S. § 3408, which provided that "the deposits in savings banks shall be exempt from tax * * * on all deposits not exceeding $2,000 made in the name of any one person," exempted $2,000 of those deposits in the name of any one person which exceed $2,000. German Sav. Bank v. Archbold (1881) 104 U. S. 708, 26 L. Ed. 901, reversing (C. C. 1878) Fed. Cas. No. 5,364.

The exemption of savings banks in the last clause of this section as enacted in the Revised Statutes, did not apply only to such deposits as amounted to $2,000 or under, but was intended to exempt all deposits to the extent that they were invested in United States securities, and also to the extent of $2,000. German Sav. Bank v. Archbold (1881) 104 U. S. 708, 709, 710, 26 L. Ed. 901.

Act March 1, 1875, c. 125, as it originally stood, meant the same thing. Id.

Moneys placed in a bank by the state treasurer of New York, pursuant to the contract between the bank and the commissioners of the canal fund, and also under R. S. N. Y. pt. 1, c. 8, tit. 4, §§ 7–10, to be disbursed by the bank, as agent of the state, in discharge of the principal and interest of the state canal loan and the loan for payment of bounties to volunteers, and which moneys were held by the bank at its own risk, mixed with its general funds, and were subject to be recalled by the state, were "deposits," and computable as such in determining the sum subject to the federal tax of one twenty-fourth of 1 per cent. a month, imposed by the act of June 30, 1864, § 110 (R. S. § 3408), on the average amount of bank deposits subject to payment by check, draft, etc. President & Directors of Manhattan Co. v. Blake (1893) 13 Sup. Ct. 640, 644, 148 U. S. 412, 37 L. Ed. 504.

Moneys placed in a bank by the state treasurer, under R. S. N. Y. pt. 1, c. 8, tit. 4, §§ 7–10, to be disbursed by the bank as agent of the state, in discharge of the principal and interest of the state canal loan, was not held by the bank merely as agent of the state, so as to render the tax a tax on the revenue of the state in the hands of its disbursing agent, or a tax directly on the revenues of the state. Id.

The deposit of the money by the state did not create a vested right in the creditors to whom it was to be paid, so as to make the bank a mere trustee for them; nor, on the other hand, was the money held by the bank merely as agent of the state, so as to render the tax a tax on the revenues of the state in the hands of its disbursing agent, or a tax directly upon the revenues of the state. Id.

Act June 30, 1864, § 110, did not authorize a tax of $^1/_{24}$ of 1 per cent. on money borrowed by a banking firm. Clark v. Bailey (C. C. 1874) Fed. Cas. No. 2,814.

A tax of $^1/_{24}$ of 1 per cent. each month on deposits subject to check was collectible under Act June 30, 1864, § 110, even though interest was allowed on such deposits. Id.

Though a deposit in a savings bank exceed $2,000, that amount thereof was exempt. R. S. § 3408. German Sav. Bank v. Archbold (C. C. 1878) Fed. Cas. No. 5,364.

The tax on deposits imposed by R. S. § 3408, as originally enacted, was a tax on the bank, and not on the depositor, and was not subject to the objection that it was not a uniform tax. Id.

In an action by the United States to recover a tax of one twenty-fourth of 1 per centum each month upon the capital stock of a bank, under section 3408, subsec. 2, of the Revised Statutes as originally enacted, the assessment list made by the commissioner of internal revenue, and not appealed from, is not conclusive evidence, but the defendant may show that the assessment was excessive or illegal. U. S. v. Bank of America (C. C. 1883) 15 Fed. 730.

R. S. § 3408, provided that state banks should pay a tax of one twenty-fourth of one per cent. per month on the average deposits of money subject to payment by check or drafts, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day. Plaintiff, as such bank, received for deposit checks and drafts on other city banks, which were sent by it to another bank to be put through the clearing house, necessitat-

ing the keeping of a large balance in such other bank to meet any balances that might be due from plaintiff to such bank on account of those clearances. Held, that the checks and drafts upon other city banks constituted a part of plaintiff's deposits subject to payment on check or draft, and should be included in determining the average daily deposits for the purpose of taxation. Bank of the Metropolis v. Weber (C. C. 1889) 41 Fed. 413.

Under that provision every banking association, company, or corporation is taxable for the fixed amount of its capital, and every private banker for the entire capital employed by him in the banking business, less only the average amount invested by them respectively in United States bonds. (1877) 15 Op. Atty. Gen. 218.

The terms "capital" and "capital employed," as used in paragraph second of section 3408, R. S., included such portion of the capital of any bank, association, company, corporation, or person mentioned therein as was invested in a banking house. Id.

The Eagle & Phœnix Manufacturing Company, a Georgia corporation, with a large capital invested in mills, machinery, etc., by authority of an act of the Georgia legislature passed in 1873 established a savings bank in connection with its manufacturing business, pledging the entire capital stock and property of the company for the payment of depositors and the holders of certificates of deposits issued thereby. By the same act the company was authorized to issue certificates of deposit "to an amount equal to the amount actually deposited, in sums of five, two, and one dollars, which may be payable to the holder of the same, and may be circulated by delivery as currency," which were issued and employed as currency in the business of the company: Held, that the company was subject to the tax imposed by the second paragraph of section 3408, R. S., of "one twenty-fourth of one per centum each month" upon its whole capital stock. (1877) 15 Op. Atty. Gen. 371.

Where certain savings banks, without capital stock, received daily deposits from others than their regular depositors, under agreement that no interest should be allowed thereon, but that they might be checked out without previous notice, and that the checks should be paid by drafts on Boston when so required, to meet which drafts a fund was kept on deposit in a Boston bank, upon which interest was allowed the savings banks at the rate of 4 per cent. per annum, held, that these savings banks are not entitled to exemption from taxation on said deposits under section 9, c. 184, Act July 13, 1866 (nor under section 3408, R. S.). (1878) 15 Op. Atty. Gen. 452.

By operation of the repeal provision in the act of March 3, 1883 (22 Stat. 488, 526), the taxes on capital and deposits of banks, bankers, and national banking associations, imposed by the internal revenue law in force at the time of the passage of that act, are not assessable and collectible on the capital and deposits of banks and bankers for the interval between December 1, 1882, and March 3, 1883, nor on the capital and deposits of national banking associations for the interval between January 1 and March 3, 1883. (1883) 17 Op. Atty. Gen. 539.

The words "any right accruing," etc., used in section 13 of the said act, do not include such taxes accruing at the date of the repeal, there being, as to them, no right in esse. It is the accruing right, not the accruing tax, that is saved. Id.

The provisions of section 13, R. S., section 14, ante, saving "any penalty, forfeiture, or liability incurred" under the statute repealed, do not extend to the taxes referred to; since, as to them, there are no "liabilities incurred" at the date of the act of March 3, 1883. Id.

Cited without definite application, Hollister v. Zion's Co-operative Mercantile Inst. (1884) 4 Sup. Ct. 263, 264, 111 U. S. 62, 28 L. Ed. 352; Richmond v. Blake (1890) 10 Sup. Ct. 204, 205, 206, 132 U. S. 592, 33 L. Ed. 481; In re Aldrich (D. C. 1883) 16 Fed. 369, 372.

§ 6293. (R. S. § 3409.) Taxes, when payable.

The taxes provided in the preceding section shall be paid semi-annually, on the first day of January and the first day of July; but the same shall be calculated at the rate per month as prescribed by said section, so that the tax for six months shall not be less than the aggregate would be if such taxes were collected monthly.

Act June 30, 1864, c. 173, § 110, 13 Stat. 277. Act July 13. 1866, c. 184, § 9, 14 Stat. 146. Act June 6, 1872, c. 315, § 37, 17 Stat. 256.

The tax on bank circulation imposed by Act Feb. 8, 1875, c. 36, §§ 19, 20, ante, §§ 6289, 6290, was required to be paid at the time and in the manner provided by law by section 21 of said act, also set forth ante, § 6291.

Notes of Decisions

See notes under § 6288, ante.

(R. S. § 3410. Superseded.)

This section provided that the capital of a State bank ceasing to exist, or being converted into a national bank, should be assumed to be the capital as it

existed immediately before such bank ceased to exist or was so converted. It was superseded by the repeal of the taxes on capital and deposits of banks by Act March 3, 1883, c. 121, § 1, 22 Stat. 488.

§ 6294. (R. S. § 3411.) Circulation, when exempted from tax.

Whenever the outstanding circulation of any bank, association, corporation, company, or person is reduced to an amount not exceeding five per centum of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation; and whenever any bank which has ceased to issue notes for circulation deposits in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary of the Treasury shall prescribe, it shall be exempt from any tax upon such circulation.

Act March 3, 1865, c. 78, § 14, 13 Stat. 486. Act July 13, 1866, c. 184, § 9 bis, 14 Stat. 146.

Notes of Decisions

See notes under § 6288, ante, and §§ 6297 and 6299, post.

Banks to which statute applies.—This section relates to state, and not to national banks. Merchants' Nat. Bank v. U. S. (1909) 29 Sup. Ct. 593, 596, 214 U. S. 33, 53 L. Ed. 899.

Operation and effect of exemption.—A national bank whose outstanding circulating notes amount to less than 5 per cent. of its capital is not exempted from the payment of the half-yearly duty imposed by section 9779, post, upon the average amount of its notes in circulation, by the provision of this section that the outstanding circulation of any bank, association, corporation, company, or person shall be free from taxation when reduced to an amount not exceeding 5 per cent. of its capital, although the latter section is by section 6298, post, expressly made applicable to national banking associations, since it was so made applicable, as clearly appears from the legislation from which its provisions were drawn, in order to give national banks representing state banks the benefit of loss or inability to retire the circulation of the state bank when 95 per cent. thereof had been actually retired. Merchants' Nat. Bank v. U. S. (1909) 29 Sup. Ct. 593, 594, 214 U. S. 33, 53 L. Ed. 899, affirming judgment (1906) 42 Ct. Cl. 6.

The exemption from taxation of 5 per cent. of the outstanding circulation of any bank, association, corporation, company, or person, provided by this section does not relate to the tax upon notes paid out which the sixth section of the act of 1865 (R. S. § 3412) imposes, but exclusively to the tax upon circulation imposed by the one hundred and tenth section of the act of June 30, 1864 (chapter 173), as amended by section 9 of the said act of 1866 (section 6292, ante); and it relieves, to the extent mentioned, from the latter tax only. (1872) 14 Op. Atty. Gen. 98.

(R. S. §§ 3412, 3413. Superseded.)

R. S. § 3412, required banks to pay a tax on the amount of notes of a person or State bank or State banking association used for circulation and paid out by them.

R. S. § 3413, required banks to pay a tax on the amount of notes of municipal corporations paid out by them.

Both these sections were superseded by Act Feb. 8, 1875, c. 36, § 20, set forth ante, § 6290.

Notes of Decisions

See notes under § 6290, ante.

§ 6295. (R. S. § 3414.) Banks' and bankers' monthly returns.

A true and complete return of the monthly amount of circulation, [of deposits, and of capital,] as aforesaid, and of the monthly amount of notes of persons, town, city, or municipal corporation, State banks, or State banking associations paid out as aforesaid for the previous six months, shall be made and rendered in duplicate on the first day of December and the first day of June, by each of such banks, associations, corporations, companies, or persons, with a declaration annexed thereto, under the oath of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful statement of the amounts subject to tax, as aforesaid; and one copy shall be transmitted to the collector of the district in which

any such bank, association, corporation, or company is situated, or in which such person has his place of business, and one copy to the Commissioner of Internal Revenue.

Act June 30, 1864, c. 173, § 110, 13 Stat. 278. Act July 13, 1866, c. 184, § 9 bis, 14 Stat. 147. Act March 26, 1867, c. 8, § 2, 15 Stat. 6. Act June 6, 1872, c. 315, § 37, 17 Stat. 256. Act Dec. 24, 1872, c. 13, § 5, 17 Stat. 403.

The words of this section "of deposits, and of capital," inclosed in brackets, were superseded by the repeal of taxes on deposits and capital by Act March 3, 1883, c. 121, § 1, 22 Stat. 488.

The taxes on circulation of banks other than national banks, and on banks using as circulation or paying out the notes of State banks and municipal corporations, were fixed by Act Feb. 8, 1875, c. 36, §§ 19, 20, ante, §§ 6289, 6290. Banks were required to make the returns of such circulation, as prescribed by this section, by section 21 of said act, also set forth ante, § 6291.

Notes of Decisions

See notes under § 6288, ante.

Cited without definite application, Merchants' Nat. Bank v. U. S. (1909) 29 Sup. Ct. 593, 596, 214 U. S. 33, 53 L. Ed. 899.

§ 6296. (R. S. § 3415.) In default of return, Commissioner to estimate, etc.

In default of the returns provided in the preceding section, the amount of circulation, [deposit, capital,] and notes of persons, town, city, and municipal corporations, State banks, and State banking associations paid out, as aforesaid, shall be estimated by the Commissioner of Internal Revenue, upon the best information he can obtain. And for any refusal or neglect to make return and payment, any such bank, association, corporation, company, or person so in default shall pay a penalty of two hundred dollars, besides the additional penalty and forfeitures provided in other cases.

Act June 30, 1864, c. 173, § 110, 13 Stat. 278. Act July 13, 1866, c. 184, § 9 bis, 14 Stat. 147. Act Dec. 24, 1872, c. 13, § 2, 17 Stat. 402.

The words of this section, "deposit, capital," inclosed in brackets, were superseded by the repeal of taxes on deposits and capital by Act March 3, 1883, c. 121, § 1, 22 Stat. 488.

See notes to preceding section.

Notes of Decisions

See notes under § 6288, ante.

Cited without definite application, Merchants' Nat. Bank v. U. S. (1909) 29 Sup. Ct. 593, 596, 214 U. S. 33, 53 L. Ed. 899.

§ 6297. (R. S. § 3416.) State banks converted into national banks; returns, how made.

Whenever any State bank or banking association has been converted into a national banking association, and such national banking association has assumed the liabilities of such State bank or banking association, including the redemption of its bills, by any agreement or understanding whatever with the representatives of such State bank or banking association, such national banking association shall be held to make the required return and payment on the circulation outstanding, so long as such circulation shall exceed five per centum of the capital before such conversion of such State bank or banking association.

Act March 3, 1865, c. 78, § 14, 13 Stat. 486. Act July 13, 1866, c. 184, § 9 bis, 14 Stat. 146.

Notes of Decisions

See notes under § 6288, ante.

Statute as reiteration of previous section.—This section was plainly not enacted to reiterate what was expressly or impliedly embodied in section 6294, ante, though construed to relate to state banks only, but was to declare the obligation of a national bank in a stated contingency, to make return and payment on the outstanding circulation of a state bank which was subject to taxation. Merchants' Nat. Bank v. U. S. (1909) 29 Sup. Ct. 593, 597, 214 U. S. 33, 53 L. Ed. 899.

Cited without definite application, Merchants' National Bank of Baltimore v. U. S. (1906) 42 Ct. Cl. 6.

§ 6298. (R. S. § 3417, as amended, Act Feb. 18, 1875, c. 80, § 1.) Provisions for bank tax and returns not to apply to national banks.

The provisions of this chapter, relating to the tax on the [deposits, capital, and] circulation of banks, and to their returns, except as contained in sections thirty-four hundred and ten, thirty-four hundred and eleven, thirty-four hundred and twelve, thirty-four hundred and thirteen, and thirty-four hundred and sixteen, and such parts of sections thirty-four hundred and fourteen, and thirty-four hundred and fifteen as relate to the tax of ten per centum on certain notes, shall not apply to associations which are taxed under and by virtue of Title "National Banks."

Act June 30, 1864, c. 173, § 110, 13 Stat. 278. Act July 13, 1866, c. 184, § 9 bis, 14 Stat. 146. Act Feb. 18, 1875, c. 80, 18 Stat. 319.

This section, as enacted in the Revised Statutes, was amended by inserting, among the sections mentioned, the words "thirty-four hundred and thirteen," as set forth here, by Act Feb. 18, 1875, c. 80, § 1, cited above.

The words of this section, "deposits, capital and," inclosed in brackets, were superseded by the abolition of taxes on deposits and capital by Act March 3, 1883, c. 121, § 1, 22 Stat. 488.

Insolvent national banks were exempted from tax by Act March 1, 1879, c. 125, § 22, set forth post, § 6299.

R. S. § 3410, mentioned in this section, was superseded by the abolition of the tax on capital by Act March 3, 1833, c. 121, § 1, 22 Stat. 488. R. S. §§ 3412, 3413, also mentioned in this section, were superseded by Act Feb. 8, 1875, c. 36, § 20, ante, § 6290. R. S. §§ 3411, 3414, 3415, 3416, also mentioned in this section, are set forth ante, §§ 6294–6297.

Notes of Decisions

See notes under § 6288, ante.

Effect as to section 6294.—A national bank whose outstanding circulating notes amount to less than 5 per cent. of its capital is not exempted from the payment of the half-yearly duty imposed by section 9779, post, upon the average amount of its notes in circulation, by the provision of section 6294, ante, that the outstanding circulation of any bank, association, corporation, company, or person shall be free from taxation when reduced to an amount not exceeding 5 per cent. of its capital, although the latter section is by this section expressly made applicable to national banking associations, since it was so made applicable, as clearly appears from the legislation from which its provisions were drawn, in order to give national banks representing state banks the benefit of the presumption of loss or inability to retire the circulation of the state bank when 95 per cent. thereof had been actually retired. Judgment (1906) 42 Ct. Cl. 6, affirmed. Merchants' Nat. Bank v. U. S. (1909) 29 Sup. Ct. 593, 594, 214 U. S. 33, 53 L. Ed. 899.

§ 6299. (Act March 1, 1879, c. 125, § 22.) Insolvent bank exempt from tax.

Whenever and after any bank has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Commissioner of Internal Revenue, when the facts shall so appear to him, is authorized to remit so much of said tax against insolvent State and savings banks as shall be found to affect the claims of their depositors. (20 Stat. 351.)

This was part of section 22 of an Act to amend the laws relating to internal revenue, cited above.

Further provisions of this section, omitted here, related to the collection of the tax on deposits of savings banks. They were superseded by the abolition of the tax by Act March 3, 1883, c. 121, § 1, 22 Stat. 488.

Notes of Decisions

See note under § 6292, ante.

Operation and effect of statute in general.—This section does not cause section 6294, ante, to apply to national banks in the broad sense, but was expressly made applicable in order to

give to national banks as representing state banks the benefit of the presumption of loss, or inability to retire the circulation of the state bank, when such circulation had been reduced by 95 per centum of the volume thereof. Merchants' Nat. Bank v. U. S. (1909) 29 Sup. Ct. 593, 597, 214 U. S. 33, 53 L. Ed. 899.

It is clearly the intention of this section to relieve the customers of an insolvent national bank from the relation of taxpayers, but not to relieve the owners of the institution from their liabilities. Jackson v. U. S. (1885) 20 Ct. Cl. 298.

Taxes to which statute applies.—This section applies to taxes assessed before the passage of the act, but not paid when the act took effect. Johnston v. U. S. (1881) 17 Ct. Cl. 157.

This statute was passed to relieve depositors from contributing to the payment of taxes assessed, not upon them, but upon the assets of the proprietors as a corporation. It abates the tax when the proprietors have no such assets which can be reached from which to pay the same. Id.

Decisions under War Revenue Act of June 13, 1898, c. 448.

War revenue act of 1898.—Where a fund accumulated by a bank was carried on its books under the head of "profit and loss" for a period of years, and was used in the bank's business like its other capital, such fund, though not "surplus," should be regarded as an accretion to capital, and was therefore subject to federal taxation under Act June 13, 1898, c. 448, § 2, 30 Stat. 448, providing that bankers using or employing a capital not exceeding certain amounts shall pay certain federal taxes, and that, in estimating capital, surplus shall be included. Leather Manufacturers' Nat. Bank v. Treat (1904) 128 Fed. 262, 62 C. C. A. 644, affirming judgment (C. C. 1902) 116 Fed. 774, and writ of certiorari denied (1905) 25 Sup. Ct. 802, 198 U. S. 584, 49 L. Ed. 1173.

The capital and surplus of a trust company permanently invested in stocks and bonds, the bank business being done entirely on deposits, is not subject to the tax upon capital and surplus used in banking imposed by War Revenue Act June 13, 1898, c. 448, § 2, subd. 1, 30 Stat. 448. Treat v. Farmers' Loan & Trust Co. (1911) 185 Fed. 760, 108 C. C. A. 98, affirming judgments Central Trust Co. of New York v. Treat (C. C. 1909) 171 Fed. 301, and Farmers' Loan & Trust Co. v. Same (C. C. 1909) 171 Fed. 302.

Surplus earnings of a bank held not liable to a license tax thereon as capital under Act June 30, 1864, § 79. Mechanics' & Farmers' Bank v. Townsend (C. C. 1866) Fed. Cas. No. 9,381.

A loan and trust company which issues certificates of deposit, and makes loans on stocks, bonds, and other security, is subject to the payment of the license fee imposed by Act 1864, § 79, cl. 1. U. S. v. Farmers' Loan & Trust Co. (C. C. 1866) Fed. Cas. No. 15,070.

As the Bank of Montreal can have no corporate existence in the United States, but only transacts business by comity, an agency established by it here must, for the purpose of the revenue laws, be considered the same as a private person engaged in the banking business, and pay the tax upon the amount of money employed in its business, without regard to whether it is, technically, capital or not. U. S. v. Bank of Montreal (C. C. 1884) 21 Fed. 236.

War Revenue Act June 13, 1898, c. 448, § 2, 30 Stat. 448, provides that bankers, and persons and firms engaged in various other similar occupations, employing a capital not exceeding $25,000, shall pay a certain tax, and a certain additional amount for every $1,000 of capital above $25,000, and that in estimating capital surplus shall be included. Held that, inasmuch as the act does not refer exclusively to national banks, the word "surplus" as used in the act will not be restricted, in assessing a national bank, to the meaning given it in previous national bank legislation, as covering only so much of the surplus profits as the board of directors have set apart for a reserve capital, but includes the entire surplus of assets over liabilities. Leather Manufacturers' Nat. Bank v. Treat (C. C. 1902) 116 Fed. 774, judgment affirmed (1904) 128 Fed. 262, 62 C. C. A. 644, and writ of certiorari denied (1905) 25 Sup. Ct. 802, 198 U. S. 584, 49 L. Ed. 1173.

War Revenue Act June 13, 1898, c. 448, § 2, 30 Stat. 448, provided that bankers using a capital not exceeding $25,000 should pay a tax of $50 and $2 additional for every $1,000 in excess of $25,000, and that, in estimating, the capital surplus should be included. The section also declares that every person, firm, etc., having a place where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted on draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or sale, shall be a "banker" within the act. Held, that it was only the capital surplus used in the banking business that was subject to tax, and hence the undivided profits of a trust company, invested in bonds and stocks, were not subject to taxation, though the corporation was engaged in some of the activities of a bank, and the profits so invested were available to make good

losses in the corporation's enterprises and to increase its credit. Central Trust Co. of New York v. Treat (C. C. 1909) 171 Fed. 301, Farmers' Loan & Trust Co. v. Same (C. C. 1909) 171 Fed. 302, decrees affirmed Treat v. Farmers' Loan & Trust Co. (1911) 185 Fed. 760, 108 C. C. A. 98.

Profit is the gain made upon any business or investment when both the receipts and payments are taken into account. (1899) 22 Op. Atty. Gen. 320.

The undivided profits of a bank are not surplus, and cannot be estimated under the war revenue act of 1898 (30 Stat. 448) as a part of the bank surplus. Id.

The capital of a bank and other funds belonging to it which, by law or the action of the bank authorities, assume the character of capital, and which the bank uses in carrying on its business, is what the law has in view as the subject of taxation. Id.

The term "surplus," as applied to banks, includes not only the amount set apart as a minimum surplus, under the national banking act, but also such amount as has been set apart by a vote of the directors or other authorized action of the bank to strengthen the capital, and is thus held out to the public as a part of its banking capital. Id.

State banks are taxable upon the amount of their capital, together with such additional surplus or funds belonging to them as may be set apart either by law or by the action of the bank authorities and used in carrying on the general business of the bank. Id.

The tax referred to in section 2 of the act (30 Stat. 448) should be computed on the basis of the capital and surplus for the fiscal year preceding the time at which the assessment is made. Id.

The "undivided profits" or "profit and loss" accounts of banking institutions are not taxable as surplus under sec. 2 of the war revenue act of June 13, 1898 (30 Stat. 448). (1900) 23 Op. Atty. Gen. 341.

In enacting this law Congress meant to tax only the capital of a bank in its strict technical sense under the banking laws, and in taxing surplus it meant the fund formally set apart by the authorized officers of the bank as surplus, and not the undivided profits of the institution. Id.

The Secretary of the Treasury has authority under section 10131, post, to remit the penalty imposed under section 5899, ante, on a national bank for its failure to make a timely return of its liability for the special tax levied under section 2 of the war revenue act of June 13, 1898 (30 Stat. 448). (1901) 23 Op. Atty. Gen. 398.

CHAPTER EIGHT A

Special Excise Tax on Corporations

§§ 6300–6309. (Repealed and superseded.)

The above sections of the compilation of 1913 were inserted here as additional to the chapters of this Title in the Revised Statutes. They included provisions of the Payne-Aldrich Tariff Act of Aug. 5, 1909, c. 6, § 38, 36 Stat. 112, imposing a special excise tax on corporations, and subsequent acts amendatory thereof relating to such tax, which provisions were continued in force for a limited time by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, S. Said section 38, the amendatory act of March 4, 1913, c. 142, § 1, 37 Stat. 759, relating to inspection of returns, and Act March 3, 1913, c. 120, relating to refund of additional tax imposed for neglect to file returns, are now wholly superseded by Act Sept. 8, 1916, c. 463, title I, part II, set forth post, §§ 6336j–6336x, imposing an income tax on corporations, and by section 407 of the latter act, imposing a special tax on corporations, set forth ante, § 5980a.

Notes of Decisions

Decisions affecting § 6300

1. Constitutionality in general.
2. Exemption as invalidating tax.
3. Measuring excise by net income from all sources as invalidating tax.
4. Construction and operation of statute in general.
5. "Income received" and "net income."
6. Carrying on or doing business.
7. Organization for profit.
8. Corporations acting as agents of state.
9. Insolvent corporations.
10. Effect of dissolution.
11. Receivers as liable to tax.
12. Real estate trusts.
13. Street railroad companies.
14. Railroad company in Phillippine Islands.
15. Mining corporations.
16. Foreign steamship companies.
17. Savings banks.
18. Building and loan associations.
19. Partnership associations.
20. Recovery of tax paid.
21. Former laws.
22. —— War revenue act of 1898.

1. Constitutionality in general.— Property is not taken without due process of law by this statute. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

Inequality of application, owing to different local conditions, does not invalidate the excise imposed by this statute. Id.

The possibility that the rights of the

several states to create corporations may practically be destroyed by the exercise of the power assumed by Congress in this statute furnishes no ground for judicial interference with the tax. Id.

The measurement by the net corporate income from all sources of the excise imposed by this statute is not so arbitrary and baseless as to fall outside of the authority of the taxing power. Id.

The substitution in the Senate of a tax on corporations in lieu of the plan of inheritance taxation contained in a general bill for the collection of revenue as it came from the House of Representatives where the bill originated was not violative of the constitutional provision that all bills for the raising of revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills. Id.

The tax measured by net annual income imposed by this statute, upon the carrying on or doing of business in a corporate or quasi corporate capacity, being an excise, and not a direct, tax, is not invalid because not apportioned among the several states according to population. Id.

There is such a substantial difference between the carrying on of business by corporations and the same business when conducted by a private firm or individual as would justify—even were the principles of the fourteenth amendment applicable—the excise imposed by this statute upon the carrying on or the doing of business in a corporate or quasi corporate capacity. Id.

Treating the proceeds of ore mined by a corporation upon its own premises as "income" within the meaning of the statute does not make such excise the equivalent of a direct tax upon the property, and therefore invalid, because not apportioned to population, as prescribed by the federal Constitution. Stratton's Independence v. Howbert (1913) 34 Sup. Ct. 136, 231 U. S. 399, 58 L. Ed. 285.

Construing the statute as preventing a realty corporation from deducting from gross income interest paid on mortgage in excess of its capital stock held not unconstitutional as an arbitrary and unreasonable classification. Anderson v. Forty-Two Broadway Co. (1915) 36 Sup. Ct. 17.

Tax imposed on corporations by this and the following sections held valid as an excise on the privilege of doing business. Blalock v. Georgia Ry. & Electric Co. (C. C. A. 1916) 228 Fed. 296.

2. Exemption as invalidating tax.—Taxing a business when carried on by a corporation, and exempting a similar business when carried on by a partnership or by a private individual as is done by this statute, imposing an excise upon the carrying on or the doing of business in a corporate or quasi corporate capacity, does not invalidate the tax, since the only limitation upon the power of Congress is uniformity in laying the tax, and this is a geographical uniformity, which does not require the equal application of the tax to all persons or corporations who may come within its operation. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

Exempting corporations whose net annual incomes are under $5,000 from the excise imposed by this act upon the doing or the carrying on of business in a corporate or quasi corporate capacity, does not invalidate the tax. Id.

Labor, agricultural, and horticultural organizations, fraternal and benevolent societies, and organizations for religious, charitable or educational purposes, could be excepted from the operation of the excise imposed by this act without invalidating the tax. Id.

3. Measuring excise by net income from all sources as invalidating tax.—Measuring the excise imposed by the statute upon the carrying on or the doing of business in a corporate or quasi corporate capacity by the entire net income from all sources does not invalidate the tax, although a part of such income may be derived from property in itself not taxable. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

4. Construction and operation of statute in general.—An excise upon the carrying on or the doing of business in a corporate or quasi corporate capacity is what was imposed by this section. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

This section imposes a tax and must be strictly construed, and cannot be enlarged by construction to cover matters not clearly within its purport. Pennsylvania Steel Co. v. New York City Ry. Co. (1912) 198 Fed. 774, 117 C. C. A. 556.

The tax is not direct, but an excise on the privilege of doing business in a corporate capacity. Anderson v. Morris & E. R. Co. (1914) 216 Fed. 83, 132 C. C. A. 327.

Where a railroad corporation leased its property and franchises, the fact that the rent was paid to its stockholders and bondholders instead of to the lessor entity could not prevent the rent being subject to taxation under the statute, if otherwise applicable. Id.

The tax is not a tax upon income, but an excise tax upon the right to do business as a corporation, the amount of which is measured by income. National Bank of Commerce in St. Louis v. Allen (1915) 223 Fed. 472, 139 C.

C. A. 20, affirming judgment (D. C. 1914) 211 Fed. 743.

The tax imposed by this provision is imposed on the exercise of the privilege of doing business in a corporate capacity, and is an excise tax. U. S. v. General Inspection & Loading Co. (D. C. 1911) 192 Fed. 223.

The Corporation Tax Act is within the rule that a statute providing for the imposition of taxes should be strictly construed. Mutual Benefit Life Ins. Co. v. Herold (D. C. 1912) 198 Fed. 199, judgment affirmed Herold v. Mutual Benefit Life Ins. Co. (C. C. A. 1912) 201 Fed. 918.

The statute must be construed as imposing an excise tax. Philadelphia Traction Co. v. McCoach (D. C. 1915) 224 Fed. 800.

The tax imposed by the statute is not a tax upon the property of the corporation, but is specifically "a special excise tax with respect to the carrying on or doing business by such corporation." It is in the nature of a tax imposed upon the privilege of carrying on the business. (1910) 28 Op. Atty. Gen. 138.

5. "Income received" and "net income."—See, also, notes under § 6301, post.

Amounts collected by corporations from lessees of mining claims held not included in "income," within the meaning of that word in the statute, but to be parts of the property or capital. Von Baumbach v. Sargent Land Co. (1914) 219 Fed. 31, 134 C. C. A. 649, affirming judgment Sargent Land Co. v. Von Baumbach (D. C. 1913) 207 Fed. 423.

The word "income" is used in contradistinction to property and invested capital. It is not synonymous with the word "receipts," and does not include receipts from the conversion, without profit, of the corporate property into money. Id.

Apparent increase in valuation of corporation's property by reason of new appraisement held not taxable as income. Baldwin Locomotive Works v. McCoach (1915) 221 Fed. 59, 136 C. C. A. 660, affirming judgment (D. C. 1914) 215 Fed. 967.

Under sections 6300–6302, excise tax on corporation doing business only part of year held to be computed on its income for the full year. Blalock v. Georgia Ry. & Electric Co. (1916) 228 Fed. 296, 142 C. C. A. 588.

Net income of a corporation subject to excise tax under the statute determined. Jacobs & Davies v. Anderson (C. C. A. 1915) 228 Fed. 505.

Dividends paid by a mutual life insurance company, representing the excess loading of premiums over the cost of insurance and used by policy holders to reduce subsequent premiums, held not "income * * * received," and not, therefore, subject to taxation under the Corporation Tax Law. Mutual Benefit Life Ins. Co. v. Herold (D. C. 1912) 198 Fed. 199, judgment affirmed Herold v. Mutual Benefit Life Ins. Co. (C. C. A. 1912) 201 Fed. 918.

The taxable net income of a corporation for any year is limited to such income, less allowable deductions, as was actually received during that year, and does not include items which may have been earned, or have become due, but have not been collected. Connecticut Mut. Life Ins. Co. v. Eaton (D. C. 1914) 218 Fed. 206.

Items shown in the report of a life insurance company as assets, but uncollected, held not to constitute "income received during the year," taxable under Corporation Tax Act, § 38 Id.

A net increase in the book value of securities held by a banking corporation, as shown by an adjustment entered on its books, held not to constitute "net income" for the year when the adjustment was made, subject to excise tax. Industrial Trust Co. v. Walsh (D. C. 1915) 222 Fed. 437.

In computing the income of a corporation under the Corporation Tax Law, as distinguished from capital assets, neither the government nor the corporation is bound by its book valuations. Mitchell Bros. Co. v. Doyle (D. C. 1915) 225 Fed. 437.

6. Carrying on or doing business.—The excise imposed by this statute upon the carrying on or the doing of business in a corporate or quasi corporate capacity is not invalid because the business taxed is done in pursuance of the authority granted by a state, in the creation of private corporations. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

A corporation owning and leasing taxicabs and collecting rents therefrom is engaged in business within the meaning of the statute imposing an excise upon the doing or carrying on of business in a corporate or quasi corporate capacity. Id.

Corporations organized for and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the meaning of this statute. Id.

A corporation organized for the purpose of owning and renting an office building, but which has wholly parted with the control and management of the property, and by the terms of a reorganization has disqualified itself from any activity in respect to it, its sole authority being to hold the title subject to a lease for 130 years, and to receive and distribute the rentals which may accrue under the terms of the lease, or the proceeds of any sale of the land,

if it shall be sold, is not doing business within the meaning of the statute. Zonne v. Minneapolis Syndicate (1911) 31 Sup. Ct. 361, 220 U. S. 187, 55 L. Ed. 428.

A railroad company which, under legislative authority, has leased its entire railroad, with all its rights, powers, privileges, and franchises (except the franchise of being a corporation), for a term of years, at an annual rental, the lessees agreeing to keep the road in good order and repair, keep it in public use, and efficiently operate it and return it to the lessor company at the expiration or other determination of the lease, is not, with respect to the railroad, "engaged in business," within the meaning of the corporation tax law, although it retains the franchise of corporate existence, maintains its organization, and holds itself ready to exercise its franchise of eminent domain or other reserved powers if and when required by the lessee, and ready to resume possession of the property at the expiration of the lease. McCoach v. Minehill & Schuylkill Haven R. Co. (1913) 33 Sup. Ct. 419, 228 U. S. 295, 57 L. Ed. 842.

The mere receipt by a lessor railway company of the income from its leased railway property (the property being used in business by the lessee, and not by the lessor), and the receipt of interest and dividends from invested funds, bank balances, and the like, and the payment of organization and administration expenses incidental to the receipt of such moneys, and their distribution among the stockholders, do not constitute such a business as is taxable under the corporation tax law. Id.

A railroad which has leased its entire road and all its rights and privileges for a term of years at an annual rental, the lessees operating it and agreeing to return it at the expiration of the lease, is not with respect to the railroad "engaged in business" within the Corporation Tax Law, though it retains a franchise of corporate existence, and is ready to resume possession at the expiration of the lease, and to exercise its franchise of eminent domain when required by the lessee. Id.

The receipt by a lessor railroad of the income from its railroad and of interest and dividends from invested funds and payment of expenses incidental of the receipt of such moneys and distribution among stockholders do not constitute a business taxable under this statute. Id.

A real estate corporation, whose business consists in the collection of rent received from its single lessee, is not engaged in business, within the statute. U. S. v. Emery, Bird, Thayer Realty Co. (1915) 35 Sup. Ct. 499, 237 U. S. 28, 59 L. Ed. 825, affirming judgment (D. C. 1912) Emery, Bird, Thayer Realty Co. v. U. S., 198 Fed. 242.

A corporation organized solely to hold the stock of an operating mining company, and doing no business except to receive dividends on such stock and distribute the same among its own stockholders, was not "doing business," within the statute, and was therefore not subject to the tax. U. S. v. Nipissing Mines Co. (1913) 206 Fed. 431, 124 C. C. A. 313, modifying judgment (D. C. 1912) 202 Fed. 803.

Where a railroad corporation leased its property and franchises for the whole term of its charter, the lessee having sole control of its property and the operation of its road, that the lessor retained its corporate existence, elected directors and officers, amended by-laws, etc., did not show that it was engaged in business within the statute. Anderson v. Morris & E. R. Co. (1914) 216 Fed. 83, 132 C. C. A. 327.

A corporation, limited to the ownership of certain real property used by its stockholders and applying to rents, liens, interest, and dividends, held not "doing business," so as to subject it to the statute. Maxwell v. Abrast Realty Co. (1914) 218 Fed. 457, 134 C. C. A. 255, dismissing writ of error Abrast Realty Co. v. Maxwell (D. C. 1913) 206 Fed. 333.

Corporations owning property, but merely doing acts to preserve their property, convert it into money and distribute the proceeds to stockholders, are not "doing business," within the statute. Von Baumbach v. Sargent Land Co. (1914) 219 Fed. 31, 134 C. C. A. 649, affirming judgment Sargent Land Co. v. Von Baumbach (D. C. 1913) 207 Fed. 423.

A railroad corporation, having leased all of its property to an operating company, held not "doing business," within the statute. New York Cent. & H. R. R. Co. v. Gill (1915) 219 Fed. 184, 134 C. C. A. 558.

Corporations leasing railroads held not doing business, within the statute. Lewellyn v. Pittsburgh, B. & L. E. R. Co. (1915) 222 Fed. 177, 137 C. C. A. 617.

"Engaged in business," "carrying on business," and "doing business," within the statute, defined. Id.

A railroad company, owning railroad property which was leased and operated by the lessee, held, under the facts shown, not "engaged in business" which rendered it subject to the excise tax. Miller v. Snake River Valley R. Co. (1915) 223 Fed. 946, 139 C. C. A. 426.

Tests for determining whether a corporation is "engaged in business," within the meaning of the statute, considered. Traction Cos. v. Collectors of Internal Revenue (1915) 223 Fed. 984, 139 C. C. A. 360.

Street railroad corporations, which had leased their property for the term of their respective franchises, held not "engaged in business," within the meaning of the statute. Id.

Corporation held liable to excise tax by carrying on business for any part of year for which tax is imposed. Bla-

lock v. Georgia Ry. & Electric Co. (1915) 228 Fed. 296, 142 C. C. A. 588.

Complainant railroad company, having leased its property and franchises for 999 years in 1906, was not "engaged in business" in the years 1909 and 1910, and was therefore not liable for the tax. Mine Hill & S. H. R. Co. v. McCoach (C. C. 1912) 192 Fed. 670.

A corporation to be subject to the tax imposed by the Corporation Tax Law must be organized for the purpose of doing business, and must be actually engaged in business. Emery, Bird, Thayer Realty Co. v. U. S. (D. C. 1912) 198 Fed. 242.

A corporation organized for the sole purpose of holding real estate and renting it to a specified tenant, collecting the rents and distributing them among its stockholders, which had executed a long term lease and surrendered the management and control, held not subject to the tax. Id.

Where property owned by a corporation could not be directly taxed if owned by an individual, it cannot be so taxed solely by virtue of its corporate ownership. Id.

Taxes on real estate being direct taxes, taxes on the rents or income thereof are also direct taxes. Id.

A corporation, empowered only to own and operate certain real estate rented from it by a firm operating a department store thereon, held not doing business, so as to be subject to the statute. Abrast Realty Co. v. Maxwell (D. C. 1913) 206 Fed. 333.

Corporations owning mining land which they leased and exercising the right under the leases to inspect the work and which also sold part of the real estate, sold stumpage, etc., held to be doing business so as to be subject to the corporation tax. Sargent Land Co. v. Von Baumbach (D. C. 1913) 207 Fed. 423.

A street railroad company, having leased all its property and franchises to another company for a long term, and thereafter maintained its corporate existence only for the distribution of rent, held no longer doing business, so as to be subject to franchise taxation, under Act Aug. 5, 1909, § 38. Wilkes-Barre & W. V. Traction Co. v. Davis (D. C. 1914) 214 Fed. 511.

Street railway company, which leased its railway and did no business thereafter, except to maintain its corporate existence and collect the rental, held not subject to the excise tax. Public Service Ry. Co. v. Herold (D. C. 1915) 219 Fed. 301.

A street railway held not to do business, within the statute. Philadelphia Traction Co. v. McCoach (D. C. 1915) 224 Fed. 800.

An iron company, which leased all its property for a long term of years, and which quit carrying on business and had no other income than the rental, held not "doing business," within the statute. Cambria Steel Co. v. McCoach (D. C. 1915) 225 Fed. 278.

Foreign corporation, which sold timber and factory, retaining title until payment as security, held not "doing business" in any state, within the statute, though retaining an attorney to look after its interests and an agent for service of process. Bryant & May v. Scott (D. C. 1914) 226 Fed. 875.

A corporation held engaged in business, and so subject to excise tax, where, after leasing all its property, it exercises its corporate powers to increase its estate, as by issuance and sale of bonds. Public Service Electric Co. v. Herold (D. C. 1915) 227 Fed. 486.

A corporation affirmatively exerting its power for acquisition of additional franchise rights, after leasing all its property, is doing business, and so subject to excise tax. Public Service Ry. Co. v. Herold (D. C. 1915) 227 Fed. 490.

Though a corporation has leased all its property, including its electric power plant, it is doing business, and so subject to the excise tax; one of the express purposes of its organization being to lease such plants. Public Service Electric Co. v. Herold (D. C. 1915) 227 Fed. 491.

A corporation which, after leasing its business, exercises its reserved power to extend such business at the lessee's request, is doing business, so as to be subject to the excise tax. Public Service Ry. Co. v. Moffett (D. C. 1915) 227 Fed. 494.

A gas company, which had leased its property, held not doing business, and so not liable for corporation taxes. Public Service Gas Co. v. Herold (D. C. 1915) 227 Fed. 496.

A corporation held not liable for corporation tax because not "doing business." Public Service Ry. Co. v. Herold (D. C. 1915) 227 Fed. 500.

A gas company, which had leased its plant for a term of years, the business being carried on by its lessee, held not "carrying on or doing business," within the meaning of federal Corporation Tax Law. Waterbury Gaslight Co. v. Walsh (D. C. 1915) 228 Fed. 54.

Acts of corporation, which had leased its railroads, mines, and other property, held not such a doing of business as subjected it to the corporate excise tax. State Line & S. R. Co. v. Davis (D. C. 1915) 228 Fed. 246.

7. Organization for profit.—Corporations organized to acquire title to an estate for the purpose of liquidating it and dividing the proceeds among the owners held organized for profit within the corporation tax law. Sargent Land Co. v. Von Baumbach (D. C. 1913) 207 Fed. 423.

8. Corporations acting as agents of state.—Corporations acting as trustees, guardians, etc., under the authority of

the laws or courts of a state, are not the agents of the state government in such a sense as to be exempt from the imposition, under this statute, of an excise measured by net income upon the doing or the carrying on of business in a corporate or quasi corporate capacity. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

9. Insolvent corporations.—The federal excise tax imposed on the net income of corporations by this statute was not intended to include insolvent corporations with no net income whose properties are being administered by a court. Pennsylvania Steel Co. v. New York City Ry. Co. (C. C. 1910) 176 Fed. 471.

10. Effect of dissolution.—A corporation which has continued in business through a calendar year cannot evade liability for the special excise tax imposed by Act Aug. 5, 1909, § 38, by dissolving before the time when it is required to make a return of said business to the collector of internal revenue and the assessment of the tax. U. S. v. General Inspection & Loading Co. (D. C. 1911) 192 Fed. 223.

Corporations engaged in business after the approval of Corporation Tax Law, but dissolved prior to December 31, 1909, are liable to the tax. (1910) 28 Op. Atty. Gen. 241.

Assets of a corporation are subject to a lien for the payment of taxes, provided the corporation has not been dissolved and all its assets distributed prior to the time the list of assessments came into the hands of the collector. Id.

Where the corporation is dissolved before the taxes become due, and no lien attaches to the assets of a corporation, as in the case first above referred to, the tax imposed may be collected by the government by pursuing the assets into the hands of the stockholders, in the same manner as any other creditor might obtain satisfaction of his debt. Id.

11. Receivers as liable to tax.—The income derived from the management of street railway lines by receivers authorized and required by the order for their appointment to manage and operate such railways, and to discharge their public duties subject to the supervision of the court, is not subject to the excise tax imposed by the statute upon the doing or carrying on of business in a corporate capacity. U. S. v. Whitridge (1913) 34 Sup. Ct. 24, 231 U. S. 144, 58 L. Ed. 159, affirming decree Pennsylvania Steel Co. v. New York City Ry. Co. (1912) 198 Fed. 774, 117 C. C. A. 556.

Receivers of corporations, administering their property for the benefit of creditors, held not liable to the corporation tax. Pennsylvania Steel Co. v. New York City Ry. Co. (1912) 198 Fed. 774, 117 C. C. A. 556, affirming order (D. C. 1912) 198 Fed. 286.

12. Real estate trusts.—Real estate trusts created by deed for the purchasing, improving, holding, or selling lands and buildings for the benefit of the shareholders, which do not derive any benefit from, and are not organized under, any statute of the state, and which, by their terms, end with lives in being and twenty years thereafter, are not subject to the excise imposed by the statute, upon the doing of business by corporations, joint-stock companies, or associations "now or hereafter organized under the laws of the United States or of any state or territory." Eliot v. Freeman (1911) 31 Sup. Ct. 360, 220 U. S. 178, 55 L. Ed. 424.

Companies known as the Snow Associates, the Department Store Trust, the Real Estate Trust, etc., organized under and by an agreement and declaration of trust for the purpose of improving and holding real estate, the title to which is vested exclusively in trustees who are removable by vote of the stockholders, and the stock being transferable, which companies possess all of the essential elements of a common-law joint-stock company, are "joint-stock companies or associations organized for profit and having a capital stock represented by shares," organized under the laws of a state, within the intent of the statute, and are amenable to the tax imposed thereby. (1910) 28 Op. Atty. Gen. 234.

13. Street railroad companies.—Public service corporations, such as street railway companies created under state laws, may constitutionally be subjected to the excise tax imposed by this statute. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

14. Railroad company in Philippine Islands.—The Manila Railroad Company, a corporation organized under the laws of New Jersey, and doing business wholly within the Philippine Islands, and operating under a concessionary contract granted by the Philippine Legislature, is liable to the federal excise tax on corporations. (1911) 29 Op. Atty. Gen. 164.

The fact that the company is aided in its business by the Philippine government cannot of itself exempt it from the burdens of taxation imposed by the government of the United States. Id.

15. Mining corporations.—The proceeds of ore mined by a corporation from its own premises are "income" within the meaning of Act Aug. 5, 1909, § 38, imposing an excise tax measured by net annual income upon the carrying on or the doing of business in a corporate or quasi corporate

capacity. Stratton's Independence v. Howbert (1913) 34 Sup. Ct. 136, 231 U. S. 399, 58 L. Ed. 285.

Mining corporations engaged solely in mining upon their own premises are subject to the excise tax imposed by the statute upon the carrying on or the doing of business in a corporate or quasi corporate capacity, such corporations being within the general description of that section, which comprises every corporation organized for profit and having a capital stock represented by shares, and engaged in business, and not being among the classes of corporations specified in that section as exempt from its operation. Id.

Where corporation leased land owned by it for mining purposes, held, that the royalties were not income within the federal Corporation Tax Law, although in distributing them to its stockholders it called them dividends and although it carried no depreciation account on its books. Sargent Land Co. v. Von Baumbach (D. C. 1913) 207 Fed. 423.

Difference between capitalization of corporation formed to take title to land owned by its stockholders and the value of such land held not profits, and hence royalties under mining leases thereof were not income within the corporation tax law on the theory that they were a part of such profits. Id.

16. Foreign steamship companies.—Foreign steamship companies engaged in the business of transporting passengers, goods, and merchandise between ports in this country and foreign ports, and maintaining passenger and freight agencies in this country, are corporations subject to the tax. (1910) 28 Op. Atty. Gen. 211.

A tax imposed upon an exporter of merchandise as an incident to his business is not a tax upon the exported article, as an export, and hence is not violative of section 9, art. 1 of the Constitution. Id.

Passengers are not exports within the meaning of the above-cited provision of the Constitution. Id.

17. Savings banks.—Mutual savings banks, organized under the laws of West Virginia, while in a sense organized for profit, have not a capital stock represented by shares, and are not therefore subject to the tax. (1910) 28 Op. Atty. Gen. 189.

So-called savings banks which have a capital stock similar to other banking institutions are not exempt from the tax. Id.

18. Building and loan associations.—Tariff Act, imposing a special excise tax on corporations, held to exempt building and loan associations if they come within the terms of the proviso as to organization and operation. Herold v. Park View Building & Loan Ass'n (1914) 210 Fed. 577, 127 C. C. A. 213, affirming judgment Parkview Building & Loan Ass'n v. Herold (D. C. 1913) 203 Fed. 876.

A building association is not excluded from the right to exemption as not one "organized and operated exclusively for the mutual benefit of its members" because it issues both prepaid and installment stock; the prepaid stock being entitled to a fixed dividend, payable however only out of earnings of the association. Id.

A building and loan association, organized under the laws of Washington (Pierce's Code, §§ 7128, 7130, 7131, 7149, 7154, 7160), which loaned funds to nonmembers, issued preferred or guaranteed interest-paying stock, and allowed the directors to cancel any outstanding certificates of general stock not borrowed upon, is not within the exception in Act Aug. 5, 1909, § 38, subjecting corporations to an annual tax, except building and loan associations organized exclusively for the mutual benefit of members. Pacific Building & Loan Ass'n v. Hartson (D. C. 1913) 201 Fed. 1011.

A building and loan association organized under Act N. J. April 8, 1903 (P. L. p. 457), and supplemental acts for the sole benefit of members, who control the same in accordance with the membership and not in accordance with stockholding, is a "mutual" association, within the exception of the Corporation Tax Law, and was therefore exempt from the payment of such tax. Parkview Building & Loan Ass'n v. Herold (D. C. 1913) 203 Fed. 876, judgment affirmed Herold v. Parkview Building & Loan Ass'n (1914) 210 Fed. 577, 127 C. C. A. 213.

19. Partnership associations.—Partnership associations, organized under the laws of Pennsylvania, possess every privilege and power essential to a corporation and are liable to the tax. (1910) 28 Op. Atty. Gen. 189.

20. Recovery of tax paid.—See notes under § 5944, ante.

21. Former laws.—See Pacific Ins. Co. v. Soule (1868) 74 U. S. (7 Wall.) 433, 19 L. Ed. 95; Marquette, H. & O. R. Co. v. U. S. (1887) 8 Sup. Ct. 319, 320, 123 U. S. 722, 31 L. Ed. 302; Georgia v. Atkins (C. C. 1866) Fed. Cas. No. 5,-350; New Jersey Steamboat Co. v. Pleasonton (C. C. 1871) Fed. Cas. No. 10,166; Metropolitan R. Co. v. Slack (C. C. 1874) Fed. Cas. No. 9,506; U. S. v. Buffalo Park (C. C. 1879) Fed. Cas. No. 14,681.

22. —— War revenue act of 1898.—See Spreckels Sugar Refining Co. v. McClain (1904) 24 Sup. Ct. 376, 381, 192 U. S. 397, 48 L. Ed. 496; Spreckels Sugar Refining Co. v. McClain (1902) 113 Fed. 244, 51 C. C. A. 201, reversing judgment (C. C. 1901) 109 Fed. 76, and reversed (1904) 24 Sup. Ct. 376, 192 U. S. 397, 48 L. Ed. 496; U. S. v. Consumers' Gas Trust Co. (1906) 142

Fed. 134, 73 C. C. A. 352; U. S. v. Northwestern Ohio Natural Gas Co. (C. C. 1905) 141 Fed. 198; U. S. v. Acorn Roofing Co. (D. C. 1912) 204 Fed. 157; U. S. v. Military Const. Co. (D. C. 1913) 204 Fed. 153; Black v. Sixth Ave. R. Co. (N. Y. 1866) 1 Daly, 536.

Notes of decisions affecting § 6301

See, also, notes under the preceding section.

Deductions in general.—Where corporate bonds were sold at discount, held, that the amount of the discount could not be deducted in computing the corporation's income tax for that year. Baldwin Locomotive Works v. McCoach (1915) 221 Fed. 59, 136 C. C. A. 660, affirming judgment (D. C. 1914) 215 Fed. 967.

Amounts expended by a business corporation in enlarging or making improvements in its office or premises, not in the nature of permanent improvements to the property, but to facilitate the transaction of a growing business, should properly be deducted as necessary expenses of the business in computing the taxable net income of the corporation under Corporation Tax Act, § 38. Connecticut Mut. Life Ins. Co. v. Eaton (D. C. 1914) 218 Fed. 206.

A lumber corporation held entitled, in its return of net income under the Corporation Tax Law, to deduct as capital assets the market value of the standing timber from which the lumber sold during the year was manufactured. Mitchell Bros. Co. v. Doyle (D. C. 1915) 225 Fed. 437.

Deduction of interest.—See, also, note under § 6300 as to "Constitutionality in general."

The excise measured by net annual income, imposed by the statute upon the doing or the carrying on of business in a corporate or quasi corporate capacity, is not invalid because a deduction of interest payments is permitted only in case of interest paid by banks and trust companies on deposits, and interest actually paid within the year on bonded or other indebtedness to an amount not exceeding the paid-up capital stock. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

Under the provision authorizing deduction of interest paid on bonded debt in an amount not exceeding capital stock may be deducted does not permit deduction of interest on bonded debt of more than the capital stock as part of the expenses of operation. Anderson v. Forty-Two Broadway Co. (1915) 36 Sup. Ct. 17, 239 U. S. 69, 60 L. Ed. 152.

Payments of interest on bonds of a corporation engaged in the realty business, secured by mortgage on its realty, are ordinary and necessary expenses, and must be deducted to determine the liability of the corporation for the taxes, and interest actually paid within a year, though previously accruing, must also be deducted. Anderson v. Forty-Two Broadway Co. (1914) 213 Fed. 777, 130 C. C. A. 338, affirming judgment Forty-Two Broadway Co. v. Anderson (D. C. 1913) 209 Fed. 991.

A corporation organized to build and rent a building in the city of New York having a capital of only $600 and a bonded indebtedness of $4,750,000 held entitled to deduct interest paid on such bonded indebtedness from its gross income in determining the net income on which it was subject to internal revenue taxation under Corporation Tax Act, § 38. Forty-Two Broadway Co. v. Anderson (D. C. 1913) 209 Fed. 991.

The statute construed with respect to the right of a corporation to deduct certain interest paid from its gross income. Middlesex Banking Co. v. Eaton (D. C. 1915) 221 Fed. 86.

In computing the amount of the gross income of corporations subject to the tax, the interest received on its United States bonds should be included. (1910) 28 Op. Atty. Gen. 138.

Such interest should not be deducted from the gross income of the corporation for the purpose of ascertaining the net income, to be used as a basis for computing the amount of the taxes to be paid. Id.

Where a realty corporation takes title to real property subject to a mortgage, but does not assume the indebtedness secured thereby, the interest on such indebtedness should be deducted from the gross income of the corporation. (1910) 28 Op. Atty. Gen. 198.

In ascertaining the net income of a corporation holding and dealing in real estate, interest on an indebtedness assumed by the corporation and secured by mortgage upon the properties which it acquires can be deducted only to an amount not exceeding the interest on the paid-up capital stock of such corporation. Id.

Deduction of dividends received by corporation as stockholder.—In computing the net income of a corporation, the dividends received by the corporation as a stockholder of any other corporation of a character to which that act applies should be deducted from its gross earnings, regardless of the amount of the net income of such dividend-paying corporation. (1910) 28 Op. Atty. Gen. 140.

Deduction of expense of maintenance.—An ordinary amount, expended by an insurance company for renewal of office furniture and equipment, held not assets, but an expense of maintenance, which it was entitled to deduct in ascertaining its taxable net income. Mutual Benefit Life Ins. Co. v. Herold (D. C. 1912) 198 Fed. 199, judgment affirmed Herold v. Mutual Benefit Life

Ins. Co. (1913) 201 Fed. 918, 120 C. C. A. 256.

Allowance for depreciation of property.—Where amounts collected by corporations on claims against lessees are "income," within the statute, the corporations are entitled to an allowance thereof for the depreciation of their property. Von Baumbach v. Sargent Land Co. (1914) 219 Fed. 31, 134 C. C. A. 649, affirming judgment Sargent Land Co. v. Von Baumbach (D. C. 1913) 207 Fed. 423.

In determining the net income of a corporation for a given year on which it is subject to excise tax, the corporation is entitled to a "reasonable allowance" for depreciation of its property. U. S. v. Nipissing Mines Co. (D. C. 1912) 202 Fed. 803, judgment modified (1913) 206 Fed. 431, 124 C. C. A. 313.

Deduction of taxes.—"Taxes imposed," which a corporation is authorized to deduct from its gross income, taxable under the statute, held not to include taxes on stock against stockholders, which the corporation is required to pay in the first instance. Eliot Nat. Bank v. Gill (1914) 218 Fed. 600, 134 C. C. A. 358, affirming judgment (D. C. 1913) 210 Fed. 933.

A national bank held not authorized under this section to deduct from its gross income a tax imposed by the state on its shares, and which it has paid, but is entitled to recover from its stockholders. National Bank of Commerce in St. Louis v. Allen (1915) 223 Fed. 472, 139 C. C. A. 20, affirming judgment (D. C. 1914) 211 Fed. 743.

A bank in Massachusetts held not authorized to deduct from its gross income taxes paid on its shares on behalf of its stockholders under Rev. Laws Mass. c. 14, §§ 9–18, in ascertaining its net income subject to special excise tax. Eliot Nat. Bank v. Gill (D. C. 1913) 210 Fed. 933.

R. S. Mo. 1909, § 11357, imposes a tax on bank shares, and section 11359 declares that the tax be paid in the first instance by the corporation, but it may recover the same from the owners or deduct it from dividends accruing on the shares, and the amount is also made a lien on the shares and is payable before a transfer of the shares can be made. Held, that taxes assessed on the corporate shares of a bank and paid by it under sections 11357, 11359, post, were not taxes assessed against the bank which it was entitled to deduct in determining its net income for the assessment of the excise tax. National Bank of Commerce in St. Louis v. Allen (D. C. 1914) 211 Fed. 743.

A tax assessed against the stockholders of a corporation under Act June 13, 1907, Pa., held a tax against the property of the individual stockholders and not against either the corporation or its property; and hence the amount of such tax could not be deducted from the corporation's assets in ascertaining its net income taxable under this statute. Northern Trust Co. v. McCoach (D. C. 1914) 215 Fed. 991; Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Same (D. C. 1914) Id. 995; Fidelity Trust Co. v. Same (D. C. 1914) Id. 996.

Income of insurance company.—So-called "dividends" paid policy holders by a mutual life insurance company held not subject to tax as net income for the year, under the statute. Herold v. Mutual Benefit Life Ins. Co. (1913) 201 Fed. 918, 120 C. C. A. 256, affirming judgment Mutual Ben. Life Ins. Co. v. Herold (D. C. 1912) 198 Fed. 199.

That an insurance company has a surplus more than sufficient to meet all its liabilities does not deprive it of its right to the deduction allowed by the statute for reserve funds in ascertaining net income upon which a corporation excise tax is to be paid. Insurance Co. of North America v. McCoach (1915) 224 Fed. 657, 140 C. C. A. 167, reversing judgment (D. C. 1914) 218 Fed. 905.

Under Act Pa. June 1, 1911 (P. L. 612) §§ 7–9, and this section, unpaid losses are properly included within the addition to be made to the reserve funds in determining the amount of a government excise tax against an insurance company. Id.

A mutual life insurance company held entitled to deduct from its income received, in determining the amount on which it was liable, the contribution to its reserve required to secure supplementary policy contracts for payment of matured policies to beneficiaries in installments. Mutual Benefit Life Ins. Co. v. Herold (D. C. 1912) 198 Fed. 199, judgment affirmed Herold v. Mutual Benefit Life Ins. Co. (1913) 201 Fed. 918, 120 C. C. A. 256.

Net income of mutual insurance company, on which it is taxable, held not to include deferred premiums and interest, accrued and due, but not actually received. Id.

The excess loading of premiums collected by a mutual life insurance company on the level premium plan, applied at the end of the year in reduction of future premiums of the policy holder, etc., held not "dividends," within the statute. Connecticut Mut. Life Ins. Co. v. Eaton (D. C. 1914) 218 Fed. 188, 206.

The rights and liabilities of a mutual life insurance company under Corporation Tax Act, § 38, considered with respect to profits and losses on real estate sold during the year. Connecticut Mut. Life Ins. Co. v. Eaton (D. C. 1914) 218 Fed. 206.

In computing excise tax, where insurance company had large surplus, held that excess of losses over those of previous year could not be deducted from gross income as additions required to

be made to its reserve. Insurance Co. of North America v. McCoach (D. C. 1914) 218 Fed. 905.

Amount of insurance company's unpaid losses and claims and unearned premiums on unmatured policies, which it was required to carry as liabilities, and the moneys carried to meet such liabilities, held the reserve which it was required by law to maintain, within the Corporation Excise Tax Law. Id.

In computing corporation excise tax, inclusion of accrued but unpaid interest, represented by unmatured interest coupons payable in the future, held improper. Id.

Mining corporation.—Assuming that the depletion of the mineral supply from the process of mining is an element to be considered in determining the reasonable depreciation that, under the statute, is to be deducted from the net annual income of a mining company when assessing the excise imposed by that section upon the doing or carrying on of a business in a corporate or quasi corporate capacity, the difference between the gross proceeds of the sales of ores during the year, and the amount expended in extracting, mining, and marketing such ores, cannot be treated as the value of the ore in place for such purpose. Stratton's Independence v. Howbert (1913) 34 Sup. Ct. 136, 231 U. S. 399, 58 L. Ed. 285.

Net income of a corporation operating a mine, taxable under the statute, held not to contemplate an allowance in favor of the corporation for ore in place extracted from the property. Stratton's Independence v. Howbert (D. C. 1912) 207 Fed. 419.

In determining the net income of a corporation operating a mine, on which the corporation is taxable under the statute, the corporation is not entitled to an allowance for ore in place extracted from the property, under the provision authorizing a reasonable allowance for depreciation of the property. Id.

Computation under war revenue act of 1898.—Interest on bank deposits and dividends on shares of stock owned by a sugar refining company are not properly included in the gross annual receipts upon which the amount of the tax imposed on sugar refining by War Revenue Act June 13, 1898, c. 448, § 27, 30 Stat. 448, 464, is to be computed. Spreckels Sugar Refining Co. v. McClain (1904) 24 Sup. Ct. 376, 382, 192 U. S. 397, 48 L. Ed. 496, reversing judgment (1902) 113 Fed. 244, 51 C. C. A. 201.

Interest received by such company on corporate funds deposited or invested for the time being, while not in use, is also a part of its receipts in the business, and subject to the tax. Spreckels Sugar Refining Co. v. McClain (1902) 113 Fed. 244, 51 C. C. A. 201, reversing judgment (C. C. 1901) 109 Fed. 76, and reversed (1904) 24 Sup. Ct. 376, 192 U. S. 397, 48 L. Ed. 496.

In fixing the gross receipts of a corporation organized for and engaged in the business of sugar refining, for the purpose of computing the tax on such business, interest received on corporate funds, and for the rental of wharves owned by the corporation, and used chiefly for the purposes of its business, should be included as income from the business; but receipts from stevedoring done in unloading cargoes of sugar consigned to the corporation, and charged to the vessel, whose duty it was to discharge such cargoes, are not receipts of the business, and should be excluded. Spreckels Sugar Refining Co. v. McClain (C. C. 1901) 109 Fed. 76, judgment reversed (1902) 113 Fed. 244, 51 C. C. A. 201, which is reversed (1904) 24 Sup. Ct. 376, 192 U. S. 397, 48 L. Ed. 496.

The tax required to be paid by sugar refiners by War Revenue Act June 13, 1898, c. 448, § 27, 30 Stat. 464, being on the business, and not on the receipts, money received by a refiner after the passage of the act, but which was the product of business done previously, is not to be taken into account in computing the tax. Id.

In computing the gross amount of all receipts "in its business" of a corporation whose sole business is the refining of sugar, for the purpose of the special tax imposed by War Revenue Act 1898 (Act June 14, 1898, c. 448, 30 Stat. 456), dividends received during the tax year on stock owned by it in another corporation should be included, being the equivalent of interest on its corporate funds, and it is immaterial that it was the sole stockholder of the other corporation, or that the dividends were earned by the latter in previous years. American Sugar Refining Co. v. Rutan (C. C. 1903) 123 Fed. 979, judgment reversed (1904) 128 Fed. 1017, 62 C. C. A. 679.

Cited without definite application, McCoach v. Minehill & Schuylkill Haven R. Co. (1913) 33 Sup. Ct. 419, 228 U. S. 295, 57 L. Ed. 842.

Notes of decisions affecting § 6302

Necessity of making return.—All corporations of the character described are required to file returns, though their net profits are insufficient to render them subject to the tax. U. S. v. Military Const. Co. (D. C. 1913) 204 Fed. 153; Same v. Acorn Roofing Co. (D. C. 1912) Id. 157; (1911) 29 Op. Atty. Gen. 217.

Failure to make returns.—For a mere failure to make such returns in time, in the case of corporations with incomes so limited as not to be liable to the payment of any tax, liberal compromise is a course required by the spirit and

policy of the laws of the United States. (1911) 29 Op. Atty. Gen. 217.

Dissolved corporation.—Under Corporation Act, N. J. §§ 53–55, the officers of a dissolved corporation who are also directors have authority to make return to the collector of internal revenue of its business of the preceding year on which it has incurred liability for the special tax. U. S. v. General Inspection & Loading Co. (D. C. 1911) 192 Fed. 223.

Return of gross receipts under former law.—The returns of gross receipts under Act June 30, 1864, § 109, must state whether the amount is stated in legal tender currency or coined money, and the duty is to be paid according to the values in coined money when reduced to their equivalent in legal tender currency. Wells v. Shook (C. C. 1871) Fed. Cas. No. 17,406.

False return and amendment thereof.—This section and the two following sections construed with respect to what constitutes a "false" return and the time within which the commissioner may amend the same. National Bank of Commerce in St. Louis v. Allen (1915) 223 Fed. 472, 139 C. C. A. 20, affirming judgment (D. C. 1914) 211 Fed. 743.

Notes of decisions affecting § 6303

See notes under § 6302, ante.

Notes of decisions affecting § 6304

False return and amendment thereof.—See, also, notes under § 6302, ante.

A corporation's excise tax return held false, authorizing correction within three years, under this section, though it was merely incorrect, and made in good faith under a mistake of law. Eliot Nat. Bank v. Gill (1914) 218 Fed. 600, 134 C. C. A. 358, affirming judgment (D. C. 1913) 210 Fed. 933.

This section held to authorize the Commissioner of Internal Revenue to amend the return of a corporation upon which the special excise tax is assessed as a "false" return if it is incorrect although made in good faith, even after the tax assessed on the original return has been paid. Eliot Nat. Bank v. Gill (D. C. 1913) 210 Fed. 933.

Time for making corrected assessment.—The provision being that in case of such false or fraudulent return the commissioner shall make an amended return "upon the discovery thereof at any time within three years after said return is due," the corrected assessment is not required to be made within the three years. Eliot Nat. Bank v. Gill (D. C. 1913) 210 Fed. 933.

Notice of tax assessed.—The notice to a corporation of the special excise tax assessed against it, required to be given by Act Aug. 5, 1909, § 38, subd. 5, may lawfully be given by mail, and where duly mailed is presumed to have been received; and the burden rests on the corporation to prove the contrary to avoid the penalty for nonpayment within the time prescribed. U. S. v. General Inspection & Loading Co. (D. C. 1913) 204 Fed. 657.

Notes of decisions affecting § 6305

See note under § 6308, post.

Notes of decisions affecting § 6307

See notes under § 5944, ante.

Personal liability of collector for tax improperly collected.—Collector of internal revenue held not personally liable for return of amount of corporation excise tax improperly collected from a company which had leased its railway and was not doing business, under the statute. Public Service Ry. Co. v. Herold (D. C. 1915) 219 Fed. 301.

Action for penalty.—Where an action is brought by the United States against delinquent corporations which have failed to file a return, the verdict must specifically state the amount of the penalty not less than $1,000, after which the corporations' only remedy (other than appeal) is to apply for a compromise under sections 5952, ante, and 6375, post. U. S. v. Acorn Roofing Co. (D. C. 1912) 204 Fed. 157.

Failure to make return under war revenue act of 1898.—The Secretary of the Treasury has authority, under section 10131, post, to remit the penalty imposed under section 5899, ante, on a national bank for its failure to make a timely return of its liability for the special tax levied under section 2 of War Revenue Act June 13, 1898 (30 Stat. 448). (1901) 23 Op. Atty. Gen. 398.

Notes of decisions affecting § 6308

Constitutionality.—Making the returns for the assessment of the excise imposed by the statute public documents, and open to inspection as such, under certain restrictions, as was done by section 6305, ante, as amended by Act June 17, 1910, c. 297, 36 Stat. 494, did not do violence to the constitutional protection against unreasonable searches and seizures. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

CHAPTER EIGHT B

Excise Tax on Dealings in Cotton Futures

This chapter consists of part of the agricultural appropriation act for the fiscal year 1917, Act Aug. 11, 1916, c. 313. The provisions herein set forth were preceded by the following preliminary part:

"Part A.

"That this Part, to be known as the United States cotton futures Act, be, and hereby is, enacted to read and be effective hereafter as follows:"

Act Aug. 18, 1914, c. 255, 38 Stat. 693–698, is repealed by the above act. The repealing provision is set forth post, § 6309u.

Sec.
6309a. [Sec. 1.] Short title of act.
6309b. [Sec. 2.] Contract of sale, and person defined; act, omission, etc., of official, agent, etc., of association, etc., or corporation, deemed act, omission, etc., also of association, etc., or corporation.
6309c. [Sec. 3.] Tax on contracts of sale of cotton for future delivery, made at any exchange, etc.
6309d. [Sec. 4.] Contracts mentioned in preceding section to be in writing; requisites thereof.
6309e. [Sec. 5.] Tax not to be levied on contracts complying with conditions prescribed; rules and regulations for reference of disputes to Secretary of Agriculture, and effect of findings on reference.
6309f. [Sec. 6.] Mode of determining differences to be paid in settlement of contract, on delivery of cotton above or below basis grade.
6309g. [Sec. 6a.] Tax not to be levied on contracts complying with conditions prescribed, and to be known as Section Six A Contracts.
6309h. [Sec. 7.] Bona fide spot markets for purposes of act.
6309i. [Sec. 8.] Bona fide spot markets; mode of determining.
6309j. [Sec. 9.] Cotton standards; establishment and promulgation; official cotton standards of the United States; change in or replacement of; forms for.
6309k. [Sec. 10.] Tax not to be levied on contracts complying with conditions prescribed; tax not imposed on sale of spot cotton; section not to apply to contracts complying with section 5 of act.
6309l. [Sec. 11.] Tax to be paid by stamps; affixing to contracts.
6309m. [Sec. 12.] Contracts not conforming to requirements of act, etc., not enforceable in courts of United States by parties thereto, etc.
6309n. [Sec. 13.] Regulations for collection of tax and enforcement of provisions of act; records and returns by clearing houses, etc.; agents; appointment and compensation; internal-revenue laws made applicable.
6309o. [Sec. 14.] Failure to pay tax or other violation of provisions of act, etc., a misdemeanor; punishment.
6309p. [Sec. 15.] Penalty, additional to punishment, for violations of act; United States attorneys to prosecute actions therefor.
6309q. [Sec. 16.] Testimony deemed material in prosecutions under act not to be withheld because of complicity of witness in violation of act; exemption of witness from prosecution.
6309r. [Sec. 17.] Payment of tax not to exempt from penalty, etc., under State laws, nor to prohibit tax by State or municipality on same transaction.
6309s. [Sec. 19.] Appropriation to carry out provisions of act; publication of results of investigations; disposition of moneys collected under sections 5 and 9.
6309t. [Sec. 20.] Time of taking effect of act; contracts not affected by act.
6309u. [Sec. 21.] Repeal; effect.
6309v. [Sec. 22.] Effect of partial invalidity of act.

§ 6309a. (Act Aug. 11, 1916, c. 313.) [Sec. 1.] Short title of act. This Act shall be known by the short title of the "United States cotton futures Act." (39 Stat. 476.)

This section is identical in language with section 1 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309b. (Act Aug. 11, 1916, c. 313.) [Sec. 2.] Contract of sale, and person defined; act, omission, etc., of official, agent, etc., of association, etc., or corporation, deemed act, omission, etc., also of association, etc., or corporation.

For the purposes of this Act, the term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. That the word "person," wherever used in this Act, shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships, and corporations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office, shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person. (39 Stat. 476.)

This section is identical in language with section 2 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309c. (Act Aug. 11, 1916, c. 313.) [Sec. 3.] Tax on contracts of sale of cotton for future delivery, made at any exchange, etc.

Upon each contract of sale of any cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, there is hereby levied a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract. (39 Stat. 476.)

This section is identical in language with section 3 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309d. (Act Aug. 11, 1916, c. 313.) [Sec. 4.] Contracts mentioned in preceding section to be in writing; requisites thereof.

Each contract of sale of cotton for future delivery mentioned in section three of this Act shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purposes of this Act, be deemed to weigh five hundred pounds. (39 Stat. 476.)

This section is identical in language with section 4 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309e. (Act Aug. 11, 1916, c. 313.) [Sec. 5.] Tax not to be levied on contracts complying with conditions prescribed; rules and regulations for reference of disputes to Secretary of Agriculture, and effect of findings on reference.

No tax shall be levied under this Act on any contract of sale mentioned in section three hereof if the contract comply with each of the following conditions:

First. Conform to the requirements of section four of, and the rules and regulations made pursuant to, this Act.

Second. Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture, except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled:

Provided, That middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

Third. Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section and no other grade or grades.

Fourth. Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

Fifth. Provide that cotton that, because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary, or cotton that is below the grade of Good Ordinary, or, if tinged, cotton that is below the grade of Low Middling, or, if stained, cotton that is below the grade of Middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed," shall not be delivered on, under, or in settlement of such contract.

Sixth. Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

Seventh. Provide that, in case a dispute arises between the person making the tender and the person receiving the same, as to the classification of any cotton tendered under the contract, either party may refer the question of the true classification of said cotton to the Secretary of Agriculture for determination, and that such dispute shall be referred and determined, and the costs thereof fixed, assessed, collected, and paid in such manner and in accordance with such rules and regulations as may be prescribed by the Secretary of Agriculture.

The provisions of the third, fourth, fifth, sixth, and seventh subdivisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States cotton futures Act, section five."

The Secretary of Agriculture is authorized to prescribe rules and regulations for carrying out the purposes of the seventh subdivision of this section, and his findings, upon any dispute referred to him under said seventh subdivision, made after the parties in

interest have had an opportunity to be heard by him or such officer, officers, agent, or agents of the Department of Agriculture as he may designate, shall be accepted in the courts of the United States in all suits between such parties, or their privies, as prima facie evidence of the true classification of the cotton involved. (39 Stat. 476.)

This section is identical in language with section 5 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post, except that in the seventh subdivision the former act uses the words "quality, or the grade, or the length of staple," in place of the word "classification" in the third line of such subdivision, and omits the words "of the true classification of said cotton" after the word "question," and in place of the word "classification" in the last line of the section the former act used the words "quality, or grade, or length of staple."

§ 6309f. (Act Aug. 11, 1916, c. 313.) [Sec. 6.] Mode of determining differences to be paid in settlement of contract, on delivery of cotton above or below basis grade.

For the purposes of section five of this Act the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basis grade in the settlement of a contract of sale for the future delivery of cotton shall be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of section five, for the delivery of cotton on the contract, established by the sale of spot cotton in the market where the future transaction involved occurs and is consummated if such market be a bona fide spot market; and in the event there be no bona fide spot market at or in the place in which such future transaction occurs, then, and in that case, the said differences above or below the contract price which the receiver shall pay for cotton above or below the basis grade shall be determined by the average actual commercial differences in value thereof, upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of section five, for the delivery of cotton on the contract, in the spot markets of not less than five places designated for the purpose from time to time by the Secretary of Agriculture, as such values were established by the sales of spot cotton, in such designated five or more markets: Provided, That for the purposes of this section such values in the said spot markets be based upon the standards for grades of cotton established by the Secretary of Agriculture: And provided further, That whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture. (39 Stat. 478.)

This section is identical in language with section 6 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309g. (Act Aug. 11, 1916, c. 313.) [Sec. 6a.] Tax not to be levied on contracts complying with conditions prescribed, and to be known as Section Six A Contracts.

No tax shall be levied under this Act on any contract of sale mentioned in section three hereof if the contract provide that, in case cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such

basis grade in said contract, and if the contract also comply with all the terms and conditions of section five hereof not inconsistent with this section: Provided, That nothing in this section shall be so construed as to relieve from the tax levied by section three of this Act any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any "fixed difference" system, or by arbitration, or by any other method not provided for by this Act.

Contracts made in compliance with this section shall be known as "Section six A Contracts." The provisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States cotton futures Act, section six A."

Section ten of this Act shall not be construed to apply to any contract of sale made in compliance with section six A hereof. (39 Stat. 478.)

Section 3, referred to, is set forth ante, § 6309c. Section 10, referred to, is set forth post, § 6309k. This section did not appear in Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309h. (Act Aug. 11, 1916, c. 313.) [Sec. 7.] Bona fide spot markets for purposes of act.

For the purposes of this Act the only markets which shall be considered bona fide spot markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice. (39 Stat. 478.)

This section is identical in language with section 7 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309i. (Act Aug. 11, 1916, c. 313.) [Sec. 8.] Bona fide spot markets; mode of determining.

In determining, pursuant to the provisions of this Act, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: Provided, That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with section six of this Act, he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event, differences in value of cotton of various grades involved in contracts made pursuant to section five of this Act shall be determined in compliance with such rules and regulations. (39 Stat. 479.)

Sections 5 and 6, referred to, are set forth ante, §§ 6309e, 6309f.

This section is identical in language with section 8 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309j. (Act Aug. 11, 1916, c. 313.) [Sec. 9.] Cotton standards; establishment and promulgation; official cotton standards of the United States; change in or replacement of; forms for.

The Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purposes of this Act, shall be known as the "Official cotton standards of the United States," and to adopt, change, or replace the standard for any grade of cotton established under the Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-Fifth Statutes at Large, page two hundred and fifty-one), and Acts supplementary thereto: Provided, That any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall not be changed or replaced within a period less than one year from and after the date of the promulgation thereof by the Secretary of Agriculture: Provided further, That, subsequent to six months after the date section three of this Act becomes effective, no change or replacement of any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when the same is to become effective. The Secretary of Agriculture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under the seal of the Department of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employé of the Department of Agriculture thereunto duly authorized by the said Secretary. (39 Stat. 479.)

Section 3, referred to, is set forth ante, § 6309c.

Act making appropriations for Department of Agriculture, 35 Stat. 251, referred to, is set forth post, §§ 8742, 8743.

This section is identical in language with section 9 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309k. (Act Aug. 11, 1916, c. 313.) [Sec. 10.] Tax not to be levied on contracts complying with conditions prescribed; tax not imposed on sale of spot cotton; section not to apply to contracts complying with section 5 of act.

No tax shall be levied under this Act on any contract of sale mentioned in section three hereof, if the contract comply with each of the following conditions:

First. Conform to the rules and regulations made pursuant to this Act.

Second. Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

Third. Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

Fourth. Provide that the delivery of cotton under the contract shall not be effected by means of "set-off" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

The provisions of the first, third, and fourth subdivisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "Subject to United States cotton futures Act, section ten."

This Act shall not be construed to impose a tax on any sale of spot cotton.

This section shall not be construed to apply to any contract of sale made in compliance with section five of this Act. (39 Stat. 479.)

By the provisions of section 6a, ante, § 6309g, this section is not applicable to the contracts provided for by said section 6a.

Sections 3 and 5, referred to, are set forth ante, §§ 6309c, 6309e.

This section is identical in language with section 10 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

Section 11 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post, read as follows:

"Upon each order transmitted, or directed or authorized to be transmitted, by any person within the United States for the making of any contract of sale of cotton grown in the United States for future delivery in cases in which the contract of sale is or is to be made at, on, or in any exchange, board of trade, or similar institution or place of business in any foreign country, there is hereby levied an excise tax at the rate of 2 cents for each pound of the cotton so ordered to be bought or sold under such contract: Provided, That no tax shall be levied under this Act on any such order if the contract made in pursuance thereof comply either with the conditions specified in the first, second, third, fourth, fifth, and sixth subdivisions of section five, or with all the conditions specified in section ten of this Act, except that the quantity of the cotton involved in the contract may be expressed therein in terms of kilograms instead of pounds."

§ 6309*l*. (Act Aug. 11, 1916, c. 313.) [Sec. 11.] Tax to be paid by stamps; affixing to contracts.

The tax imposed by section three of this Act shall be paid by the seller of the cotton involved in the contract of sale, by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary of the Treasury. (39 Stat. 480.)

Section 3, referred to, is set forth ante, § 6309c.

This section is identical in language with section 12 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post, except the act of August 18, 1914, contained the further clause: "The tax imposed by section eleven of this Act shall be paid by the sender of the order and collected in accordance with rules and regulations which shall be prescribed by the Secretary of the Treasury."

§ 6309m. (Act Aug. 11, 1916, c. 313.) [Sec. 12.] Contracts not conforming to requirements of act, etc., not enforceable in courts of United States by parties thereto, etc.

No contract of sale of cotton for future delivery mentioned in section three of this Act which does not conform to the requirements of section four hereof and has not the necessary stamps affixed thereto as required by section eleven hereof shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies. (39 Stat. 480.)

Sections 3, 4, and 11, referred to, are set forth ante, §§ 6309c, 6309d, 6309*l*.

In addition to the provisions of this section, section 13 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post, provided as follows: "That no contract of sale of cotton for future delivery, made in pursuance of any order mentioned in section eleven of this Act, shall be enforceable in any court of the United States by or on behalf of any party to such contract or his privies unless it conforms to the requirements of section four hereof and the tax imposed by section eleven upon the order for such contract shall have been paid in compliance with section twelve of this Act."

§ 6309n. (Act Aug. 11, 1916, c. 313.) [Sec. 13.] Regulations for collection of tax and enforcement of provisions of act; records and returns by clearing houses, etc.; agents; appointment and compensation; internal-revenue laws made applicable.

The Secretary of the Treasury is authorized to make and promulgate such rules and regulations as he may deem necessary to collect the tax imposed by this Act and otherwise to enforce its provisions. Further to effect this purpose, he shall require all persons coming within its provisions to keep such records and statements of account, and may require such persons to make such returns verified under oath or otherwise, as will fully and correctly disclose all transactions mentioned in section three of this Act, including the making, execution, settlement, and fulfillment thereof; he may require all persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting transactions mentioned in section three of this Act to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions; and he may appoint agents to conduct the inspection necessary to collect said tax and otherwise to enforce this Act and all rules and regulations made by him in pursuance hereof, and may fix the compensation of such agents. The provisions of the internal-revenue laws of the United States, so far as applicable, including sections thirty-one hundred and seventy-three, thirty-one hundred and seventy-four, and thirty-one hundred and seventy-five of the Revised Statutes, as amended, are hereby extended, and made to apply, to this Act. (39 Stat. 480.)

Section 3, referred to, is set forth ante, § 6309c.

R. S. §§ 3173–3175, referred to, are set forth ante, §§ 5896–5898.

Section 14 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post, read as follows:

"The Secretary of the Treasury is authorized to make and promulgate such rules and regulations as he may deem necessary to collect the tax imposed by this Act and otherwise to enforce its provisions. Further to effect this purpose, he shall require all persons coming within its provisions to keep such records and statements of account as will fully and correctly disclose all transactions mentioned in sections three and eleven of this Act; and he may appoint agents to conduct the inspection necessary to collect said tax and otherwise to enforce this Act and all rules and regulations made by him in pursuance hereof, and may fix the compensation of such agents."

§ 6309*o*. (Act Aug. 11, 1916, c. 313.) [Sec. 14.] Failure to pay tax or other violation of provisions of act, etc., a misdemeanor; punishment.

Any person liable to the payment of any tax imposed by this Act who fails to pay, or evades or attempts to evade the payment of such tax, and any person who otherwise violates any provision of this Act, or any rule or regulation made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than sixty days nor more than three years, in the discretion of the court. (39 Stat. 480.)

This section is identical in language with section 15 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309p. (Act Aug. 11, 1916, c. 313.) [Sec. 15.] Penalty, additional to punishment, for violations of act; United States attorneys to prosecute actions therefor.

In addition to the foregoing punishment there is hereby imposed, on account of each violation of this Act, a penalty of $2,000, to be

recovered in an action founded on this Act in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of this Act is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this section. (39 Stat. 481.)

This section is identical in language with section 16 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309q. (Act Aug. 11, 1916, c. 313.) [Sec. 16.] Testimony deemed material in prosecutions under act not to be withheld because of complicity of witness in violation of act; exemption of witness from prosecution.

No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this Act shall withhold his testimony because of complicity by him in any violation of this Act or of any regulation made pursuant to this Act, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates. (39 Stat. 481.)

This section is identical in language with section 17 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

§ 6309r. (Act Aug. 11, 1916, c. 313.) [Sec. 17.] Payment of tax not to exempt from penalty, etc., under State laws, nor to prohibit tax by State or municipality on same transaction.

The payment of any tax levied by this Act shall not exempt any person from any penalty or punishment now or hereafter provided by the laws of any State for entering into contracts of sale of cotton for future delivery, nor shall the payment of any tax imposed by this Act be held to prohibit any State or municipality from imposing a tax on the same transaction. (39 Stat. 481.)

This section is identical in language with section 18 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post.

Section 18 of Act Aug. 11, 1916, c. 313, appropriates any unexpended balance of the appropriation made by Act March 4, 1915, 38 Stat. 1017, to carry out the provisions of the new act, and is omitted as temporary.

§ 6309s. (Act Aug. 11, 1916, c. 313.) [Sec. 19.] Appropriation to carry out provisions of act; publication of results of investigations; disposition of moneys collected under sections 5 and 9.

There are hereby appropriated out of any moneys in the Treasury not otherwise appropriated, available until expended, the unexpended balance of the sum of $150,000 appropriated by section twenty of the said Act of August eighteenth, nineteen hundred and fourteen, and for the fiscal year ending June thirtieth, nineteen hundred and sixteen, the unexpended balance of the sum of $75,000 appropriated for the "Enforcement of the United States cotton futures Act" by the Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and sixteen (Thirty-eighth Statutes at Large, page one thousand and eighty-six), or so much of each of said unexpended balances as may be necessary, to be used by the Secretary of Agriculture for the same purposes, in carrying out the provisions of this Act, as those for which said sums, respectively, were originally appropriated, and to enable the Secretary of Agriculture to carry out any duties remaining to be performed by him under the said Act of August eighteenth, nineteen hundred and fourteen. The Secretary of Agriculture is hereby directed to publish from time to time the results of investigations made in pursuance of this Act.

All sums collected by the Secretary of Agriculture as costs under section five, or for furnishing practical forms under section nine, of this Act, shall be deposited and covered into the Treasury as miscellaneous receipts. (39 Stat. 481.)

Sections 5 and 9, referred to, are set forth ante, §§ 6309e, 6309j.

Act Aug. 18, 1914, referred to, was repealed by Act Aug. 11, 1916, c. 313, § 21, post, § 6309u.

Section 20 of Act Aug. 18, 1914, repealed by § 6309u, post, read as follows:

"There is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available until expended, the sum of $150,000 or so much thereof as may be necessary to enable the Secretary of Agriculture to make such investigations, to collect such data, and to use such methods and means as he may deem necessary to determine and designate what are bona fide spot markets within the meaning of this Act, to prescribe rules and regulations pursuant to sections five, six, and eight hereof, to establish and promulgate standards for cotton and to furnish practical forms thereof as authorized by section nine hereof, to publish the results of his investigations, to pay rent and to employ such persons as he may deem necessary, in the city of Washington and elsewhere. The Secretary of Agriculture is hereby directed to publish from time to time the results of investigations made in pursuance of this Act. All sums collected by the Secretary of Agriculture as costs under section five, or for furnishing practical forms under section nine of this Act, shall be deposited and covered into the Treasury as miscellaneous receipts."

§ 6309t. (Act Aug. 11, 1916, c. 313.) [Sec. 20.] Time of taking effect of act; contracts not affected by act.

Sections nine, eighteen, and nineteen of this Act and all provisions of this Act authorizing rules and regulations to be prescribed shall be effective immediately. All other sections of this Act shall become and be effective on and after the first day of the calendar month next succeeding the date of the passage of this Act: Provided, That nothing in this Act shall be construed to apply to any contract of sale of any cotton for future delivery mentioned in section three of this Act which shall have been made prior to the first day of the calendar month next succeeding the date of the passage of this Act. (39 Stat. 481.)

Section 9, referred to, is set forth ante, § 6309j; section 18 is omitted as temporary (see note under preceding section); and section 19 is set forth ante, § 6309s.

Section 21 of Act Aug. 18, 1914, c. 255, repealed by § 6309u, post, read as follows:

"Sections nine, nineteen, and twenty of this Act and all provisions of this Act authorizing rules and regulations to be prescribed shall be effective immediately. All other sections of this Act shall become and be effective on and after six months from the date of the passage of this Act: Provided, That nothing in this Act shall be construed to apply to any contract of sale of any cotton for future delivery mentioned in section three of this Act which shall have been made prior to the date when section three becomes effective."

§ 6309u. (Act Aug. 11, 1916, c. 313.) [Sec. 21.] Repeal; effect.

The Act entitled "An Act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," approved August eighteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page six hundred and ninety-three), is hereby repealed, effective on and after the first day of the calendar month next succeeding the date of the passage of this act: Provided, That nothing in this Act shall be construed to affect any right or privilege accrued, any penalty or liability incurred, or any proceeding commenced under said Act of August eighteenth, nineteen hundred and fourteen, or to diminish any authority conferred by said Act on any official of the United States necessary to enable him to carry out any duties remaining to be performed by him under the said Act, or to impair the effect of the findings of the Secretary of Agriculture upon any dispute referred to him under said Act, or

to affect any right in respect to, or arising out of, any contract mentioned in section three of said Act, made on or subsequent to February eighteenth, nineteen hundred and fifteen, and prior to the first day of the calendar month next succeeding the date of the passage of this Act, but so far as concerns any such contract said Act of August eighteenth, nineteen hundred and fourteen, shall remain in force with the same effect as if this Act had not been passed. (39 Stat. 482.)

Act Aug. 18, 1914, c. 255, 38 Stat. 693, was an act similar in its provisions to this act. See notes to preceding sections of this act, ante, §§ 6309a–6309t.

§ 6309v. (Act Aug. 11, 1916, c. 313.) [Sec. 22.] Effect of partial invalidity of act.

If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. (39 Stat. 482.)

CHAPTER NINE

Stamp-Taxes on Specific Objects

Sec.
6310. Tax on playing cards.
6311. Stamps to be canceled; penalty for fraudulent use; method of cancellation.
6312. Manufacturers to register.
6313. Preparation and furnishing of stamps.
6314. Forging, counterfeiting, etc., or fraudulently using or selling stamps, etc.
6315. Selling or removing for sale playing cards without affixing stamps; penalty.
6316. Removing stamps from playing cards; penalty.
6317. Selling playing cards without stamps; penalty.
6318. Manufacturer to pay tax; who deemed manufacturer; tax on articles of foreign manufacture.

(R. S. §§ 3418, 3419. Repealed.)

R. S. § 3418, imposed a tax on bank checks, drafts, and orders for the payment of money drawn on banks, bankers, and trust companies. It was modified by Act Feb. 8, 1875, c. 36, § 15, 18 Stat. 310, which amended Act June 30, 1864, c. 173, § 151, 13 Stat. 291, which was incorporated into this section. The tax was repealed by Act March 3, 1883, c. 121, § 1, 22 Stat. 488.

Receipts in receipt books of savings banks were exempted from the stamp tax by Act March 3, 1875, c. 127, § 6, 18 Stat. 340. This provision, also, was superseded by Act March 3, 1883, c. 121, § 1, 22 Stat. 488.

R. S. § 3419, imposed a tax on medicinal preparations, perfumery, cosmetics, matches, playing cards, etc., as designated in Schedule A, following R. S. § 3437. The tax was repealed by Act March 3, 1883, c. 121, § 1, 22 Stat. 488.

The stamp-taxes on checks, drafts, and other instruments and documents, and on medicinal proprietary articles, perfumery, etc., imposed by the War Revenue Act of June 13, 1898, c. 448, § 6, 30 Stat. 451, and the act amendatory thereof, Act March 2, 1901, c. 806, § 5, 31 Stat. 940, were abrogated by the repeal of those provisions by Act April 12, 1902, c. 500, § 7, 32 Stat. 97. The stamp-taxes were again imposed by Act Oct. 22, 1914, c. 331, §§ 5–24, 38 Stat. 753–764, and by Res. Dec. 17, 1915, 39 Stat., but the taxes were again abrogated by Act Sept. 8, 1916, c. 463, § 410, ante, § 5980*l*.

Notes of Decisions

See notes at end of chapter, and see U. S. v. Isham (1873) 84 U. S. (17 Wall.) 496, 21 L. Ed. 728; U. S. v. Mann (1877) 95 U. S. 580, 582, 24 L. Ed. 531; Ferguson v. Arthur (1886) 6 Sup. Ct. 861, 864, 117 U. S. 482, 29 L. Ed. 979; J. Ellwood Lee Co. v. McClain (C. C. 1901) 106 Fed. 164; Johnson & Johnson v. Rutan (C. C. 1903) 122 Fed. 993 (writ of error dismissed Rutan v. Johnson [1904] 130 Fed. 109, 64 C. C. A. 443); Simpson v. Treat (C. C. 1904) 126 Fed. 1003, 1005; Johnson & Johnson v. Herold (C. C. 1907) 161 Fed. 593; U. S. v. Stubbs (D. C. 1898) 91 Fed. 608; (1898) 22 Op. Atty. Gen. 134; (1898) 22 Op. Atty. Gen. 272.

(R. S. §§ 3420–3428. Superseded.)

R. S. § 3420, exempted from the stamp tax blank checks, drafts, and orders issued by officers of the United States Government, or officers of States or municipalities.

R. S. § 3421, rendered unstamped instruments subject to a stamp tax inadmissible in evidence, made it unlawful to record them, and declared such recording void.

R. S. § 3422, subjected the party omitting to stamp an instrument required to be stamped to a penalty. It was amended by Act Feb. 18, 1875, c. 80, 18 Stat. 319, and by Act Feb. 27, 1877, c. 69, 19 Stat. 248.

R. S. § 3423, prescribed the manner of canceling the stamps denoting the tax imposed by this chapter.

R. S. § 3424, authorized the Commissioner of Internal Revenue to prescribe methods of canceling such stamps, either as a substitute for, or in addition to, the method prescribed in this chapter.

R. S. § 3425, authorized the Commissioner to sell adhesive stamps or stamped paper to collectors and deputies, and to postmasters, stationers, and others.

R. S. § 3426, authorized the Commissioner to make allowances for stamps spoiled, destroyed, or rendered useless. It was amended by Act March 1, 1879, c. 125, § 17, 20 Stat. 349. A permanent appropriation to repay the amount paid for such stamps was made by R. S. § 3689, post, § 6799.

R. S. § 3427, authorized the Commissioner to supply collectors, assistant treasurers of the United States, designated depositories, and postmasters with adhesive stamps without prepayment therefor.

R. S. § 3428, authorized the Commissioner to make regulations as to the disposal and safe-keeping of adhesive stamps and stamped paper.

All these sections were superseded by Act March 3, 1883, c. 121, § 1, 22 Stat. 488, which repealed the taxes imposed by R. S. §§ 3418, 3419. See notes to said R. S. §§ 3418, 3419, ante.

Notes of Decisions

See notes at end of chapter, and see U. S. v. Isham (1873) 17 Wall. 496, 501, 21 L. Ed. 728; Same v. Mann (1877) 95 U. S. 580, 582, 24 L. Ed. 531; Same v. Kaufman (1877) 96 U. S. 567, 569, 24 L. Ed. 792; Bechtel v. U. S. (1879) 101 U. S. 597, 598, 600, 25 L. Ed. 1019; U. S. v. Goldback (1880) 102 U. S. 623, 26 L. Ed. 249; Same v. Real Estate Sav. Bank (1881) 104 U. S. 728, 733, 26 L. Ed. 908; Swift Co. v. U. S. (1881) 105 U. S. 691; Swift & Courtney & Beecher Co. v. U. S. (1884) 4 Sup. Ct. 244, 111 U. S. 22, 28 L. Ed. 341; Jessup v. U. S. (1882) 1 Sup. Ct. 74, 75, 77, 106 U. S. 147, 27 L. Ed. 85; U. S. v. American Tobacco Co. (1897) 17 Sup. Ct. 619, 166 U. S. 468, 41 L. Ed. 1081; Diamond Match Co. v. U. S. (C. C. 1887) 31 Fed. 271, 274; Swift, Courtney & Beecher Co. v. U. S. (1878) 14 Ct. Cl. 481; American Tobacco Co. v. U. S. (1897) 32 Ct. Cl. 207; Dugan v. U. S. (1899) 34 Ct. Cl. 458.

(R. S. § 3429. Superseded.)

R. S. § 3429, rendered the forging, counterfeiting, etc., or fraudulently using or selling stamps made or used pursuant to this chapter or any previous law on the subject punishable by imprisonment or fine, or both, at the discretion of the court. It was amended by Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248, and was again amended by Act March 1, 1879, c. 125, § 17, 20 Stat. 349, to read as set forth there. And the section as so amended was reenacted in the same words, except the change of the words "this chapter" to "this Act," by the Wilson Tariff Act of Aug. 27, 1894, c. 349, § 42, post, § 6314. See notes to said section, post, § 6314.

(R. S. §§ 3430–3432. Superseded.)

R. S. § 3430, imposed a penalty on a person selling or removing for sale drugs, medicinal preparations, perfumery, cosmetics, etc., matches, and playing cards, without affixing the required stamp. It was amended by Act March 1, 1879, c. 125, § 19, 20 Stat. 351.

R. S. § 3431, imposed a penalty on a manufacturer of drugs, medicinal preparations, perfumery, cosmetics, etc., matches, and playing cards, removing stamps affixed on such articles.

R. S. § 3432, imposed a penalty on manufacturers selling drugs, medicinal preparations, perfumery, cosmetics, etc., matches and playing cards, without affixing the required stamp.

These three sections, also, were superseded by the repeal of the stamp-taxes referred to therein, which were imposed by R. S. §§ 3418, 3419, by Act March 3, 1883, c. 121, § 1, 22 Stat. 488. See notes to said R. S. §§ 3418, 3419, ante.

Subsequent provisions imposing a stamp-tax on playing cards were made by the Wilson Tariff Act of Aug. 27, 1894, c. 349, §§ 38–46, post, §§ 6310–6319.

§ 6310. (Act Aug. 27, 1894, c. 349, § 38.) Tax on playing cards.

On and after the first day of August, eighteen hundred and ninety-four, there shall be levied, collected, and paid, by adhesive stamps, a tax of two cents for and upon every pack of playing cards containing not more than fifty-four cards, manufactured and sold or removed, and also upon every pack in the stock of any dealer on and after that date; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make regulations as to dies and adhesive stamps. (28 Stat. 560.)

This section and the eight sections next following were a part of the Wilson Tariff Act, cited above.

A previous tax on playing cards, imposed by R. S. § 3419, was repealed by Act March 3, 1883, c. 121, § 1, 22 Stat. 488.

Notes of Decisions

Necessity of each pack showing stamp.—The statute imposing an internal revenue tax on playing cards requires that each pack of cards shall show a stamp denoting the payment of the tax, so that a dealer may not reassemble cards from packs that have paid the tax and offer the reassembled packs for sale in new wrappings without restamping. U. S. v. Neustaedter (C. C. 1906) 149 Fed. 1010.

Cited without definite application, U. S. v. Burr (1895) 15 Sup. Ct. 1002, 1005, 159 U. S. 78, 40 L. Ed. 82.

§ 6311. (Act Aug. 27, 1894, c. 349, § 39.) Stamps to be canceled; penalty for fraudulent use; method of cancellation.

In all cases where an adhesive stamp is used for denoting the tax imposed by this Act upon playing cards, except as hereinafter provided, the person using or affixing the same shall write thereon the initials of his name and the date on which such stamp is attached or used, so that it may not again be used. And every person who fraudulently makes use of an adhesive stamp to denote any tax imposed by this Act without so effectually canceling and obliterating such stamp shall forfeit the sum of fifty dollars. The Commissioner of Internal Revenue is authorized to prescribe such method for the cancellation of stamps as substitute for, or in addition to the method prescribed in this section as he may deem expedient and effectual. And he is authorized, in his discretion, to make the application of such method imperative upon the manufacturers of playing cards. (28 Stat. 560.)

§ 6312. (Act Aug. 27, 1894, c. 349, § 40.) Manufacturers to register.

Every manufacturer of playing cards shall register with the collector of the district his name or style, place of residence, trade, or business, and the place where such business is to be carried on, and a failure to register as herein provided and required shall subject such person to a penalty of fifty dollars. (28 Stat. 560.)

§ 6313. (Act Aug. 27, 1894, c. 349, § 41.) Preparation and furnishing of stamps.

The Commissioner of Internal Revenue shall cause to be prepared, for payment of the tax upon playing cards, suitable stamps denoting the tax thereon. Such stamps shall be furnished to collectors requiring them, and collectors shall, if there be any manufacturers of playing cards within their respective districts, keep on hand at all times a supply equal in amount to two months' sales thereof, and shall sell the same only to such manufacturers as have registered as required by law and to importers of playing cards, who are required to affix the same to imported playing cards, and to persons who are required by law to affix the same to stocks of playing cards on hand when the tax thereon imposed first takes effect. Every collector shall keep an account of the number and denominate

values of the stamps sold by him to each manufacturer and to other persons above described. (28 Stat. 560.)

§ 6314. (Act Aug. 27, 1894, c. 349, § 42.) Forging, counterfeiting, etc., or fraudulently using or selling stamps, etc.

If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument which shall have been provided or may hereafter be provided, made, or used in pursuance of the provisions of this Act or of any previous provisions of law on the same subjects, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled the impression or any part of the impression of any such stamp, die, plate, or other instrument, as aforesaid, upon any paper, or shall stamp or mark or cause or procure to be stamped or marked any paper with any such forged or counterfeited stamp, die, plate, or other instrument or part of any stamp, die, plate, or other instrument, as aforesaid, with intent to defraud the United States of any of the taxes hereby imposed or any part thereof; or if any person shall utter, or sell, or expose to sale any paper, article, or thing having thereupon the impression of any such counterfeited stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument, or any such forged, counterfeited, or resembled impression, or part of impression, as aforesaid, knowing the same to be forged, counterfeited, or resembled; or if any person shall knowingly use or permit the use of any stamp, die, plate, or other instrument which shall have been so provided, made, or used, as aforesaid, with intent to defraud the United States; or if any person shall fraudulently cut, tear, or remove, or cause or procure to be cut, torn, or removed, the impression of any stamp, die, plate, or other instrument, which shall have been provided, made, or used in pursuance of this Act, or of any previous provisions of law on the same subjects, from any paper, or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall fraudulently use, join, fix, or place, or cause to be used, joined, fixed, or placed, to, with, or upon any paper, or any instrument or writing charged or chargeable with any of the taxes hereby imposed, any adhesive stamp, or the impression of any stamp, die, plate, or other instrument, which shall have been provided, made, or used in pursuance of law, and which shall have been cut, torn, or removed from any other paper or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall willfully remove or cause to be removed, alter or cause to be altered, the canceling or defacing marks on any adhesive stamp, with intent to use the same, or to cause the use of the same, after it shall have been once used, or shall knowingly or willfully sell or buy such washed or restored stamps or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same, or prepare the same with intent for the further use thereof; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any washed, restored, or altered stamps, which have been removed from any article, paper, instrument, or writing, then, and in every such case, every person so offending, and every person knowingly and willfully aiding, abetting, or assisting in committing any such offense as aforesaid, shall, on conviction thereof, forfeit the said counterfeit, washed, restored, or altered stamps and the articles upon which they are placed and be punished by fine not exceeding one thousand dollars, or by imprisonment and confinement to hard labor not exceeding five years, or both, at the discretion of the court. And the fact that any adhesive stamp so bought, sold, offered for

sale, used, or had in possession as aforesaid, has been washed or restored by removing or altering the canceling or defacing marks thereon, shall be prima-facie proof that such stamp has been once used and removed by the possessor thereof from some paper, instrument, or writing charged with taxes imposed by law, in violation of the provisions of this section. (28 Stat. 561.)

Provisions similar to those of this section, made by R. S. § 3429, as amended by Act March 1, 1879, c. 125, § 17, 20 Stat. 349, were re-enacted in this section in the same language except the change of the words thereof "this chapter," to "this Act." Thereby said provisions were superseded, this section applying to the forgery or counterfeiting, etc., of any stamp, die, etc., provided, made, or used "in pursuance of the provisions of this Act or of any previous provisions of law on the same subjects."

The provisions of this section are not limited in application as are those of the other sections of the same act set forth in this chapter, ante, §§ 6310–6313, post, §§ 6315–6318, to the stamp-tax on playing cards.

Notes of Decisions

Removal or defacement of stamps.— While criminal offenses against the United States are wholly statutory, and indictments therefor must find their warrant in the provision of some statute, the fact that an act of congress creating an offense—such as the defacement or removal of revenue stamps or marks or brands—delegates to an administrative department of the government the duty of designing and preparing such stamps or prescribing such marks and brands, and making regulations governing their use, does not render their removal or defacement, when used in accordance with such regulations, any the less a statutory offense. Wilkins v. U. S. (1899) 96 Fed. 837, 37 C. C. A. 588.

Dealing in washed stamps. — One whom defendant knew to be a dealer in washed revenue stamps asked him to assist in finding purchasers for stamps which such dealer said were a part of the estate left by his deceased uncle. Defendant repeatedly declared he would have nothing to do with washed stamps, and was assured that they were genuine. Defendant found a man who agreed to assist in selling the stamps at 50 per cent. discount, after such dealer had furnished three "samples" which were genuine. The dealer gave defendant an envelope said to contain $663 in stamps, for which $331.50 was expected, and defendant handed the envelope, unopened, to the one who had agreed to assist in selling. The stamps were then taken to another man, who was about to sell them, when they were seized. Defendant was indicted for knowingly having in his possession and offering for sale washed and restored revenue stamps. There was some testimony that it is a custom for genuine stamps to be sold in the neighborhood where these were offered at large discounts. Held, that the evidence was sufficient to justify a conviction. Kaufmann v. U. S. (1902) 113 Fed. 919, 51 C. C. A. 549.

Defendant's requests to instruct the jury that, before they could render a verdict of guilty, they must be satisfied beyond a reasonable doubt that he had inspected the stamps, and had seen that they were canceled and washed, or else there must be proof that such dealer had told defendant that the stamps were washed and canceled, were properly refused. Id.

§ 6315. (Act Aug. 27, 1894, c. 349, § 43.) Selling or removing for sale playing cards without affixing stamps; penalty.

Whenever any person makes, prepares, and sells or removes for consumption or sale, playing cards, whether of domestic manufacture or imported, upon which a tax is imposed by law, without affixing thereto an adhesive stamp denoting the tax before mentioned, he shall incur a penalty of fifty dollars for every omission to affix such stamp: Provided, That playing cards may be removed from the place of manufacture for export to a foreign country, without payment of tax, or affixing stamps thereto, under such regulations and the filing of such bonds as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. (28 Stat. 562.)

Cited without definite application,
U. S. v. Burr (1895) 15 Sup. Ct. 1002, 1005, 159 U. S. 78, 40 L. Ed. 82.

§ 6316. (Act Aug. 27, 1894, c. 349, § 44.) Removing stamps from playing cards; penalty.

Every manufacturer or maker of playing cards who, after the same are so made, and the particulars hereinbefore required as to stamps have been complied with, takes off, removes, or detaches, or causes, or permits, or suffers to be taken off, or removed, or detached, any stamp, or who uses any stamp, or any wrapper or cover to which any stamp is affixed, to cover any other article or commodity than that originally contained in such wrapper or cover, with such stamp when first used, with the intent to evade the stamp duties, shall, for every such article, respectively, in respect of which any such offense is committed, be subject to a penalty of fifty dollars, to be recovered together with the costs thereupon accruing; and every such article or commodity as aforesaid shall also be forfeited. (28 Stat. 562.)

§ 6317. (Act Aug. 27, 1894, c. 349, § 45.) Selling playing cards without stamps; penalty.

Every maker or manufacturer of playing cards who, to evade the tax or duty chargeable thereon, or any part thereof, sells, exposes for sale, sends out, removes, or delivers any playing cards before the duty thereon has been fully paid, by affixing thereon the proper stamp, as provided by law, or who, to evade as aforesaid, hides or conceals, or causes to be hidden or concealed, or removes or conveys away, or deposits, or causes to be removed or conveyed away from or deposited in any place, any such article or commodity, shall be subject to a penalty of fifty dollars, together with the forfeiture of any such article or commodity. (28 Stat. 562.)

Cited without definite application,
U. S. v. Burr (1895) 15 Sup. Ct. 1002, 1005, 159 U. S. 78, 40 L. Ed. 82.

§ 6318. (Act Aug. 27, 1894, c. 349, § 46.) Manufacturer to pay tax; who deemed manufacturer; tax on articles of foreign manufacture.

The tax on playing cards shall be paid by the manufacturer thereof. Every person who offers or exposes for sale playing cards, whether the articles so offered or exposed are of foreign manufacture and imported or are of domestic manufacture, shall be deemed the manufacturer thereof, and subject to all the duties, liabilities, and penalties imposed by law in regard to the sale of domestic articles without the use of the proper stamps denoting the tax paid thereon, and all such articles of foreign manufacture shall, in addition to the import duties imposed on the same, be subject to the stamp tax prescribed in this Act. (28 Stat. 562.)

The Commissioner of Internal Revenue was required to estimate the tax on articles sold without the use of the proper stamp by section 47 of this act, post, § 6348.

The duty of playing cards was fixed by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § I, par. 331, ante, § 5291, par. 331.

(R. S. § 3433. Superseded.)

This section, as enacted in the Revised Statutes, provided that medicines, preparations, etc., manufactured wholly or in part of domestic spirits, intended for exportation, in order to be manufactured and sold or removed, without being charged with duty, and without having a stamp affixed thereto, should be manufactured in warehouses, as thereby prescribed.

An amendment of the section by inserting therein the words "except distilled spirits," was superseded by provisions for removal of distilled spirits from distillery warehouses, without payment of tax, by manufacturers of medicines, preparations, etc., in manufacturing warehouses, made by Act March 1, 1879, c. 125, § 20, amended by Act May 28, 1880, c. 108, § 14, ante, § 6068.

The provisions of the original section, without said inserted words "except distilled spirits," were substantially re-enacted in and superseded by section 10 of the McKinley Tariff Act of Oct. 1, 1890, c. 1244, § 10, post, § 6339.

Cited without definite application,
See 18 Op. Atty. Gen. 82.

(R. S. § 3434. Transferred to Chapter 11.)

This section provided for the removal of articles, manufactured in bonded warehouses under the preceding section, R. S. § 3433, situated in any of the Atlantic States, to customs bonded warehouses on the Pacific coast, for exportation therefrom.

Act Oct. 1, 1890, c. 1244, § 10, which re-enacted and superseded said preceding section of the Revised Statutes, and this section, are placed, with other miscellaneous provisions relating to internal revenue taxation, post, under chapter 11 of this Title, "Provisions Common to Several Objects of Taxation," §§ 6339, 6340.

(R. S. §§ 3435–3437. Superseded.)

R. S. § 3435, defined manufacturers of the articles mentioned in Schedule A, following R. S. § 3437, as persons who offered or exposed for sale any of such articles.

R. S. § 3436, exempted from stamp tax medicines compounded according to the United States or other national pharmacopœia.

Medicines prepared according to any standard dispensatory or pharmacopœia in common use by physicians were also exempted from the tax by Act Feb. 8, 1875, c. 36, § 22, 18 Stat. 312.

R. S. § 3437, authorized an assessment of unpaid taxes payable by stamps.

The schedule of medicinal preparations, perfumeries, cosmetics, etc., designated as Schedule A, followed R. S. § 3437.

All these sections, together with said Schedule A, and Act Feb. 8, 1875, c. 36, § 22, were superseded by Act March 3, 1883, c. 121, § 1, 22 Stat. 488, which repealed the taxes imposed by R. S. §§ 3418, 3419.

STAMP TAX ACT OF 1914

Act Oct. 22, 1914, c. 331, §§ 5–24, 38 Stat. 753–764, relating to stamp taxes on documents and other objects, was repealed by Act Sept. 8, 1916, c. 463, § 410, ante, § 5980*l*. By section 411 of the act last mentioned, set forth ante, § 6346a, the Commissioner of Internal Revenue is authorized to redeem unused stamps issued under such Act Oct. 22, 1914.

Decisions Relating to Stamp Taxes under Former Laws

1. Construction of statutes in general.
2. Application to instruments and documents used in state courts.
3. Determination as to liability to stamp tax.
4. Persons who may or must affix and cancel stamps.
5. Presumption as to proper stamping.
6. Liability of instrument to stamp duty.
7. Persons liable for not affixing stamp.
8. Intent to evade statute.
9. Indictment.
10. Evidence.
11. Decisions under former law as to the admission in evidence of unstamped instruments.
12. Who may cancel.
13. Sufficiency of cancellation.
14. Effect of irregularity or improper cancellation.
15. Failure to cancel.
16. Indictable offense.
17. Practice under former law as to commissions.
18. Omission of stamps as affecting validity of instrument.
19. Unstamped instrument as subject of forgery.
20. Affixing omitted stamps in general.
21. Omission of stamps through inadvertence, inability to procure the same, etc.
22. Stamping copy of lost instrument.
23. District wherein application to affix stamp should be made.
24. Persons who may or should procure stamping and cancellation.
25. Who may affix omitted stamps.
26. —— Deputy collectors.
27. Conclusiveness of officer's decision.
28. Collector's certificate of subsequent sufficient stamp.
29. Presumption as to subsequent stamping.
30. Effect of subsequent stamping.
31. Effect of paying price of stamp and penalty.
32. Record to which statute applies.
33. Conveyance of realty.
34. Recording unstamped instrument.
35. Presumption as to recorded instruments being duly stamped.
36. Filing for record.
37. Effect as to validity of instrument.
38. Unlawful record as importing constructive notice.
39. Use as evidence of record of unstamped instrument.
40. Official bonds.
41. Liquor license bonds.
42. Tax deeds.
43. County orders.
44. Certificate of appraisal on foreclosure.
45. Certificate of acknowledgment to declaration of homestead.
46. Official papers, instruments and certificate made or issued by federal officers.
47. Certificates or instruments issued for private use.

48. Liability of partners.
49. "Selling" and "exposing for sale."
50. Sale "in the original and unbroken package."
51. Presumption as to stamping article.
52. Forfeiture for removal of unstamped cosmetics from warehouse.
53. Manner of collecting stamp duty.
54. Constitutionality of tax.
55. Transactions or memorandum subject to tax in general.
56. Pledge or hypothecation of stock.
57. Agreement to sell.
58. "Call" memorandum or writing.
59. Second tax on memorandum.
60. Constitutionality.
61. "Similar place" within meaning of statute.
62. Former law.
63. Extension of statute by construction.
64. Forged note.
65. Receipt for money loaned.
66. Receipt for property to be paid at a certain price.
67. Stamping anew on transfer to another than original holder.
68. Constitutionality of tax on foreign bill of lading.
69. Term "goods" as including money.
70. Meaning of "accepted for transportation."
71. Duplicate bills of lading.
72. Exemption of express companies as to bills of lading, etc.
73. Receipts issued by express companies.
74. Excess baggage receipt.
75. Transportation extending outside of country.
76. Money and merchandise carried free.
77. Inland bills of lading under act of 1864.
78. Who must affix and pay for stamp.
79. Liability to penalty under statute.
80. Telephone messages transmitted under yearly contracts.
81. Who must buy, affix, and cancel stamp or telegraphic dispatch.
82. "Bond" defined.
83. Bond in possession of obligor unissued.
84. Official bonds.
85. Liquor license bonds.
86. Bonds in legal proceedings.
87. Constitutionality.
88. Certificates issued by state officers.
89. Return of constable.
90. Affidavit made in progress of cause.
91. Certificate of acknowledgment attached to declaration of homestead.
92. Certificates on foreclosure.
93. Copy of certificate on foreclosure.
94. Copy of order approving bond of trustee in bankruptcy.
95. Transcript of judgment of municipal court.
96. Certificate as to transcript or exemplification of foreign judgment.
97. Certificate of tax sale.
98. Certificates as to depositions.
99. Certificate indorsed on writ issued by justice.
100. Certificate to appeal record or transcript.
101. Recorder's certificate.
102. Magistrate's certificate exempt under former law.
103. Transaction called a "put."
104. Recovery of tax paid.
105. Stamping according to actual consideration.
106. Enhancement of value by improvements by purchaser.
107. Amount of stamp as depending on payment in gold or legal tender notes.
108. Conveyance subject to incumbrances.
109. Double stamp duty.
110. Deeds on judicial sales.
111. —— Master's deed.
112. Receiver's deed on termination of trust.
113. Tax deed.
114. Affixing stamp to policy or preliminary application.
115. Amount of policy.
116. Reinsurance.
117. Assignment of policy.
118. Raising question as to stamps in state court.
119. Power of attorney in general.
120. Power of attorney in bankruptcy proceedings.
121. Power to sell or convey real estate.

The notes under this and the following sections relating to stamp taxes obviously relate to former statutes, and are inserted as bearing more or less on the present law and on subsequent acts which may be enacted.

1. Construction of statutes in general.—A law imposing a stamp duty is intended to raise revenue, not to invalidate instruments, and should be liberally construed. Day v. Baker (1865) 36 Mo. 125.

The act of congress requiring stamps on written instruments should be strictly construed. Conroy v. Warren (N. Y. 1802) 3 Johns. Cas. 259, 2 Am. Dec. 156.

2. Application to instruments and documents used in state courts.—The various acts of congress providing that certain instruments, unless stamped in the manner therein required, shall not be recorded, admitted, or used as evidence in any court, etc., must be construed to embrace only proceedings had and acts done in public offices and courts established under the constitution of the United States and by authority of act of congress framed in pursuance thereof. Duffy v. Hobson (1870) 40 Cal. 240, 6 Am. Rep. 617.

The provision of the federal war revenue law of 1898 requiring revenue stamps to be attached to certain instruments and documents does not apply to instruments used in legal proceedings in state courts; it being beyond the power of the federal government to impose any burden on the procedure of state courts. Dawson v. McCarty (1899) 57 P. 816, 21 Wash. 314, 75 Am. St. Rep. 841.

3. Determination as to liability to stamp tax.—In determining the liability of an instrument to a stamp duty, regard is to be had to its form and face, rather than to its operation. Though it may be a device to avoid the stamp duty, and its operation a fraud on the revenue, yet, if the device be carried out by means of legal forms, it is subject to no legal censure. U. S. v. Isham (1873) 84 U. S. (17 Wall.) 496, 21 L. Ed. 728.

Where a written instrument is on its face one which requires an internal

revenue stamp under the law, the purpose for which it was taken or used cannot be inquired into to affect its liability to the duty. Granby Mercantile Co. v. Webster (C. C. 1899) 98 Fed. 604.

Where a tax is imposed on documents of a special character, to determine whether a stamp is required, the form of the document is to be looked to, rather than the transaction of which it is a part, as the stamp is imposed, not on transactions, but on documents. Merchants' Warehouse Co. v. McClain (C. C. 1902) 112 Fed. 787, judgment affirmed McClain v. Merchants' Warehouse Co. (1902) 115 Fed. 295, 53 C. C. A. 155.

The liability of an instrument to a stamp tax, as well as the amount of such tax, is determined by the form and face of the instrument, and cannot be affected by proof of facts outside of the instrument itself. (1899) 22 Op. Atty. Gen. 369.

4. Persons who may or must affix and cancel stamps.—See, also, notes under Schedule A(5), post.

Where, in ejectment, the plaintiff offers a deed in evidence as part of his chain of title, and the defendant thereupon asks the subscribing witness when the deed was made, stating that he makes the inquiry only to show that the grantee, and not the grantors, affixed and canceled the war revenue stamps on the deed, and that they were affixed on the day of the date of the deed, when it was offered for record, and disclaiming any purpose to offer evidence of bad faith or other attempt to evade the revenue law, the trial court properly sustains an objection to the question. Crandall v. Lynch (1902) 20 App. D. C. 73.

In an action upon a written contract bearing a proper revenue stamp, it is wholly immaterial which party to the contract affixed the revenue stamp. Adams v. Dale (1868) 29 Ind. 273.

In a suit on a written contract, properly stamped, an objection that the maker did not affix the stamp nor authorize it to be done is untenable; it being immaterial who affixed the stamp. Id.

The uttering and publishing of a promissory note, though the forger did not place thereon the revenue stamp required by Act July 13, 1866, is indictable, as under that act any person having an interest in the note might affix the proper stamp thereto, and thereby render the note valid. State v. Mott (1871) 16 Minn. 472 (Gil. 424), 10 Am. Rep. 152.

The person executing a document which requires a stamp is the one to affix it, and it cannot be subsequently affixed, nor the cancellation made, by any party, without his actual knowledge and express or implied assent. Myers v. Smith (N. Y. 1867) 48 Barb. 614.

Under Revenue Law, § 151, providing that the stamp duty shall be levied upon and collected in respect to the paper upon which it is placed from the person who shall make or issue the same, and a subsequent section providing that a person issuing or affixing the same shall write the initials of his name thereon, and the date when the same is affixed, the person executing a document which requires a stamp is the one to affix it, and in any event it cannot be affixed nor the cancellation made by another party, without the actual knowledge or the express or implied assent of the party who issues the paper. Id.

A purchaser at judicial sale is entitled to a deed which will be a defense to his title in any tribunal in which it may be attacked, and hence he can compel the referee to affix thereto the revenue stamps required by the "War Tax Act," since, without the stamps, the deed would not be competent evidence in the federal courts. Loring v. Chase (1899) 56 N. Y. Supp. 312, 26 Misc. Rep. 318.

The duty imposed by the United States stamp laws on written instruments may be paid either by the maker or by the party for whose use and benefit they are made. Voight v. McKain (Pa. 1864) 2 Pittsb. R. 522.

It is the duty of the obligor in a voluntary insolvent's bond to affix the stamp, and neither he nor his sureties can allege his own neglect in avoidance of the bond. McGovern v. Hoesback (1866) 53 Pa. (3 P. F. Smith) 176.

It being the duty of the maker of a note to affix and cancel a revenue stamp, he cannot raise the objection to the want of a stamp, when it is offered in evidence. Mogelin v. Westhoff (1871) 33 Tex. 788.

A note is not inadmissible in evidence because the revenue stamp was affixed by an indorsee. Mays v. Rutledge (1873) 37 Tex. 134.

5. Presumption as to proper stamping.—An instrument having the appropriate revenue stamp attached thereto will be presumed to have been stamped by the proper person and at the proper time. Iowa & M. R. Co. v. Perkins (1869) 28 Iowa, 281.

In the absence of anything to the contrary, a written instrument, required by law to be stamped, will be presumed to have been properly stamped. Thayer v. Barney (1867) 12 Minn. 502 (Gil. 406); Smith v. Jordan (1868) 13 Minn. 264 (Gil. 246), 97 Am. Dec. 232; Cabbott v. Radford (1871) 17 Minn. 320 (Gil. 296); Owsley v. Greenwood (1872) 18 Minn. 429 (Gil. 386).

Where a contract or conveyance is offered in evidence, executed during the period when revenue stamps were

required, and such instrument has the required stamp, it is entitled to go in evidence, and in the absence of direct proof to the contrary the presumption will prevail that it was stamped at the proper time, by the proper person, and in the proper sum. Glaser v. Glaser (1903) 74 P. 944, 13 Okl. 389.

Where a bond is offered in evidence to which a United States internal revenue stamp is affixed, it is no objection thereto that the bond was not stamped with the knowledge, consent, or authority of the grantee, since it may nevertheless have been done under the authority of the revenue act, and, without proof to the contrary, will be presumed to have been properly and legally stamped. Myers v. McGraw (1871) 5 W. Va. 30.

6. Liability of instrument to stamp duty.—In determining the liability of an instrument to a stamp duty, regard is to be had to its form and face, rather than to its operation. Though it may be a device to avoid the stamp duty, and its operation a fraud on the revenue, yet, if the device be carried out by means of legal forms, it is subject to no legal censure. U. S. v. Isham (1873) 84 U. S. (17 Wall.) 496, 21 L. Ed. 728.

7. Persons liable for not affixing stamp.—Under Act June 13, 1898, § 18 (30 Stat. 456), providing that a telegraph company shall incur a certain penalty for transmitting a message not stamped as therein required, and section 7 (30 Stat. 452), providing that any person who shall "make, sign, or issue" an instrument not properly stamped shall be subject to a fine, it is the duty of the maker or signer of the message offered for transmission to affix the stamp. Kirk v. Western Union Tel. Co. (C. C. 1899) 90 Fed. 809.

8. Intent to evade statute.—Under Act July 13, 1866, § 9, providing that any person who shall issue any instrument for the payment of money without the same being duly stamped, with intent to evade the provisions of the act, shall forfeit the sum of $50, an intent to evade is the essence of the offense. U. S. v. Buzzo (1873) 85 U. S. (18 Wall.) 125, 21 L. Ed. 812.

Section 152 of the internal revenue act of June 30, 1864 (13 Stat. 292), as amended by Act July 13, 1866 (14 Stat. 141), while it avoided the record of a deed not duly stamped, or upon which the stamp is not canceled, did not affect the validity of the original. Section 156 of said act (13 Stat. 293) imposed a penalty upon the vendor for not canceling a stamp put upon his conveyance, but does not affect the validity of the conveyance itself. Section 158 of said act (13 Stat. 293), as amended by Act July 13, 1866 (14 Stat. 142), imposed a penalty upon the maker for not duly stamping his conveyance, or omitting to cancel a stamp thereon, and declared the same void if either omission was made "with intent" to defraud the government; but whoever seeks to set aside or avoid a conveyance on that ground must allege and prove such fraudulent intent. Dowell v. Applegate (C. C. 1881) 7 Fed. 881.

The penalties imposed by Act June 30, 1864, § 158, requiring revenue stamps, applies as well to instrument issued without intent to evade the provisions of the act as to those issued with such intent. City of Muscatine v. Sterneman (1871) 30 Iowa, 526, 6 Am. Rep. 685.

9. Indictment.—An indictment charging the defendant with issuing an unstamped receipt is sufficient if it sets out the offense in the language of the statute. It is the giving of a receipt for a sum exceeding $20, and not the payment of the money, which requires a stamp. U. S. v. Moore (C. C. 1882) 11 Fed. 248.

Where an indictment brought under act of March 3, 1865 (13 Stat. 481), charges the defendant with issuing an unstamped receipt for the payment of money, and the evidence shows that it was a receipt for the payment of a debt, it was held not a variance. Id.

10. Evidence.—On an indictment for issuing instruments without stamping them, proof of issuing an instrument unstamped, which by law should have been stamped, is sufficient in the first instance, to warrant a conviction. U. S. v. Learned (D. C. 1870) Fed. Cas. No. 15,580.

11. Decisions under former law as to the admission in evidence of unstamped instruments.—See Frank Waterhouse v. Rock Island Alaska Min. Co. (1899) 97 Fed. 466, 38 C. C. A. 281; Sackett v. McCaffrey (1904) 131 Fed. 219, 65 C. C. A. 205; Barry v. Law (C. C. 1802) 89 Fed. 582; Wheaton v. Weston & Co. (D. C. 1903) 128 Fed. 151; Mobile & G. R. Co. v. Edwards (1871) 46 Ala. 267; Turner v. State (1872) 48 Ala. 549; Foster v. Holley's Adm'rs (1873) 49 Ala. 593; Oxford Iron Co. v. Spradley (1874) 51 Ala. 171; Perryman v. Greenville (1874) 51 Ala. 507; Hooper v. Whitaker (1901) 30 So. 355, 130 Ala. 324; Fulgham v. Hunking (1912) 60 South. 417, 6 Ala. App. 68; Bumpass v. Taggart (1870) 26 Ark. 398, 7 Am. Rep. 623; Patterson v. Gile (1870) 1 Colo. 200; Trowbridge v. Addoms (1897) 48 P. 535, 23 Colo. 518; Frank v. Bauer (1903) 75 P. 930, 19 Colo. App. 445; Griffin v. Ranney (1868) 35 Conn. 239; Garland v. Gaines (1901) 49 Atl. 19, 73 Conn. 662, 84 Am. St. Rep. 182; Forcheimer v. Holly (1872) 14 Fla. 239; Israel v. Redding (1866) 40 Ill.

362; Jacquin v. Warren (1866) 40 Ill. 459; Latham v. Smith (1867) 45 Ill. 29; Cross v. People (1868) 47 Ill. 152, 95 Am. Dec. 474; Craig v. Dimock (1868) 47 Ill. 308; Hanford v. Obrecht (1868) 49 Ill. 146; Wilson v. McKenna (1869) 52 Ill. 43; Mullin v. Johnson (1901) 98 Ill. App. 621; Masterofsky v. Hellman (1901) 99 Ill. App. 214; Richardson v. Roberts (1902) 62 N. E. 840, 195 Ill. 27; Pierpont v. Johnson (1902) 104 Ill. App. 27; Plessinger v. Depuy (1865) 25 Ind. 419; Hawes v. Rhoads (1870) 34 Ind. 79; Wallace v. Cravens (1870) 34 Ind. 534; Doffin v. Guyer (1872) 39 Ind. 215; Dillingham v. Parks (1902) 65 N. E. 300, 30 Ind. App. 61; O'Hare v. Leonard (1866) 19 Iowa, 515; Barney v. Ivins (1867) 22 Iowa, 163; Leach v. Hale (1871) 31 Iowa, 69, 7 Am. Rep. 112; Byington v. Oaks (1871) 32 Iowa, 488; Brown v. Scott (1872) 34 Iowa, 575; Morgan v. Graham (1872) 35 Iowa, 213; Collins v. Valleau (1889) 79 Iowa, 626, 43 N. W. 284, 44 N. W. 904; Mathews v. Culbertson (1891) 83 Iowa, 434, 50 N. W. 201; Harvey v. Wieland (1902) 88 N. W. 1077, 115 Iowa, 564; State v. Glucose Sugar Refining Co. (1902) 91 N. W. 794, 117 Iowa, 524; First Nat. Bank v. Stone (Iowa, 1902) 91 N. W. 1076; Bottorff v. Lewis (1903) 95 N. W. 262, 121 Iowa, 27; Green v. McCracken (1902) 67 P. 857, 64 Kan. 330; McLearn v. Skelton (1866) 18 La. Ann. 514; Bayly v. McKnight (1867) 19 La. Ann. 321; Van Wickle v. Paydras (1870) 22 La. Ann. 70; D'Armond v. Dubose (1870) 22 La. Ann. 131, 2 Am. Rep. 718; Corrie v. Billiu's Estate (1871) 23 La. Ann. 250; Browne v. Bennett (1872) 24 La. Ann. 618; Pavy v. Bertinot (1873) 25 La. Ann. 469; Alter v. McDougal (1874) 26 La. Ann. 245; Foreman v. Francis (La. 1880) Man. Unrep. Cas. 337; Pargoud v. Richardson (1878) 30 La. Ann. 1286; Holt v. Hart (1881) 33 La. Ann. 673; Leavitt v. Leavitt (1826) 4 Me. (4 Greenl.) 161; Patterson v. Eames (1866) 54 Me. 203; Emery v. Hobson (1873) 63 Me. 33; Wade v. Foss (1902) 52 Atl. 640, 96 Me. 230; Same v. Curtis (1902) 52 Atl. 762, 96 Me. 309; Montgomery v. Black (Md. 1799) 4 Har. & McH. 391; Reynolds v. Furlong (1856) 10 Md. 318; Black v. Woodrow (1874) 39 Md. 194; Desmond v. Norris (1865) 92 Mass. (10 Allen) 250; Tobey v. Chipman (1866) 95 Mass. (13 Allen) 123; Carpenter v. Snelling (1867) 97 Mass. 452; Lynch v. Morse (1867) 97 Mass. 458, note; Green v. Holway (1869) 101 Mass. 243, 3 Am. Rep. 339; Cook v. Shearman (1869) 103 Mass. 21; Rowe v. Bowman (1903) 67 N. E. 636, 183 Mass. 488; Clemens v. Conrad (1869) 19 Mich. 170; Sammons v. Halloway (1870) 21 Mich. 162, 4 Am. Rep. 465; Amos-Richia v. Northwestern Mut. Life Ins. Co. (1906) 107 N. W. 707, 143 Mich. 684, 13 Detroit Leg. N. 129; Spoon v. Frambach (1901) 86 N. W. 106, 83 Minn. 301; Frazer v. Robinson (1868) 42 Miss. 121; Humphreys v. Wilson (1870) 43 Miss. 328; Morris v. McMorris (1870) 44 Miss. 441, 7 Am. Rep. 695; New Orleans, J. & G. N. R. Co. v. Pressley (1871) 45 Miss. 66; Davis v. Richardson (1871) 45 Miss. 499, 7 Am. Rep. 732; Waterbury v. McMillan (1872) 46 Miss. 635; Day v. Baker (1865) 36 Mo. 125; Boehne v. Murphy (1870) 46 Mo. 57, 2 Am. Rep. 485; Boly v. Lake (1873) 54 Mo. 201; Sulpho-Saline Bath Co. v. Allen (1902) 92 N. W. 354, 66 Neb. 295, 1 Ann. Cas. 21; Carpenter v. Johnson (1865) 1 Nev. 331; Knox v. Rossi (1899) 57 Pac. 179, 25 Nev. 96, 48 L. R. A. 305, 83 Am. St. Rep. 566; Janvrin v. Fogg (1870) 49 N. H. 340; Woodward v. Roberts (1878) 58 N. H. 503; Edeck v. Ranuer (N. Y. 1807) 2 Johns. 423; Beebe v. Hutton (N. Y. 1866) 47 Barb. 187; Davy v. Morgan (N. Y. 1868) 56 Barb. 218; Frink v. Thompson (N. Y. 1869) 4 Lans. 489; Schermerhorn v. Burgess (N. Y. 1869) 55 Barb. 422; People v. Gates (1870) 43 N. Y. 40; Gilbert v. Sage (N. Y. 1871) 5 Lans. 287; Haight v. Grist (1870) 64 N. C. 739; Davis v. Evans (1903) 45 S. E. 643, 133 N. C. 320; Harris v. Trimble (Ohio, 1870) 1 Cin. Super. Ct. R. 108; Hellman v. Reis (Ohio, 1870) 1 Cin. R. 30 (affirmed Reis v. Hellman [1874] 25 Ohio St. 180); Stewart v. Hopkins (1876) 30 Ohio St. 502; Glaser v. Glaser (1903) 74 Pac. 944, 13 Okl. 389; Frey v. Wells (Pa. 1808) 4 Yeates, 497; McMasters v. Pennsylvania R. Co. (Pa. 1865) 3 Pittsb. R. 1; Shay v. Henk (1865) 49 Pa. (13 Wright) 79; Walsh v. Carroll (Pa. 1868) 6 Phila. 590; Boyd v. Hood (1868) 57 Pa. (7 P. F. Smith) 98; Long v. Spencer (1875) 78 Pa. (28 P. F. Smith) 303; Markel's Adm'rs v. Marx (Pa. 1886) 33 Pittsb. Leg. J. 420; Lerch v. Snyder (1886) 112 Pa. 161, 4 Atl. 336; Bryan v. First Nat. Bank (1903) 54 A. 480, 205 Pa. 7; Ohio River Junction R. Co. v. Pennsylvania Co. (1909) 72 A. 271, 222 Pa. 573; Cassidy v. St. Germain (1900) 46 Atl. 35, 22 R. I. 53; Kennedy v. Rountree (1901) 37 S. E. 942, 59 S. C. 324, 82 Am. St. Rep. 841; Sporrer v. Eifler (1870) 48 Tenn. (1 Heisk.) 633; Southern Ins. Co. v. Estes (1901) 62 S. W. 149, 106 Tenn. 472, 52 L. R. A. 915, 82 Am. St. Rep. 892; Werbiskie v. McManus (1868) 31 Tex. 116; Van Alstyne v. Sorley (1870) 32 Tex. 518; Mogelin v. Westhoff (1871) 33 Tex. 788; Dailey v. Coker (1870) 33 Tex. 815, 7 Am. Rep. 279; Jacobs v. Spofford (1871) 34 Tex. 152; Gregg v. Fitzhugh (1872) 36 Tex. 127; Mays v. Rutledge (1873) 37 Tex. 134; Shipman v. Fulcrod (1875) 42 Tex. 248; Watson v. Mirike (1901) 61 S. W. 538, 25 Tex. Civ.

App. 527; Hale v. Wilkinson (Va. 1871) 21 Grat. 75; Talley v. Robinson's Assignee (Va. 1872) 22 Grat. 888; Foster v. Pacific Clipper Line (1902) 71 P. 48, 30 Wash. 515; Weltner v. Riggs (1869) 3 W. Va. 445; Myers v. McGraw (1871) 5 W. Va. 30; Knox v. Huidekoper (1867) 21 Wis. 527; Rheinstrom v. Cone (1870) 26 Wis. 163, 7 Am. Rep. 48; Timp v. Dockham (1872) 29 Wis. 440; Fenelon v. Hogoboom (1872) 31 Wis. 172. CONTRA, Plessinger v. Depuy (1865) 25 Ind. 419; City of Muscatine v. Sterneman (1871) 30 Iowa, 526, 6 Am. Rep. 685; Corrie v. Billiu's Estate (1871) 23 La. Ann. 250; Howe v. Carpenter (N. Y. 1869) 53 Barb. 382; Davy v. Morgan (N. Y. 1868) 56 Barb. 218; Chartiers & R. Turnpike Co. v. McNamara (1873) 72 Pa. (22 P. F. Smith) 278, 13 Am. Rep. 673; Woodson v. Randolph (1800) 1 Va. Cas. 128.

12. Who may cancel.—The stamp on a bond need be canceled by one only of several obligors. Teagarden v. Garver (1865) 24 Ind. 399.

Where an adhesive stamp is used for denoting the duty on a written instrument, it may be canceled either by the maker or by the party for whose use and benefit the instrument is made. Voight v. McKain (Pa. 1864) 2 Pittsb. R. 522.

A revenue stamp on a note may as well be canceled by the initials of the payee as by those of the maker. Schultz v. Herndon (1869) 32 Tex. 390.

13. Sufficiency of cancellation.—The sufficiency of the cancellation of a revenue stamp is not affected by the failure to affix the initials of the plaintiff's name. Foster v. Holley's Adm'rs (1873) 49 Ala. 593.

A revenue stamp is effectually canceled when it is so defaced that it cannot be used a second time. Taylor v. Duncan (1870) 33 Tex. 440.

14. Effect of irregularity or improper cancellation.—The manner of the cancellation of a revenue stamp on a written instrument cannot affect its validity. St. Louis & C. R. R. Co. v. Eakins (1870) 30 Iowa, 279.

Irregularity in canceling a revenue stamp on an instrument does not affect the validity of the instrument as evidence. Union Agricultural & Stock Ass'n v. Neill (1871) 31 Iowa, 95.

A document having the requisite amount of United States internal revenue stamps thereon is admissible in evidence, although they are not canceled as required by the revenue laws. The failure to have the stamps properly canceled subjects the parties to the penalties prescribed by the United States for such neglect, but does not invalidate or render the instrument inadmissible in evidence. D'Armond v. Dubose (1870) 22 La. Ann. 131, 2 Am. Rep. 718.

The want of the proper cancellation of a revenue stamp does not render the instrument void. Cory Nat. Bank v. Rouse (Pa. 1865) 3 Pittsb. R. 18.

A note canceled by the impress of a rubber stamp with the date "July 6, 1869," and without any initial or other device, is not inadmissible as evidence because of such improper cancellation. Andress v. Thomas (Pa. 1878) 6 Wkly. Notes Cas. 414.

15. Failure to cancel.—Notes which have been stamped with the required internal revenue stamps are admissible in evidence without the stamps being canceled as required by law. Doffin v. Guyer (1872) 39 Ind. 215; Browne v. Bennett (1872) 24 La. Ann. 618.

The commission of 10 per cent. formerly allowed to dealers in proprietary articles, purchasing for their own use stamps made from their own dies, had to be paid in money, and not in stamps at their face value, unless the dealer voluntarily exacted the stamps in final settlement of his claim. Swift & Courtney & Beecher Co. v. U. S. (1884) 4 Sup. Ct. 244, 245, 111 U. S. 22, 28 L. Ed. 341.

Where the internal revenue bureau refused in all cases to allow dealers to purchase stamps unless they accepted stamps in payment of their commission, the acceptance was not voluntary and the dealers could recover, provided actions were brought within the six years statutory period of limitations. Id.

Act June 30, 1864, as amended by Act July 13, 1866, rendering the record of a deed not duly stamped, or on which the stamp is not canceled, void, does not affect the validity of the deed. Dowell v. Applegate (C. C. 1881) 7 Fed. 881.

Act July 13, 1866, § 156, imposing a penalty on a vendor of land for not canceling a stamp put on his conveyance, does not affect the validity of the conveyance. Id.

Internal Revenue Act, § 158, does not forbid the courts from receiving in evidence an instrument bearing the requisite value in stamps, merely because they do not appear duly canceled. Patterson v. Gile (1870) 1 Colo. 200.

If an appeal bond requires a revenue stamp under the internal revenue law, the bond is not void for failure to cancel the stamp. Goodwine v. Wanz (1865) 25 Ind. 101.

A failure to cancel the revenue stamp affixed to a written contract does not render the instrument void. Adams v. Dale (1868) 29 Ind. 273.

Where a note offered in evidence had thereon the amount of internal revenue stamps required by the law of the United States, it was admissible, though the stamps had not been canceled. D'Armond v. Dubose (1870) 22 La. Ann. 131, 2 Am. Rep. 718.

An innocent omission to cancel a revenue stamp on a promissory note in the manner prescribed by statute will

not render it inadmissible in evidence. Desmond v. Norris (1865) 92 Mass. (10 Allen) 250.

Failure to cancel a revenue stamp will not render it inadmissible as evidence in a state court. Schultz v. Herndon (1869) 32 Tex. 390.

The mere failure to cancel the revenue stamps upon an instrument required by law to be stamped does not invalidate the instrument as evidence. Jacobs v. Cunningham (1870) 32 Tex. 74.

A writ is not void because the internal revenue stamp affixed to it is not canceled. Chaplin v. Horton (1864) 36 Vt. 684.

16. Indictable offense.—A failure to affix stamps as required by the internal revenue law is an indictable offense. U. S. v. Chapel (D. C. 1863) Fed. Cas. No. 14,781.

17. Practice under former law as to commissions.—The practice of the internal revenue department of paying commissions to purchasers of stamps in stamps, instead of money, is not authorized by the statute. U. S. v. Fielding (C. C. 1882) 17 Fed. 572.

18. Omission of stamps as affecting validity of instrument.—The omission to affix a revenue stamp to an instrument will not render it invalid, unless such omission was with intent to evade the revenue law or to defraud the government. Mitchell v. Home Ins. Co. (1871) 32 Iowa, 421; Ogden v. Forney (1872) 33 Iowa, 205; Janvrin v. Fogg (1870) 49 N. H. 340; Harper v. Clark (1867) 17 Ohio St. 190; Corry Nat. Bank v. Rouse (Pa. 1865) 3 Pittsb. R. 18.

The fraudulent omission of the stamp cannot be taken advantage of on demurrer in an action on a note. Campbell v. Wilcox (1870) 10 Wall. 421, 19 L. Ed. 973.

Where a citizen of the United States executed a bill of sale of his interest in a boat plying on a Mexican river, which was required to be stamped under the Mexican internal revenue laws, the buyer was not entitled to claim that the instrument was invalid because not stamped, since he was entitled to himself affix the stamp and look to the seller for reimbursement. Sandford v. Embry (1907) 151 Fed. 977, 81 C. C. A. 167.

Under Act June 30, 1864, § 158, as amended by Act July 13, 1866, imposing a penalty on the maker of a deed for not duly stamping it, or omitting to cancel a stamp thereon, and declaring the same void if either omission was made with "intent" to defraud the government, whoever seeks to avoid the conveyance on that ground must allege and prove such fraudulent intent. Dowell v. Applegate (C. C. 1881) 7 Fed. 881.

An unstamped conveyance is not void unless the stamp was omitted with intent to thereby defraud the revenue. A conveyance is sufficiently stamped if stamped according to the actual consideration thereof, be that more or less than the nominal one. U. S. v. Griswold (C. C. 1881) 8 Fed. 556.

A deed alleged to have been made with the intent to evade the internal revenue act or to defraud the United States is not, therefore, invalid under section 158, Internal Revenue Act (13 Stat. 294; 14 Stat. 152), and to make it so it must also appear that the deed was made without being duly stamped, and with the intent thereby to evade the revenue act. Dowell v. Applegate (C. C. 1881) 8 Fed. 698.

Under 14 Stat. 152, § 158, which only avoids a deed made without being duly stamped, where there was an attempt to evade the revenue act, the intent of the grantee in receiving the deed or to what use he puts it is immaterial. Id.

An intent to defraud the government by the omission of a stamp from a promissory note will not be presumed, but such intent must be proved as any other fraud is proved. Whigham v. Pickett (1869) 43 Ala. 140.

A promissory note, not stamped as provided by Act June 13, 1898, should be admitted in evidence, in absence of proof of an intent to defraud the government. Fulgham v. Hunking (1912) 60 South. 417, 6 Ala. App. 68.

Under the United States internal revenue law of June 13, 1898, c. 448, 30 Stat. 448, declaring instruments invalid from which stamps have been omitted with intent to defraud the government, the intent must be shown by the party relying on such omission, before an unstamped instrument will be inadmissible in evidence. Harvey v. Wieland (1902) 88 N. W. 1077, 115 Iowa, 564.

Where a plaintiff failed to affix the internal revenue stamps required by Act 1864, on a petition and affidavit in an attachment suit, or to have such omission corrected according to the directions of the collector of internal revenue, as provided by the act, an attachment issued thereon is void. Hoyt v. Benner (1870) 22 La. Ann. 353.

One who is bound to put a revenue stamp on an instrument before signing cannot object to the omission as a ground of invalidating the instrument, if, when the instrument is produced on the trial, the proper stamp appears to have been affixed meantime, both because he cannot take advantage of his own wrong, and because the requirement is substantially complied with if the proper stamp is upon the instrument when sought to be enforced. Chaffe v. Ludeling (1875) 27 La. Ann. 607.

Acts Md. 1856, c. 352, repealing Acts 1844, c. 280, requiring notes to be stamped, provides that unstamped notes executed previous to the repeal shall be as valid as though stamped. Held, that a note upon which suit was

pending at the time of the repeal was a valid instrument of evidence, though not stamped. Reynolds v. Furlong (1856) 10 Md. 318.

Whether any revenue stamp is necessary to the validity of legal process issued by a state court, quære. Cardell v. Bridge (1864) 91 Mass. (9 Allen) 355.

The provision of Act 1866, c. 184, § 9, that any person who shall make, sign, or issue any instrument without being duly stamped, with intent to evade the provisions of the act, shall be subject to a penalty, and that "such instrument" shall be deemed invalid and of no effect, do not, construed in connection with the other provisions of the statute, render instruments, not duly stamped at first, absolutely void, without proof that the stamp was omitted with intent to defraud the revenue. Green v. Holway (1869) 101 Mass. 243, 3 Am. Rep. 339; Moore v. Quirk (1870) 105 Mass. 49, 7 Am. Rep. 499.

Congress has no power to make void a contract for want of a revenue stamp, made in one of the states between the citizens thereof, and permitted by local law. Sammons v. Halloway (1870) 21 Mich. 162, 4 Am. Rep. 465.

When an instrument is made invalid for want of a proper stamp, the defendant in a suit upon it may plead and prove that the law was not complied with, although it was his duty to affix the stamp. Maynard v. Johnson (1866) 2 Nev. 16.

A summons, issued without a United States stamp, is irregular and void. German Liederkranz v. Schiemann (N. Y. 1863) 25 How. Prac. 388.

Congress has no power to deprive a state court of jurisdiction by declaring a notice of appeal from a justice court to a court of record void for want of a revenue stamp. Lewis v. Randall (N. Y. 1866) 30 How. Prac. 378, 1 Abb. Prac. (N. S.) 135.

The burden of proof is on a party objecting to a contract, because not stamped as required by the revenue law, to show that the omission of the stamp was with intent to evade the act of congress. New Haven & N. Co. v. Quintard (1869) 6 Abb. Prac. (N. S.) 128, 31 N. Y. Super. Ct. (1 Sweeny) 89.

The omission to affix the requisite revenue stamp to a written agreement is presumed to be willful. Howe v. Carpenter (N. Y. 1869) 53 Barb. 382.

The burden is on the party objecting to the use of a written instrument for want of a revenue stamp to show its invalidity. Cagger v. Lansing (N. Y. 1870) 57 Barb. 421.

The burden of proving fraudulent intent in the omission of a revenue stamp from an instrument, so as to show its invalidity, is on the party objecting to the want of the stamp. Baker v. Baker (N. Y. 1872) 6 Lans. 509.

It is not within the statutory power of congress to prescribe for the states a rule for the transfer of property within them, and hence a deed is not invalid because not duly stamped according to the internal revenue laws. Moore v. Moore (1872) 47 N. Y. 467, 7 Am. Rep. 466.

A failure to attach an internal revenue stamp to a note does not invalidate it. Gregory v. Hitchcock Pub. Co. (1900) 63 N. Y. Supp. 975, 31 Misc. Rep. 173.

The stamp used to denote the duty on a written instrument must be affixed and canceled at the time the paper is issued or it will be invalid. Voight v. McKain (Pa. 1864) 2 Pittsb. R. 522.

Where a bank teller, with authority to issue due bills for the bank for a special purpose, issued them to raise money for himself, in an action on his bond for the proceeds, neither he nor his sureties can set up as a defense the invalidity of the bills because they were not duly stamped when issued. Wayne v. Commercial Nat. Bank (1866) 52 Pa. (2 P. F. Smith) 343.

Under the United States internal revenue law of 1898, declaring instruments invalid from which stamps have been omitted with intent to evade the provisions of the act, such intent must be shown before an instrument can be declared invalid. Cassidy v. St. Germain (1900) 46 A. 35, 22 R. I. 53.

Congress has not the power to make a revenue stamp necessary to the validity of a paper as a muniment of title. Sporrer v. Eifler (1870) 48 Tenn. (1 Heisk.) 633.

The burden is on the party disputing the validity of an instrument, because unstamped at the time of its delivery, to show that the stamp was omitted with intent to evade the law. Grant v. Connecticut Mut. Life Ins. Co. (1871) 29 Wis. 125.

19. Unstamped instrument as subject of forgery.—The fact that an instrument does not bear a stamp as required by the internal revenue laws of the United States, does not render it void in such a sense that a prosecution for forging and uttering it cannot be sustained in a state court. Cross v. People (1868) 47 Ill. 152, 95 Am. Dec. 474; Laird v. State (1884) 61 Md. 309; State v. Young (1867) 47 N. H. 402; State v. Haynes (1869) 46 Tenn. (6 Cold.) 550; Horton v. State (1869) 32 Tex. 79.

The established rule that to simulate an instrument which, upon its face, has no validity or force, does not constitute the crime of forgery, applies to a case of writing a false indorsement upon a draft which, as set out in the indictment, appears not to have been stamped in accordance with the internal revenue law. People v. Frank (1865) 28 Cal. 507; John v. State (1868) 23 Wis. 504.

The fact that the note alleged to have been forged did not bear a revenue stamp would not necessitate a verdict of not guilty. State v. Peterson (1901) 40 S. E. 9, 129 N. C. 556, 85 Am. St. Rep. 756.

An instrument in the form of an order to pay money, required to be stamped under the internal revenue stamp law (28 Stat. 448), is the subject of forgery, though not stamped. Thomas v. State (1899) 51 S. W. 242, 40 Tex. Cr. R. 562, 46 L. R. A. 454, 76 Am. St. Rep. 740.

An order to pay money may be the subject of forgery, though not containing a United States revenue stamp. Hanks v. State (Tex. Cr. App. 1899) 54 S. W. 587.

It is no defense to a prosecution for forgery that the note forged does not bear a revenue stamp. King v. State (Tex. Cr. App. 1900) 57 S. W. 840, 96 Am. St. Rep. 792.

Forgery may be committed of an unstamped instrument unless it was shown that the stamp was fraudulently omitted therefrom. State v. Hill (1872) 30 Wis. 416.

20. Affixing omitted stamps in general.—Conveyances of land previously made, as well as those subsequently executed, were comprehended by Amendment March 2, 1901, c. 806, § 7, 31 Stat. 941, by which the language of the original proviso in War Revenue Act June 13, 1898, c. 448, § 13, 30 Stat. 454, for validating unstamped bonds, debentures, or certificates of stock or indebtedness on making the prescribed payment, was broadened so as to embrace any instrument, document, or paper of any kind or description whatsoever mentioned in Schedule A of the act, which specifically mentioned conveyances of land. U. S. v. Chamberlin (1911) 31 S. Ct. 155, 219 U. S. 250, 55 L. Ed. 204.

The stamp required upon appeal papers cannot be affixed after the appeal is perfected. Hugus v. Strickler (1866) 19 Iowa, 413; O'Hare v. Leonard, Id. 515.

Act July 14, 1870, § 5 (16 Stat. 257), by which the power of collectors of internal revenue to poststamp certain instruments of writing and remit penalties for the nonstamping of them when issued, is extended in point of time, applied to notes issued before the passage of the act, as well as to notes issued subsequently. Pugh v. McCormick (1871) 81 U. S. (14 Wall.) 361, 20 L. Ed. 789.

Under Internal Revenue Act July 13, 1866, § 9, providing that, where a party has not affixed the stamp required by law on an instrument executed in a place where no collection district was established, it should be lawful for him, or any person having an interest therein, to affix the proper stamp, prior to January 1, 1867, the omitted stamp could be so affixed to a note executed in Alabama in 1864. McElvain v. Mudd (1870) 44 Ala. 48, 4 Am. Rep. 106.

A note unstamped in accordance with stamp act may be stamped, even after suit commenced, to the satisfaction of the court. Bumpass v. Taggart (1870) 26 Ark. 398, 7 Am. Rep. 623.

Under Act June 30, 1864, § 163, providing that no instrument executed prior to the passage of the act without being stamped shall be deemed invalid for that cause, if the stamp is subsequently affixed, the party to a proceeding has the right to affix the requisite stamp to an affidavit without leave of court. Wright v. McFadden (1865) 25 Ind. 483.

Act June 30, 1864, § 163, allowing instruments to be stamped in certain cases when offered in evidence, does not extend to those thereafter made. O'Hare v. Leonard (1866) 19 Iowa, 515.

In an action involving the validity of an assignment from which internal revenue stamps had been omitted, it was not error for the court to delay the trial to enable the instrument to be stamped, in order that it might be introduced in evidence. First Nat. Bank v. Stone (Iowa, 1902) 91 N. W. 1076.

C., the executor and trustee under a will, having, by an order of the orphans' court, obtained possession as trustee to the fund in his hands as executor, executed to himself as trustee a deed of seven lots in trust to sell for the use of the beneficiary under the will, reciting a previous request by them, and an express promise by him, for security. The deed was prepared by his attorney at his cost, and was duly attested and acknowledged, but not stamped or recorded, he believing himself to be solvent, and it was retained in his own possession until his death, insolvent. Held, that the want of a stamp was properly supplied by affixing one to the instrument after the death of C., and by payment to the clerk of the penalty prescribed by the act of congress. Carson v. Phelps (1873) 40 Md. 73.

All deeds or other instruments of writing, executed during the war, were valid and admissible as evidence, though not stamped at the time of their execution, as required by the revenue law, provided that, after the close of the war, they were stamped by the proper revenue officer. Frazer v. Robinson (1868) 42 Miss. 121.

Where the party offering in evidence an instrument required by act of congress to be stamped offered to affix the requisite stamp upon objection made for want of it, it is error to refuse permission to do so and read it in evidence. New Orleans, J. & G. N. R. Co. v. Pressley (1871) 45 Miss. 66.

Under Act March 3, 1863, providing that instruments executed prior to June 1st should not be deemed invalid for want of the proper stamp, but should be inadmissible as evidence until stamp-

ed, and authorizing the stamp to be affixed in the presence of the court, one desiring to use an unstamped instrument executed prior to the date named could attach the stamp, either before or after suit brought. Day v. Baker (1865) 36 Mo. 125.

An instrument made prior to June 30, 1864, may be stamped upon being offered in evidence. Carpenter v. Johnson (1865) 1 Nev. 331.

A revenue stamp may be affixed to a notice of appeal, even after motion to dismiss. Killip v. Empire Mill Co. (1866) 2 Nev. 34.

The act of March 3, 1865, does not repeal section 163 of the act of June 30, 1864, which permits an instrument which was issued unstamped before the passage of the latter act to be stamped in the presence of the court wherein it is desired to use it. Garland v. Lane (1865) 46 N. H. 245.

Where a chattel mortgage was introduced in evidence without having been stamped, so as to make it competent, the court might, after verdict, permit an amendment by having it properly stamped, so as to remove the ground of objection to its admission. Janvrin v. Fogg (1870) 49 N. H. 340.

The court may allow a stamp to be affixed to an original process, in a case of excusable failure to affix a stamp when it was issued. Jackson v. Allen (N. Y. 1863) 26 How. Prac. 119.

The want of a stamp upon an undertaking may be cured upon exception to the undertaking. De Reguie v. Lewis (1865) 26 N. Y. Super. Ct. (3 Rob.) 708.

Where an assignment and memorandum reciting the object thereof are executed, and it becomes necessary to use the memorandum as a separate instrument in a legal proceeding, a stamp may be affixed and canceled in the presence of the court. Parks v. Comstock (N. Y. 1865) 59 Barb. 16.

The provision of the internal revenue act relating to the stamping of unstamped mortgages, that "no right accruing in good faith before the stamping of such instrument * * * and the recording, if such record be required of law, shall in any manner be affected by such stamping," does not apply to chattel mortgages, inasmuch as it contemplates mortgages which are required to be recorded. Vail v. Knapp (N. Y. 1867) 49 Barb. 299.

On a motion to dismiss an appeal from a justice's judgment because the proper revenue stamp was not affixed to the transcript, it was error to refuse appellant permission to stamp the transcript, and show that the stamp was not omitted with a fraudulent intent, and after such refusal to dismiss the appeal. Harper v. Clark (1867) 17 Ohio St. 190.

Revenue offices of the United States not being in operation in Texas in January, 1865, a draft drawn at that time is not inadmissible as evidence, because not stamped when made; but the stamp could be subsequently attached. Van Alstyne v. Sorley (1870) 32 Tex. 518.

Under Act 1867, § 162, which provides that it shall be lawful to present any instrument not previously issued or used to the collector, and require his opinion whether the same is chargeable with any stamp duty, where a stamp on an instrument was omitted by the parties who believed none was required, and the instrument was taken to the collector and stamped, the paper had not been previously issued or used within the meaning of the section. Green Mountain Central Institute v. Britain (1871) 44 Vt. 13.

21. Omission of stamps through inadvertence, inability to procure the same, etc.—It appeared that neither the notary before whom a mortgage was executed nor the parties had any stamps when such mortgage was executed, and mention of this fact was made in the mortgage; but one of the parties immediately purchased the necessary stamps from the recorder, who placed them on the mortgage and canceled them in the presence and at the request of the party. Held, that this was sufficient to authorize the introduction of the mortgage in evidence. Pavy v. Bertinot (1873) 25 La. Ann. 469.

Act June 13, 1898, § 13, provides a penalty for one who shall issue assignments of mortgages and other enumerated instruments without affixing revenue stamps and canceling the same as required by law, with intent to evade the provisions of the statute, and provides that any such instrument shall be deemed invalid. Held, that "such instrument" refers only to one left unstamped with intent to evade the law, and hence where an assignment of a mortgage was left unstamped through inadvertence, and not willfully, a sale thereunder was validated by the subsequent affixing and canceling of the proper stamps, and hence the purchaser at such sale acquired as good a title as though the assignment had been stamped when made, where no rights of other persons were acquired in the meantime. Wingert v. Zeigler (1900) 46 A. 1074, 91 Md. 318, 51 L. R. A. 316, 80 Am. St. Rep. 453.

Where the omission to stamp an instrument appears to have been the result of an innocent action or of inability to procure the proper stamp, it is proper to allow the stamp to be affixed and canceled in open court when the instrument is offered in evidence. Dailey v. Coker (1871) 33 Tex. 815, 7 Am. Rep. 279.

Under Act 1867, § 158, providing that, if it shall be made to appear to any stamp collector that an instrument has not been duly stamped by reason of accident, mistake, or inadvertence, it shall be lawful for such collector to affix the proper stamp and omit the penalty, the omission of the stamp by the parties,

who believed none was required, is an inadvertence. Green Mountain Central Institute v. Britain (1871) 44 Vt. 13.

Revenue stamps omitted from stock certificates through inadvertence may be affixed at any time. Jones v. Western Mfg. Co. (1902) 67 P. 586, 27 Wash. 136.

22. Stamping copy of lost instrument.—Under Act 1874, relating to unstamped instruments, providing that all instruments, when "stamped by any person having an interest therein, or, when the original is lost, a copy thereof, * * * shall be as valid to all intents and purposes as if stamped when made," a copy of a lost instrument referred to is a substantial copy, or such a draft of the original instrument as will identify the subject of the tax. Miller v. Wentworth (1876) 82 Pa. 280.

23. District wherein application to affix stamp should be made.—Where an application to the revenue collector to have a stamp affixed to a note, is made by the holder of the note, the proper district in which to make the application is the district in which the party resides. Schermerhorn v. Burgess (N. Y. 1869) 55 Barb. 423.

24. Persons who may or should procure stamping and cancellation.—The person who is to appear before the revenue collector to procure the stamping and cancellation of an unstamped instrument is the person who issued the instrument and who should have affixed the stamp. Myers v. Smith (N. Y. 1867) 48 Barb. 614.

Where a party having an interest in an unstamped paper desires it to be stamped for his benefit, he can only effect it by procuring the maker or party to be affected by it to appear before the collector and procure the stamping and cancellation. Id.

Under act of congress declaring that where a party has failed to affix a revenue stamp to an instrument at the time of its execution, "and he or they, or any party having an interest therein, shall be subsequently desirous of affixing such stamp to said instrument, he or they shall appear before the collector," any person having an interest in the instrument may appear before the collector, and it is not necessary that the maker do so. Schermerhorn v. Burgess (N. Y. 1869) 55 Barb. 422.

25. Who may affix omitted stamps.—Since January 1, 1867, the only person who can affix an omitted stamp is the revenue collector of the proper district. Mobile & G. R. Co. v. Edwards (1871) 46 Ala. 267.

Under Act July 13, 1866, § 158 (14 Stat. 142, 143), providing that where any party has not paid the required stamp on a written instrument, and subsequently desires to do so, he shall appear before the collector, who shall affix the proper stamp on payment of a penalty, neither an assessor nor an assistant assessor has the power to affix such stamp, but only the collector, as specified in the statute. Miller v. Underwood (1874) 51 Ala. 453.

Under Act 1866 (14 Stat. 143), as amended by 16 Stat. 257, authorizing the collector to stamp unstamped instruments and remit the penalty within 12 months from August 1, 1871, the collector had power in February, 1871, to affix stamps to such instruments and remit the penalties. Browne v. Steck (1873) 2 Colo. 70.

Where the requisite revenue stamps are not affixed to the pleadings and documents in an attachment suit before the filing of the suit, they can only be placed thereon after the suit has been filed by the collector of the district. Placing them on the document by the party after suit is filed and the opposite party cited will not avail. Hoyt v. Benner (1870) 22 La. Ann. 353.

Where a promissory note offered in evidence has not been properly stamped with the required amount of revenue stamps, the judge who is presiding has no power to authorize the plaintiff to stamp it in his presence; and in such a case the note must be stamped by the revenue collector of the district, and the fine paid or remitted, before the note is admissible. Corrie v. Billiu's Estate (1871) 23 La. Ann. 250.

Under Act 1868, providing that instruments not stamped shall be deemed invalid and of no effect, but declaring that a party having an interest therein may have the stamp affixed by applying to the collector and paying the penalty, etc., the judge trying a cause has no power to permit the stamp to be affixed, but the party must apply to the collector. Succession of Bernard (1872) 24 La. Ann. 402.

Omitted stamps on a promissory note cannot be affixed, so as to validate the note, except by the proper revenue officer, in accordance with Act March 3, 1865. Wayman v. Torreyson (1868) 4 Nev. 124.

Though the section of the act of congress which allowed parties desiring to use in court instruments not properly stamped to affix such stamps in the presence of the court, and thereupon to use such instruments in evidence, was amended so as to require the stamps to be affixed by the collector of internal revenue, such amendment did not include instruments in the nature of process of courts of record. Coppernoll v. Ketcham (N. Y. 1867) 56 Barb. 111.

Notwithstanding that the internal revenue act required all stamps to instruments theretofore issued to be affixed by the collector of internal revenue, it did not deprive state courts of the power vested in them by Code N. Y. § 327, which provides that when a party shall give in good faith notice of appeal from judgment or order, and shall omit through mistake to do any other act

necessary to perfect the appeal or to stay proceedings, the court may permit an amendment. Id.

Under Act March 3, 1863, § 16, regulating stamp duties, it was competent for a person holding a note dated in 1863 to stamp it in the presence of the court during the suit in which the note was to be introduced. Roundtree v. Thomas (1869) 32 Tex. 286.

26. —— **Deputy collectors.**—A deputy collector has no authority except by special authority of the collector to remit penalties and stamp instruments left unstamped by mistake. Brown v. Crandal (1867) 23 Iowa, 112; McAfferty v. Hale (1868) 24 Iowa, 355.

The revenue act provides that deputy collectors should have the same authority in every respect to collect the duties and taxes levied and assessed as the collector himself, and that in case of sickness or temporary disability of a collector the duties may devolve on one of the deputies. Held that, during the sickness or temporary disability of the collector, the deputy collector could exercise his power of stamping unstamped instruments. Deskin v. Graham (1866) 19 Iowa, 553.

The exercise of such power affords a presumption of such disability, in the absence of affirmative evidence to the contrary. Id.

The deputy collector of internal revenue has no power to stamp instruments left unstamped by inadvertence or mistake, except when in case of sickness or inability of the collector he acts by special authority in his place. City of Muscatine v. Sterneman (1871) 30 Iowa, 526, 6 Am. Rep. 685.

Deputy collectors of internal revenue have the same power as collectors to stamp unstamped instruments, when satisfied that the failure to affix the same at the proper time was not an attempt to evade the law. Stolte v. Herndon (1869) 32 Tex. 392.

27. **Conclusiveness of officer's decision.**—Where promissory notes were offered in evidence, properly stamped, with the approval of the United States officer whose duty it was to stamp such notes, they were admissible; and it formed no part of the duties of the state court to inquire whether or not the United States officer had done his duty. Levy v. Loeb (1873) 25 La. Ann. 496.

Under the act of July 13, 1866, authorizing the collector, in case of accident or mistake, to affix a sufficient stamp, on an instrument not originally duly stamped, his decision in such case is conclusive, as partaking of a judicial nature. Peoria Marine & Fire Ins. Co. v. Perkins (1868) 16 Mich. 380.

Revenue Act, § 158, makes the collector of revenue of the proper district the judge whether the omission of a revenue stamp was with design to defraud the United States, and from his judgment, if favorable, there is no appeal. Corry Nat. Bank v. Rouse (Pa. 1865) 3 Pittsb. R. 18.

28. **Collector's certificate of subsequent sufficient stamp.**—Under Act July 13, 1866, the collector's certificate of a subsequent sufficient stamp on an assignment of a policy of insurance, not originally duly stamped, is admissible in evidence in a suit on the policy. Peoria Marine & Fire Ins. Co. v. Perkins (1868) 16 Mich. 380.

29. **Presumption as to subsequent stamping.**—The authority of a deputy collector to stamp unstamped instruments will not be presumed from the mere stamping of the instrument, when the certificate of the deputy thereto is not authenticated by the collector's seal. City of Muscatine v. Sterneman (1871) 30 Iowa, 526, 6 Am. Rep. 685.

Where deeds and other instruments in writing, not stamped when made, as required by the revenue laws, are subsequently stamped by the proper officer, it will be presumed that stamps of requisite value were affixed. Frazer v. Robinson (1868) 42 Miss. 121.

30. **Effect of subsequent stamping.**—Instruments not stamped in accordance with the United States revenue law may, in the absence of fraud, be stamped subsequently, and then given in evidence. Foster v. Holley's Adm'r (1873) 49 Ala. 593; Morris v. McMorris (1870) 44 Miss. 441, 7 Am. Rep. 695; Waterbury v. McMillan (1872) 46 Miss. 635; Boly v. Lake (1873) 54 Mo. 201; Beebe v. Hutton (N. Y. 1866) 47 Barb. 187; Frink v. Thompson (N. Y. 1869) 4 Lans. 489; Dailey v. Coker (1871) 33 Tex. 815, 7 Am. Rep. 279.

Where an instrument, unstamped when made, is subsequently stamped by the United States collector of internal revenue, and certified accordingly, the defect is cured. Corbin v. Tracy (1867) 34 Conn. 325; Pavy v. Bertinot (1873) 25 La. Ann. 469; Cooke v. England (1867) 27 Md. 14, 92 Am. Dec. 618; Logan v. Dils (1870) 4 W. Va. 397.

An appeal from a justice should not be dismissed for want of stamps on the justice's certificate and the appeal bond, when proper stamps are afterwards put on by leave of court. Teagarden v. Garver (1865) 24 Ind. 399.

Though a promissory note dated November 7, 1862, is not admissible in evidence without an appropriate revenue stamp, under Act Dec. 25, 1862, § 5, the party might remove the objection by affixing the proper stamp. Plessinger v. Depuy (1865) 25 Ind. 419.

Omission to stamp an appeal bond at the time of taking out the same at a justice's court is not sufficient cause for dismissal, if the proper stamp is subsequently affixed under the order of the revenue collector. Such order need not state the facts on which he bases

his action. Doud v. Wright (1867) 22 Iowa, 336.

As a record of an instrument insufficiently stamped does not import constructive notice to third parties under Internal Revenue Act, § 125, the subsequent attaching of an additional stamp by the revenue collector does not cure the defect, so as to interfere with intervening rights. McBride v. Doty (1867) 23 Iowa, 122.

On an appeal to the district court from a justice of the peace, the appeal bond was filed within 20 days, as required, but no revenue stamp was attached to any of the papers within the 20 days, and not until a short time before the commencement of the term of the appellate court, and for this the appeal was dismissed. Held to be error. Ford v. Clinton (1868) 25 Iowa, 157.

Where United States internal revenue stamps have been omitted from an instrument, such instrument may be properly admitted in evidence after being stamped, though stamped during the trial. First Nat. Bank v. Stone (Iowa, 1902) 91 N. W. 1076.

Where failure to affix a revenue stamp to a note occurred through ignorance, and it was thereafter placed on the note with the consent of the United States revenue collector, the note becomes competent evidence. Green v. McCracken (1902) 67 P. 857, 64 Kan. 330.

By virtue of Acts 37th Cong. (3d Sess.) c. 4, § 5, and Acts 38th Cong. (1st Sess.) c. 173, § 163, documents may be admitted as evidence, if stamped for the first time in open court. Patterson v. Eames (1866) 54 Me. 203.

An innocent omission to stamp a promissory note made after the passage of Acts 1864, c. 173, though antedated to November, 1862, will not render it inadmissible in evidence, if subsequently stamped in the presence of the court. Tobey v. Chipman (1866) 95 Mass. (13 Allen) 123.

An award of arbitrators, returned to the superior court on an agreement for submission, will not be rejected because the agreement did not bear the proper revenue stamp prior to the return of the award, when it does not appear that such submission was with design to evade the law, and when, since its return, it has been supplied in the manner provided by law. Holyoke Mach. Co. v. Franklin Paper Co. (1867) 97 Mass. 150.

The holder of a draft dated in August, 1863, made a gift of it causa mortis to her mother; and the administrator of the donor, treating the draft as void for want of the proper revenue stamp, brought an action against the drawer to recover the consideration. At the trial the drawer, defending in the interest of the donee, affixed to the draft the requisite stamp, under the provisions of the United States statute of June 30, 1864. Held, that the statute was retrospective, and rendered the draft valid from its date. Gibson v. Hibbard (1865) 13 Mich. 214.

A revenue stamp, affixed to a notice of appeal, renders the notice operative ab initio. Killip v. Empire Mill Co. (1866) 2 Nev. 34.

Complainant failed to attach the required revenue stamp to an original writ, and defendant therefore omitted to answer. After the expiration of the time limited for the filing of the answer, complainant attached the stamp. Held that, by thus affixing the stamp, complainant's writ was validated ab initio, and he become entitled to a decree pro confesso. Disbrow v. Johnson (1866) 18 N. J. Eq. (3 C. E. Green) 36.

A summons issued without a revenue stamp being irregular and void, a subsequent affixing of a stamp will not cure the defect. German Liederkranz v. Schiemann (N. Y. 1863) 25 How. Prac. 388.

Under Act July 1, 1862, § 95, providing that every instrument not stamped according to a certain schedule should be invalid and of no effect, a notice of appeal will not be void where a stamp has not been primarily affixed to it as required by the statute, if the appeal was taken in good faith and appellant perfects it by affixing the stamp in open court. Whitley v. Leeds (N. Y. 1864) 27 How. Prac. 378.

Where the collector puts on and cancels the requisite revenue stamp, the instrument is valid to all intents and purposes ab initio. Corry Nat. Bank v. Rouse (Pa. 1865) 3 Pittsb. R. 18; Tripp v. Bishop (1867) 56 Pa. (6 P. F. Smith) 424.

Plaintiff entered judgment against defendant on an insufficiently stamped judgment note, and issued execution thereon. The judgment and execution were set aside on defendant's motion. Defendant then confessed judgment in favor of another creditor, and caused execution to be issued thereon, without the latter's knowledge. Plaintiff then procured the judgment note to be stamped by the collector according to law, and entered up another judgment, and issued execution thereon. Subsequently the court rescinded the order setting aside plaintiff's first judgment and execution. The sheriff returned that he had levied a sale under the third execution; the levy and sale under the last two writs being subject to the levy and sale under the first writ. Held that, as the omitted stamp had been properly affixed, the defect was cured, and plaintiff was entitled to the proceeds of the sale under the first execution. Hetzell v. Gregory (Pa. 1870) 7 Phila. 148.

A revenue stamp, affixed in 1873 to a draft drawn in 1869, and on which suit was brought in the same year,

cured the defect. Gay v. Comstock (Pa. 1875) 2 Wkly. Notes Cas. 532.

Where an unstamped instrument is subsequently duly stamped by an officer qualified to do so, the bar on it as evidence is removed, and it is given the same position as though it had been stamped when made. Long v. Spencer (1875) 78 Pa. (28 P. F. Smith) 303.

An instrument delivered without the stamp required by act of congress, upon being returned to the maker and by him redelivered with stamp duly canceled, it seems, takes effect from the date of such redelivery, in the absence of any act of congress like that of June 30, 1864, which cures the defect in the first execution. Robbins v. Deverill (1865) 20 Wis. 142.

A tax deed which, within 12 months after its execution, has been stamped by the collector of the proper district, as by authority of Act March 3, 1865, is admissible in evidence. Knox v. Huidekoper (1867) 21 Wis. 527.

31. Effect of paying price of stamp and penalty.—When it appears that the party through whose neglect a proper stamp was not placed upon a deed has paid the full price of the stamp, together with the penalty, and obtained the collector's receipt therefor, it is a sufficient compliance with the form prescribed, especially that now the act is no longer in force; and the deed is evidence. Lerch v. Snyder (1886) 112 Pa. 161, 4 Atl. 336.

See notes under § 6371m, post.

32. Record to which statute applies.—The provisions of Act 1866, c. 184, § 9, that no instrument shall be recorded until stamped as therein required does not affect a record thereof under state laws. Moore v. Quirk (1870) 105 Mass. 49, 7 Am. Rep. 499.

Revenue Law 1898, §§ 14, 15, providing that no unstamped instrument required to be stamped shall be recorded, apply only to records pursuant to United States statutes. People v. Fromme (1898) 54 N. Y. S. 833, 35 App. Div. 459.

33. "Conveyance of realty."—The fact that a conveyance is made by a master commissioner under a decree of foreclosure in which the priority of liens is considered and settled, and after competitive sale, does not affect the requirement that the instrument, being a "conveyance of realty," under Schedule A of the revenue law (Act June 13, 1898, c. 448), shall have the required revenue stamps affixed, to be receivable for record. Farmers' Loan & Trust Co. v. Council Bluffs Gas & Electric Light Co. (C. C. 1898) 90 Fed. 806.

34. Recording unstamped instrument.—There being no pretense that the omission of a stamp from a mortgage is fraudulent, it should not be refused record on that account. Bates v. Bailey (1876) 57 Ala. 73.

A deed, not containing any internal revenue stamp, executed and delivered while the stamp acts of congress were in force, must be recorded by the county recorder, when tendered for that purpose, in the absence of any other objection to recording it. Hoffecker v. New Castle County Mut. Ins. Co. (Del. 1875) 5 Houst. 101.

35. Presumption as to recorded instruments being duly stamped.—In the absence of other evidence, it will be presumed that instruments recorded at a time when it was the duty of the recorder to refuse to record instruments not properly stamped, were so stamped. Collins v. Valleau (1889) 79 Iowa, 626, 43 N. W. 284, 44 N. W. 904.

In the absence of proof to the contrary, the presumption is, where a certified copy of a mortgage is offered in evidence, that the recorder required the necessary revenue stamps to be affixed before recording the mortgage. Grand v. Cox (1872) 24 La. Ann. 462.

36. Filing for record.—A register of deeds must file an instrument offered for record under Laws N. Y. 1896, c. 528, though it is not stamped as required by Revenue Law 1898, §§ 14, 15. People v. Fromme (1898) 54 N. Y. S. 833, 35 App. Div. 459.

See notes under § 6371e, ante.

37. Effect as to validity of instrument.—Act June 30, 1864, as amended by Act July 13, 1866, rendering the record of a deed not duly stamped, or on which the stamp is not canceled, void, does not affect the validity of the deed. Dowell v. Applegate (C. C. 1881) 7 Fed. 881.

38. Unlawful record as importing constructive notice.—Under Internal Revenue Act, § 152, providing that it shall not be lawful to record any instrument required to be stamped, unless the proper stamps are affixed and canceled, and that the record of any instrument unstamped or improperly stamped shall be totally void, the record of an insufficiently stamped instrument does not import constructive notice to third parties. McBride v. Doty (1867) 23 Iowa, 122.

39. Use as evidence of record of unstamped instrument.—The fact that the record of a deed executed in 1872 does not show that any United States revenue stamps were placed thereon does not render such record incompetent evidence. Bennett v. Morris (Cal. 1894) 37 Pac. 929.

The constitutional power of congress to levy taxes did not confer on such body authority to pass Act July 1, 1862, as amended by Act June 30, 1864, § 152, declaring that it shall not be lawful to record any instrument or paper required by the previous provisions of the act to be stamped, unless a stamp has been affixed and canceled,

and that the record of any such instrument without the proper stamp shall not be used in evidence, in so far as it attempts to provide a rule of evidence in state courts. Craig v. Dimock (1868) 47 Ill. 308.

The registry of an agreement is admissible as proof of it, though it does not appear from the registration that there was any revenue stamp on it. Ratliff v. Ratliff (1902) 42 S. E. 887, 131 N. C. 425, 63 L. R. A. 963.

See notes under Schedule A (9), post.

40. Official bonds.—A stamp tax imposed by the United States upon a bond required by a state from an officer as a prerequisite to the exercise of the duties of his office is, in necessary legal effect, a tax upon the officer's right to qualify, and upon the exercise by the state of its governmental functions, and the fact that the tax is required to be paid before the officer has qualified is unimportant. Bettman v. Warwick (1901) 108 Fed. 46, 47 C. C. A. 185, affirming judgment Warwick v. Bettman (C. C. 1900) 102 Fed. 127.

War Revenue Act June 13, 1898, declares that bonds for indemnifying any person, etc., as surety for the payment of money or the execution of official duties, and all other bonds, except such as are required in legal proceedings, shall pay a tax of 50 cents; and section 17 provides that it is the intent of the act to exempt from the stamp taxes state, county, town, and other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing, or municipal capacity. Held, that a notary appointed by a state is a state officer employed in the exercise of functions belonging to it in its governmental capacity, and hence the bond required of such notary as part of his qualification for office is not subject to the revenue tax. Warwick v. Bettman (C. C. 1900) 102 Fed. 127, judgment affirmed Bettman v. Warwick (1901) 108 Fed. 46, 47 C. C. A. 185.

Congress has no power to impose a tax upon the bonds required by a state law from persons holding office under the state. State v. Garton (1869) 32 Ind. 1, 2 Am. Rep. 315.

41. Liquor license bonds.—A bond executed to a state or municipality under the provisions of a statute or ordinance as a condition precedent to the issuance of a saloon license is for the individual benefit of the applicant, and not an instrumentality for the exercise of the functions of state or municipal government, and must be stamped, under the war revenue act of 1898. U. S. v. Ambrosini (D. C. 1899) 105 Fed. 239, judgment reversed Ambrosini v. U. S. (1902) 23 Sup. Ct. 1, 187 U. S. 1, 47 L. Ed. 49.

The bond required to be given by a saloon keeper by the statutes of Missouri, as one of the conditions of the granting by the state of a license, and which is conditioned for the faithful observance of all the requirements of such statutes by the licensee, is an instrumentality employed by the state to execute and enforce its own laws enacted in the exercise of its police powers, which cannot be taxed by the federal government, and such bonds do not require an internal revenue stamp, under the war revenue act of 1898. U. S. v. Owens (D. C. 1900) 100 Fed. 70.

42. Tax deeds.—A tax deed made by the sheriff and tax collector does not require a stamp, under Act July 13, 1866. Rouse v. Hampton (C. C. 1871) Fed. Cas. No. 12,088.

43. County orders.—County orders are "official instruments," and as such are expressly exempted from payment of stamp duties; and the exemption applies in favor of orders originally issued without authority of law, but subsequently ratified by the act of the Legislature. By the legalizing Act Ind. March 3, 1865, they are made official instruments of the county. Nave v. King (1866) 27 Ind. 356.

44. Certificate of appraisal on foreclosure.—Under the war revenue act of 1898 (Act June 13, 1898, c. 448, 30 Stat. 448), requiring the attachment of revenue stamps to certain instruments, section 17, providing that state, county, town, and other municipal corporations shall be exempt in the exercise of functions strictly belonging to them, a revenue stamp is not required to the certificate of appraisal made by a sheriff in the execution of a decree for sale on foreclosure. Noble v. Citizens' Bank (1902) 89 N. W. 400, 63 Neb. 847.

45. Certificate of acknowledgment to declaration of homestead.—Since stamps required to be affixed to a notary's certificate of acknowledgment to a declaration of homestead, under War Revenue Act June 13, 1898, c. 448, § 14, 30 Stat. 455, are required to be furnished by the person for whose benefit the instrument is furnished, such tax is not objectionable on the ground that the notary, in taking the acknowledgment and indorsing his certificate, was exercising a function of the state government not subject to federal taxation. Sackett v. McCaffrey (1904) 131 Fed. 219, 65 C. C. A. 205.

46. Official papers, instruments, and certificates made or issued by federal officers.—Official papers, instruments, and certificates made or issued by officers of the United States in the discharge of their official functions and for the use and benefit of the government are exempt from tax under the war-revenue act of 1898 (30 Stat. 448). (1898) 22 Op. Atty. Gen. 134.

47. Certificates or instruments issued for private use.—Stamps should be af-

fixed under the war revenue act of 1898 to certificates or other instruments issued by any Department or officer of the federal government at the request of private persons and for private use, such stamps to be furnished by the party applying therefor, and should be affixed before delivery of the document. (1898) 22 Op. Atty. Gen. 134.

48. **Liability of partners.**—In the case of a partnership, both partners are liable where the sale is made by one, or by a clerk having authority. U. S. v. Fenelon (D. C. 1871) Fed. Cas. No. 15,085.

49. **"Selling" and "exposing for sale."**—"Selling" and "exposing for sale," as used in the statutes relating to stamp duties (Act June 30, 1864, §§ 167, 169; Act July 13, 1866), are treated as different things. U. S. v. Houghton (D. C. 1871) Fed. Cas. No. 15,396.

50. **Sale "in the original and unbroken package."**—Goods are sold "in the original and unbroken package" (Act July 13, 1866) although the package is open for inspection, if closed again before delivery without the contents being changed. U. S. v. Fox (D. C. 1869) Fed. Cas. No. 15,155.

51. **Presumption as to stamping article.**—Where an article is sold unstamped, the presumption is that it never was stamped, but such presumption may be overcome by evidence that the stamp had been lost or removed by accident or the like. U. S. v. Brown (D. C. 1869) Fed. Cas. No. 14,662.

52. **Forfeiture for removal of unstamped cosmetics from warehouse.**—Cosmetics not manufactured in the warehouses prescribed by Acts June 30, 1864, § 168, and March 3, 1873, § 28, are liable to forfeiture for being removed without affixing stamps, although intended for exportation. U. S. v. Two Hundred and Thirty-Six Dozen Boxes of Cosmetics (D. C. 1873) Fed. Cas. No. 16,584.

53. **Manner of collecting stamp duty.**—A stamp duty imposed by an internal revenue law is collected by the government through the sale of the required stamps, and, in the absence of an express provision therefor, a collector is not authorized to collect such duty in any other manner. Fleshman v. McClain (C. C. 1900) 105 Fed. 610, judgment affirmed McClain v. Fleshman (1901) 106 Fed. 880, 46 C. C. A. 15.

54. **Constitutionality of tax.**—The stamp tax on a memorandum or contract of sale of a certificate of stock, imposed by Act June 13, 1898, c. 448, 30 Stat. 448, is not unconstitutional as a direct tax on property, which, under Const. art. 1, § 2, cl. 3, must be apportioned according to the census, but falls within the class of duties, imposts, and excises which, by section 8, cl. 1, of that article, are required to be uniform through the United States. Thomas v. U. S. (1904) 24 Sup. Ct. 305, 306, 192 U. S. 363, 48 L. Ed. 481, affirming judgment U. S. v. Thomas (C. C. 1902) 115 Fed. 207.

55. **Transactions or memorandum subject to tax in general.**—A stockbroker by his course of business entered into agreements with his customers to buy or sell stocks at a fixed price for future delivery. Each of such agreements was evidenced by a written memorandum properly stamped in accordance with Schedule A of the war revenue act of 1898, which enumerates, as subject to stamp taxes imposed by the act, "all sales or agreements to sell or memoranda of sales or deliveries or transfers" of stock. The transactions were purely speculative, conducted on margins, and no actual delivery of stocks was contemplated by the parties, but settlement was made by the payment of differences and the surrender of the written memoranda. Held, that such settlements did not involve agreements for a resale of the stocks, requiring new memoranda to be made and stamped under such provision; the courts having no authority to infer such agreements, contrary to the fact, for the purpose of extending the provisions of the statute to transactions not within its terms. McClain v. Fleshman (1901) 106 Fed. 880, 46 C. C. A. 15, affirming judgment Fleshman v. McClain (C. C. 1900) 105 Fed. 610.

Plaintiff corporation was engaged in business as a stockbroker in conducting transactions respecting the purchase and sale of stocks to be settled with reference to the public market quotations of prices, within subdivision 3 of Schedule A of the War Revenue Act of July 13, 1898, c. 448, § 25, 30 Stat. 458, as amended by Act March 2, 1901, c. 806, § 8, 31 Stat. 943. Its business was transacted with numerous correspondents, on whose telegraphic orders it would report a purchase or sale, and forward the correspondent a memorandum such as is required by the statute. The correspondents were also dealing with customers, and their orders to plaintiff generally represented orders from their own customers, to whom they delivered a memorandum of each purchase or sale bearing a stamp as required by the act, but stating the transaction between the correspondent and the customer only. The customer was not named or known in the transaction between the correspondent and plaintiff. Held, that such transactions were transactions between principals, separate and distinct from those between the correspondents and their customers, and that plaintiff was subject to the tax on each memorandum given thereon. Municipal Telegraph & Stock Co. v. Ward (1905) 138 Fed. 1006, 70 C. C. A. 284, affirming judgment (C. C. 1904) 133 Fed. 70.

A bucket shop, which made contracts for the purchase and sale of stocks and

commodities with its customers, and executed the same by pretended purchases and sales through another bucket shop having no relations with such customers, the contract between them expressly providing that the first was not an agent of the second, was conducting a separate business, and the transactions of both concerns were subject to the stamp tax imposed by War Revenue Act June 13, 1898, c. 448, § 25, schedule A, 30 Stat. 458, as amended by Act March 2, 1901, c. 806, § 8, subd. 3, 31 Stat. 943. Eldridge v. Ward (1909) 174 Fed. 402, 98 C. C. A. 619, affirming judgment Eldredge v. Ward (C. C. 1907) 155 Fed. 253.

Act March 2, 1901 (31 Stat. 943), provides that every corporation which shall in its own behalf, or as agent, conduct what is commonly known as a "bucket shop," shall pay a stamp tax of 2 cents on each $100 of the face value, or fraction thereof, of all stocks, bonds, or other securities covered, etc. Held, that where defendant commission company contracted with S. that the latter should open a separate office, and send trades obtained to defendant, and for his services defendant agreed to pay one-fourth of the commission charged to the customer, and S. received an order for stocks, which he transmitted to defendant, and which was filled by the latter, whereupon S. executed a memorandum of the sale, which he duly stamped, S. acted simply as the agent of defendant, and hence the latter was not guilty of a violation of the statute by reason of its failure to execute and stamp a memorandum of sale to S. U. S. v. Clawson (D. C. 1902) 119 Fed. 994.

56. Pledge or hypothecation of stock.—If stock is hypothecated simply by the delivery of the certificates, or is deposited as the basis of credit without a mortgage or other instrument being executed, no tax thereon, collectible by the affixing and cancellation of an adhesive documentary stamp, can be imposed. The provision named does not impose a tax upon anything which is not written or printed. (1900) 23 Op. Atty. Gen. 53.

Stock pledged as security for loans would be taxable under the first paragraph of Schedule A if accompanied by any paper or agreement or memorandum or other evidence of transfer such as is contemplated by the statutes. Id.

The depositing with the Girard Trust Company by the Pennsylvania Company, under a written agreement, of certificates of stock of other corporations as a pledge for the performance of its covenant to pay, when due, the interest and principal of certain certificates of indebtedness issued and sold by the former company for the benefit of the latter, constitutes such a pledging of stocks for the future payment of money as to render the transaction taxable under Schedule A of the act of March 2, 1901 (31 Stat. 942), although the power of attorney accompanying the agreement only authorized the transfer of the stock so deposited in case of default by the pledgor, and until such default the pledgor was to retain and exercise all the rights, powers, and privileges belonging or incident to such ownership. (1902) 23 Op. Atty. Gen. 615.

57. Agreement to sell.—A "call" for stock, which contains an absolute promise to sell the stock at any time within 15 days at a certain price, though it may be a unilateral contract, is an "agreement to sell," within the provision of War Revenue Act June 13, 1898, c. 448, § 25, Schedule A, 30 Stat. 458, requiring a stamp tax of 2 cents on each $100 of face value or fraction thereof. Treat v. White (1901) 21 Sup. Ct. 611, 181 U. S. 264, 45 L. Ed. 853, answering certified questions (1901) 109 Fed. 1063, 47 C. C. A. 686.

58. "Call" memorandum or writing.—A "call" memorandum or writing, executed for a valuable consideration, giving the bearer the right to call upon the subscriber for certain shares of stock therein named, within a stated time and at a given price, is not an "agreement to sell" such stock, within the meaning of section 25 of the war revenue act of 1898, and is not subject to the stamp tax imposed on such agreements by that section. Such instrument, which merely gives an option, requires a further agreement to effect a sale, which agreement, or the sale when so effected, is clearly subject to the tax, and the statute contains no language indicating an intention to require the payment of the tax twice on a single sale. White v. Treat (C. C. 1900) 100 Fed. 290.

A writing termed a "call," in which the signer agrees to sell the stock described in the paper at the price named, provided the holder of the paper calls upon him within the time specified, is taxable under the first paragraph of Schedule A, but not under the eighth paragraph. (1899) 22 Op. Atty. Gen. 447.

59. Second tax on memorandum.—Where plaintiff accepted purchases and sales of stocks on margin obtained from customers by various correspondents, and a stamp tax was paid on a memorandum given to the customer, under War Revenue Act July 13, 1898, § 25, subd. 3, schedule A, plaintiff was not bound to pay a second tax on a memorandum between it and the correspondent. Metropolitan Stock Exchange v. Gill (1912) 199 Fed. 545, 118 C. C. A. 19.

60. Constitutionality.—Internal Revenue Act 1898, Schedule A, par. 2 (30 Stat. 458), imposing a tax on "each sale, agreement of sale or agreement to sell any products or merchandise, at any exchange or board of trade, or other sim-

ilar place," and requiring, on the making of any such sale, the delivery by the seller to the buyer of a written bill or memorandum, to which a revenue stamp shall be affixed, equal to the amount of the tax on the sale, is not a direct tax, within Const. art. 1, § 9, subd. 4, requiring such a tax to be apportioned, but is in the nature of a duty or excise tax for the privilege of doing business at such place, graduated according to the use, and not a tax either on the memorandum required, the article sold, or the occupation; and, since applied equally to sales made at such places throughout the United States, it conforms with Const. art. 1, § 8, requiring excises and duties to be uniform throughout the United States, and is therefore valid. Nicol v. Ames (1899) 19 S. Ct. 522, 173 U. S. 509, 43 L. Ed. 786, affirming order (C. C. 1898) 89 Fed. 144.

The act affects with equal force sales made at such places for future delivery, though they may ultimately be carried out by payment of differences in market price at the date of delivery, instead of actual delivery of the goods, since the privilege used in either case is the same. Id.

The act is not objectionable for nonuniformity, in that it is not levied on all who make sales of the same commodities, whether at exchanges or not; for since such places afford special facilities, not afforded to others, they furnish a legitimate ground for classification for the imposition of taxation, and the tax, being equally imposed on all availing themselves of such facilities, possesses the uniformity required by the constitution. Id.

The tax is also not objectionable on that ground in that it only taxes the sellers, and not the buyers, and those who sell products or merchandise, and not those who sell bonds, stock, etc., since it is not necessary to the uniformity of an excise tax imposed on privileges that every exercise thereof should be taxed. Id.

61. "Similar place" within meaning of statute.—Revenue Act 1898, Schedule A, par. 2 (30 Stat. 458), provides for the taxation of sales of products or merchandise "at any exchange, or board of trade, or other similar place," etc., and for the affixing of stamps to the bill or memorandum equal to the amount of the tax on the sale. Held, that the Chicago Union Stockyards, where special facilities are provided for the penning, feeding, weighing, and sale of stock, was a "similar place," within the meaning of the act, and that sales made there were subject to its provisions. Nicol v. Ames (1899) 19 Sup. Ct. 522, 528, 173 U. S. 509, 43 L. Ed. 786, affirming order (C. C. 1898) 89 Fed. 144.

62. Former law.—The war revenue act of June 13, 1898 (30 Stat. 459), required a stamp of the value of 2 cents upon promissory notes for a sum not exceeding $100, and of 2 cents additional for each $100 or fractional part thereof in excess of 100. (1898) 22 Op. Atty. Gen. 218.

63. Extension of statute by construction.—A tax law cannot be extended by construction to things not described as the subject of taxation, and though a party may not use a letter in the character of a substantial instrument to evade a stamp tax, if it is really a mere communication by way of correspondence intended merely to convey the purpose of the writer and not as an evidence of a debt and is not used otherwise, it need not be stamped to be given in evidence. Boyd v. Hood (1868) 57 Pa. (7 P. F. Smith) 98.

A debtor placed a note due him in the hands of the defendant, a creditor, to receive the amount and take out his indebtedness. He afterwards wrote to plaintiff, another creditor, that he should receive his debt from the proceeds of the note after defendant was paid. Plaintiff, by direction of the debtor, showed the letter to the defendant, who promised to pay the money when received. Held, that the letter was not an instrument requiring a revenue stamp and was admissible in evidence in an action of assumpsit. Id.

A debtor left a note in the hands of a creditor for collection and to pay his claim out of the proceeds, and afterward wrote to another creditor that the latter should receive his claim out of such proceeds, after the first creditor should be paid and requested the second creditor to show the letter of the first creditor. Held, that such letter was not an order or promise to pay money, a note, or an assignment within Act March 3, 1865 (sections 1, 2, Brightly's Dig. 264, pl. 252), requiring such documents to be stamped before being placed in evidence. Id.

64. Forged note.—The uttering and publishing of a promissory note, though the forger did not place thereon the revenue stamp required by Act July 13, 1866, is indictable, as under that act any person having an interest in the note might affix the proper stamp thereto, and thereby render the note valid. State v. Mott (1871) 16 Minn. 472 (Gil. 424) 10 Am. Rep. 152.

65. Receipt for money loaned.—A receipt for money loaned, importing an obligation to repay, requires a revenue stamp. Hoops v. Atkins (1870) 41 Ga. 109.

66. Receipt for property to be paid at a certain price.—A receipt for hogshead staves to be paid at a certain price is "a note for the security of money," within the stamp act of 1797. Moore v. Gadsby (C. C. 1801) Fed. Cas. No. 9,762; Neale v. Hill (C. C. 1801) Fed. Cas. No. 10,068.

67. Stamping anew on transfer to another than original holder.—Where notes are payable to the order of the maker and are by him indorsed in blank, and the mortgage securing them is in favor of a named person and any other or future holder of them, neither the notes nor the mortgage need be stamped anew when transferred to another than the original holder, even if the United States revenue laws could impose a law of evidence upon the state courts, a doctrine which the court repudiates. Foreman v. Francis (La. 1880) Man. Unrep. Cas. 337.

68. Constitutionality of tax on foreign bill of lading.—The stamp tax imposed on a foreign bill of lading by Act June 13, 1898, c. 448, § 6, 30 Stat. 448, is in substance and effect equivalent to a tax on the articles included in that bill of lading, and therefore a tax or duty on exports, prohibited by Const. art. 1, § 9. Fairbank v. U. S. (1901) 21 Sup. Ct. 648, 649, 181 U. S. 283, 45 L. Ed. 862.

69. Term "goods" as including money.—The term "goods" as used in the paragraph entitled "Express and Freight," Schedule A of the war revenue act of June 13, 1898 (30 Stat. 459) includes money. (1898) 22 Op. Atty. Gen. 178.

70. Meaning of "accepted for transportation."—The term "accepted for transportation" as used in the paragraph entitled "Express and Freight," in the war revenue act (30 Stat. 459), means goods received from a shipper or consignee other than the carrier itself, and is intended to apply to goods received for transportation in the usual manner by common carriers. (1898) 22 Op. Atty. Gen. 252.

71. Duplicate bills of lading.—A railroad company issued bills of lading marked "Original," to each of which was attached a detachable copy, marked as such, and containing a statement thereon that it was not an original bill of lading, but merely a memorandum for filing, as an acknowledgment that a bill of lading had been issued for the goods described. Held, that such copies were not duplicate bills of lading, within the meaning of paragraph 6 of Schedule A of the war revenue act of June 13, 1898 (30 Stat. 458, c. 448), and were not required to be stamped; nor were they rendered such by the fact that in some instances the company recognized them in making deliveries to the consignee, waiving the production of the original. Wright v. Michigan Cent. R. Co. (1904) 130 Fed. 843, 65 C. C. A. 327.

In paragraph 6 of Schedule A of the war revenue act of June 13, 1898 (30 Stat. 458, c. 448), which requires a stamp to be affixed to each bill of lading, manifest, etc., "and to each duplicate thereof," the word "duplicate" is to be defined in accordance with the meaning given it generally in business, as one of two instruments, each of which is original, and intended to have the force of an obligation irrespective of the other, and not as meaning merely a copy. Id.

72. Exemption of express companies as to bills of lading, etc.—The exemption of express companies by Act March 2, 1901, c. 806, from the requirement of War Revenue Act June 13, 1898, c. 448, in relation to adhesive stamps to be placed upon bills of lading, manifects, or other evidences of the receipt of goods for carriage or transportation, requires the affirmance on certiorari, without reference to the merits of the case as affected by the earlier act, of a judgment of the circuit court of appeals affecting the dismissal of a suit to prevent the application by an express company of any of its moneys to meet this requirement. Dinsmore v. Southern Exp. Co. (1901) 22 Sup. Ct. 45, 46, 183 U. S. 115, 46 L. Ed. 111, affirming judgment Trammell v. Dinsmore (1900) 102 Fed. 794, 42 C. C. A. 623.

The United States Express Company is not, by reason of its contract with the United States for the transportation of money, securities, etc., relieved of its duty under the war revenue act of June 13, 1898 (30 Stat. 459), of issuing a bill of lading, manifest, or other receipt with a 1-cent stamp duly attached and canceled, for each such transportation for the Government. (1898) 22 Op. Atty. Gen. 192.

73. Receipts issued by express companies.—Act 1865 (13 Stat. 469), excepting receipts issued by express companies on the delivery of property for transportation from the class of receipts subject to stamp duties, includes receipts given by express companies containing conditions limiting their liability as carriers. De Barre v. Livingston (N. Y. 1867) 48 Barb. 511.

Act June 30, 1864, § 151, requiring a revenue stamp on each sheet of an agreement or contract, does not include receipts given by express companies, though they contained conditions limiting the liability of such companies. Id.

A receipt issued by an express company does not require a revenue stamp, being within the exception in the act of 1865. Belger v. Dinsmore (N. Y. 1868) 51 Barb. 69, 34 How. Prac. 421.

74. Excess baggage receipt.—An excess baggage receipt issued by a railroad company to a passenger for excess weight of baggage does not require a stamp under Schedule A, paragraph "Express and Freight" of the war revenue act of June 13, 1898 (30 Stat. 459). (1898) 22 Op. Atty. Gen. 246.

75. Transportation extending outside of country.—The war revenue act of June 13, 1898 (30 Stat. 459), requires the payment of a stamp tax of 1 cent,

under the clause headed "Express and Freight," upon bills of lading, receipts, manifests, and other similar documents issued by railroad companies for the receipt of goods to be transported by rail from any place within the United States to Canada or Mexico; but no tax is payable thereon under the clause relating to goods exported from a port or place in the United States to any foreign port or place. (1900) 23 Op. Atty. Gen. 3.

Under the war revenue act of June 13, 1898 (30 Stat. 459), a 1-cent. stamp should be attached to all bills of lading for goods transported from places within the United States to Canada or Mexico. Such bills being in part domestic, given for transportation within the United States as well as for export, may be taxed upon the domestic part regardless of the ultimate destination of the goods. (1902) 24 Op. Atty. Gen. 44.

76. Money and merchandise carried free.—Money and merchandise carried by the Adams Express Company for the Pennsylvania Railroad Company over the lines of the latter, free of charge, under a contract between the two companies, do not require a bill of lading or manifest under the provisions of the war revenue law, and, if given, it is not liable to the stamp tax provided for under the head of "Express and Freight" in the war revenue act of 1898 (30 Stat. 459). (1898) 22 Op. Atty. Gen. 252.

77. Inland bills of lading, under act of 1864.—Receipts for goods delivered to a common carrier for transportation, being in effect inland bills of lading, were not subject to stamp duty under the act of 1864. U. S. v. Baltimore & O. R. Co. (C. C. 1868) Fed. Cas. No. 14,509.

78. Who must affix and pay for stamp.—An express company is not forbidden by the act of June 13, 1898, known as the "War Revenue Act," from adding to its rates an amount sufficient to cover the cost of the stamp required to be affixed to a receipt issued to the shipper, and thereby shifting the burden of the tax upon the shipper, if the rate as increased thereby is not unreasonable. Crawford v. Hubbell (1900) 20 Sup. Ct. 701, 177 U. S. 419, 44 L. Ed. 829; American Exp. Co. v. Maynard (1900) 20 Sup. Ct. 695, 177 U. S. 404, 44 L. Ed. 823, reversing judgment Attorney General v. American Exp. Co. (1898) 77 N. W. 317, 118 Mich. 682.

An express company is not forbidden by this act from adding to its rates an amount sufficient to cover the cost of the stamp required to be affixed to a receipt issued to the shipper, and thereby shifting the burden of the tax upon the shipper, if the rate as increased thereby is not unreasonable. American Exp. Co. v. Maynard (1900) 20 Sup. Ct. 695, 697, 177 U. S. 404, 44 L. Ed. 823.

The provision of the war revenue act of 1898, imposing a stamp tax on express receipts, neither authorizes nor prohibits an increase of rates by an express company to cover the cost of the stamp required; and the action of a state railroad commission authorized by statute to prescribe rates for carriage between points within the state, in prohibiting an express company from adding the cost of the revenue stamp to the maximum rates prescribed, is within its jurisdiction and powers, and can only be set aside by the courts on the ground that the rates so compelled are so low as to be violative of constitutional rights. Trammell v. Dinsmore (1900) 102 Fed. 794, 42 C. C. A. 623, judgment affirmed Dinsmore v. Southern Exp. Co. (1901) 22 Sup. Ct. 45, 183 U. S. 115, 46 L. Ed. 111.

The provision of the revenue act of 1898 requiring carriers to affix stamps to receipts given to shippers contains no express language prohibiting a carrier from requiring payment for such stamp from the shipper, in the absence of which such requirement is lawful. Crawford v. Hubbell (C. C. 1898) 89 Fed. 961.

Where a package was offered to an express company for transportation, accompanied by a tender of the full amount of the company's regular charges for the service, such company could not refuse to accept the package unless further payment of one cent or of a one-cent documentary internal revenue stamp was made, and mandamus would lie to compel its acceptance. People v. Wells, Fargo & Co. (1901) 64 P. 702, 135 Cal. 503, reversed (1902) 67 P. 895, 135 Cal. 503.

Where a package is offered for transportation to an express company, required by the war revenue act (Act Cong. June 13, 1898) to attach a stamp thereto, the company may refuse to accept the package for transportation at the regular rates, and may insist on the further payment of the price of the revenue stamp to be attached thereto, or that the consignor furnish such stamp. People v. Wells, Fargo & Co. (1902) 67 P. 895, 135 Cal. 503, reversing judgment on rehearing (1901) 64 Pac. 702, 135 Cal. 503.

Under Act June 13, 1898, it is the duty of common carriers, on receiving packages for transportation, to issue receipts and bills of lading therefor, and to affix thereto the revenue stamp, without requiring the shipper to pay therefor. United States Exp. Co. v. People (1898) 80 Ill. App. 446.

79. Liability to penalty under statute.—Under Act June 13, 1898, Schedule A, relating to stamp taxes, which makes it the duty of every carrier to issue to the shipper or consignor, "from whom any goods are accepted for transportation," a bill of lading, to

which a revenue stamp shall be attached and canceled, and providing that any failure to issue such bill of lading shall subject the carrier to a penalty, it is only when the carrier accepts a consignment for transportation that he is required to issue a stamped bill of lading; his refusal to accept goods offered for shipment does not expose him to the penalty of the act. U. S. v. Wells, Fargo & Co. Express (D. C. 1898) 96 Fed. 835.

80. Telephone messages transmitted under yearly contracts.—Under the war revenue act of June 13, 1898, c. 448, § 25 (30 Stat. 460), which imposes a tax of 1 cent on telephone companies for each message transmitted over their lines for which a charge of 15 cents or more is imposed, a company is subject to the tax on messages transmitted under contracts with subscribers by which each pays $90 per year for the right to send not to exceed 600 local messages during the year. New York Telephone Co. v. Treat (1904) 130 Fed. 340, 64 C. C. A. 586, writ of certiorari denied (1905) 25 Sup. Ct. 802, 198 U. S. 584, 49 L. Ed. 1173.

81. Who must buy, affix, and cancel stamp on telegraphic dispatch.—Under the act of June 13, 1898, § 18 (30 Stat. 456), providing that a telegraph company shall incur a certain penalty for transmitting a message not stamped as therein required; and section 7 (30 Stat. 452), providing that any person who shall "make, sign, or issue" an instrument not properly stamped shall be subject to a fine,—it is the duty of the maker or signer of the message offered for transmission to affix the stamp. Kirk v. Western Union Tel. Co. (C. C. 1899) 90 Fed. 809.

Under Revenue Act 1898, directing that no telegraph company shall transmit any message without an adhesive stamp being affixed thereto or stamped thereon, the maker and sender of a telegraphic dispatch must buy, affix, and cancel the revenue stamp required on the dispatch; and the penalty of $10 imposed on the telegraph company for sending an unstamped message is merely to aid the government in compelling the sender to stamp the same. Gray v. Western Union Tel. Co. (1900) 85 Mo. App. 123.

82. "Bond" defined.—A "bond" is an obligation in writing, and under seal, binding the obligor to pay a sum of money to the obligee. It is sometimes denominated a specialty, being under seal, as distinguished from a simple promise to pay not sealed. (1899) 22 Op. Atty. Gen. 369.

83. Bond in possession of obligor unissued.—A bond, though prepared and signed, which is still in the possession of the obligor unissued, and which may never be issued, is not a debt or obligation which is liable to taxation under that law. (1899) 22 Op. Atty. Gen. 531.

Bonds provided for in a mortgage, to be issued or not, as the future action of the mortgagor may determine, are not, under schedule A of the war revenue act of 1898 (30 Stat. 458), until issued, the subject of taxation or an element in estimating the amount of stamps required for the mortgage. Id.

84. Official bonds.—The United States and the states act separately and independently of each other in the field within which each is sovereign, and neither have power to impose a tax which will interfere with the exercise of the sovereignty of the other within their own sphere, either by taxing their functions or the means by which they are exercised. A power in the federal government to exact a tax upon the right to qualify, under a state law, for the performance of the duties of a state office, is inconsistent with the existence of any supreme governmental authority in the state, and the converse is true as regards the power of the state to tax the means employed by the federal government to carry into execution the powers vested in it by the constitution. Bettman v. Warwick (1901) 108 Fed. 46, 47 C. C. A. 185, affirming judgment Warwick v. Bettman (C. C. 1900) 102 Fed. 127.

A stamp tax imposed by the United States upon a bond required by a state from an officer as a prerequisite to the exercise of the duties of his office is, in necessary legal effect, a tax upon the officer's right to qualify, and upon the exercise by the state of its governmental functions, and the fact that the tax is required to be paid before the officer has qualified is unimportant. Id.

War Revenue Act June 13, 1898, declares that bonds for indemnifying any person, etc., as surety for the payment of money or the execution of official duties, and all other bonds, except such as are required in legal proceedings, shall pay a tax of 50 cents; and section 17 provides that it is the intent of the act to exempt from the stamp taxes state, county, town, and other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing, or municipal capacity. Held, that a notary appointed by a state is a state officer employed in the exercise of functions belonging to it in its governmental capacity, and hence the bond required of such notary as part of his qualification for office is not subject to the revenue tax. Warwick v. Bettman (C. C. 1900) 102 Fed. 127, judgment affirmed Bettman v. Warwick (1901) 108 Fed. 46, 47 C. C. A. 185.

The United States revenue act, requiring stamps on written instruments, including bonds of public officers, is not unconstitutional, as "taxing the constitutional means employed by a state to execute and carry out its constitutional powers." City of Muscatine v. Sterne-

man (1871) 30 Iowa, 526, 6 Am. Rep. 685.

85. Liquor license bonds.—Bonds required to be given to the state of Illinois and city of Chicago as a condition precedent to the issue of a liquor license were exempted from the stamp tax requirement of the war revenue act of 1898, 30 Stat. 448, c. 448, either as bonds issued by a state or city within the meaning of the exemption conferred by section 17 of that act, or by virtue of the proviso in that section that it was thereby intended to exempt the state and municipalities in respect of the exercise of strictly governmental functions. Ambrosini v. U. S. (1902) 23 Sup. Ct. 1, 187 U. S. 1, 47 L. Ed. 49, reversing U. S. v. Ambrosini (D. C. 1899) 105 Fed. 239.

The bond required to be given by a saloon keeper by the statutes of Missouri, as one of the conditions of the granting by the state of a license, and which is conditioned for the faithful observance of all the requirements of such statutes by the licensee, is an instrumentality employed by the state to execute and enforce its own laws enacted in the exercise of its police powers, which cannot be taxed by the federal government, and such bonds did not require an internal revenue stamp, under the war revenue act of 1898. U. S. v. Owens (D. C. 1900) 100 Fed. 70.

86. Bonds in legal proceedings.—A bond given on appeal from a justice of the peace is not required to be stamped under the internal revenue laws. Violet v. Heath (1866) 26 Ind. 178; Anderson v. Poble, Id. 329; Topf v. King, Id. 391; Brayton v. Delaware County (1864) 16 Iowa, 44.

Act March 2, 1901 (31 Stat. 945) being an amendment of Act June 13, 1898 (30 Stat. 460), for the purpose, as shown in its title, of reducing taxation, provided: "Seven. Bond: For indemnifying any person or persons, firm or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position and to account for money received by virtue thereof, fifty cents." The original act had added to this provision, "all other bonds of any description except such as may be required in legal proceedings, not otherwise provided for in this schedule." Held that, in view of its purpose to reduce taxation, the amending act would be construed as referring only to bonds given to indemnify sureties, and would not cover the original bond of an administrator, which by ruling of the commissioner of internal revenue would have been exempted under the original act as a bond required in a legal proceeding. McNally v. Field (C. C. 1902) 119 Fed. 445.

On an appeal from a justice of the peace, if there is a stamp on the summons by which the appellee is brought into court, no stamp is necessary on the appeal bond. Depuy v. Schuyler (1867) 45 Ill. 306.

Failure to attach a stamp to a replevin bond is not ground for dismissing an appeal from a justice's judgment. Smith v. Waters (1865) 25 Ind. 397.

Under the acts of congress, no revenue stamp is required to be placed on the papers used in proceedings under the statute for surety of the peace. Deloohery v. State (1867) 27 Ind. 521.

A bond taken in a judicial proceeding is not required to be stamped under the revenue laws. Lalanne v. McKinney (1876) 28 La. Ann. 642.

A bond to dissolve an attachment requires no internal revenue stamp. Sampson v. Barnard (1867) 98 Mass. 359.

A bond given to release property taken under attachment is a bond given in a legal proceeding, and does not require a stamp. Bowers v. Beck (1866) 2 Nev. 139.

Arbitration bonds and powers of attorney, in suits depending in the Supreme Court need not be stamped. Davis v. Ostrander (N. Y. 1799) 1 Johns. Cas. 106.

An insolvent's bond is a bond made necessary by legal proceedings, and does not require a revenue stamp. McGovern v. Hoesback (1866) 53 Pa. (3 P. F. Smith) 176.

A revenue stamp need not be affixed to the certificate of qualification of the sureties on an appeal bond, under War Revenue Law 1898, Schedule A, § 25, providing that revenue stamps need not be attached to bonds used in legal proceedings. Dawson v. McCarty (1899) 57 Pac. 816, 21 Wash. 314, 75 Am. St. Rep. 841.

87. Constitutionality. — The requirement that the certificate of a clerk of the state court be stamped is unconstitutional. Neldert v. Chicago, R. I. & P. R. Co. (1915) 153 N. Y. S. 658, 89 Misc. Rep. 282, judgment reversed (1915) 155 N. Y. Supp. 818.

88. Certificates issued by state officers.—The requirement that certificates of any description be stamped applies to certificates issued by state officers. Neldert v. Chicago, R. I. & P. R. Co. (1915) 153 N. Y. Supp. 658, 89 Misc. Rep. 282, judgment reversed 155 N. Y. Supp. 818.

89. Return of constable.—The return of a constable to the service of a summons is a certificate, and requires a stamp, and the omission of the stamp renders the certificate invalid and of no effect. Miller v. Larmon (N. Y. 1870) 38 How. Prac. 417.

90. Affidavit made in progress of cause.—An affidavit made in the progress of a cause, or on motion in court, does not require a revenue stamp. Reed v. Curry (1864) 35 Ill. 536.

91. Certificate of acknowledgment attached to declaration of homestead.—A notary's certificate of acknowledgment attached to a declaration of homestead was subject to a stamp tax under War Revenue Act June 13, 1898, c. 448, § 13, 30 Stat. 454, requiring documents mentioned in the schedule, and certificates of any description required by law not otherwise specified to be stamped. Sackett v. McCaffrey (1904) 131 Fed. 219, 65 C. C. A. 205.

92. Certificates on foreclosure.—Under the war revenue act of 1898 (Act June 13, 1898, c. 448, 30 Stat. 448), requiring the attachment of revenue stamps to certain instruments, section 17 providing that state, county, town, and other municipal corporations shall be exempt in the exercise of functions strictly belonging to them, a revenue stamp is not required to the certificate of appraisal made by a sheriff in the execution of a decree for sale on foreclosure. Noble v. Citizens' Bank (1902) 89 N. W. 400, 63 Neb. 847.

The certificates of prior incumbrances and appraisal of land on foreclosure need not be stamped under the war revenue act of 1898. Moultham v. Apking (1902) 89 N. W. 1051, 64 Neb. 378.

No internal revenue stamp is required to the certificate of the sheriff attached to an appraisal on foreclosure. Rieck v. Zoller (1902) 92 N. W. 728, 3 Neb. (Unof.) 721.

93. Copy of certificate on foreclosure.—It is not necessary to attach an internal revenue stamp to a copy of the sheriff's certificate, on foreclosure, showing that the appraisers were resident freeholders. Sanborne v. Lindley (1902) 88 N. W. 869, 63 Neb. 692.

94. Copy of order approving bond of trustee in bankruptcy.—Under provision of the statute that certificates of any description required by law, not otherwise specified in the act, shall bear a 10-cent internal revenue stamp a referee in bankruptcy properly refused to certify a copy of an order approving the bond of the trustee unless it was stamped. In re Hawley (D. C. 1915) 220 Fed. 372.

95. Transcript of judgment of municipal court.—A transcript of a judgment of the Municipal Court of the City of New York is not required to be stamped, etc., before the same can be filed by the county clerk. People ex rel. Tinton Bldg. Corporation v. Ganly (1915) 152 N. Y. Supp. 67, 166 App. Div. 675.

96. Certificate as to transcript or exemplification of foreign judgment.—The certificate of the clerk and judge authenticating the transcript of a foreign judgment does not require a revenue stamp. Walker v. Sleight (1870) 30 Iowa, 310.

Under Act July 6, 1797, § 1 (1 Stat. 20), providing that any exemplification that shall pass the seal of any court shall be subjected to a duty, the certificate of a judge authenticating an exemplification of a foreign judgment is admissible without the stamp; the exemplification and the certificate being different things. Frey v. Wells (Pa. 1807) 4 Yeates, 396.

97. Certificate of tax sale.—Congress has no power to impose a tax on a certificate of sale of land for taxes issued by state authority by requiring a revenue stamp to be affixed thereto. Barden v. Columbia County Sup'rs (1873) 33 Wis. 445, 14 Am. Rep. 762.

98. Certificates as to depositions.—A notary public when engaged in taking depositions to be used as evidence before some judicial tribunal being a judicial officer, the certificate authenticating his official acts as such officer is not within Internal Revenue Act June 13, 1898 (30 Stat. 455, 460, c. 448) Schedule A, requiring a 10-cent stamp to be affixed on a "certificate of any description required by law not otherwise specified in this act." Stirneman v. Smith (1900) 100 Fed. 600, 40 C. C. A. 581.

The certificate of the officer taking a deposition is not subject to stamp duty. Prather v. Pritchard (1866) 26 Ind. 65.

Depositions taken in another state, though not having revenue stamps on the notary's certificates, as required by Internal Revenue Law June 13, 1898, § 14, will not be suppressed. Magic Packing Co. v. Stone-Ordean-Wells Co. (1902) 64 N. E. 11, 158 Ind. 538.

Where a revenue stamp is affixed to an original writ, the magistrate's certificate on a deposition filed in the case does not require another. Cardell v. Bridge (1864) 91 Mass. (9 Allen) 355.

Act June 13, 1898, c. 448, 30 Stat. 448, requiring the certificate of a notary public before whom a deposition is taken to bear an internal revenue stamp, and that failure to comply with this requirement shall make the deposition inadmissible in evidence, has no application to proceedings in state courts. Sulpho-Saline Bath Co. v. Allen (1902) 92 N. W. 354, 66 Neb. 295.

99. Certificate indorsed on writ issued by justice.—Where a writ is issued by a justice of the peace and directed to an indifferent person for immediate service, and the justice indorses on it a certificate, as required by the statute in such case, that he has administered the prescribed oath and deputed an indifferent person to make service, no stamp is necessary on the certificate, though the act of congress requires a five-cent stamp upon every certificate not otherwise specially provided for. Greene v. New London

County Agricultural Soc. (1864) 32 Conn. 95.

100. Certificate to appeal, record, or transcript.—The certificate of the justice to the transcript required by section 6 of the act of March 4, 1863 (Acts Ind. 1862, p. 251), "to enforce judgments against railroad companies for stock killed," to be filed in the clerk's office, does not require a revenue stamp. Toledo, L. & B. Ry. Co. v. Nordyke (1866) 27 Ind. 95.

A certificate of a record by a justice of the peace, in a case appealed from his decision, is not required to be stamped under the internal revenue law. Brayton v. Delaware County (1864) 16 Iowa. 44.

Act July 4, 1864, does not require a stamp to be affixed to the certificate of a justice of the peace in respect to the transcript on an appeal. Norris v. Hannibal & St. J. R. Co. (1866) 37 Mo. 286.

101. Recorder's certificate.—A certified copy of the record of a mortgage is not rendered inadmissible in evidence by the want of a revenue stamp upon the recorder's certificate; such official instruments being exempt from stamp duty. Hawes v. Rhoads (1870) 34 Ind. 79.

102. Magistrate's certificate exempt under former law.—Act 1862, c. 119, § 110, providing that no writ, summons, or other process issued by a justice of the peace, or issued in any criminal or other suit commenced by the United States or any state, shall be subject to the payment of stamp duties, exempts from tax duty the certificate of a magistrate testing his record of a conviction in a criminal case which is taken to the superior court on appeal. Commonwealth v. Hardiman (1864) 91 Mass. (9 Allen) 487.

Under the clause of the internal revenue act, providing "that no writ, summons, or other process issued by a justice of the peace, or issued in any criminal or other suit commenced by the United States or any state, shall be subject to the payment of stamp duties," the certificate of a magistrate attached as required by law to the order for the removal of a pauper does not require a stamp. Town of East Haven v. Town of Derby (1865) 38 Vt. 253.

103. Transaction called a "put."—The written evidence of a transaction called in brokers' parlance a "put," being an agreement on the part of the signer to buy stock, the opportunity to purchase being entirely dependent upon the disposition of the bearer, or the party to whom the paper is given, is not taxable under the eighth paragraph of Schedule A or at all under the law (War Revenue Act of 1898). (1899) 22 Op. Atty. Gen. 447.

104. Remedy of the [illegible].—[illegible] person fails to [illegible] or memoranda of agreements [illegible] him to sell [illegible] thereto as required by [illegible] the war revenue act of [illegible] collector has no authority to [illegible] collect from him the value of the stamps which would have been required had he complied with the act [illegible] only remedy provided for a violation [illegible] ing by prosecution and fine or imprisonment; and a payment so [illegible] by a collector may be recovered back. McClain v. Fleishman [illegible] 880, 46 C. C. A. 15, affirming judgment Fleishman v. McClain [illegible] Fed. 610.

105. Stamping according to actual consideration.—An allegation that a conveyance was made and stamped for less than the actual consideration with intent to aid or give color to a former fraudulent conveyance of the same premises to the grantee, or that such conveyance was made and stamped for an "inadequate" consideration, does not show that such conveyance was not duly stamped with intent to evade the stamp act. Dowell v. Applegate (C. C. 1881) 7 Fed. 881.

A conveyance is sufficiently stamped if stamped according to the actual consideration, be that more or less than the nominal one. U. S. v. Grewell (C. C. 1881) 8 Fed. 556.

106. Enhancement of value by improvements by purchaser.—An enhancement of value by stipulated improvements to be made by the purchaser is not to be considered in fixing the amount of the stamp. James v. Blauvelt (C. C. 1864) Fed. Cas. No. 7,180.

107. Amount of stamps as depending on payment in gold or legal tender notes.—Where the consideration in a deed is expressed to be so many dollars, the stamp required is the same whether the sum named is paid in gold or in legal tender notes of the United States. Hall v. Jordan (1873) 19 Wall. 271, 273, 22 L. Ed. 47.

108. Conveyance subject to incumbrances.—A deed to real estate, under Schedule A of the war revenue stamp act of 1898, requires stamps in proportion to the "consideration or value" of the interest transferred, and not to the entire value of the property, where it is conveyed subject to incumbrances. Central Trust Co. of New York v. Columbus, H. V. & T. Ry. Co. (C. C. 1899) 92 Fed. 919.

109. Double stamp duty.—A double stamp duty held not incurred on a conveyance to the original purchaser through an irresponsible middleman. James v. Blauvelt (C. C. 1864) Fed. Cas. No. 7,180.

110. Deeds on judicial sales.—A state court will not permit its officer making judicial sale to disobey a valid federal

statute requiring revenue stamps to be attached to deeds. Loring v. Chase (1899) 56 N. Y. Supp. 312, 26 Misc. Rep. 318.

111. —— Master's deed.—The revenue stamps required to be affixed to a conveyance of realty may be paid for, as expenses, out of the funds in the hands of the receiver, when the conveyance is by a master under decree and sale. Farmers' Loan & Trust Co. v. Council Bluffs Gas & Electric Light Co. (C. C. 1898) 90 Fed. 806.

The exemption of checks, drawn by the clerk of the district court on funds held by the court, from the requirement as to revenue stamps, cannot be extended to a deed executed by the master commissioner, although the property conveyed in the deed has been in the hands of a receiver under the order and direction of the court. Id.

The fact that a conveyance is made by a master commissioner under a decree of foreclosure in which the priority of liens is considered and settled, and after competitive sale, does not affect the requirement that the instrument, being a "conveyance of realty," under Schedule A of the revenue law (Act June 13, 1898, c. 448), shall have the required revenue stamps affixed, to be receivable for record. Id.

112. Receiver's deed on termination of trust.—A deed of release, executed by a receiver appointed for a partnership to the partners, on the termination of the receivership, pursuant to an order of the court, made on final decree, winding up the administration of the estate, is but a formal evidence of the transfer which results by operation of law, and is not a conveyance which requires a stamp, under the war revenue act of 1898. Mastin v. Mastin (C. C. 1900) 99 Fed. 435.

113. Tax deed.—A tax deed made by the sheriff and tax collector does not require a stamp, under Act July 13, 1866. Rouse v. Hampton (C. C. 1871) Fed. Cas. No. 12,088.

Congress has no power to require a revenue stamp on a tax deed executed under the laws of a state. Sayles v. Davis (1867) 22 Wis. 225; Delorme v. Ferk (1869) 24 Wis. 201.

114. Affixing stamp to policy or preliminary application.—The act of June 13, 1898 (30 Stat. 448), requires the stamp to be affixed to the policy of insurance, and not to the preliminary application, although such application is expressly made a part of the contract of insurance. (1900) 23 Op. Atty. Gen. 210.

115. Amount of policy.—Where the application for insurance expressly stipulates that the policy shall embrace four separate contracts, covering four consecutive periods aggregating one year, and shall remain in force after the first insurance period only as continued by further payments of premium, such policy is held to be a policy issued for one year, and the amount of tax to be affixed when the policy is delivered is to be determined by the aggregate of the premiums for the entire year. (1900) 23 Op. Atty. Gen. 210.

116. Reinsurance.—Reinsurance policies need not be stamped under the war revenue law of June 13, 1898 (30 Stat. 460). (1899) 22 Op. Atty. Gen. 318.

The purpose of Schedule A of the war revenue law (30 Stat. 460), is to tax the policy by which an insurance is made, either life, fire, or marine, and not the reinsurance of such policy. (1899) 22 Op. Atty. Gen. 376.

117. Assignment of policy.—It seems that the revenue act in force July 1, 1898 (Act June 13, 1898, c. 448, 30 Stat. 448), requiring adhesive revenue stamps to be affixed to certain documents, did not require a revenue stamp to be affixed to an assignment of an insurance policy. Steeley's Creditors v. Steeley (1901) 64 S. W. 642, 23 Ky. Law Rep. 996.

118. Raising question as to stamps in state court.—The question of the want of revenue stamps on an insurance policy, required by law when it was issued, cannot be raised in a state court. Wheaton v. Liverpool & London & Globe Ins. Co. (1905) 104 N. W. 850, 20 S. D. 62.

119. Power of attorney in general.—A paper or instrument stipulating that certain securities or other property shall be held as indemnity or as a basis of credit, or a guaranty generally, without specifying particular property as security for the payment of a definite and certain sum, being a pledge of property for the payment of a debt, is not to be construed as a power of attorney and stamped as such, as it only authorizes the holder, in case of default, to make the securities available for the purposes for which they were deposited. (1898) 22 Op. Atty. Gen. 218.

Arbitration bonds and powers of attorney in suits depending in the Supreme Court need not be stamped. Davis v. Ostrander (N. Y. 1799) 1 Johns. Cas. 106.

The failure to affix a United States revenue stamp to a power of attorney embodied in an assignment, but not necessary thereto, did not affect the validity of the assignment. Cassidy v. St. Germain (1900) 46 A. 35, 22 R. I. 53.

120. Power of attorney in bankruptcy proceedings.—A power to represent a creditor in bankruptcy is not subject to stamp duty after March, 1867. In re Myrick (D. C. 1869) Fed. Cas. No. 10,000.

A power of attorney, authorizing

the appointee to act for the grantor in bankruptcy proceedings, is subject to an internal revenue stamp equal to 25 cents, under Internal Revenue Act 1914. In re Hawley (D. C. 1915) 220 Fed. 372.

121. Power to sell or convey real estate.—A provision in a note authorizing any attorney at law to appear in court on behalf of its maker and confess judgment against him is a warrant of attorney, and not a power of attorney, and is not within War Revenue Act June 13, 1898, requiring stamps on powers of attorney to sell or convey real estate and perform other acts. Treat v. Tolman (1902) 113 Fed. 892, 51 C. C. A. 522, affirming judgment Tolman v. Treat (C. C. 1901) 106 Fed. 679.

Cited without definite application, See Dandelet v. Smith (1873) 85 U. S. (18 Wall.) 642, 21 L. Ed. 758; Ferguson v. Arthur (1886) 6 Sup. Ct. 861, 864, 117 U. S. 482, 29 L. Ed. 979; Knowlton v. Moore (1900) 20 Sup. Ct. 747, 752, 178 U. S. 41, 44 L. Ed. 969; Vanderbilt v. Eidman (1905) 25 Sup. Ct. 331, 338, 196 U. S. 480, 49 L. Ed. 563; U. S. v. Houghton (D. C. 1871) Fed. Cas. No. 15,396; U. S. v. Goldback (C. C. 1877) Fed. Cas. No. 15,222.

See, also, cases cited under R. S. §§ 3418, 3419, ante.

DECISIONS RELATING TO ADDITIONAL SCHEDULES UNDER FORMER LAWS

1. Agreements or contracts.
2. Orders for the payment of money.
3. Receipts.
4. Charter parties.
5. Mortgage and pledge and bonds and notes secured thereby.
6. Orders for payment of money.
7. Warehouse receipts.
8. Acknowledgment of hiring house.
9. Writ or process.
10. Appeal papers.
11. Probate of will or letters.

1. Agreements or contracts.—See U. S. v. Learned (D. C. 1870) Fed. Cas. No. 15,580; Same v. Smith, Id. 16,340.

2. Orders for the payment of money.—See Granby Mercantile Co. v. Webster (C. C. 1899) 98 Fed. 604.

3. Receipts.—See Thayer v. Barney (1867) 12 Minn. 502 (Gil. 406).

4. Charter parties.—See Simpson v. Treat (C. C. 1904) 126 Fed. 1003; Wheaton v. Weston & Co. (D. C. 1903) 128 Fed. 151; (1898) 22 Op. Atty. Gen. 168; Id., 2[illegible]).

5. Mortgage and pledge and bonds and notes secured thereby.—(1898) 22 Op. Atty. Gen. 218; (1899) 22 Op. Atty. Gen. 531; (1900) 23 Op. Atty. Gen. 53; Foreman v. Francis (La. 1880) Man. Unrep. Cas. 337; Janvrin v. Fogg (1870) 49 N. H. 340; Vail v. Knapp (N. Y. 1867) 49 Barb. 299.

6. Orders for payment of money.—See (1898) 22 Op. Atty. Gen. 248.

7. Warehouse receipts.—See Merchants' Warehouse Co. v. McClain (C. C. 1902) 112 Fed. 787, judgment affirmed McClain v. Merchants' Warehouse Co. (1902) 115 Fed. 295, 53 C. C. A. 155; (1898) 22 Op. Atty. Gen. 283.

8. Acknowledgment of hiring house.—Brown v. U. S. (C. C. 1868) Fed. Cas. No. 2,032.

9. Writ or process.—See Sowell v. Sowell's Adm'r (1866) 40 Ala. 243; Smith v. Short (1867) 40 Ala. 385; Black v. Nettles (1869) 25 Ark. 606; Greene v. New London County Agricultural Soc. (1864) 32 Conn. 95; Smyth v. Ripley (1864) Id. 156; Appeal of Hotchkiss (1865) 32 Conn. 353; Tucker v. Potter (1868) 35 Conn. 43; Bear v. Hays (1865) 36 Ill. 280; Craig v. Dimock (1868) 47 Ill. 308; Warren v. Paul (1864) 22 Ind. 276; Smith v. Waters (1865) 25 Ind. 397; Colerick v. Bowser (1868) 30 Ind. 329; Cardell v. Bridge (1864) 91 Mass. (9 Allen) 355; Commonwealth v. Hardiman (1864) 91 Mass. (9 Allen) 487; Fifield v. Close (1867) 15 Mich. 505; Pierce v. Huddleston (1865) 10 Minn. 131 (Gil. 105); Dorman v. Bayley (1865) 10 Minn. 383 (Gil. 306); Disbrow v. Johnson (1866) 18 N. J. Eq. (3 C. E. Green) 36; Tipton v. Cordova (1866) 1 N. M. 383; Walton v. Bryenth (N. Y. 1863) 24 How. Prac. 357; German Liederkranz v. Schiemann (N. Y. 1863) 25 How. Prac. 388; Jackson v. Allen (N. Y. 1863) 26 How. Prac. 119; Baird v. Pridmore (N. Y. 1865) 29 How. Prac. 253; Lewis v. Randall (1866) 30 How. Prac. 378, 1 Abb. Prac. (N. S.) 135; Baird v. Pridmore (N. Y. 1866) 31 How. Prac. 359; Cole v. Bell (N. Y. 1866) 48 Barb. 194; Coppernoll v. Ketcham (N. Y. 1867) 56 Barb. 111; Shay v. Henk (1865) 49 Pa. (13 Wright) 79; Kennedy v. Morrison (1868) 31 Tex. 207; Town of East Haven v. Town of Derby (1865) 38 Vt. 253; Hitchcock v. Sawyer (1867) 39 Vt. 412; Gorman v. Steed (1864) 1 W. Va. 1; Jones v. Keep's Estate (1865) 19 Wis. 369.

10. Appeal papers.—See, also, cases cited in the preceding note as to "Writ or process."

See People v. Weston (1865) 28 Cal. 639; Teagarden v. Garver (1865) 24 Ind. 399; Toledo, L. & B. Ry. Co. v. Nordyke (1866) 27 Ind. 95; Brayton v. Delaware County (1864) 16 Iowa, 44; Mussellman v. Mauk (1865) 18 Iowa, 239; Hugus v. Strickler (1866) 19 Iowa, 413; O'Hare v. Leonard (1866) Id. 515; May v. Wilson (1866) 20 Iowa, 117; Botkins v. Spurgeon, Id. 598; Doud v. Wright (1867) 22 Iowa, 336; Ford v. Clinton (1868) 25 Iowa, 157; Flower v. Kellum (1866) 14 Mich. 300; Norris v. Hannibal & St. J. R. Co. (1866) 37 Mo. 286; Killip v. Empire Mill Co. (1866)

2 Nev. 34; Hinchman v. Rutan (1865) 31 N. J. Law (2 Vroom) 496; Whitley v. Leeds (N. Y. 1864) 27 How. Prac. 378; Lewis v. Randall (N. Y. 1866) 30 How. Prac. 378, 1 Abb. Prac. (N. S.) 135; Coppernoll v. Ketcham (N. Y. 1867) 56 Barb. 111; Harper v. Clark (1867) 17 Ohio St. 190; Swift v. Cornes (1866) 20 Wis. 397.

II. Probate of will or letters.—See Blake v. Hall (1867) 19 La. Ann. 49; Dayton v. Mintzer (1876) 22 Minn. 393; Werbiskie v. McManus (1868) 31 Tex. 116.

Cited without definite application, Dinsmore v. Southern Express Co. (1901) 22 Sup. Ct. 45, 46, 183 U. S. 115, 46 L. Ed. 111; Ambrosini v. U. S. (1902) 23 Sup. Ct. 1, 187 U. S. 1, 47 L. Ed. 49; U. S. v. New York & Cuba Mail S. S. Co. (1906) 26 Sup. Ct. 327, 328, 200 U. S. 488, 50 L. Ed. 569; U. S. v. Cleage (1908) 161 Fed. 85, 88 C. C. A. 249; Metropolitan Stock Exchange v. Gill (1912) 199 Fed. 545, 118 C. C. A. 19; Beer v. Moffatt (D. C. 1912) 192 Fed. 984; Blake v. Hall (1867) 19 La. Ann. 49; Amos-Richia v. Northwestern Mut. Life Ins. Co., 107 N. W. 707, 143 Mich. 684; Kennedy v. Rountree (1900) 37 S. E. 942, 59 S. C. 324, 82 Am. St. Rep. 841.

CHAPTER NINE A

Incomes

This chapter, inserted here as additional to the chapters of this Title in the Revised Statutes, includes the income tax provisions of Act Sept. 8, 1916, c. 463, 39 Stat. 756–777. Such provisions appear in the act under the heading "Title I.—Income Tax." Section 24 of the act, set forth post, § 6336w, repeals section II of Act Oct. 3, 1913, c. 16, 38 Stat. 166, constituting the income tax provisions of the Underwood Tariff Act.

An excise tax, in addition to the income tax herein provided for, is imposed on munition manufacturers by Title III of the act, set forth post, §§ 6336¼a–6336¼m.

An income tax was imposed by Act Aug. 5, 1861, c. 45, §§ 49–51, 12 Stat. 309, which was amended, continued in force, and modified by Act July 1, 1862, c. 119, §§ 89–114, 12 Stat. 473, Act June 30, 1864, c. 173, §§ 116–150, 13 Stat. 281, Act March 3, 1865, c. 78, § 1, 13 Stat. 469, Act July 13, 1866, c. 184, § 9, 14 Stat. 137, Act March 2, 1867, c. 169, § 13, 14 Stat. 480, and Act July 14, 1870, c. 255, §§ 6–17, 16 Stat. 257. It expired in 1871.

An income tax was also imposed by Act Aug. 27, 1894, c. 349, §§ 27, 28, 28 Stat. 553, the provisions of which were held unconstitutional in Pollock v. Trust Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759.

Sec.
6319–6336. (Act Oct. 3, 1913, c. 16, § II. Repealed.)

PART I.—ON INDIVIDUALS

6336a. [a] Normal income tax.
[b] Additional tax; income included; provisions relating to normal tax applicable.
[c] Normal and additional tax rates applicable to entire income.

INCOME DEFINED

6336b. [a] Net income of taxable person, how determined; dividends defined.
[b] Income of estates of decedents and trust estates; indemnity and credit to executors, etc.
[c] Gain derived from sale of property, how determined.

ADDITIONAL TAX INCLUDES UNDISTRIBUTED PROFITS

6336c. Taxable income of individual for purpose of additional tax; fraudulent accumulations; statement of gains and profits by corporation, etc.

Sec.

INCOME EXEMPT FROM LAW

6336d. Income exempt from taxation.

DEDUCTIONS ALLOWED

6336e. Computation of net income of citizen or resident of United States.
[a] Deductions allowed.

CREDITS ALLOWED

[b] Credit for normal tax purposes of dividends on stock or net earnings of corporation, etc., taxable upon net income.
[c] Credit for normal tax purposes of normal tax paid or withheld at source.

NONRESIDENT ALIENS

6336f. Computation of net income of nonresident alien.
[a] Deductions allowed.
[b] Credits allowed.

PERSONAL EXEMPTION

6336g. [a] Exemption allowed for purpose of normal tax; to guardian or trustee; to estate of decedent.
[b] Exemption to nonresident alien individual.

Sec.

RETURNS

6336h. [a] Tax computed on income received in preceding calendar year.
[b] Returns of incomes; form and contents: extension of time for filing; making by agent.
[c] Returns by guardians, trustees, etc.; provisions applicable to.
[d] Deduction and withholding normal tax at source of income; returns, when not required.
[e] Tax on partnerships; returns.
[f] Returns to include income derived from dividends on capital stock or net earnings of corporation, etc.
[g] Returns on accounts kept on basis other than of actual receipts and disbursements.

ASSESSMENT AND ADMINISTRATION

6336i. [a] Assessments to be made by Commissioner of Internal Revenue; notice to persons liable; time for payment of tax; penalty and interest.
[b] Deduction and withholding of normal tax at source; payment to government; personal liability for and indemnity to persons required to deduct; exemptions and deductions where tax is deducted, etc., at source, how obtained.
[c] Normal tax deducted and withheld at source on fixed or determinable annual or periodical gains, profits, etc., from interest on bonds, mortgages, etc., of corporations, etc., not amounting to $3,000.
[d] Normal tax deducted and withheld at source from coupons, checks, etc., for interest as bonds of foreign countries, foreign mortgages and dividends, etc., on stock, etc., of foreign corporations, etc.
[e] Exemptions and deductions where tax withheld at source.
[f] License to and regulations concerning persons, etc., collecting foreign payments of interest, etc., by coupons, checks, etc.; penalty for collecting without license.
[g] Personal returns on gains, profits, and income not included in section; intent of act.

Sec.

PART II.—ON CORPORATIONS

6336j. Tax of 2 per cent. on net income of corporations; meaning of word "dividends"; fiscal year; mode of ascertaining gain or loss from sale or disposition of property.

CONDITIONAL AND OTHER EXEMPTIONS

6336k. [a] Corporations exempted.
[b] Tax on income of public utility accruing to state or other political divisions; imposition of tax not to impose loss or burden upon state, etc.

DEDUCTIONS

6336l. [a] Mode of ascertaining net income of domestic corporations.
[b] Mode of estimating net income of foreign corporations.
[c] What constitutes payments to reserve funds of assessment insurance companies.

RETURNS

6336m. [a] Tax computed upon net income as ascertained; corporations may designate closing day of fiscal year.
[b] Corporations shall render return of net income annually; form and contents of return; verification; to whom return made; transmission to Commissioner of Internal Revenue.
[c] Returns by receivers, trustees in bankruptcy, or assignees of corporations.
[d] Corporations permitted to make return on basis on which their accounts are kept.
[e] Provisions as to deduction of tax from income of nonresident alien individuals applicable to income of nonresident alien firms, corporations, etc., derived from interest on bonds, etc., of domestic and resident corporations.
[f] Provisions as to deduction of tax from income of nonresident alien individuals made applicable to income of nonresident alien companies, derived from dividends of domestic or resident corporations, etc.

ASSESSMENT AND ADMINISTRATION

6336n. [a] Notice of assessment and time for payment; immediate payment in case of refusal to make return or making of false return; penalty for nonpayment; refundment.

Sec.
[b] Filing returns in office of commissioner of internal revenue; inspection; rules as to inspection; access to returns by state officer.
[c] Penalty for failing to make return or for rendering false return; extension of time.

PART III.—GENERAL ADMINISTRATIVE PROVISIONS

6336o. Definition of terms.
6336p. Receipt for taxes paid; separate receipts to debtor making payments affecting separate creditors; receipts as evidence; surrender of receipts to creditor.
6336q. Penalty for failure of individual to make return or pay taxes; penalty for false return by individual or corporate officer; taxation at source not to be made where tax paid by taxpayer; penalty in such case.
6336r. Verification of returns; notice to show cause why amount of return should not be increased; statement of proof; appeal.
6336s. Jurisdiction of district court to compel attendance of witnesses and production of books.
6336t. Statistics relating to operation of income tax law.
6336u. Consistent provisions of internal revenue law applicable.
6336v. Extension to Porto Rico and Philippine Islands.
6336w. Repeal.
6336x. Income on which tax imposed under Act Oct. 3, 1913, not to be considered as income; effect as to fiscal year fixed by taxpayer.

§§ 6319–6336. (Act Oct. 3, 1913, c. 16, § II. Repealed.)

PART I.—ON INDIVIDUALS

§ 6336a. (Act Sept. 8, 1916, c. 463, § 1.) [a] Normal income tax. There shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a citizen or resident of the United States, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources within the United States by every individual, a nonresident alien, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.

[b] Additional tax; income included; provisions relating to normal tax applicable.

In addition to the income tax imposed by subdivision (a) of this section (herein referred to as the normal tax) there shall be levied, assessed, collected, and paid upon the total net income of every individual, or, in the case of a nonresident alien, the total net income received from all sources within the United States, an additional income tax (herein referred to as the additional tax) of one per centum per annum upon the amount by which such total net income exceeds $20,000 and does not exceed $40,000, two per centum per annum upon the amount by which such total net income exceeds $40,000 and does not exceed $60,000, three per centum per annum upon the amount by which such total net income exceeds $60,000 and does not exceed $80,000, four per centum per annum upon the amount by which such total net income exceeds $80,000 and does not exceed $100,000, five per centum per annum upon the amount by which such total net income exceeds $100,000 and does not exceed $150,000, six per centum per annum upon the amount by which such total net income exceeds $150,000 and does not exceed $200,000, seven per centum per annum upon the amount by which such total net income exceeds $200,000 and does not exceed $250,000, eight per centum per annum upon the amount by which such total net income exceeds $250,000 and does not exceed $300,000, nine per centum per annum upon the amount by which such total net income exceeds $300,000 and does not ex-

price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such gain derived. (39 Stat. 757, 758.)

Notes of Decisions

See, also, notes under §§ 6300-6309, ante.

Income of insurance agent.—Agent's percentage of premiums on policies issued prior to Act Oct. 3, 1913, held income which accrued when the premiums were paid, and which was taxable as income, under section 2, div. A, subd. 1, and division B. Edwards v. Keith (D. C. 1915) 224 Fed. 585.

Liability to income tax of insurance agent's percentage of premiums held not affected by fact that such percentage represented in part office expenses paid by the agent before the passage of the law. Id.

Income under former law.—Pacific Ins. Co. v. Soule (1868) 74 U. S. (7 Wall.) 433, 19 L. Ed. 95; Gray v. Darlington (1872) 82 U. S. (15 Wall.) 63, 21 L. Ed. 45; Stockdale v. Atlantic Ins. Co. (1873) 87 U. S. (20 Wall.) 323, 22 L. Ed. 348 (reversing Home Mut. Ins. Co. v. Stockdale [C. C. 1872] Fed. Cas. No. 6,662); Schuylkill Nav. Co. v. Elliott (C. C. 1875) Fed. Cas. No. 12,497; Lake Shore & M. S. R. Co. v. Rose (1877) 95 U. S. (5 Otto) 78, 24 L. Ed. 376; Western Union R. Co. v. U. S. (1879) 101 U. S. 543, 25 L. Ed. 1068; Knowlton v. Moore (1900) 20 Sup. Ct. 747, 752, 178 U. S. 41, 44 L. Ed. 969; Magee v. Denton (C. C. 1863) Fed. Cas. No. 8,943; U. S. v. Schillinger (C. C. 1876) Fed. Cas. No. 16,228; U. S. v. Frost (D. C. 1869) Fed. Cas. No. 15,172; U. S. v. Smith (D. C. 1870) Fed. Cas. No. 16,341.

ADDITIONAL TAX INCLUDES UNDISTRIBUTED PROFITS

§ 6336c. (Act Sept. 8, 1916, c. 463, § 3.) Taxable income of individual for purpose of additional tax; fraudulent accumulations; statement of gains and profits by corporation, etc.

For the purpose of the additional tax, the taxable income of any individual shall include the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies or associations, or insurance companies, however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company or association, or insurance company, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company or association, or insurance company shall forward to him a correct statement of such gains and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed. (39 Stat. 758.)

INCOME EXEMPT FROM LAW

§ 6336d. (Act Sept. 8, 1916, c. 463, § 4.) Income exempt from taxation.

The following income shall be exempt from the provisions of this title:

The proceeds of life insurance policies paid to individual beneficiaries upon the death of the insured; the amount received by the insured, as a return of premium or premiums paid by him under life

insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon the surrender of the contract; the value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included as income); interest upon the obligations of a State or any political subdivision thereof or upon the obligations of the United States or its possessions or securities issued under the provisions of the Federal farm loan Act of July seventeenth, nineteen hundred and sixteen; the compensation of the present President of the United States during the term for which he has been elected, and the judges of the Supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State, or any political subdivision thereof, except when such compensation is paid by the United States Government. (39 Stat. 758.)

DEDUCTIONS ALLOWED

§ 6336e. (Act Sept. 8, 1916, c. 463, § 5.) Computation of net income of citizen or resident of United States.

In computing net income in the case of a citizen or resident of the United States—

[a] **Deductions allowed.**

For the purpose of the tax there shall be allowed as deductions—

First. The necessary expenses actually paid in carrying on any business or trade, not including personal, living, or family expenses;

Second. All interest paid within the year on his indebtedness;

Third. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits;

Fourth. Losses actually sustained during the year, incurred in his business or trade, or arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise: Provided, That for the purpose of ascertaining the loss sustained from the sale or other disposition of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such loss sustained;

Fifth. In transactions entered into for profit but not connected with his business or trade, the losses actually sustained therein during the year to an amount not exceeding the profits arising therefrom;

Sixth. Debts due to the taxpayer actually ascertained to be worthless and charged off within the year;

Seventh. A reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade;

Eighth. (a) In the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof, which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: Provided, That when the allowances authorized in (a) and (b) shall equal

the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

CREDITS ALLOWED

[b] Credit for normal tax purposes of dividends on stock or net earnings of corporation, etc., taxable upon net income.

For the purpose of the normal tax only, the income embraced in a personal return shall be credited with the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company or association, trustee, or insurance company, which is taxable upon its net income as hereinafter provided.

[c] Credit for normal tax purposes of normal tax paid or withheld at source.

A like credit shall be allowed as to the amount of income, the normal tax upon which has been paid or withheld for payment at the source of the income under the provisions of this title. (39 Stat. 759.)

Notes of Decisions

See, also, notes under §§ 6300–6309, ante.

Constitutionality.—No want of due process of law results because the Tariff Act does not compel owners of houses to estimate their rental value thereof, but those who live in rented houses are not allowed to deduct the rent paid, nor because farmers are permitted to omit from their income products of farms used by their families during the year. Brushaber v. Union Pac. R. Co. (1916) 36 Sup. Ct. 236, 240 U. S. 1, 60 L. Ed. 493.

Deductions.—Allowing individuals to deduct from their gross income dividends paid by corporations whose incomes are taxed, and not giving such right to corporations under income tax law, does not render tax wanting in due process of law. Stanton v. Baltic Mining Co. (1916) 36 Sup. Ct. 278, 240 U. S. 103, 60 L. Ed. 546.

Deduction of bad debts under former law.—See U. S. v. Mayer (D. C. 1865) Fed. Cas. No. 15,753.

Official salaries or compensation under former law.—See Stockdale v. Atlantic Ins. Co. (1873) 20 Wall. 323, 325, 22 L. Ed. 348; Day v. Buffinton (C. C. 1871) Fed. Cas. No. 3,675; Freedman v. Sigel (C. C. 1873) Fed. Cas. No. 5,080; U. S. v. Ritchie (D. C. 1872) Fed. Cas. No. 16,168; Galm v. U. S. (1903) 39 Ct. Cl. 55; (1895) 21 Op. Atty. Gen. 112.

NONRESIDENT ALIENS

§ 6336f. (Act Sept. 8, 1916, c. 463, § 6.) Computation of net income of nonresident alien.

In computing net income in the case of a nonresident alien—

[a] Deductions allowed.

For the purpose of the tax there shall be allowed as deductions—

First. The necessary expenses actually paid in carrying on any business or trade conducted by him within the United States, not including personal, living, or family expenses;

Second. The proportion of all interest paid within the year by such person on his indebtedness which the gross amount of his income for the year derived from sources within the United States bears to the gross amount of his income for the year derived from all sources within and without the United States, but this deduction shall be allowed only if such person includes in the return required by section eight all the information necessary for its calculation;

Third. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or under the au-

thority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;

Fourth. Losses actually sustained during the year, incurred in business or trade conducted by him within the United States, and losses of property within the United States arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise: Provided, That for the purpose of ascertaining the amount of such loss or losses sustained in trade, or speculative transactions not in trade, from the same or any kind of property acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such loss or losses sustained;

Fifth. In transactions entered into for profit but not connected with his business or trade, the losses actually sustained therein during the year to an amount not exceeding the profits arising therefrom in the United States;

Sixth. Debts arising in the course of business or trade conducted by him within the United States due to the taxpayer actually ascertained to be worthless and charged off within the year;

Seventh. A reasonable allowance for the exhaustion, wear and tear of property within the United States arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: Provided, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

[b] Credits allowed.

There shall also be allowed the credits specified by subdivisions (b) and (c) of section five. (39 Stat. 760.)

PERSONAL EXEMPTION

§ 6336g. (Act Sept. 8, 1916, c. 463, § 7.) [a] Exemption allowed for purpose of normal tax; to guardian or trustee; to estate of decedent.

For the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each of said persons, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making the return be a head of a family or a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of $1,000 be

deducted by both a husband and a wife: Provided, That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together: Provided further, That guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or cestui que trust: Provided further, That in no event shall a ward or cestui que trust be allowed a greater personal exemption than $3,000, or, if married, $4,000, as provided in this paragraph, from the amount of net income received from all sources. There shall also be allowed an exemption from the amount of the net income of estates of deceased persons during the period of administration or settlement, and of trust or other estates the income of which is not distributed annually or regularly under the provisions of paragraph (b), section two, the sum of $3,000, including such deductions as are allowed under section five.

[b] Exemption to nonresident alien individual.

A nonresident alien individual may receive the benefit of the exemption provided for in this section only by filing or causing to be filed with the collector of internal revenue a true and accurate return of his total income, received from all sources, corporate or otherwise, in the United States, in the manner prescribed by this title; and in case of his failure to file such return the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax. (39 Stat. 761.)

Notes of Decisions

See, also, notes under §§ 6300–6309, ante.

Constitutionality.—Allowance of deduction of $3,000 or $4,000 given by income tax act is not wanting in due process of law because those whose incomes are greater than $20,000 are not allowed a second right to deduct such exemption, nor because no second right is given to deduct dividends from corporations is permited. Brushaber v. Unión Pac. R. Co. (1916) 36 Sup. Ct. 236, 240 U. S. 1, 60 L. Ed. 493.

Allowance of deduction of stated amounts to ascertain taxable income by Tariff Act does not render tax wanting in due process of law because of discrimination between married and single persons, and husbands and wives living together, and those who are not. Id.

Corporations are not unconstitutionally discriminated against by exemption, which the income tax statute makes of individual incomes below $4,000. Stanton v. Baltic Mining Co. (1916) 36 Sup. Ct. 278, 240 U. S. 103, 60 L. Ed. 546.

RETURNS

§ 6336h. (Act Sept. 8, 1916, c. 463, § 8.) [a] Tax computed on income received in preceding calendar year.

The tax shall be computed upon the net income, as thus ascertained, of each person subject thereto, received in each preceding calendar year ending December thirty-first.

[b] Returns of incomes; form and contents; extension of time for filing; making by agent.

On or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, a true and accurate return under oath shall be made by each person of lawful age, except as hereinafter provided, having a net income of $3,000 or over for the taxable year to the collector of internal revenue for the district in which such person has his legal residence or principal place of business, or if there be no legal residence or place of business in the United States, then with the collector of internal revenue at Baltimore, Maryland, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount

of income from all separate sources, and from the total thereof deducting the aggregate items of allowances herein authorized: Provided, That the Commissioner of Internal Revenue shall have authority to grant a reasonable extension of time, in meritorious cases, for filing returns of income by persons residing or traveling abroad who are required to make and file returns of income and who are unable to file said returns on or before March first of each year: Provided further, That the aforesaid return may be made by an agent when by reason of illness, absence, or nonresidence the person liable for said return is unable to make and render the same, the agent assuming the responsibility of making the return and incurring penalties provided for erroneous, false, or fraudulent return.

[c] Returns by guardians, trustees, etc.; provisions applicable to.

Guardians, trustees, executors, administrators, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the income of the person, trust, or estate for whom or which they act, and be subject to all the provisions of this title which apply to individuals. Such fiduciary shall make oath that he has sufficient knowledge of the affairs of such person, trust, or estate to enable him to make such return and that the same is, to the best of his knowledge and belief, true and correct, and be subject to all the provisions of this title which apply to individuals: Provided, That a return made by one of two or more joint fiduciaries filed in the district where such fiduciary resides, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph.

[d] Deduction and withholding normal tax at source of income; returns, when not required.

All persons, firms, companies, copartnerships, corporations, joint-stock companies, or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another individual subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: Provided, That the provision requiring the normal tax of individuals to be deducted and withheld at the source of the income shall not be construed to require the withholding of such tax according to the two per centum normal tax rate herein prescribed until on and after January first, nineteen hundred and seventeen, and the law existing at the time of the passage of this Act shall govern the amount withheld or to be withheld at the source until January first, nineteen hundred and seventeen.

That in either case mentioned in subdivisions (c) and (d) of this section no return of income not exceeding $3,000 shall be required, except as in this title provided.

[e] Tax on partnerships; returns.

Persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of the partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid under the provisions of this title: Provided, That from the net distributive interests on

which the individual members shall be liable for tax, normal and additional, there shall be excluded their proportionate shares received from interest on the obligations of a State or any political or taxing subdivision thereof, and upon the obligations of the United States and its possessions, and all taxes paid to the United States or to any possession thereof, or to any State, county, or taxing subdivision of a State, and that for the purpose of computing the normal tax there shall be allowed a credit, as provided by section five, subdivision (b), for their proportionate share of the profits derived from dividends. And such partnership, when requested by the Commissioner of Internal Revenue, or any district collector, shall render a correct return of the earnings, profits, and income of the partnership, except income exempt under section four of this Act, setting forth the item of the gross income and the deductions and credits allowed by this title, and the names and addresses of the individuals who would be entitled to the net earnings, profits, and income, if distributed.

[f] Returns to include income derived from dividends on capital stock or net earnings of corporation, etc.

In every return shall be included the income derived from dividends on the capital stock or from the net earnings of any corporation, joint-stock company or association, or insurance company, except that in the case of nonresident aliens such income derived from sources without the United States shall not be included.

[g] Returns on accounts kept on basis other than of actual receipts and disbursements.

An individual keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect his income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, make his return upon the basis upon which his accounts are kept, in which case the tax shall be computed upon his income as so returned. (39 Stat. 761–763.)

Notes of Decisions

See, also, notes under §§ 6300–6309, ante.

Constitutionality. — The retroactive effect of the income tax provisions of the Tariff Act, fixing preceding March 1st as the time from which the income for ten months is to be computed, does not render it repugnant to due process of law clause of Const. Amend. 5, nor inconsistent with Amendment 16. Brushaber v. Union Pac. R. Co. (1916) 36 Sup. Ct. 236, 240 U. S. 1, 60 L. Ed. 493.

Act Oct. 3, 1913, so far as it imposes a tax upon incomes for a period partially preceding the enactment of the law, held not unconstitutional. Edwards v. Keith (D. C. 1915) 224 Fed. 585.

Act Oct. 3, 1913, held not unconstitutional, so far as it imposes income tax on insurance agent's percentage of premiums on policies issued before its passage. Id.

Return under former law.—See Stockdale v. Atlantic Ins. Co. (1873) 20 Wall. 323, 324, 22 L. Ed. 348; Wells v. Shook (C. C. 1871) Fed. Cas. No. 17,406.

ASSESSMENT AND ADMINISTRATION

§ 6336i. (Act Sept. 8, 1916, c. 463, § 9.) [a] Assessments to be made by Commissioner of Internal Revenue; notice to persons liable; time for payment of tax; penalty and interest.

All assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said amounts shall be paid on or before the fifteenth day of June, except in cases of refusal or neglect to make such return and in cases of erroneous, false, or fraudulent returns, in which cases the Commissioner of Internal Revenue shall,

upon the discovery thereof at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this title or by existing law, or require the necessary corrections to be made, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the fifteenth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid, and interest at the rate of one per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

[b] Deduction and withholding of normal tax at source; payment to government; personal liability for and indemnity to persons required to deduct; exemptions and deductions where tax is deducted, etc., at source, how obtained.

All persons, firms, copartnerships, companies, corporations, joint-stock companies, or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, employers, and all officers and employés of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than income derived from dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations, or insurance companies, the income of which is taxable under this title, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this title, and shall pay the amount withheld to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax, and they are each hereby indemnified against every person, corporation, association, or demand whatsoever for all payments which they shall make in pursuance and by virtue of this title.

In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, such person shall not receive the benefit of the personal exemption allowed in section seven of this title except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him a signed notice in writing, claiming the benefit of such exemption, and thereupon no tax shall be withheld upon the amount of such exemption: Provided, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of not exceeding $300.

And where the income tax is paid or to be paid at the source, no person shall be allowed the benefit of any deduction provided for in sections five or six of this title unless he shall, not less than thirty days prior to the day on which the return of his income is due,

either (1) file with the person who is required to withhold and pay tax for him a true and correct return of his gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or (2) likewise make application for deductions to the collector of the district in which return is made or to be made for him: Provided, That when any amount allowable as a deduction is known at the time of receipt of fixed annual or periodical income by an individual subject to tax, he may file with the person, firm, or corporation making the payment a certificate, under penalty for false claim, and in such form as shall be prescribed by the Commissioner of Internal Revenue, stating the amount of such deduction and making a claim for an allowance of the same against the amount of tax otherwise required to be deducted and withheld at the source of the income, and such certificate shall likewise become a part of the return to be made in his behalf.

If such person is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made by an agent, he making oath that he has sufficient knowledge of the affairs and property of his principal to enable him to make a full and complete return, and that the return and application made by him are full and complete.

[c] Normal tax deducted and withheld at source on fixed or determinable annual or periodical gains, profits, etc., from interest on bonds, mortgages, etc., of corporations, etc., not amounting to $3,000.

The amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed or determinable annual or periodical gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to $3,000, subject to the provisions of this title requiring the tax to be withheld at the source and deducted from annual income and returned and paid to the Government.

[d] Normal tax deducted and withheld at source from coupons, checks, etc., for interest as bonds of foreign countries, foreign mortgages and dividends, etc., on stock, etc., of foreign corporations, etc.

And likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries.

And the tax in such cases shall be withheld, deducted, and returned for and in behalf of any person subject to the tax hereinbefore imposed, although such interest or dividends do not exceed $3,000, by (1) any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and (2) any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by

means of coupons, checks, or bills of exchange, and also (3) any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons.

[e] Exemptions and deductions where tax withheld at source.

Where the tax is withheld at the source, the benefit of the exemption and the deductions allowable under this title may be had by complying with the foregoing provisions of this section.

[f] License to and regulations concerning persons, etc., collecting foreign payments of interest, etc., by coupons, checks, etc.; penalty for collecting without license.

All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

[g] Personal returns on gains, profits, and income not included in section; intent of act.

The tax herein imposed upon gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same. For the purpose of this title ownership or liability shall be determined as of the year for which a return is required to be rendered.

The provisions of this title relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals. (39 Stat. 763–765.)

Notes of Decisions

Assessment under former law.—See Brushaber v. Union Pac. R. Co. (1916) 36 Sup. Ct. 236, 240 U. S. 1, 60 L. Ed. 493; Mandell v. Pierce (C. C. 1868) Fed. Cas. No. 9,008; U. S. v. Tilden (D. C. 1878) Fed. Cas. No. 16,519.

See, also, notes under §§ 6300–6309, ante.

PART II.—ON CORPORATIONS

§ 6336j. (Act Sept. 8, 1916, c. 463, § 10.) Tax of 2 per cent. on net income of corporations; meaning of word "dividends"; fiscal year; mode of ascertaining gain or loss from sale or disposition of property.

That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or as-

sociation, or insurance company, organized in the United States, no matter how created or organized but not including partnerships, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company or association, or insurance company organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies or associations, or insurance companies whose net income is taxable under this title: Provided, That the term "dividends" as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value.

The foregoing tax rate shall apply to the total net income received by every taxable corporation, joint-stock company or association, or insurance company in the calendar year nineteen hundred and sixteen and in each year thereafter, except that if it has fixed its own fiscal year under the provisions of existing law, the foregoing rate shall apply to the proportion of the total net income returned for the fiscal year ending prior to December thirty-first, nineteen hundred and sixteen, which the period between January first, nineteen hundred and sixteen, and the end of such fiscal year bears to the whole of such fiscal year, and the rate fixed in Section II of the Act approved October third, nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," shall apply to the remaining portion of the total net income returned for such fiscal year.

For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition by a corporation, joint-stock company or association, or insurance company, of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such gain derived or loss sustained. (39 Stat. 765.)

In addition to the normal income tax hereby imposed on corporations, a tax of one per centum on the gross income of all railroad companies on business done in Alaska, to be computed and collected in the manner provided in Act Oct. 3, 1913, c. 16, § II, the proceeds of which are to be paid to the treasurer of Alaska for general territorial purposes, was levied by Act July 18, 1914, c. 187, ante, § 3593e. See note thereunder.

Notes of Decisions

Tax under former law.—See Haight v. Pittsburg, Ft. W. & C. R. Co. (1867) 73 U. S. (6 Wall.) 15, 18 L. Ed. 818; Northern Cent. R. Co. v. Jackson (1868) 74 U. S. (7 Wall.) 262, 19 L. Ed. 88; U. S. v. Baltimore & O. R. Co. (1872) 17 Wall. 322, 324, 21 L. Ed. 597; Barnes v. Philadelphia & R. R. Co. (1872) 84 U. S. (17 Wall.) 294, 21 L. Ed. 544 (reversing Philadelphia & R. R. Co. v. Barnes [C. C. 1870] Fed. Cas. No. 11,087); U. S. v. Baltimore & O. R. Co. (1872) 84 U. S. (17 Wall.) 322, 21 L. Ed. 597 (affirming [C. C. 1871] Fed. Cas. No. 14,-511); Dollar Sav. Bank v. U. S. (1873) 19 Wall. 227, 235, 22 L. Ed. 80; Stockdale v. Atlantic Ins. Co. (1873) 20 Wall. 323, 325, 326, 22 L. Ed. 348; Bailey v. New York Cent. R. Co. (1874) 89 U. S. (22 Wall.) 604, 22 L. Ed. 840; Blake v. National Banks (1874) 90 U. S. (23 Wall.) 307, 23 L. Ed. 119; Kenny v. Philadelphia & R. R. Co. (1875) 154 U. S. 616, 14 Sup. Ct. 1196, 23 L. Ed. 121; Missouri River, Ft. S. & G. R. Co. v. U. S. (C. C. 1884) 19 Fed. 66; Grant v. Hart-

ford & N. H. R. Co. (1876) 93 U. S. 225, 227, 23 L. Ed. 878; Western Union R. Co. v. U. S. (1879) 101 U. S. 543, 25 L. Ed. 1068; Kentucky Imp. Co. v. Slack (1879) 100 U. S. 648, 25 L. Ed. 609 (affirming [C. C. 1876] Fed. Cas. No. 7,718); Marquette, H. & O. R. Co. v. U. S. (1887) 8 Sup. Ct. 319, 320, 123 U. S. 722, 31 L. Ed. 302; Michigan Cent. R. Co. v. Slack (1879) 100 U. S. 595, 25 L. Ed. 647; Chicago, B. & Q. R. Co. v. Page (C. C. 1864) Fed. Cas. No. 2,668; Reynolds v. Williams (C. C. 1867) Fed. Cas. No. 11,734; Merchants' Ins. Co. v. McCartney (C. C. 1870) Fed. Cas. No. 9,443; Philadelphia & R. R. Co. v. Barnes (C. C. 1870) Fed. Cas. No. 11,087; Home Mut. Ins. Co. v. Stockdale (C. C. 1872) Fed. Cas. No. 6,662; Hartford & N. H. R. Co. v. Grant (C. C. 1872) Fed. Cas. No. 6,159; U. S. v. Dollar Sav. Bank (C. C. 1872) Fed. Cas. No. 14,979; Cotton Press Co. v. Collector (C. C. 1873) Fed. Cas. No. 3,271; San Francisco Savings & Loan Soc. v. Cary (C. C. 1873) Fed. Cas. No. 12,317; Philadelphia & R. R. Co. v. Kenney (C. C. 1873) Fed. Cas. No. 11,088; New York Cent. & H. R. R. Co. v. Bailey (C. C. 1874) Fed. Cas. No. 10,203; Concord R. Corp. v. Topliff (C. C. 1874) Fed. Cas. No. 3,093; Metropolitan R. Co. v. Slack (C. C. 1874) Fed. Cas. No. 9,506; U. S. v. State Nat. Bank (C. C. 1874) Fed. Cas. No. 16,381; Schuylkill Nav. Co. v. Elliott (C. C. 1875) Fed. Cas. No. 12,497; Eastern Ky. R. Co. v. Slack (C. C. 1876) Fed. Cas. No. 4,253; U. S. v. Brooklyn City & N. R. R. (C. C. 1882) 14 Fed. 284; U. S. v. Marquette, H. & O. R. Co. (C. C. 1883) 17 Fed. 719; Central Nat. Bank v. U. S. (1890) 137 U. S. 355, 11 Sup. Ct. 126, 34 L. Ed. 703 (affirming U. S. v. Central Nat. Bank (C. C. 1885) 24 Fed. 577); U. S. v. Louisville & N. R. Co. (C. C. 1888) 33 Fed. 829; U. S. v. Central Nat. Bank (D. C. 1883) 15 Fed. 222; Beardsley v. New Jersey, W. L. R. Co. (1872) 35 N. J. Law (6 Vroom) 479.

See, also, notes under §§ 6300–6309, ante.

Cited without definite application, Herold v. Park View Building & Loan Ass'n (1914) 210 Fed. 577, 127 C. C. A. 213.

CONDITIONAL AND OTHER EXEMPTIONS

§ 6336k. (Act Sept. 8, 1916, c. 463, § 11.) [a] Corporations exempted.

That there shall not be taxed under this title any income received by any—

First. Labor, agricultural, or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary society, order, or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

Fourth. Domestic building and loan association and cooperative banks without capital stock organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local char-

acter, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Farmers', fruit growers', or like association, organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

Twelfth. Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title; or

Thirteenth. Federal land banks and national farm-loan associations as provided in section twenty-six of the Act approved July seventeenth, nineteen hundred and sixteen, entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

Fourteenth. Joint stock land banks as to income derived from bonds or debentures of other joint stock land banks or any Federal land bank belonging to such joint stock land bank.

Act July 17, 1916, c. 245, § 26, 39 Stat., referred to, is set forth post, § 9835q.

[b] Tax on income of public utility accruing to state or other political divisions; imposition of tax not to impose loss or burden upon state, etc.

There shall not be taxed under this title any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: Provided, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this title, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate, or maintain a public utility, no tax shall be levied under the provisions of this title upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this title upon the part or portion of the said income to which such person or corporation shall be entitled under such contract. (39 Stat. 766, 767.)

Notes of Decisions

See, also, notes under §§ 6300–6309, ante.

Constitutionality.—Labor and agriculture organizations, mutual savings banks, etc., can be excepted from operation of income tax provisions without rendering the tax repugnant to the federal Constitution. Stanton v. Baltic Mining Co. (1916) 36 Sup. Ct. 278, 240 U. S. 103, 60 L. Ed. 546; Brushaber v. Union Pac. R. Co. (1916) 36 Sup. Ct. 236, 240 U. S. 1, 60 L. Ed. 493.

Power to exclude from taxation some income of designated persons and classes and to exempt entirely certain enumerated organizations or corporations was not forbidden by Const. Amend. 16, providing for taxes on incomes from whatever source derived. Brushaber v. Union Pac. R. Co. (1916) 36 Sup. Ct. 236, 240 U. S. 1, 60 L. Ed. 493.

DEDUCTIONS

§ 6336l. (Act Sept. 8, 1916, c. 463, § 12.) [a] Mode of ascertaining net income of domestic corporations.

In the case of a corporation, joint-stock company or association, or insurance company, organized in the United States, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources—

First. All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

Second. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: Provided, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made; and (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: Provided further, That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Third. The amount of interest paid within the year on its indebt-

edness to an amount of such indebtedness not in excess of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding: Provided, That for the purpose of this title preferred capital stock shall not be considered interest-bearing indebtedness, and interest or dividends paid upon this stock shall not be deductible from gross income: Provided further, That in cases wherein shares of capital stock are issued without par or nominal value, the amount of paid-up capital stock, within the meaning of this section, as represented by such shares, will be the amount of cash, or its equivalent, paid or transferred to the corporation as a consideration for such shares: Provided further, That in the case of indebtedness wholly secured by property collateral, tangible or intangible, the subject of sale or hypothecation in the ordinary business of such corporation, joint-stock company or association as a dealer only in the property constituting such collateral, or in loaning the funds thereby procured, the total interest paid by such corporation, company, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business, but interest on such indebtedness shall only be deductible on an amount of such indebtedness not in excess of the actual value of such property collateral: Provided further, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed, or any other tax paid pursuant to such guaranty, shall be allowed; and in the case of a bank, banking association, loan or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company;

Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits.

[b] Mode of estimating net income of foreign corporations.

In the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources within the United States—

First. All the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

Second. All losses actually sustained within the year in business or trade conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) and in the case (a) of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are

made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: Provided, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made; and (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: Provided, further, That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Third. The amount of interest paid within the year on its indebtedness to an amount of such indebtedness not in excess of the proportion of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of the capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: Provided, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed or any other tax paid pursuant to such guaranty shall be allowed; and in case of a bank, banking association, loan or trust company, or branch thereof, interest paid within the year on deposits by or on moneys received for investment from either citizens or residents of the United States and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company, or branch thereof;

Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;

[c] What constitutes payments to reserve funds of assessment insurance companies.

In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds. (39 Stat. 767–770.)

Notes of Decisions

See, also, notes under §§ 6300–6309, ante.

Deductions.—Limiting amount of interest which may be deducted from gross incorporate income in fixing taxable income to interest on indebtedness by Tariff Act is not wanting in due process of law because discriminating between different classes of corporations and individuals. Brushaber & Union Pac. R. Co. (1916) 36 Sup. Ct. 236, 240 U. S. 1, 60 L. Ed. 493.

Allowing individuals to deduct from their gross income dividends paid by corporations whose incomes are taxed, and not giving such right of deduction to corporations, does not render the tax wanting in due process of law. Id.

Taxation of mining companies cannot be taken out of Const. Amend. 16, excluding the source from which taxed income is derived because inadequate allowance by way of deduction is made by the income tax law, for the exhaustion of the ore body. Stanton v. Baltic Mining Co. (1916) 36 Sup. Ct. 278, 240 U. S. 103, 60 L. Ed. 546.

Independently of Const. Amend. 16, income tax imposed on the product of the working of a corporate mine is not a direct tax on the property because adequate allowance is not made for the exhaustion of the ore body. Id.

Limiting the amount of interest to be deducted from gross income of corporations to fix taxable income to interest on debt not exceeding one-half the bonded debt and paid-up capital stock is not wanting in due process of law because discriminating between different classes of corporations and individuals. Tyee Realty Co. v. Anderson (1916) 36 Sup. Ct. 281, 240 U. S. 115, 60 L. Ed. 554.

Former law.—See Cary v. Savings Union (1874) 89 U. S. (22 Wall.) 38, 22 L. Ed. 779 (affirming San Francisco Savings & Loan Soc. v. Cary [C. C. 1873] Fed. Cas. No. 12,317); Grant v. Hartford & N. H. R. Co. (1876) 93 U. S. 225, 23 L. Ed. 878; Sioux City & P. R. Co. v. U. S. (1884) 110 U. S. 205, 3 Sup. Ct. 565, 28 L. Ed. 120; U. S. v. Little Miami, C. & X. R. Co. (C. C. 1880) 1 Fed. 700, 701 (reversed [1883] 2 Sup. Ct. 627, 108 U. S. 277, 27 L. Ed. 724); Jackson v. Northern Cent. Ry. (C. C. 1865) Fed. Cas. No. 7,142.

RETURNS

§ 6336m. (Act Sept. 8, 1916, c. 463, § 13.) [a] Tax computed upon net income as ascertained; corporations may designate closing day of fiscal year.

The tax shall be computed upon the net income, as thus ascertained, received within each preceding calendar year ending December thirty-first: Provided, That any corporation, joint-stock company or association, or insurance company, subject to this tax, may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the first day of March of the year in which its return would be filed if made upon the basis of the calendar year;

[b] Corporations shall render return of net income annually; form and contents of return; verification; to whom return made; transmission to Commissioner of Internal Revenue.

Every corporation, joint-stock company or association, or insurance company, subject to the tax herein imposed, shall, on or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, or, if it has designated a fiscal

year for the computation of its tax, then within sixty days after the close of such fiscal year ending prior to December thirty-first, nineteen hundred and sixteen, and the close of each such fiscal year thereafter, render a true and accurate return of its annual net income in the manner and form to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and containing such facts, data, and information as are appropriate and in the opinion of the commissioner necessary to determine the correctness of the net income returned and to carry out the provisions of this title. The return shall be sworn to by the president, vice president, or other principal officer, and by the treasurer or assistant treasurer. The return shall be made to the collector of the district in which is located the principal office of the corporation, company, or association, where are kept its books of account and other data from which the return is prepared, or in the case of a foreign corporation, company, or association, to the collector of the district in which is located its principal place of business in the United States, or if it have no principal place of business, office, or agency in the United States, then to the collector of internal revenue at Baltimore, Maryland. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue;

[c] Returns by receivers, trustees in bankruptcy, or assignees of corporations.

In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, joint-stock companies or associations, or insurance companies, subject to tax imposed by this title, such receivers, trustees, or assignees shall make returns of net income as and for such corporations, joint-stock companies or associations, and insurance companies, in the same manner and form as such organizations are hereinbefore required to make returns, and any income tax due on the basis of such returns made by receivers, trustees, or assignees shall be assessed and collected in the same manner as if assessed directly against the organizations of whose businesses or properties they have custody and control;

[d] Corporations permitted to make return on basis on which their accounts are kept.

A corporation, joint-stock company or association, or insurance company, keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect its income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, make its return upon the basis upon which its accounts are kept, in which case the tax shall be computed upon its income as so returned;

[e] Provisions as to deduction of tax from income of nonresident alien individuals applicable to income of nonresident alien firms, corporations, etc., derived from interest on bonds, etc., of domestic and resident corporations.

All the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of nonresident alien individuals from sources within the United States shall be made applicable to incomes derived from interest upon bonds and mortgages or deeds of trust or similar obligations of domestic or other resident corporations, joint-stock companies or associations, and insurance companies by nonresident alien

firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies not engaged in business or trade within the United States and not having any office or place of business therein;

[f] Provisions as to deduction of tax from income of nonresident alien individuals made applicable to income of nonresident alien companies, derived from dividends of domestic or resident corporations, etc.

Likewise, all the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of nonresident alien individuals from sources within the United States shall be made applicable to income derived from dividends upon the capital stock or from the net earnings of domestic or other resident corporations, joint-stock companies or associations, and insurance companies by nonresident alien companies, corporations, joint-stock companies or associations, and insurance companies not engaged in business or trade within the United States and not having any office or place of business therein. (39 Stat. 770–772.)

Notes of Decisions

See, also, notes under §§ 6300–6309, ante.

Constitutionality.—The retroactive effect of the income tax provisions of the Tariff Act, fixing preceding March 1st as the time from which the income for ten months is to be computed, does not render it repugnant to due process of law clause of Const. Amend. 15, nor inconsistent with Amendment 16. Brushaber v. Union Pac. R. Co. (1916) 36 Sup. Ct. 236, 240 U. S. 1, 60 L. Ed. 493; Tyee Realty Co. v. Anderson (1916) 36 Sup. Ct. 281, 240 U. S. 115, 60 L. Ed. 554.

Returns under former law.—See Stockdale v. Atlantic Ins. Co. (1873) 20 Wall. 323, 325, 22 L. Ed. 348; U. S. v. Military Const. Co. (D. C. 1913) 204 Fed. 153.

Penalty for failure to pay tax under former law.—See Erskine v. Milwaukee & St. P. Ry. Co. (1876) 94 U. S. 619, 24 L. Ed. 133; Elliott v. East Pennsylvania R. Co. (1878) 99 U. S. 573, 25 L. Ed. 292.

ASSESSMENT AND ADMINISTRATION

§ 6336n. (Act Sept. 8, 1916, c. 463, § 14.) [a] Notice of assessment and time for payment; immediate payment in case of refusal to make return or making of false return; penalty for nonpayment; refundment.

All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the fifteenth day of June: Provided, That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and five days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of erroneous, false, or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this title or by existing law; and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the fifteenth day of June in any year, or after one hundred

and five days from the date on which the return of income is required to be made by the taxpayer, and after ten days' notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due: Provided, That upon the examination of any return of income made pursuant to this title, the Act of August fifth, nineteen hundred and nine, entitled, "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes", and the Act of October third, nineteen hundred and thirteen, entitled, "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes", if it shall appear that amounts of tax have been paid in excess of those properly due, the taxpayer shall be permitted to present a claim for refund thereof notwithstanding the provisions of section thirty-two hundred and twenty-eight of the Revised Statutes;

Act Aug. 5, 1909, c. 6, § 38, referred to, is superseded by this act, while Act Oct. 3, 1913, c. 16, § II, is expressly repealed by section 24 of this act, set forth post, § 6336w.

[b] Filing returns in office of commissioner of internal revenue; inspection; rules as to inspection; access to returns by state officer.

When the assessment shall be made, as provided in this title, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: Provided, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: Provided further, That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint-stock company or association, or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe;

[c] Penalty for failing to make return or for rendering false return; extension of time.

If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding $10,000: Provided, That the Commissioner of Internal Revenue shall have authority, in the case of either corporations or individuals, to grant a reasonable extension of time in meritorious cases, as he may deem proper. (39 Stat. 772.)

Section 14(d) amends R. S. § 3225, and is set forth ante, § 5948.

Notes of Decisions

See, also, notes under §§ 6300–6309, ante.

Penalty for failure to make return or pay tax under former law.—National banks are liable to a penalty for failing to make return of dividends declared, etc., during the period between July 1 and December 30, 1870. Act July 14, 1870. U. S. v. State Nat. Bank (C. C. 1874) Fed. Cas. No. 16,381.

Where action was brought against a corporation under Act June 30, 1864, § 120, as amended by Act July 14, 1870 (16 Stat. 160, § 15), to recover penalties for failure to make return of interest and pay the tax on a bond of defendant, it was held that only one penalty was recoverable for all failures to make the required returns prior to commencement of the action to recover penalties for such failure. U. S. v. Brooklyn City & N. R. R. (C. C. 1882) 14 Fed. 284.

The same rule applies to penalties for

failure to pay the tax on earnings and profits. Id.

Where an action was brought against a corporation under section 120 of Act June 30, 1864, as amended by Act July 14, 1870 (16 Stat. 260, § 15), to recover penalties for failure to make return of interest and pay the tax on a bond of the defendant, held, that only one penalty is recoverable for all failures to make the required returns prior to the commencement of the action to recover penalties for such failure. Id.

Only one penalty is recoverable for all failures to make returns for taxation under Acts June 30, 1864, and July 13, 1866, prior to the commencement of a suit. U. S. v. New York Guaranty & Indemnity Co. (D. C. 1875) Fed. Cas. No. 15,872; Same v. Erie Ry. Co. (D. C. 1877) Fed. Cas. No. 15,056.

Restraining assessment and collection.—A bill in equity will not lie to enjoin the assessment and collection by the Commissioner of Internal Revenue of a surtax imposed upon the plaintiff's income under section 2, Act Oct. 3, 1913, as the plaintiffs have an adequate remedy at law under R. S. §§ 3220, 3226 and 3227, sections 5944, 5949 and 5950, ante, and as R. S. § 3224, section 5947, ante, expressly provides that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. Dodge v. Osborn (1915) 43 App. D. C. 144.

PART III.—GENERAL ADMINISTRATIVE PROVISIONS

§ 6336*o*. (Act Sept. 8, 1916, c. 463, § 15.) Definition of terms.

The word "State" or "United States" when used in this title shall be construed to include any Territory, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions. (39 Stat. 773.)

Section 16 amends §§ 3167, 3172, 3173, and 3176, of the Revised Statutes of the United States. The text of this amendment will be found under the appropriate sections in this compilation devoted to the sections of the Revised Statutes amended. See ante, §§ 5887, 5895, 5896, 5899.

§ 6336p. (Act Sept. 8, 1916, c. 463, § 17.) Receipt for taxes paid; separate receipts to debtor making payments affecting separate creditors; receipts as evidence; surrender of receipts to creditor.

It shall be the duty of every collector of internal revenue, to whom any payment of any taxes is made under the provisions of this title, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt. (39 Stat. 775.)

§ 6336q. (Act Sept. 8, 1916, c. 463, § 18.) Penalty for failure of individual to make return or pay taxes; penalty for false return by individual or corporate officer; taxation at source not to be made where tax paid by taxpayer; penalty in such case.

If any individual liable to make the return or pay the tax aforesaid shall refuse or neglect to make such return at the time or times hereinbefore specified in each year, he shall be liable to a penalty of not less than $20 nor more than $1,000. Any individual or any officer of any corporation, joint-stock company or association, or insurance company required by law to make, render, sign, or verify any

return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this title to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, in the discretion of the court, with the costs of prosecution: Provided, That where any tax heretofore due and payable has been duly paid by the taxpayer, it shall not be re-collected from any person or corporation required to retain it at its source, nor shall any penalty be imposed or collected in such cases from the taxpayer, or such person or corporation whose duty it was to retain it, for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment. (39 Stat. 775.)

§ 6336r. (Act Sept. 8, 1916, c. 463, § 19.) Verification of returns; notice to show cause why amount of return should not be increased; statement of proof; appeal.

The collector or deputy collector shall require every return to be verified by the oath of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. Such person may furnish sworn testimony to prove any relevant facts, and, if dissatisfied with the decision of the collector, may appeal to the Commissioner of Internal Revenue for his decision under such rules of procedure as may be prescribed by regulation. (39 Stat. 776.)

§ 6336s. (Act Sept. 8, 1916, c. 463, § 20.) Jurisdiction of district court to compel attendance of witnesses and production of books.

Jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this title to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process. (39 Stat. 776.)

§ 6336t. (Act Sept. 8, 1916, c. 463, § 21.) Statistics relating to operation of income tax law.

The preparation and publication of statistics reasonably available with respect to the operation of the income tax law and containing classifications of taxpayers and of income, the amounts allowed as deductions and exemptions, and any other facts deemed pertinent and valuable, shall be made annually by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. (39 Stat. 776.)

§ 6336u. (Act Sept. 8, 1916, c. 463, § 22.) Consistent provisions of internal revenue law applicable.

All administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this title, are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed. (39 Stat. 776.)

§ 6336v. (Act Sept. 8, 1916, c. 463, § 23.) Extension to Porto Rico and Philippine Islands.

The provisions of this title shall extend to Porto Rico and the Philippine Islands: Provided, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and

machinery, account being taken of the exceptional depreciation of special plants. (39 Stat. 781.)

§ 6336¼d. (Act Sept. 8, 1916, c. 463, § 303.) Computation of net profits as affected by sale of articles for less than fair market price.

If any person manufactures any article specified in section three hundred and one and, during any taxable year or part thereof, whether under any agreement, arrangement, or understanding, or otherwise, sells or disposes of any such article at less than the fair market price obtainable therefor, either (a) in such manner as directly or indirectly to benefit such person or any person directly or indirectly interested in the business of such person, or (b) with intent to cause such benefit, the gross amount received or accrued for such year or part thereof from the sale or disposition of such article shall be taken to be the amount which would have been received or accrued from the sale or disposition of such article if sold at the fair market price. (39 Stat. 781.)

§ 6336¼e. (Act Sept. 8, 1916, c. 463, § 304.) Returns by manufacturers.

On or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, a true and accurate return under oath shall be made by each person manufacturing articles specified in section three hundred and one to the collector of internal revenue for the district in which such person has his principal office or place of business, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income received or accrued from the sale or disposition of the articles specified in section three hundred and one, and from the total thereof deducting the aggregate items of allowance authorized in section three hundred and two, and such other particulars as to the gross receipts and items of allowance as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may require. (39 Stat. 781.)

§ 6336¼f. (Act Sept. 8, 1916, c. 463, § 305.) Transmission of returns to Commissioner of Internal Revenue; assessment of taxes.

All such returns shall be transmitted forthwith by the collector to the Commissioner of Internal Revenue, who shall, as soon as practicable, assess the tax found due and notify the person making such return of the amount of tax for which such person is liable, and such person shall pay the tax to the collector on or before thirty days from the date of such notice. (39 Stat. 782.)

§ 6336¼g. (Act Sept. 8, 1916, c. 463, § 306.) Investigation of truth of returns; notice and hearing; burden of proof.

If the Secretary of the Treasury or the Commissioner of Internal Revenue shall have reason to be dissatisfied with the return as made, or if no return is made, the commissioner is authorized to make an investigation and to determine the amount of net profits and may assess the proper tax accordingly. He shall notify the person making, or who should have made, such return and shall proceed to collect the tax in the same manner as provided in this title, unless the person so notified shall file a written request for a hearing with the commissioner within thirty days after the date of such notice; and on such hearing the burden of establishing to the satisfaction of the commissioner that the gross amount received or accrued or the amount of net profits, as determined by the commissioner, is incorrect, shall devolve upon such person. (39 Stat. 782.)

§ 6336¼h. (Act Sept. 8, 1916, c. 463, § 307.) Assessment of tax on agents or persons in charge of business.

The tax may be assessed on any person for the time being owning or carrying on the business, or on any person acting as agent for that person in carrying on the business, or where a business has ceased, on the person who owned or carried on the business, or acted as agent in carrying on the business immediately before the time at which the business ceased. (39 Stat. 782.)

§ 6336¼i. (Act Sept. 8, 1916, c. 463, § 308.) Examination of books, etc.

For the purpose of carrying out the provisions of this title the Commissioner of Internal Revenue is authorized, personally or by his agent, to examine the books, accounts, and records of any person subject to this tax. (39 Stat. 782.)

§ 6336¼j. (Act Sept. 8, 1916, c. 463, § 309.) Information obtained not to be communicated to others.

No person employed by the United States shall communicate, or allow to be communicated to any person not legally entitled thereto, any information obtained under the provisions of this title, or allow any such person to inspect or have access to any return furnished under the provisions of this title. (39 Stat. 782.)

§ 6336¼k. (Act Sept. 8, 1916, c. 463, § 310.) Penalty for violation of act.

Whoever violates any of the provisions of this title or the regulations made thereunder, or who knowingly makes false statements in any return, or refuses to give such information as may be called for, is guilty of a misdemeanor, and upon conviction shall, in addition to paying any tax to which he is liable, be fined not more than $10,000, or imprisoned not exceeding one year, or both, in the discretion of the court. (39 Stat. 782.)

§ 6336¼*l*. (Act Sept. 8, 1916, c. 463, § 311.) Other laws made applicable.

All administrative, special, and general provisions of law, relating to the assessment and collection of taxes not specifically repealed, are hereby made to apply to this title so far as applicable and not inconsistent with its provisions. (39 Stat. 782.)

§ 6336¼m. (Act Sept. 8, 1916, c. 463, § 312.) Commissioner of Internal Revenue empowered to make regulations.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any person subject to such provisions to furnish him with further information whenever in his judgment the same is necessary to collect the tax provided for herein. (39 Stat. 782.)

CHAPTER TEN

Legacies and Successions

(R. S. §§ 3438–3440. Obsolete.)

These three sections of the Revised Statutes provided for the payment, assessment, and collection of taxes on legacies and successions which were then subject to tax under provisions of acts in force prior to Oct. 1, 1870; said taxes, on and after that date, having been repealed by Act July 14, 1870, c. 255, § 3, 16 Stat. 256. They are omitted as temporary merely in their nature, and as having become obsolete by lapse of time since the repeal of said taxes.

The tax on legacies and distributive shares of personalty imposed by the War Revenue Act of June 13, 1898, c. 448, §§ 29, 30, 30 Stat. 464, 465, and

the act amendatory thereof, Act March 2, 1901, c. 806, § 11, 31 Stat. 948, was abrogated by the repeal of section 29 of said Act June 13, 1898, c. 448, by Act April 12, 1902, c. 500, § 7, 32 Stat. 97. This tax was again imposed by Act Sept. 8, 1916, c. 463, §§ 200–212, set forth post, §§ 6336½a–6336½m, under the designation "Estate Tax."

Notes of Decisions

See notes following § 6336½m, post.

CHAPTER TEN A

Estate Tax

This chapter, inserted here as additional to the chapters of this Title in the Revised Statutes, includes the estate tax provisions of Act Sept. 8, 1916, c. 463, 39 Stat. It appears in said act under the heading "Title II.—Estate Tax."

Sec.
6336½a. Definition of terms.
6336½b. Taxing percentages based on value of net estate.
6336½c. Value of gross estate, how determined.
6336½d. Net value of estate, how determined.
6336½e. Time when tax becomes due; discount where tax is paid before it is due; penalty for failure to pay within time required.
6336½f. Notice to collector of appointment of executor; returns by executor; form and contents of return; mode of assessment.
6336½g. Collector to make return in certain cases.
6336½h. Payment of tax by executor; what deemed sufficient payment; refundment; excessive payment; duplicate receipts.
6336½i. Proceedings to compel payment of tax; sale of property of decedent; reimbursement out of other property of person paying tax.
6336½j. Tax as lien on estate; personal liability of transferee or trustee of decedent; rights of bona fide purchasers of property.
6336½k. Penalty for false statement in notice or return; penalty for failure to make disclosure of information.
6336½l. Other laws made applicable.
6336½m. Commissioner of Internal Revenue empowered to make regulations.

§ 6336½a. (Act Sept. 8, 1916, c. 463, § 200.) Definition of terms. When used in this title—

The term "person" includes partnerships, corporations, and associations;

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue at Baltimore, Maryland. (39 Stat. 777.)

§ 6336½b. (Act Sept. 8, 1916, c. 463, § 201.) Taxing percentages based on value of net estate.

A tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

One per centum of the amount of such net estate not in excess of $50,000;

Two per centum of the amount by which such net estate exceeds $50,000 and does not exceed $150,000;

Three per centum of the amount by which such net estate exceeds $150,000 and does not exceed $250,000;

Four per centum of the amount by which such net estate exceeds $250,000 and does not exceed $450,000;

Five per centum of the amount by which such net estate exceeds $450,000 and does not exceed $1,000,000;

Six per centum of the amount by which such net estate exceeds $1,000,000 and does not exceed $2,000,000;

Seven per centum of the amount by which such net estate exceeds $2,000,000 and does not exceed $3,000,000;

Eight per centum of the amount by which such net estate exceeds $3,000,000 and does not exceed $4,000,000;

Nine per centum of the amount by which such net estate exceeds $4,000,000 and does not exceed $5,000,000; and

Ten per centum of the amount by which such net estate exceeds $5,000,000. (39 Stat. 777.)

§ 6336½c. (Act Sept. 8, 1916, c. 463, § 202.) Value of gross estate, how determined.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated:

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate.

(b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title; and

(c) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent.

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (b) of this section, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death. (39 Stat. 777.)

§ 6336½d. (Act Sept. 8, 1916, c. 463, § 203.) Net value of estate, how determined.

For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and

(2) An exemption of $50,000;

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States that proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated. But no deductions shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section two hundred and five the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States. (39 Stat. 778.)

§ 6336½e. (Act Sept. 8, 1916, c. 463, § 204.) Time when tax becomes due; discount where tax is paid before it is due; penalty for failure to pay within time required.

The tax shall be due one year after the decedent's death. If the tax is paid before it is due a discount at the rate of five per centum per annum, calculated from the time payment is made to the date when the tax is due, shall be deducted. If the tax is not paid within ninety days after it is due interest at the rate of ten per centum per annum from the time of the decedent's death shall be added as part of the tax, unless because of claims against the estate, necessary litigation, or other unavoidable delay the collector finds that the tax can not be determined, in which case the interest shall be at the rate of six per centum per annum from the time of the decedent's death until the cause of such delay is removed, and thereafter at the rate of ten per centum per annum. Litigation to defeat the payment of the tax shall not be deemed necessary litigation. (39 Stat. 778.)

§ 6336½f. (Act Sept. 8, 1916, c. 463, § 205.) Notice to collector of appointment of executor; returns by executor; form and contents of return; mode of assessment.

The executor, within thirty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor, shall also, at such times and in such manner as may be required by the regulations made under this title, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section two hundred and three; (c) the value of the net estate of the decedent as defined in section two hundred and three; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases of estates subject to the tax or where the gross estate at the death of the decedent exceeds $60,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the

gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner of Internal Revenue shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes. (39 Stat. 778.)

§ 6336½g. (Act Sept. 8, 1916, c. 463, § 206.) Collector to make return in certain cases.

If no administration is granted upon the estate of a decedent, or if no return is filed as provided in section two hundred and five, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner of Internal Revenue shall assess the tax thereon. (39 Stat. 779.)

§ 6336½h. (Act Sept. 8, 1916, c. 463, § 207.) Payment of tax by executor; what deemed sufficient payment; refundment; excessive payment; duplicate receipts.

The executor shall pay the tax to the collector or deputy collector. If for any reason the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner of Internal Revenue shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid the commissioner shall notify the executor of the amount of such excess. From the time of such notification to the time of the final payment of such excess part of the tax, interest shall be added thereto at the rate of ten per centum per annum, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. (39 Stat. 779.)

§ 6336½i. (Act Sept. 8, 1916, c. 463, § 208.) Proceedings to compel payment of tax; sale of property of decedent; reimbursement out of other property of person paying tax.

If the tax herein imposed is not paid within sixty days after it is due, the collector shall, unless there is reasonable cause for further delay, commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose in-

terest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. (39 Stat. 779.)

§ 6336½j. (Act Sept. 8, 1916, c. 463, § 209.) Tax as lien on estate; personal liability of transferee or trustee of decedent; rights of bona fide purchasers of property.

Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

If the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) and if the tax in respect thereto is not paid when due, the transferee or trustee shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth. (39 Stat. 780.)

§ 6336½k. (Act Sept. 8, 1916, c. 463, § 210.) Penalty for false statement in notice or return; penalty for failure to make disclosure of information.

Whoever knowingly makes any false statement in any notice or return required to be filed by this title shall be liable to a penalty of not exceeding $5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

Whoever fails to comply with any duty imposed upon him by section two hundred and five, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, fails to exhibit the same upon request to the Commissioner of Internal Revenue or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding $500, to be recovered, with costs of suit, in a civil action in the name of the United States. (39 Stat. 780.)

§ 6336½*l*. (Act Sept. 8, 1916, c. 463, § 211.) Other laws made applicable.

All administrative, special, and general provisions of law, including the laws in relation to the assessment and collection of taxes, not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions. (39 Stat. 780.)

§ 6336½m. (Act Sept. 8, 1916, c. 463, § 212.) Commissioner of Internal Revenue empowered to make regulations.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make such regulations, and pre-

scribe and require the use of such books and forms, as he may deem necessary to carry out the provisions of this title. (39 Stat. 780.)

Notes of Decisions

Decisions under former laws in general.—See Scholey v. Rew (1847) 23 Wall. 331, 23 L. Ed. 99; Clapp v. Mason (1876) 94 U. S. 589, 24 L. Ed. 212; Mason v. Sargent (1881) 104 U. S. 689, 26 L. Ed. 894; Sturges v. U. S. (1886) 6 Sup. Ct. 767, 117 U. S. 363, 29 L. Ed. 920; Brune v. Smith (C. C.) Fed. Cas. No. 2,053; U. S. v. Wilder (C. C. 1838) Fed. Cas. No. 16,694; Blake v. McCartney (C. C. 1869) Fed. Cas. No. 1,498; May v. Slack (C. C. 1872) Fed. Cas. No. 9,336; Mason v. Clapp (C. C. 1874) Fed. Cas. No. 9,-233; Same v. Sargent (C. C. 1876) Fed. Cas. No. 9,253; Wright v. Blakeslee (C. C. 1876) Fed. Cas. No. 18,073; Page v. Rives (C. C. 1877) Fed. Cas. No. 10,-666; Hellman v. U. S. (C. C. 1878) Fed. Cas. No. 6,341; Ransom v. U. S. (C. C. 1879) Fed. Cas. No. 11,574; U. S. v. Hart (C. C. 1880) 4 Fed. 292; Same v. Townsend (C. C. 1881) 8 Fed. 306; Same v. Hazard (C. C. 1881) 8 Fed. 380; Same v. Hunnewell (C. C. 1882) 13 Fed. 617; Folsom v. U. S. (C. C. 1884) 21 Fed. 37; U. S. v. Truck's Adm'x (C. C. 1886) 28 Fed. 846; Same v. Kelley's Adm'rs (C. C. 1886) 28 Fed. 845; Same v. Allen (D. C. 1877) Fed. Cas. No. 14,430; Same v. New York Life Insurance & Trust Co. (D. C. 1878) Fed. Cas. No. 15,873; Same v. Hellman (D. C. 1878) Fed. Cas. No. 15,343; Same v. Tappan (D. C. 1879) Fed. Cas. No. 16,431; Same v. Leverich (D. C. 1881) 9 Fed. 586; Same v. Banks (D. C. 1883) 17 Fed. 322; Same v. Morris (D. C. 1886) 27 Fed. 341; Same v. Pennsylvania Co. (D. C. 1886) 27 Fed. 539; Same v. Truck's Adm'r (D. C. 1886) 27 Fed. 541; Same v. Kelley, Id. 542; Johnson v. Dunbar (1876) 28 La. Ann. 271; Sohier v. Eldredge (1869) 103 Mass. 345; Wilhelmi v. Wade (1877) 65 Mo. 39; Peyrie v. Schreiber (1877) 66 Mo. 38; U. S. v. Hazard (Pa. 1881) 14 Phila. 486; Same v. Townsend (Pa. 1881) 14 Phila. 493.

War revenue act of 1898.—See High v. Coyne (1900) 20 Sup. Ct. 747, 178 U. S. 111, 44 L. Ed. 997 (affirming [C. C. 1899] 93 Fed. 450); Fidelity Insurance, Trust & Safe Deposit Co. v. McClain (1900) 20 Sup. Ct. 774, 178 U. S. 113, 44 L. Ed. 998; Knowlton v. Moore (1900) 20 Sup. Ct. 747, 178 U. S. 41, 44 L. Ed. 969; Murdock v. Ward (1900) 20 Sup. Ct. 775, 178 U. S. 139, 44 L. Ed. 1009; Sherman v. U. S. (1900) 20 Sup. Ct. 779, 178 U. S. 150, 44 L. Ed. 1014; Fidelity Insurance Trust & Safe Deposit Co. v. McClain (1900) 20 Sup. Ct. 774, 775, 178 U. S. 113, 44 L. Ed. 998; Eidman v. Martinez (1902) 22 Sup. Ct. 515, 184 U. S. 578, 46 L. Ed. 697; Moore v. Ruckgaber (1902) 22 Sup. Ct. 521, 184 U. S. 593, 46 L. Ed. 705; Snyder v. Bettman (1903) 23 Sup. Ct. 803, 190 U. S. 249, 47 L. Ed. 1035; Vanderbilt v. Eidman (1905) 25 Sup. Ct. 331, 196 U. S. 480, 49 L. Ed. 563; U. S. v. Marion Trust Co. (1907) 27 Sup. Ct. 794, 205 U. S. 539, 51 L. Ed. 1191 (judgment affirmed [1906] 143 Fed. 301, 75 C. C. A. 439); McCoach v. Philadelphia Trust, Safe Deposit & Ins. Co. (1907) 27 Sup. Ct. 793, 205 U. S. 539, 51 L. Ed. 921 (affirming judgment [1905] 142 Fed. 120, 73 C. C. A. 610, which affirmed Philadelphia Trust, Safe Deposit & Ins. Co. v. McCoach [C. C. 1905] 135 Fed. 866); Eidman v. Tilghman (1907) 27 Sup. Ct. 779, 203 U. S. 580, 51 L. Ed. 326 (affirming judgment [1905] 136 Fed. 141, 69 C. C. A. 139, which affirmed Tilghman v. Eidman [C. C. 1904] 131 Fed. 651); Hertz v. Woodman (1910) 30 Sup. Ct. 621, 218 U. S. 205, 54 L. Ed. 1001; U. S. v. Fidelity Trust Co. (1911) 32 Sup. Ct. 59, 222 U. S. 158, 56 L. Ed. 137 (reversing decree Fidelity Trust Co. v. U. S. [1910] 45 Ct. Cl. 362); McClain v. Pennsylvania Co. for Insurances on Lives and Granting Annuities (1901) 108 Fed. 618, 47 C. C. A. 529 (affirming judgment Pennsylvania Co. for Insurances on Lives and Granting Annuities v. McClain [C. C. 1900] 105 Fed. 367); Moore v. Ruckgaher (1902) 114 Fed. 1020, 52 C. C. A. 587 (affirming judgment Ruckgaber v. Moore [C. C. 1900] 104 Fed. 947, 31 Civ. Proc. R. 310); McClain v. Fidelity Ins., Trust & Safe Deposit Co. (1903) 122 Fed. 1020, 57 C. C. A. 679 (affirming judgment Fidelity Trust Co. v. McClain [C. C. 1902] 113 Fed. 152); Kerr v. Goldsborough (1906) 150 Fed. 289, 80 C. C. A. 177 (writ of certiorari denied McCallum v. Goldsborough [1907] 27 Sup. Ct. 786, 204 U. S. 672, 51 L. Ed. 673); Land Title & Trust Co. v. McCoach (1904) 129 Fed. 901, 64 C. C. A. 333 (reversing judgment [C. C. 1904] 127 Fed. 381); Peck v. Kinney (1905) 143 Fed. 76, 74 C. C. A. 270 (reversing judgment [C. C. 1904] 128 Fed. 313); Herold v. Shanley (1906) 146 Fed. 20, 76 C. C. A. 478 (affirming judgment Shanley v. Herold [C. C. 1905] 141 Fed. 423); Disston v. McClain (1906) 147 Fed. 114, 77 C. C. A. 340 (writ of certiorari denied McClain v. Disston [1907] 28 Sup. Ct. 255, 207 U. S. 587, 52 L. Ed. 353); Herold v. Blair (1908) 158 Fed. 804, 86 C. C. A. 64 (affirming judgment Blair v. Herold [C. C. 1907] 150 Fed. 199); Herold v. Kahn (1908) 159 Fed. 608, 86 C. C. A. 598 (judgment modified [1908] 163 Fed. 947, 90 C. C. A. 307); McCoach v. Bamberger (1908) 161 Fed. 90, 88 C. C. A. 254; Lynch v. Union Trust Co. of San Francisco (1908) 164 Fed. 161, 90 C. C. A. 147 (affirming judgment Union Trust Co. of San Francisco v. Lynch [C. C. 1906] 148 Fed. 49, and writ of certio-

rari denied Lynch v. Union Trust Co. of San Francisco [1909] 29 Sup. Ct. 702, 214 U. S. 523, 53 L. Ed. 1067); Westhus v. Union Trust Co. of St. Louis (1908) 164 Fed. 795, 90 C. C. A. 441 (rehearing denied [1909] 168 Fed. 617, 94 C. C. A. 95); Chouteau v. Allen (1909) 170 Fed. 412, 95 C. C. A. 582; U. S. v. Robertson (1910) 183 Fed. 711, 106 C. C. A. 149 (writ of certiorari denied Robertson v. U. S. [1911] 31 Sup. Ct. 720, 220 U. S. 616, 55 L. Ed. 611); Ward v. Sage (1911) 185 Fed. 7, 108 C. C. A. 413; McCoach v. Pratt (1913) 201 Fed. 1021, 119 C. C. A. 666; Muenter v. Bliss (1913) 208 Fed. 140, 125 C. C. A. 598 (affirming judgment in part Same v. Union Trust Co. [1912] 195 Fed. 480, 115 C. C. A. 390); Ford v. U. S. (1913) 205 Fed. 130, 123 C. C. A. 362; Beer v. Moffatt (1913) 209 Fed. 779, 126 C. C. A. 503; Gill v. Bartlett (1915) 224 Fed. 927, 140 C. C. A. 405 (affirming judgment Bartlett v. Gill [D. C. 1915] 221 Fed. 476); King v. Eidman (C. C. 1903) 128 Fed. 815; Vanderbilt v. Eidman (C. C. 1903) 121 Fed. 590 (judgment reversed Same v. Eidmann [1905] 138 Fed. 1006, 70 C. C. A. 683); Heberton v. McClain (C. C. 1905) 135 Fed. 226; McCoy v. Gill (C. C. 1907) 156 Fed. 985; Armour v. Roberts (C. C. 1907) 151 Fed. 846; Title Guarantee & Trust Co. v. Ward (C. C. 1908) 164 Fed. 459 (judgment affirmed [1911] 184 Fed. 447, 107 C. C. A. 41, writ of certiorari denied [1911] 31 Sup. Ct. 723, 220 U. S. 620, 55 L. Ed. 613); Land Title & Trust Co. v. McCoach (C. C. 1904) 127 Fed. 381 (judgment reversed [1904] 129 Fed. 901, 64 C. C. A. 333); Philadelphia Trust, Safe Deposit & Ins. Co. v. McCoach (1904) 129 Fed. 906, 64 C. C. 338 (reversing judgment [C. C. 1904] 127 Fed. 386); Brown v. Kinney (C. C. 1904) 128 Fed. 310 (judgment reversed [1905] 137 Fed. 1018, 70 C. C. A. 679); Peck v. Kinney (C. C. 1904) 128 Fed. 313 (judgment reversed [1905] 143 Fed. 76, 74 C. C. A. 270); Farrell v. U. S. (D. C. 1909) 167 Fed. 639; Bartlett v. Gill (D. C. 1915) 221 Fed. 476 (judgment affirmed Gill v. Bartlett [1915] 224 Fed. 927, 140 C. C. A. 405); U. S. v. Fitts (D. C. 1912) 197 Fed. 1007; U. S. v. Hankey (D. C. 1912) 198 Fed. 355; U. S. v. Farr's Ex'r (D. C. 1912) 196 Fed. 996; Beer v. Moffatt (D. C. 1912) 192 Fed. 984; U. S. v. Priest (D. C. 1914) 210 Fed. 332; Eidman v. Baldwin (1913) 206 Fed. 428, 124 C. C. A. 310 (reversing judgment Baldwin v. Eidman [D. C. 1913] 202 Fed. 968); Fidelity Trust Co. v. U. S. (1910) 45 Ct. Cl. 362; Jones v. U. S. (1914) 49 Ct. Cl. 408 (judgment affirmed U. S. v. Jones [1915] 35 Sup. Ct. 261, 236 U. S. 106, 59 L. Ed. 488); (1899) 22 Op. Atty. Gen. 298; (1900) 23 Op. Atty. Gen. 221; (1902) 24 Op. Atty. Gen. 98; Fitzgerald v. Rhode Island Hospital Trust Co. (1902) 52 A. 814, 24 R. I. 59.

CHAPTER ELEVEN

Provisions Common to Several Objects of Taxation

Sec.
6337. Fraudulent claims of drawback.
6338. Drawback on articles shipped to Philippines.
6338a. Drawback on articles shipped to Porto Rico or Philippine Islands.
6339. Articles in schedule intended for exportation to be manufactured in bonded warehouses.
6340. Removal in bond to Pacific coast for exportation.
6341. Collector's monthly account of articles in bonded warehouses, and articles exported.
6342. Changes of stamps, instruments for attaching and canceling.
6343. Power to alter form and device of internal-revenue stamps, labels, etc.; method of cancellation.
6344. Stamps to be printed on hand-roller presses.
6345. Transmission of stamps to internal-revenue officers.
6346. Redemption of spoiled stamps, etc.
6346a. Allowance for or redemption of stamps; issue under former acts.
6347. Decision of Commissioner final.
6348. Assessment of tax on articles sold without stamps; collection.
6349. Where mode of assessing or collecting any tax is not provided for; regulations.
6350. Internal-revenue laws, when co-extensive with jurisdiction of United States.
6351. Removing any liquors or wines under other than trade-names; penalty.
6352. Removing or concealing articles with intent to defraud United States of tax; forfeiture and penalty.
6353. Fraudulently executing documents required by internal-revenue laws; penalty.
6354. Having property in possession with intent to sell in fraud of law, or to evade taxes; penalty.
6355. Seizure of property found in possession in fraud of revenue laws.

Sec.
6356. Sales to evade tax; forfeiture.
6357. Disposing of or receiving empty stamped packages, etc.; penalties.
6358. Penalty and forfeiture by distillers, rectifiers, wholesale liquor-dealers, and manufacturers of tobacco or cigars, for omitting things required, and for doing things forbidden.
6359. Package included in forfeiture of goods.
6360. Goods seized may be delivered to marshal before process issues.
6361. Bailing of goods seized; sale for want of bail.
6362. Proceedings on seizure of goods valued at $500 or less; list and appraisement; notice of seizure; claims to be filed; bond of claimant; sale of goods and disposal of proceeds.
6363. Application for remission and return of proceeds; distribution.
6364. Search-warrants.
6365. Detection and punishment of frauds.
6366. Statement of expenditures for punishment of violations, etc.
6367. Purchasing for the Government goods subject to tax.
6368. Construction of certain revenue acts.
6369. Lien for taxes on legacies, etc.
6370. Refundment of taxes on legacies, etc.
6371. Payment of claims for refundment of taxes authorized.

(R. S. §§ 3441, 3442. Superseded and repealed.)

R. S. § 3441, allowed a drawback on fermented liquors and on all the articles mentioned in Schedule A, following R. S. § 3437, consisting of medicinal preparations, perfumery, cosmetics, matches, and playing cards. It was amended by Act March 1, 1879, c. 125, § 17, 20 Stat. 350, by striking out a clause excluding any allowance less than $10.

R. S. § 3442, made certificates of drawback issued pursuant to the preceding section receivable for taxes.

Both these sections were superseded, so far as they allowed a drawback on the articles in Schedule A, by the repeal of the taxes by Act March 3, 1883, c. 121, § 1, 22 Stat. 488, and they were repealed, so far as they allowed a drawback on fermented liquors, by Act June 18, 1890, c. 432, set forth ante, § 6152.

§ 6337. (R. S. § 3443.) Fraudulent claims of drawback.

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal duty shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid as aforesaid, he shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of five hundred dollars, at the election of the Secretary of the Treasury.

Act June 30, 1864, c. 173, § 172, 13 Stat. 303.

A penalty for fraudulently claiming a drawback on distilled spirits was imposed by R. S. § 3330, as amended by Act May 28, 1880, c. 108, § 11, ante, § 6125.

A penalty for fraudulently claiming or seeking to obtain a drawback on manufactured tobacco was imposed by Act Feb. 8, 1875, c. 36, § 25, ante, § 6196.

§ 6338. (Act March 8, 1902, c. 140, § 6.) Drawback on articles shipped to Philippines.

All articles subject under the laws of the United States to internal-revenue tax, or on which the internal-revenue tax has been paid, and which may under existing laws and regulations be exported to a foreign country without the payment of such tax, or with benefit of drawback, as the case may be, may also be shipped to the Philippine Islands with like privilege, under such regulations and the filing of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue may, with the approval of the Secretary of the Treasury, prescribe. (32 Stat. 55.)

This provision was part of section 6 of an act temporarily to provide revenue for the Philippine Islands, etc., cited above. Other provisions of the section, relating to articles manufactured in bonded warehouses, are set forth ante, § 5674.

An internal-revenue tax on imports from the Philippines was imposed by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, C, ante, § 5294. An internal-revenue tax in the Philippines on imports from the United States and other countries was also imposed by that section.

A tax on bay rum and other articles containing alcohol brought from Porto Rico was imposed by Act Feb. 4, 1909, c. 65, ante, § 6123.

An internal-revenue tax on articles of Porto Rican manufacture coming into the United States was imposed by Act April 12, 1900, c. 191, § 3, ante, § 3749.

Provisions for the collection of the internal-revenue tax on articles of Porto Rican manufacture coming into the United States were made by Act June 29, 1906, c. 3613, § 1, ante, § 3750.

Articles going into Porto Rico from the United States were exempted from internal-revenue taxes by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, D, ante, § 5295.

§ 6338a. (Act March 4, 1915, c. 164.) Drawback on articles shipped to Porto Rico or Philippine Islands.

All provisions of existing laws for the allowance of drawback of internal-revenue tax on articles exported from the United States are, so far as applicable, hereby extended to like articles upon which an internal-revenue tax has been paid when shipped from the United States to the Island of Porto Rico or to the Philippine Islands. (38 Stat. 1189.)

See ante, §§ 5295, 6338.

§ 6339. (Act Oct. 1, 1890, c. 1244, § 10.) Articles in schedule intended for exportation to be manufactured in bonded warehouses.

All medicines, preparations, compositions, perfumery, cosmetics, cordials, and other liquors manufactured wholly or in part of domestic spirits, intended for exportation, as provided by law, in order to be manufactured and sold or removed, without being charged with duty, and without having a stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, be made and manufactured in warehouses similarly constructed to those known and designated in Treasury regulations as bonded-warehouses, class two: Provided, That such manufacturer shall first give satisfactory bonds to the collector of internal revenue for the faithful observance of all the provisions of law and the regulations as aforesaid, in amount not less than half of that required by the regulations of the Secretary of the Treasury from persons allowed bonded-warehouses. Such goods, when manufactured in such warehouses, may be removed for exportation under the direction of the proper officer having charge thereof, who shall be designated by the Secretary of the Treasury, without being charged with duty, and without having a stamp affixed thereto. Any manufacturer of the articles aforesaid, or of any of them, having such bonded warehouse as aforesaid, shall be at liberty, under such regulations as the Secretary of the Treasury may prescribe, to convey therein any materials to be used in such manufacture which are allowed by the provisions of law to be exported free from tax or duty, as well as the necessary materials, implements, packages, vessels, brands, and labels for the preparation, putting up, and export of the said manufactured articles; and every article so used shall be exempt from the payment of stamp and excise duty by such manufacturer. Articles and materials so to be used may be transferred from any bonded-warehouse in which the same may be, under such regulation as the Secretary of the Treasury may prescribe, into any bonded-warehouse in which such manufacture may be conducted, and may be used in such manufacture, and when so used shall be exempt from stamp and excise duty; and the receipt of the officer in charge as aforesaid shall be received as a voucher for the manufacture of such articles. Any materials imported into the United States may, under such rules as the Secretary of the Treasury may prescribe, and under the direction of the proper officer, be removed in original packages from on shipboard, or from the bonded-warehouse in which

the same may be, into the bonded-warehouse in which such manufacture may be carried on, for the purpose of being used in such manufacture, without payment of duties thereon, and may there be used in such manufacture. No article so removed, nor any article manufactured in said bonded warehouse, shall be taken therefrom except for exportation, under the direction of the proper officer having charge thereof, as aforesaid, whose certificate, describing the articles by their mark or otherwise, the quantity, the date of importation, and name of vessel, with such additional particulars as may from time to time be required, shall be received by the collector of customs in cancellation of the bonds, or return of the amount of foreign import duties. All labor performed and services rendered under these regulations shall be under the supervision of an officer of the customs, and at the expense of the manufacturer. (26 Stat. 614.)

This section was part of the McKinley Tariff Act of 1890, cited above.

This section re-enacted, without material change, and superseded the provisions of R. S. § 3433, amended by Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 248; the amendment by said last mentioned act, by inserting, after the words "Articles and materials," the words, "except distilled spirits," having been superseded by provisions for removal of distilled spirits from distillery warehouses without payment of tax, by manufactures of medicines, preparations, etc., in manufacturing warehouses, made by Act March 1, 1879, c. 125, § 20, amended by Act May 28, 1880, c. 108, § 14, ante, § 6068.

Provisions for removal of articles manufactured in bonded warehouses, situated in any of the Atlantic States, to customs bonded warehouses on the Pacific coast, for exportation therefrom, were made by R. S. § 3434, post, § 6340.

A monthly account of articles in bonded warehouses and articles exported were required from collectors by R. S. § 3444, post, § 6341.

Articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed, may be manufactured in bonded warehouses, by the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, M, ante, § 5672, by which the provisions of R. S. § 3433, were made applicable to bonded manufacturing warehouses established under that act.

Notes of Decisions

Meaning of the word "liquors."—The word "liquors" in this section does not include whisky. (1894) 20 Op. Atty. Gen. 699.

Meaning of the word "imported."—The word "imported" in R. S. § 3433, is used generally, and includes reimported. (1884) 18 Op. Atty. Gen. 82.

Exportation and reimportation of liquors.—A lot of rum which had been manufactured within the United States from imported molasses, was exported December 3, 1883, and drawback thereon allowed, and reimported October 20, 1884. Held to be dutiable under section 2500, R. S. and not under Act March 3, 1883 (22 Stat. 488); furthermore, that the importers are entitled to remove the same under section 3433, R. S. (1884) 18 Op. Atty. Gen. 82.

In February and March, 1886, certain liquors (which had been manufactured in the United States, in a bonded manufacturing warehouse under R. S. § 3433, out of both domestic and imported spirits that were removed to such warehouse without payment of either the internal revenue or customs duties, and which liquors had been exported therefrom) were imported into New York and assessed with the duty prescribed by the statute (Schedule H) as foreign liquors. Advised that, the liquors being of the manufacture of the United States and once exported, R. S. § 2500, affords the rule under which to levy duties thereon. (1889) 19 Op. Atty. Gen. 243.

That section does not contemplate the levying of different rates of duty on the several different ingredients of which an article may be composed; it is the product that is to be taxed, not its constituent ingredients. Id.

§ 6340. (R. S. § 3434.) Removal in bond to Pacific coast for exportation.

Any article manufactured in a bonded warehouse established under the preceding section, and situated in any of the Atlantic States, may be removed therefrom for transportation to a customs bonded ware-

house at any port on the Pacific coast of the United States, for the purpose only of being exported therefrom, under such regulations and upon the execution of such bonds or other security as the Secretary of the Treasury may prescribe.

Act July 13, 1866, c. 184, § 28, 14 Stat. 155.

The preceding section of the Revised Statutes, mentioned in this section, was R. S. § 3433, which was re-enacted in and superseded by section 10 of the McKinley Tariff Act of Oct. 1, 1890, c. 1244, set forth ante, § 6339.

The provisions of this section may be regarded as applicable to articles manufactured in bonded warehouses established under the provisions so re-enacted.

§ 6341. (R. S. § 3444.) Collector's monthly account of articles in bonded warehouses, and articles exported.

Every collector who has charge of any warehouse in which distilled spirits, or other articles, are stored in bond, shall render a monthly account of all such articles to the Commissioner of Internal Revenue, by whom such account shall be examined and adjusted monthly, so as to exhibit a true statement of the responsibility of such collector thereon. In adjusting such account, the collector shall be charged with all the articles which may have been deposited or received under the provisions of law, in any warehouse in his district and under his control, and shall be credited with all such articles shown to have been removed therefrom according to law, including transfers to other collectors and to his successor in office, and also whatever allowances may have been made in accordance with law to any owner of such goods or articles for leakage or other losses. And every collector from whose district any distilled spirits, tobacco, snuff, or cigars are shipped in bond, under the provisions of this Title, shall render a monthly account of the same to the Commissioner of Internal Revenue, showing the amount of each article produced and shipped in bond, the amounts of which the exportation is completed according to law, and the amount remaining unaccounted for at the end of each month; also any excesses or deficiencies on the amounts originally reported as shipped.

Act July 20, 1868, c. 186, § 100, 15 Stat. 165. Act June 6, 1872, c. 315, § 31, 17 Stat. 255.

A duty equal to the internal revenue tax was required to be assessed on reimported domestic articles, except those manufactured in bonded warehouses, by a provision of the Underwood Tariff Act of Oct. 3, 1913, c. 16, § IV, P, ante, § 5313.

The Commissioner of Internal Revenue was required to submit to Congress annually a detailed statement as to the manner of expending the money appropriated for the detection and punishment of violations of the internal-revenue laws, and also of the miscellaneous expenditures in the bureau, by Act March 3, 1893, c. 208, set forth post, § 6366.

§ 6342. (R. S. § 3445.) Changes of stamps, instruments for attaching and canceling.

The Commissioner of Internal Revenue may make such change in stamps, and may prescribe such instruments or other means for attaching, protecting, and canceling stamps, for tobacco, snuff, cigars, distilled spirits, and fermented liquors, or either of them, as he and the Secretary of the Treasury shall approve; such instruments to be furnished by the United States to the persons using the stamps to be affixed therewith, under such regulations as the Commissioner of Internal Revenue may prescribe.

Act July 20, 1868, c. 186, § 43, 15 Stat. 142. Act June 6, 1872, c. 315, § 12, 17 Stat. 240.

Articles manufactured wholly or in part of domestic spirits, intended for exportation were required to be manufactured in bonded warehouses by R. S. § 3433, which was re-enacted by Act Oct. 1, 1890, c. 1244, § 10, ante, § 6339.

Having in possession unlawfully impressions of instruments used for printing any obligation of the United States, and removing tools or materials used

for printing bonds, notes, and stamps, were punishable by R. S. §§ 5433, 5453, which were incorporated into the Criminal Code in sections 153, 155, thereof, post, §§ 10323, 10325, and were repealed by section 341 thereof, post, § 10515.

Notes of Decisions

Penalty and forfeiture.—Merely tacking a piece of newspaper over the stamped end of a barrel of distilled spirits is no ground of forfeiture under the internal revenue laws and the regulations of the internal revenue department. U. S. v. Three Barrels of Whisky (C. C. 1896) 77 Fed. 963.

This section and the section following give the Secretary of the Treasury and the Commissioner of Internal Revenue power to require and enforce the use of the so-called Hunter stamp upon cigars. Regulations promulgated under and in conformity with those sections have the force of law; and a failure to comply therewith is punishable under the general clause of section 6358, post. (1877) 15 Op. Atty. Gen. 191.

Cited without definite application, In re Kollock (1897) 17 Sup. Ct. 444, 448, 165 U. S. 526, 41 L. Ed. 813; Dougherty v. U. S. (1901) 108 Fed. 56, 58, 47 C. C. A. 195, writ of certiorari denied (1901) 21 Sup. Ct. 926, 181 U. S. 622, 45 L. Ed. 1033.

§ 6343. (R. S. § 3446, as amended, Act March 1, 1879, c. 125, § 18.) Power to alter form and device of internal-revenue stamps, labels, etc.; method of cancellation.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may establish and, from time to time, alter or change the form, style, character, material, and device of any stamp, mark, or label used under any provision of the laws relating to internal revenue. Such stamps shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as he, with the approval of the Secretary of the Treasury, may prescribe; and he is hereby authorized and empowered to make, with the approval of the Secretary of the Treasury, all needful regulations relating thereto; and all pains, penalties, fines, and forfeitures now provided by law relating to internal-revenue stamps shall apply to and have full force and effect in relation to any and all stamps which may or shall be so established by the Commissioner of Internal Revenue: Provided, Such stamps or device or instrument or means of removal or obliteration, shall entail no additional expense upon the persons required to affix or use the same.

Act July 20, 1868, c. 186, § 101, 15 Stat. 165. Act March 1, 1879, c. 125, § 18, 20 Stat. 351.

This section, as enacted in the Revised Statutes, was as follows:

"The Secretary of the Treasury and the Commissioner of Internal Revenue, may alter, renew, or change the form, style, and device of any stamp, mark, or label used under any provision of the laws relating to distilled spirits, tobacco, snuff, and cigars, when in their judgment necessary for the collection of revenue tax, or the prevention or detection of frauds thereon; and may make and publish such regulations for the use of such mark, stamp, or label as they find requisite. But in no case shall such renewal or change extend to an abandonment of the general character of the stamps above mentioned, nor to the dispensing with any provisions requiring that such stamps shall be kept in book form and have thereon the signatures of revenue officers."

It was amended to read as set forth here, by Act March 1, 1879, c. 125, § 18, cited above.

Transmission of internal-revenue stamps to the officers of internal revenue was required to be made through the mails in registered packages by Act Aug. 15, 1876, c. 287, § 1, post, § 6345.

The Commissioner of Internal Revenue was required to estimate the tax on articles sold without being stamped, and to assess the same, by Act Aug. 27, 1894, c. 349, § 47, post, § 6348.

Spoiled or destroyed stamps, or stamps rendered useless or which have been improperly used, may be redeemed, by Act May 12, 1900, c. 393, § 1, as amended by Act June 30, 1902, c. 1327, § 2, post, § 6346.

Notes of Decisions

See notes under the preceding section.

Adoption of stamps and regulations for their use, etc.—The Commissioner

of Internal Revenue, with the approval of the Secretary of the Treasury, may adopt the device known as the Hamilton-Brooks cigar stamp, and prescribe regulations for its use, cancellation, and destruction, in accordance with the design of its inventor, if deemed expedient. (1881) 17 Op. Atty. Gen. 111.

—— **Portraits of living persons on stamps.**—In placing the portraits of living persons upon internal revenue stamps there is really no infraction of the provisions of section 6549, post, nor are such ornaments forbidden to be placed on such stamps by any other legislative enactment; yet their exclusion therefrom would seem to be in consonance with the spirit of said section. (1875) 14 Op. Atty. Gen. 528.

Penalties.—A dealer in cigars would not be liable to any penalty under existing laws (see sections 6207 and 6214, ante), for refusal or neglect to detach the coupons from the stamp known as the Hamilton-Brooks stamp, at the time contemplated by that device, should such stamp be adopted in pursuance of the provisions of this section. He would under existing laws incur liability for not destroying the stamp when the box is emptied, but not for refusal or neglect to do so previously thereto. (1880) 16 Op. Atty. Gen. 443.

Any failure to use, cancel, and destroy such stamp, as directed by such regulations, would make the party chargeable with the failure amenable to the penalties existing March 1, 1879 (20 Stat. 351), as to the stamps then in use. (1881) 17 Op. Atty. Gen. 111.

Cited without definite application, Dougherty v. U. S. (1901) 108 Fed. 56, 58, 47 C. C. A. 195 (writ of certiorari denied [1901] 21 Sup. Ct. 926, 181 U. S. 622, 45 L. Ed. 1033); In re Kollock (1897) 17 Sup. Ct. 444, 448, 165 U. S. 526, 41 L. Ed. 813; In re Blackstaff Engineering Co. (D. C. 1912) 200 Fed. 1019.

§ 6344. (Act March 3, 1899, c. 424, § 1.) Stamps to be printed on hand-roller presses.

The faces of all tobacco stamps for use upon packages of two pounds and upward, and of all beer, whiskey, cigar, snuff, oleomargarine, and special liquor tax stamps, shall hereafter be printed from engraved plates upon hand-roller plate-printing presses. (30 Stat. 1082.)

This was a provision of the sundry civil appropriation act for the fiscal year 1900, cited above.

The faces of internal revenue stamps are to continue to be printed from intaglio plates on hand-roller or power plate printing presses, as the Secretary of the Treasury may determine, such presses to be operated by plate printers, by a provision of Act Aug. 24, 1912, c. 355, § 1, post, § 6556.

§ 6345. (Act Aug. 15, 1876, c. 287, § 1.) Transmission of stamps to internal-revenue officers.

Hereafter the transmission of internal revenue stamps to the officers of the internal revenue service shall be made through the mails of the United States in registered packages. (19 Stat. 152.)

This was a provision following an appropriation for printing stamps in the legislative, executive, and judicial appropriation act for the fiscal year 1877, cited above.

§ 6346. (Act May 12, 1900, c. 393, § 1, as amended, Act June 30, 1902, c. 1327.) Redemption of spoiled stamps, etc.

The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal-revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected. Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made

in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner of Internal Revenue, or until satisfactory proof has been made showing the reason why the same can not be returned; or, if so required by the said Commissioner, when the person presenting the same can not satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid: Provided, That documentary and proprietary stamps issued under the provisions of "An Act to provide ways and means for war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight, may be redeemed only when presented in quantities of two dollars or more, face value: Provided further, That no claim for the redemption of or allowance for stamps shall be allowed unless presented within two years after the purchase of said stamps from the Government, excepting documentary and proprietary stamps issued under the Act of June thirteenth, eighteen hundred and ninety-eight, which stamps may be redeemed as hereinbefore authorized, upon presentation prior to the first day of July, nineteen hundred and four. (31 Stat. 177. 32 Stat. 506.)

This section and the section next following were part of an act authorizing the Commissioner of Internal Revenue to redeem or make allowance for internal revenue stamps, cited above.

This section, as originally enacted, was amended by adding to the second proviso the words "excepting documentary and proprietary stamps," etc., to the end of the section as set forth here, by Act June 30, 1902, c. 1327, cited above.

The provisions for stamps made by Act June 13, 1898, c. 448, mentioned in the first proviso of this section, were repealed by Act April 12, 1902, c. 500, §§ 5, 7, 32 Stat. 97.

This section superseded R. S. § 3426, as amended by Act March 1, 1879, c. 125, § 17, 20 Stat. 349.

Provisions for the return to the owners of bank checks and other instruments for the payment of money having stamps imprinted, after redemption and cancellation of the stamps and for the destruction of instruments remaining unclaimed at the expiration of one year, were made by Res. Feb. 26, 1902, No. 7, 32 Stat. 736. They are omitted, as temporary merely.

Notes of Decisions

See § 6097, ante, and notes thereunder.

Regulations as to redemption of stamps or reimbursement.—The Commissioner of Internal Revenue has authority, with the approval of the Secretary of the Treasury, to make regulations looking to the redemption of unused documentary stamps issued under War Revenue Act June 13, 1898. (1901) 22 Op. Atty. Gen. 568.

In the absence of such rules, the Commissioner of Internal Revenue may cause such unused stamps to be redeemed. Id.

A regulation prescribed by the commissioner of internal revenue, requiring claimants under the statute to make oath "that the value or reimbursement of the value of said stamps, or any portion thereof, has not heretofore been received by claimant, directly or indirectly," is substantially complied with by an oath that such value or reimbursement, or any portion thereof, "has not heretofore been received by claimant, directly or indirectly, from the government." U. S. v. American Tobacco Co. (1897) 17 Sup. Ct. 619, 622, 166 U. S. 468, 41 L. Ed. 1081.

Stamps destroyed in warehouse.—Where a manufacturer destroyed stamps on boxes of cigars in his warehouse because he was enjoined from selling them in those boxes, his case does not come within the statute. American West Indies Trading Co. v. U. S. (1910) 45 Ct. Cl. 488.

Effect of payment of insurance on stamps destroyed by fire.—Where internal revenue stamps have been destroyed by fire before they have been used, the fact that the owner has received payment therefor under a contract of insurance does not bar his right to claim payment from the United States, under R. S. § 3426, as amended by 20 Stat. 327, 349, where the recovery is sought for the use of the insurer. U. S. v. American Tobacco Co. (1897) 17 Sup. Ct. 619, 621, 166 U. S. 468, 41 L. Ed. 1081.

Binding effect of award by commissioner.—When the commissioner of internal revenue makes an award in reference to subject-matter of which he has jurisdiction, as in case of an award under this section, such award, if unimpeached, is binding. Dugan v. U. S. (1899) 34 Ct. Cl. 458.

Effect of statute as to protest or notice to sustain recovery of stamp tax.—The necessity of protest or notice to sustain the recovery of a stamp tax illegally collected on manifests of cargoes on vessels bound to foreign ports is not removed by the provision of Act May 12, 1900, c. 393, 31 Stat. 177, authorizing the commissioner of internal revenue to redeem or make allowance for internal revenue stamps in any manner "wrongfully collected." U. S. v. New York & Cuba Mail S. S. Co. (1906) 26 Sup. Ct. 327, 329, 200 U. S. 488, 50 L. Ed. 569, reversing judgment New York & Cuba Mail S. S. Co. (D. C. 1903) 125 Fed. 320.

Action against collector founded on statute.—Though the commissioner of internal revenue has the choice, in redeeming unused revenue stamps, either to give other stamps or refund in money, yet where he has refused to do either, and compelled the claimant to sue, the government will not be heard to complain on appeal, for the first time, that the suit is for money only, and the commissioner is deprived of his right to elect. U. S. v. American Tobacco Co. (1897) 17 Sup. Ct. 619, 620, 166 U. S. 468, 41 L. Ed. 1081.

Certain parties became entitled to a judgment against an internal revenue collector for the cost of stamps which he had illegally compelled them to use. Held that, inasmuch as they had purchased the revenue stamps in large quantities and evidently for other purposes than that of paying the unlawful tax, they were entitled to interest only from the date of their demand. Treat v. Taylor (1908) 166 Fed. 1021, 91 C. C. A. 330, affirming judgment Taylor v. Treat (C. C. 1907) 153 Fed. 656.

Cited without definite application, Johnson & Johnson v. Herold (C. C. 1907) 161 Fed. 593.

§ 6346a. (Act Sept. 8, 1916, c. 463, § 411.) Allowance for or redemption of stamps; issue under former acts.

That the Commissioner of Internal Revenue, subject to regulation prescribed by the Secretary of the Treasury, may make allowance for or redeem stamps, issued, under authority of the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue, and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," to denote the payment of internal revenue tax, and which have not been used, if presented within two years after the purchase of such stamps. (39 Stat. 793.)

This is a provision of "An act to increase the revenue, and for other purposes," cited above.

Act Oct. 22, 1914, c. 331, referred to, was repealed in part by Act Sept. 8, 1916, c. 463, § 410, ante, § 5980*l*.

Res. Dec. 17, 1915, No. 4, referred to is set forth in notes under § 5980*l*, ante.

§ 6347. (Act May 12, 1900, c. 393, § 2.) Decision of Commissioner final.

The finding of facts in and the decision of the Commissioner of Internal Revenue upon the merits of any claim presented under or authorized by this Act shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer. (31 Stat. 178.)

See notes to the preceding section of this act, ante, § 6346.

§ 6348. (Act Aug. 27, 1894, c. 349, § 47.) Assessment of tax on articles sold without stamps; collection.

Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale by the manufacturer thereof, without the use of the proper stamp, in addition to the penalties imposed by law for such sale or removal, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such removal or sale, upon such information as he can obtain, to estimate the amount of the tax which has been omitted to be paid, and to make an assessment therefor upon the manufacturer or producer of such article. He

shall certify such assessment to the collector, who shall immediately demand payment of such tax, and upon the neglect or refusal of payment by such manufacturer or producer, shall proceed to collect the same in the manner provided for the collection of other assessed taxes. (28 Stat. 562.)

This section was part of the Wilson Tariff Act of 1894, cited above.

The Commissioner was required to estimate the tax on tobacco, snuff, or cigars sold without stamps, by R. S. § 3371, as amended by Act March 1, 1879, c. 125, § 14, incorporated into said section, ante, § 6180; on oleomargarine sold without the use of proper stamps, by Act Aug. 2, 1886, c. 840, § 9, under chapter 7A of this Title, ante, § 6221; on filled cheese sold without the use of proper stamps, by Act June 6, 1896, c. 337, § 10, under chapter 7B of this Title, ante, § 6249; and on mixed flour sold without the use of proper stamps, by Act June 13, 1898, c. 448, § 41, under chapter 7C of this Title, ante, § 6263.

Cited without definite application, U. S. v. Chamberlin (1907) 156 Fed. 881, 888, 84 C. C. A. 461, 13 Ann. Cas. 720 (reversed [1911] 31 Sup. Ct. 155, 219 U. S. 250, 55 L. Ed. 204); Epremiam v. Ward (C. C. 1909) 169 Fed. 691.

§ 6349. (R. S. § 3447.) Where mode of assessing or collecting any tax is not provided for; regulations.

Whenever the mode or time of assessing or collecting any tax which is imposed is not provided for, the Commissioner of Internal Revenue may establish the same by regulation. He may also make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

Act July 20, 1868, c. 186, § 103, 15 Stat. 166.

Notes of Decisions

Regulations as having force of statute.—Regulations made by the commissioner pursuant to the statutory authority, with the approval of the secretary of the treasury, in respect to the assessment and collection of internal revenue, have the force of statutes; and the acts of the commissioner are presumed to be the acts of the secretary. In re Huttman (D. C. 1895) 70 Fed. 699.

Void regulation.—A regulation which has the effect to subject classes of property to forfeiture and classes of persons to fines and penalties excluded therefrom by statute is void. U. S. v. 11,150 Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463.

War revenue.—The War Revenue Act of 1898 having made no provision as to the mode of collecting such tax, by virtue of section 31, and this section, the commissioner was authorized to establish the same by regulation; and having done so by circular of instructions July 7, 1899, making the tax assessable as soon as determined from the monthly returns required by the act, from that time forward monthly collections were expressly authorized by law. Prior to that date such collections were also authorized, the act itself making the assessment when the amount of the tax due was made to appear by the monthly returns showing gross receipts exceeding $250,000. Spreckels Sugar Refining Co. v. McClain (C. C. 1901) 109 Fed. 76, judgment reversed (1902) 113 Fed. 244, 51 C. C. A. 201, which is reversed (1904) 24 Sup. Ct. 376, 192 U. S. 397, 48 L. Ed. 496.

Cited without definite application, Coopersville Co-operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595; U. S. v. Fifty-Nine Demijohns Aguadiente and Four Barrels of Cigarettes (D. C. 1889) 39 Fed. 401, 402.

§ 6350. (R. S. § 3448.) Internal-revenue laws, when co-extensive with jurisdiction of United States.

The internal-revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars shall be held to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within a collection-district or not.

Act July 20, 1868, c. 186, § 107, 15 Stat. 167.

The Territory of Hawaii was made a collection district by Act April 30, 1900, c. 339, § 87, ante, § 5845.

Notes of Decisions

See, also, notes under §§ 5842 and 6174, ante.

Indian territory or country.—This section applies to and is in force in the

Indian territory embraced within the western district of Arkansas, occupied by the Cherokee Indians, notwithstanding the treaty of 1866 between the United States and those Indians, which exempted them from taxation within the territory. The Cherokee Tobacco (1870) 78 U. S. (11 Wall.) 616, 618, 20 L. Ed. 227.

Internal revenue taxes on distilled spirits, fermented liquors, tobacco, etc., produced in the Indian Territory, and special taxes on the manufacture and sale of those articles in that territory, may lawfully be collected within the same. (1884) 18 Op. Atty. Gen. 66.

Refusal to furnish special revenue stamps within territory which has ceased to be Indian country may be based upon the fact that there are no counties nor legally organized towns whose limits are capable of definition, and therefore such license cannot specifically define and describe known places of doing business as contemplated by sections 5963, 5964, ante. (1889) 19 Op. Atty. Gen. 306.

The Internal Revenue Department may decline to furnish special revenue stamps for the sale of intoxicating liquors within that territory until Congress shall have time to consider the subject. Id.

Alaska.—Alaska was so incorporated into the United States by the treaty under which it was acquired, and by such subsequent congressional legislation as Act July 20, 1868, c. 186, § 167 (this section), and Act July 27, 1868, c. 237, 15 Stat. 240, extending the laws of the United States relating to customs, commerce, and navigation over Alaska and establishing a collection district therein, as to render repugnant to Const. Amend. 6, Act June 6, 1900, c. 786, § 171, 31 Stat. 358, that in trials for misdemeanors in Alaska six jurors shall constitute a legal jury. Rasmussen v. U. S. (1905) 25 Sup. Ct. 514, 516, 197 U. S. 516, 49 L. Ed. 862.

Philippine Islands.—Prior to the passage of Act July 1, 1902 (32 Stat. 691), the Philippine Islands were "within the exterior boundaries of the United States" within the meaning of this section, and subject to its provisions; but since its passage the provisions of that section have been inoperative in those islands, section 1 of that act providing in effect that the laws of the United States shall not apply to the Philippine Islands. No internal revenue tax, therefore, can be imposed under the laws of the United States on cigars shipped into this country from the Philippine Islands. (1902) 24 Op. Atty. Gen. 120.

§ 6351. (R. S. § 3449.) Removing any liquors or wines under other than trade-names; penalty.

Whenever any person ships, transports, or removes any spirituous or fermented liquors or wines, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks or packages containing the same, or causes such act to be done, he shall forfeit said liquors or wines, and casks or packages, and be subject to pay a fine of five hundred dollars.

Act July 13, 1866, c. 184, § 29, 14 Stat. 156.

Notes of Decisions

1. Constitutionality.
2. Partial repeal.
3. Origin, purpose, and construction of statute in general.
4. Meaning of the term "package."
5. Violation of statute in general.
6. Presumption as to violation.
7. Shipment without name or brand.
8. Shipment concealing name or brand.
9. Shipping bottles packed in barrels marked "groceries."
10. Fraud or fraudulent intent as involved in prosecution.
11. Forfeiture and penalty.
12. Information or complaint.

1. Constitutionality.—This section is not unconstitutional, within the principle of the Trade-Mark Cases (1879) 100 U. S. 82, 25 L. Ed. 550, because it incidentally acts in some cases as a protection to trade-marks. U. S. v. Loeb (C. C. 1892) 49 Fed. 636.

2. Partial repeal.—This section, in so far as it relates to the shipment, transportation, or removal not wholly within the limits of a state of spirituous or fermented liquors or wines, was repealed by the enactment of the pure-food law. (1908) 26 Op. Atty. Gen. 475.

The question whether this section was repealed, in so far as it relates to purely intrastate shipment, transportation, or removal of spirituous or fermented liquors or wines, by the enactment of the pure food law, not decided. Id.

3. Origin, purpose, and construction of statute in general.—This statute is a revenue, and not a trade-mark, regulation, and its validity is not affected by the fact that it incidentally tends to the discovery of private frauds. U. S. v. One Hundred and Thirty-Two Packages of Spirituous Liquors and Wines (1896) 76 Fed. 364, 22 C. C. A. 228.

This section applies only to shipments by distillers, brewers, manufacturers of wine, rectifiers, and wholesale dealers in spirits or fermented liquors or wines, and not to all persons generally. U.

S. v. Twenty Boxes of Corn Whisky (1904) 133 Fed. 910, 67 C. C. A. 214, affirming judgment U. S. v. Twenty Boxes of Corn Liquor (D. C. 1902), 123 Fed. 135.

This section is to prevent frauds on the revenue, and has no application to marks or brands placed on packages by government officers. Woolner & Co. v. Rennick (C. C. 1908) 170 Fed. 662.

This section first appeared as a proviso to section 29 of Act July 13, 1866, c. 184, 14 Stat. 156, where, construed with reference to its context, it must apply to some removal from the distillery or warehouse under an improper or misleading title, such as a removal of whisky from a distillery to the warehouse in casks under the name of brandy or the reverse, whereby there would be opportunities for defrauding the government. U. S. v. One Hundred and Thirty-Two Packages of Spirituous Liquors (D. C. 1895) 65 Fed. 980.

The words "proper name or brand known to the trade as designating the kind and quality," etc., considered with reference to the object and the jurisdiction of the legislative body, mean something else than a trade-mark or make of a certain distiller. "Kind" does not refer to the maker, or "quality" to the excellence of his goods. "Kind" means a well-known classification of spirituous and fermented liquors, and "quality" may be a synonym, or refer to the standard of proof. Id.

The requirement of the statute cannot be limited to distillers, manufacturers, and rectifiers, as its language covers all persons who ship, transport, or remove liquors or wines. U. S. v. Campe (D. C. 1898) 89 Fed. 697.

This section was originally a proviso to section 29 of Act July 13, 1866, 14 Stat. 156, c. 184, "to reduce internal revenue and to demand an act to provide internal revenue," and from section 21 (14 Stat. 153) that act relates to distillers, brewers, manufacturers of wine, etc., and hence this section only applies to distillers, dealers in spirits, etc. U. S. v. Twenty Boxes of Corn Liquor (D. C. 1902) 123 Fed. 135, judgment affirmed Same v. Twenty Boxes of Corn Whisky (1904) 133 Fed. 910, 67 C. C. A. 214.

It is apparent such persons were alone in mind when this proviso was enacted; the purpose of the statute and the end of the proviso tends to show that it was not intended to apply to other persons; hence it must be held that the proviso cannot apply to persons other than those enumerated. U. S. v. Twenty Boxes of Corn Liquor (D. C. 1902) 123 Fed. 135, 136, affirmed (1904) 133 Fed. 910, 67 C. C. A. 214.

Sections 2 and 10 of Pure Food Law require that a different brand or mark shall be placed upon an article transported in interstate or foreign commerce from that required by this section. (1908) 26 Op. Atty. Gen. 474, 475.

4. Meaning of the term "package."—The term "package," as used in this section, includes every box, barrel, or other receptacle into which distilled spirits have been placed for shipment or removal, either in quantity or in separate small packages, as bottles or jugs. U. S. v. One Hundred and Thirty-Two Packages of Spirituous Liquors and Wines (1896) 76 Fed. 364, 22 C. C. A. 228.

5. Violation of statute in general.—A rectifier of liquors, who labels his products as those of a well-known distiller and rectifier, and attempts to sell them as such, does not thereby subject his liquors to forfeiture, and himself to fine, under this section. U. S. v. One Hundred and Thirty-Two Packages of Spirituous Liquors (D. C. 1895) 65 Fed. 980.

The words, "Glass; this side up, with care," written on a box containing bottles of whisky, are a mere caution to the carrier, and not a false designation of the contents of the box, within the meaning of the statute. U. S. v. Twenty Boxes of Corn Whisky, 133 Fed. 910, 67 C. C. A. 214, affirming judgment U. S. v. Twenty Boxes of Corn Liquor (D. C. 1902) 123 Fed. 135.

6. Presumption as to violation.—A mild form of beer, put up and sold by the manufacturer in bottles, labeled "J. D. Iler's Rochester Tonic," was subject to the special stamp tax imposed by Schedule B of War Revenue Act June 13, 1898 (30 Stat. 462), which required the payment of such tax on every bottle containing any tonics or medicinal preparations or compositions whatever, or (section 20) "which are advertised on the package or otherwise" as remedies or specifics, or as having any special claim to merit, or to any peculiar advantage in mode of preparation, quality, "use or effect"; and it is not exempt from such tax because the manufacturer paid the revenue tax thereon as beer before it was bottled, since it cannot be presumed that it violated the provisions of this section, and the article was, moreover, correctly designated as a tonic. U. S. v. J. D. Iler Brewing Co. (1903) 121 Fed. 41, 57 C. C. A. 381.

7. Shipment without name or brand.—This section merely applies to shipment of liquors under a false brand or designation, and not to their shipment without any name or brand being placed thereon. U. S. v. Twenty Boxes of Corn Whisky (1904) 133 Fed. 910, 67 C. C. A. 214.

8. Shipment concealing name or brand.—One is not liable under this section for shipping a keg of whisky on which the proper tax had been paid, and which had the proper brand affixed, packed inside of a sugar barrel which

contained no brand at all. U. S. v. Stege (1898) 87 Fed. 553.

This section applies solely to shipments under other than the proper name or brand known to the trade, and not to a shipment concealing the name or brand required by the regulations of the internal revenue department to be put on all vessels containing liquors. U. S. v. Sandefuhr (D. C. 1906) 145 Fed. 49.

9. Shipping bottles packed in barrels marked "groceries." — Where spirituous liquors contained in bottles are packed in barrels and shipped and the barrels are marked "groceries," such shipment is a violation of this section. U. S. v. Liquor Dealers' Supply Co. (D. C. 1907) 156 Fed. 219.

10. Fraud or fraudulent intent as involved in prosecution.—In a prosecution for violation of this section in shipping liquors under any other than the proper name, no question of fraud or fraudulent intent is involved. U. S. v. Liquor Dealers' Supply Co. (D. C. 1907) 156 Fed. 219.

11. Forfeiture and penalty.—See notes, ante.

Where defendant was acquitted in a criminal prosecution for causing to be transported certain casks containing bottled beer falsely marked as containing bottled soda water, such acquittal was a bar to the subsequent maintenance of an action by the United States to forfeit the property and recover a penalty for the same act imposed by this section. U. S. v. Seattle Brewing & Malting Co. (1905) 135 Fed. 597.

12. Information or complaint.—A complaint charging the defendant with the removal of liquors marked by the name under which the product of a particular manufacturer is known to the trade, when the liquor was not such product, states a cause of action. The purpose of the statute is to aid in preventing frauds on the revenue by requiring all packages shipped to be truthfully marked; and the fact that its enforcement may incidentally prevent frauds against a manufacturer or the public does not affect its validity or construction. U. S. v. Campe (D. C. 1898) 89 Fed. 697.

Under this section an information which does not allege that the person who shipped the liquors was such a person as is forbidden by the statute to ship liquors under other than its true name is demurrable. U. S. v. Twenty Boxes of Corn Liquor (D. C. 1902) 123 Fed. 135, judgment affirmed Same v. Twenty Boxes of Corn Whisky (1904) 133 Fed. 910, 67 C. C. A. 214.

Cited without definite application. Ex parte Oklahoma (1911) 31 Sup. Ct. 426, 220 U. S. 191, 55 L. Ed. 431; U. S. v. Gallant (D. C. 1910) 177 Fed. 281.

§ 6352. (R. S. § 3450.) Removing or concealing articles with intent to defraud United States of tax; forfeiture and penalty.

Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities are removed, or are deposited or concealed in any place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited; and in every such case all the casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained, such goods or commodities, respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited. And every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any goods or commodities for or in respect whereof any tax is or shall be imposed, with intent to defraud the United States of such tax or any part thereof, shall be liable to a fine or penalty of not more than five hundred dollars. And all boilers, stills, or other vessels, tools and implements, used in distilling or rectifying, and forfeited under any of the provisions of this Title, and all condemned material, together with any engine or other machinery connected therewith, and all empty barrels, and all grain or other material suitable for distillation, shall, under the direction of the court in which the forfeiture is recovered, be sold at public auction, and the proceeds thereof, after deducting the expenses of sale, shall be disposed of according to law. And all spirits or spirituous liquors which may be forfeited under the provisions of this Title,

unless herein otherwise provided, shall be disposed of by the Commissioner of Internal Revenue as the Secretary of the Treasury may direct.

Act July 13, 1866, c. 184, § 14, 14 Stat. 151.

Notes of Decisions

See notes under § 5993 and 6038, ante.

Repeal as to tax on oleomargarine.—This section and section 6355, post, are repealed, so far as concerns the tax on oleomargarine, by section 6229, ante, providing a more limited forfeiture for attempts to defraud the government of the oleomargarine tax. U. S. v. One Bay Horse and One Buggy (D. C. 1904) 128 Fed. 207.

Removal of spirits in general.—Under Act July 13, 1866, § 45, providing that all distilled spirits found elsewhere than in a bonded warehouse, not having been removed from such warehouse according to law, and the tax imposed by law not having been paid, shall be forfeited, a removal procured by a false and fraudulent bond, though accepted by the collector, is not a removal according to law, and spirits thus withdrawn are not exempted from the operation of the section. In re Distilled Spirits (1870) 78 U. S. (11 Wall.) 356, 20 L. Ed. 167, affirming U. S. v. 278 Barrels of Distilled Spirits (C. C. 1869) Fed. Cas. No. 16,580.

The removal of spirits by a distiller before they have been officially inspected, gauged, and proved is a cause of forfeiture, otherwise as to a removal before payment of duties. U. S. v. Three Hundred and Ninety-Six Barrels of Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,502.

And the failure of the inspector to mark on the barrels the quantity in proof as required by Act June 30, 1864, § 59, is not a cause of forfeiture. Id.

Removal to bonded warehouse.—The removal of distilled spirits from the place of distillation to a bonded warehouse, if made with intent to defraud the government of the tax, is an unlawful act, and subjects the spirits to forfeiture. In re Henderson's Distilled Spirits (1871) 81 U. S. (14 Wall.) 44, 20 L. Ed. 815, reversing U. S. v. One Hundred Barrels of Spirits (C. C. 1870) Fed. Cas. No. 15,948.

Under Act July 13, 1866, a removal by a distiller of spirits from the place of distillation to a bonded warehouse is a legal act. United States v. One Hundred Barrels of Spirits (C. C. 1870) Fed. Cas. No. 15,948.

Forfeiture as dependent on knowledge and intent.—It is not the purpose of the internal revenue laws to work the forfeiture of the property of any owner unless he knowingly or negligently contributes to their violation, and, where a team and wagon were used for the conveyance of unstamped bottles of whisky being removed with intent to defraud the government of the tax thereon, in violation of this section, without the knowledge or consent of a mortgagee, who, by reason of condition broken, was the legal owner of such team and wagon under the laws of the state, and had taken proper steps to obtain possession thereof, the property is not subject to forfeiture as against him. U. S. v. Two Barrels Whisky (1899) 96 Fed. 479, 37 C. C. A. 518.

The knowledge or intent of the owner of a conveyance used in transporting goods subject to a tax, that they are being removed contrary to law, is not necessary to subject the conveyance to forfeiture under this section. U. S. v. Two Horses (D. C. 1878) Fed. Cas. No. 16,578.

Transfer of property to bona fide purchaser.—The forfeiture imposed by Act July 13, 1866 (14 Stat. 98), in cases where taxable goods or commodities, etc., are removed, or deposited, etc., in any place with intent to defraud the United States of such tax, relates back to the unlawful acts of the antecedent owner; and he cannot, by any subsequent transfer of the property to a bona fide purchaser without notice of the fraud, defeat the title of the government. Henderson's Distilled Spirits (1871) 81 U. S. (14 Wall.) 44, 20 L. Ed. 815.

Where distilled spirits were removed from the place where distilled in order to defraud the government of the tax, the subsequent payment of the taxes or the fact that the claimant was an innocent purchaser would not constitute a defense and removal of distilled spirits to a United States bonded warehouse, if made with intent to defraud the government of the tax, is illegal, and the spirits are subject to forfeiture. Id.

A bona fide purchaser of personal property which has been forfeited to the government by previous acts of the former owner is not protected against the title of the government. U. S. v. Fifty-Six Barrels of Whisky (D. C. 1866) Fed. Cas. No. 15,095.

Under this section, declaring that animals used for the removal of spirits with intent to defraud the government shall be forfeited, etc., forfeiture takes place immediately upon commission of the act, though the title of the United States is not perfected until judicial condemnation, but upon such condemnation the completed title of the United States relates back to the time of

the commission of the prohibited act, and avoids all intermediate sales, even to purchasers in good faith. Pilcher v. Faircloth (1903) 33 So. 545, 135 Ala. 311.

The forfeiture and loss of title to property by the owner thereof for its use in violation of the internal revenue laws is absolute from the date of the violation, and cannot be defeated by subsequent transfer of the property to a bona fide purchaser for value. Kriess v. Faron (1897) 50 P. 388, 118 Cal. 142.

See, also, notes under § 6355, post.

Forfeiture of hired animals and conveyances.—This section, in providing that animals and conveyances used in removing spirituous liquors to evade payment of the tax shall be forfeited to the United States, subjects them to forfeiture, though they were so employed by a person who had hired them representing that they were to be used for another purpose. U. S. v. Two Bay Mules, etc. (D. C. 1888) 36 Fed. 84.

Evidence in forfeiture proceedings.—In a proceeding for the forfeiture of a vessel for violating the internal revenue laws, in transporting and concealing intoxicating liquors, evidence held to justify a finding that the liquor concealed was manufactured in Hawaii subsequent to the taking effect in that territory of the revenue laws of the United States. The Kawailani (1904) 128 Fed. 879, 63 C. C. A. 347.

Cited without definite application, Coffey v. U. S. (1886) 6 Sup. Ct. 432, 434, 116 U. S. 427, 29 L. Ed. 681; U. S. v. Zucker (1896) 16 Sup. Ct. 641, 642, 161 U. S. 475, 40 L. Ed. 777; Same v. Olsen (D. C. 1893) 57 Fed. 579, 583; Same v. Jaedicke (D. C. 1896) 73 Fed. 100, 103.

§ 6353. (R. S. § 3451.) Fraudulently executing documents required by internal-revenue laws; penalty.

Every person who simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal-revenue laws, or by any regulation made in pursuance thereof, or who procures the same to be falsely or fraudulently executed, or who advises, aids in, or connives at such execution thereof, shall be imprisoned for a term not less than one year nor more than five years; and the property to which such false or fraudulent instrument relates shall be forfeited.

Act July 20, 1868, c. 186, § 99, 15 Stat. 165.

Notes of Decisions

False notices of rectification.—The same rule of law as to liability under section 6100, ante, as to book entries required thereby held to apply to the making of false notices of rectification, in violation of this section. U. S. v. Amann (C. C. 1876) Fed. Cas. No. 14,438.

False certificate by gauger.—The procuring of a false certificate to be made by a gauger, as to the emptying of spirits to be rectified and the destruction of the stamps, will forfeit the spirits, though the fraud was not successfully carried out. Thacher v. U. S. (C. C. 1878) Fed. Cas. No. 13,851.

Cited without definite application, Thacher's Distilled Spirits (1880) 103 U. S. 679, 681, 26 L. Ed. 535.

§ 6354. (R. S. § 3452.) Having property in possession with intent to sell in fraud of law, or to evade taxes; penalty.

Every person who shall have in his custody or possession any goods, wares, merchandise, articles, or objects on which taxes are imposed by law, for the purpose of selling the same in fraud of the internal-revenue laws, or with design to avoid payment of the taxes imposed thereon, shall be liable to a penalty of five hundred dollars or not less than double the amount of taxes fraudulently attempted to be evaded.

Act June 30, 1864, c. 173, § 48, 13 Stat. 240. Act July 13, 1866, c. 184. § 9, 14 Stat. 112.

Notes of Decisions

See notes under § 6038, ante.

Intent to evade tax.—Under Act July 13, 1866, § 9, an intent to evade the payment of the tax must be shown. U. S. v. Grotenkemper (C. C. 1867) Fed. Cas. No. 15,267.

Concerting with distiller and others to market spirits without paying tax.—Defendant is liable where he fraudulently concerted with the distiller and others to market the spirits without payment of the tax. U. S. v. Groten-

kemper (C. C. 1867) Fed. Cas. No. 15,267.

Arrest of offender without warrant.—Under R. S. § 788, ante, § 1312, a deputy marshal in Virginia has power to arrest, without warrant, one who in his presence has in possession whisky to sell without paying the internal revenue tax, in violation of this section. Carico v. Wilmore (D. C. 1892) 51 Fed. 196, 200.

Verdict in prosecution.—A verdict of guilty of having in possession distilled spirits, with intent to sell them, and evade payment of the tax (Act June 30, 1864, § 48), is not bad merely because the number of gallons of such spirits is not found. U. S. v. Mattingly (C. C. 1867) Fed. Cas. No. 15,743.

Penalties and recovery thereof.—The penalties imposed by that Act June 3, 1864, § 48, may be recovered by indictment. The government is not limited to an information or action of debt. U. S. v. Mattingly (C. C. 1867) Fed. Cas. No. 15,743.

The penalty imposed for a violation of Act June 30, 1864, § 48, must at least equal double the amount of duties sought to be evaded, and in no case must it be less than $500. U. S. v. Smock (D. C. 1866) Fed. Cas. No. 16,348.

Cited without definite application, Whisky Cases (1878) 99 U. S. 594, 25 L. Ed. 399; Coffey v. U. S. (1886) 6 Sup. Ct. 432, 434, 116 U. S. 427, 29 L. Ed. 681; Id., 6 Sup. Ct. 437–439, 116 U. S. 436, 29 L. Ed. 684; Regan v. U. S. (1910) 183 Fed. 293, 105 C. C. A. 505, 31 L. R. A. (N. S.) 1073.

§ 6355. (R. S. § 3453.) Seizure of property found in possession in fraud of revenue laws.

All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal-revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue for that purpose, and shall be forfeited to the United States. And all raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such manufactured articles, or with design to evade the payment of said tax; and all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles or raw materials are found, may also be seized by any collector or deputy collector, as aforesaid, and shall be forfeited as aforesaid. The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the circuit court or district court of the United States for the district where such seizure is made.

Act June 30, 1864, c. 173, § 48, 13 Stat. 240. Act July 13, 1866, c. 184, § 9, 14 Stat. 111.

Notes of Decisions

1. Nature of power of summary seizure and forfeiture in general.
2. Intent to defraud or violate law.
3. Meaning of "in fraud of the internal revenue laws."
4. Completed sale or removal as affecting forfeiture.
5. Seizure and forfeiture of tools, implements and instruments and personal property in general.
6. Seizure and forfeiture of raw materials.
7. Forfeiture of tobacco establishment.
8. Forfeiture of distilled spirits.
9. Personal property found with distilled spirits.
10. Forfeiture of whole where goods are mixed with others.
11. Forfeiture for illicit sale of beer.
12. Possession of unstamped package of beer as ground of forfeiture.
13. Seizure of bonded warehouse.
14. When title to property is divested.
15. Reinvestment of title in claimants by acceptance of bond.
16. Sale of goods as passing title where government takes no steps to enforce forfeiture.
17. Bona fide purchasers.
18. Conviction as bar to forfeiture proceedings.
19. Suit on distiller's bond as barring or abating forfeiture proceedings.
20. Suit by owner for property pending forfeiture proceedings.
21. Forfeiture proceedings as civil or criminal.
22. Jurisdiction of forfeiture proceedings.
23. Informations and other pleadings.
24. Limitation as defense.
25. Competency of person making seizure.
26. Seizure without process.
27. Attachment of property.
28. Evidence.
29. Verdict.
30. Costs.

See notes under § 5993, ante.

1. Nature of power of summary seizure and forfeiture in general.—The power of summary seizure and forfeiture conferred by the internal revenue acts of congress upon the revenue officials, to be exercised at their discretion, being an extraordinary power, in derogation of common right, must be most strictly interpreted, and cannot be extended, as against the citizen, beyond what the language of the act imperatively requires. Crosby v. Brown (N. Y. 1871) 60 Barb. 548.

2. Intent to defraud or violate law.—The fraudulent intent or purpose of the person in possession of articles seized because found in a place where the articles or raw materials mentioned in section 48 (Act June 30, 1864, as amended July 13, 1866, § 9) are found does not constitute an element of the ground of forfeiture. U. S. v. One Still (C. C. 1867) Fed. Cas. No. 15,954.

Under Act July, 1866, § 9, it is a necessary element of the fraud specified that there should be an intent to defraud by evading the payment of the tax or duty imposed by law. U. S. v. Two Hundred and Fifty-Six Barrels of Beer (D. C. 1870) Fed. Cas. No. 16,579.

The intention on the part of those in charge of a tobacco store to violate the law in relation to the goods that were taxable by not canceling the stamps on packages that were sold, as required by Act July 20, 1868, § 72, will forfeit the whole establishment. In re Quantity of Tobacco (D. C. 1871) Fed. Cas. No. 11,500.

3. Meaning of "in fraud of the internal revenue laws."—The expression "in fraud of the internal revenue laws," means "in violation" of such laws. Act July 30, 1864, § 48, amended by Act July 13, 1866, § 9. In re Quantity of Tobacco (D. C. 1871) Fed. Cas. No. 11,500.

4. Completed sale or removal as affecting forfeiture.—Goods found in the possession of a person for the purpose of being sold or removed in fraud of the law are subject to forfeiture under Act June 30, 1864, § 48, as amended July 13, 1866, though there has not been a completed sale or removal thereof. U. S. v. Quantity of Tobacco (D. C. 1872) Fed. Cas. No. 16,106.

5. Seizure and forfeiture of tools, implements, and instruments and personal property in general.—Under Act July 13, 1866, § 70, a retail or other dealer offering canned goods for sale after August 1, 1866, was to be deemed the manufacturer thereof, and such goods were liable to a duty and to seizure in default of the proper stamp affixed thereto. Cardinel v. Smith (C. C. 1867) Fed. Cas. No. 2,395.

Personal property found in buildings in the same inclosure with a building in which an illicit distillery is carried on, and in such juxtaposition to it that the owners thereof could not be ignorant of the existence of the still, is subject to forfeiture. 13 Stat. 240, § 48. U. S. v. Quantity of Rags (C. C. 1868) Fed. Cas. No. 16,103.

All tools, implements, instruments, and personal property on the premises are forfeited under Act July 13, 1866, irrespective of the ownership. U. S. v. Distillery at Spring Valley (C. C. 1873) Fed. Cas. No. 14,963.

All tools, implements, instruments, and personal property whatsoever on the distillery premises are forfeited under Act July 13, 1866, § 9, irrespective of the purpose for which they are used. Id. CONTRA, U. S. v. Thirty-Three Barrels of Spirits (D. C. 1868) Fed. Cas. No. 16,470.

Machines used in a mill for such purpose are implements and instruments, within the meaning of the act, and are liable to forfeiture. U. S. v. Friction-Match Machinery (D. C. 1866) Fed. Cas. No. 15,167.

A water wheel used for propelling machinery in the manufacture of friction matches is not personal property liable to forfeiture, under Act 1864, § 48, amended by Act 1866, c. 184. Id.

6. Seizure and forfeiture of raw materials.—Under Act July 13, 1866, § 9, the raw material found, if intended to be used for a fraudulent purpose, may be seized, and is subject to forfeiture, without reference to the place where it is found. U. S. v. Sixteen Hogsheads of Tobacco (D. C. 1867) Fed. Cas. No. 16,302.

The forfeiture of the raw materials is not made dependent on their being seized in the possession of the person in whose possession forfeitable taxable articles are found. U. S. v. Quantity of Tobacco (D. C. 1872) Fed. Cas. No. 16,106.

7. Forfeiture of tobacco establishment.—Having on hand unstamped packages of tobacco for the purpose of being sold without payment of tax is good ground for forfeiting the entire establishment. In re Quantity of Tobacco (D. C. 1871) Fed. Cas. No. 11,500.

8. Forfeiture of distilled spirits.—The statute applies to distilled spirits, though forfeiture thereof is provided for in a different part of the law. Harrington v. U. S. (1870) 78 U. S. (11 Wall.) 356, 364, 20 L. Ed. 167.

Distilled spirits forfeited held not lost to the government by a subsequent mixture with other spirits belonging to the party. Id.

Where a barrel of whisky is without the stamps and brands required by law, the mere possession of it gives no title; and a revenue officer who seizes such a barrel concealed on private premises, and in good faith destroys

it, is not guilty of a misdemeanor under 1 Code N. C. § 1082, prohibiting "wanton and willful injuries to personal property." North Carolina v. Vanderford (C. C. 1888) 35 Fed. 282.

9. Personal property found with distilled spirits.—Under this section it is not necessary, in order that other personal property found with the distilled spirits be forfeited, that raw materials intended to be used in the manufacture should be found in the same place. U. S. v. Sixteen Barrels of Distilled Spirits (D. C. 1879) Fed. Cas. No. 16,300.

10. Forfeiture of whole where goods are mixed with others.—Where a party, for fraudulent purposes, mixes up goods prohibited by a revenue act with those not prohibited, the whole will be forfeited. U. S. v. Two Hundred and Seventy-Eight Barrels of Distilled Spirits (C. C. 1869) Fed. Cas. No. 16,580; Same v. Two Hundred and Twenty-Nine Packages (D. C. 1862) Fed. Cas. No. 15,941.

11. Forfeiture for illicit sale of beer.—The forfeiture for an illicit sale of beer applies to all beer found in claimant's possession. U. S. v. Two Hundred and Fifty-Six Barrels of Beer (D. C. 1870) Fed. Cas. No. 16,579.

The forfeiture for an illicit sale of beer, or fraudulent intent, applies to all the raw materials, fixtures, and appliances of the brewery. Id.

12. Possession of unstamped package of beer as ground of forfeiture.—The finding of an unstamped package of beer in the possession of a brewer, who has knowledge thereof, and does not satisfactorily explain it, is ground of forfeiture of all the beer and materials of the brewery. U. S. v. Brewery Utensils (D. C. 1871) Fed. Cas. No. 14,641.

13. Seizure of bonded warehouse.—Where the treasury department, with knowledge of all the facts, determines that no just cause for the seizure of a bonded warehouse exists, the court cannot retry the issue properly within the jurisdiction of and actually determined by the revenue department, but must regard the decision as final. Cumming v. U. S. (1887) 22 Ct. Cl. 344.

14. When title to property is devested.—The title to property as to which an act of forfeiture has been committed under this section is not devested eo instante on the commission of the offense or by the seizure, but only after a judgment or decree of a court having jurisdiction has ascertained and declared the forfeiture; and if, after seizure, the possession is abandoned and the decree of forfeiture not obtained, the title remains in the original owner. Tracey v. Corse (1874) 58 N. Y. 143.

15. Reinvestment of title in claimants by acceptance of bond.—The acceptance of a bond to answer a judgment against the claimants of property forfeited does not reinvest the title in them. U. S. v. Distillery & Rectifying Establishment of J. C. McCoy (D. C. 1869) Fed. Cas. No. 14,964.

16. Sale of goods as passing title where government takes no steps to enforce forfeiture.—Where the United States took no steps to enforce a forfeiture of goods for violation of the internal revenue laws, a sale of such goods will pass a good title, as the title of the government to goods forfeited does not vest until after judicial condemnation, though then it relates back to the time the offense was committed. Wessels v. Beeman (1891) 87 Mich. 481, 49 N. W. 483.

17. Bona fide purchasers.—The forfeiture imposed by Act July 13, 1866 (14 Stat. 98), in cases where taxable goods or commodities, etc., are removed, or deposited, etc., in any place with intent to defraud the United States of such tax, relates back to the unlawful acts of the antecedent owner; and he cannot, by any subsequent transfer of the property to a bona fide purchaser without notice of the fraud, defeat the title of the government. Henderson's Distilled Spirits (1871) 81 U. S. (14 Wall.) 44, 20 L. Ed. 815.

A bona fide purchaser for value, prior to seizure, is protected. U. S. v. Sixty-Four Barrels Distilled Spirits (C. C. 1870) Fed. Cas. No. 16,306; Same v. Three Hundred and Ninety-Six Barrels of Distilled Spirits (D. C. 1865) Fed. Cas. No. 16,504; Same v. Three Hundred and Seventy-Two Pipes of Distilled Spirits (D. C. 1879) Fed. Cas. No. 16,505.

The intention of congress must be manifest and unmistakable to justify the courts in construing a law imposing a forfeiture as extending to property which, before seizure, had been sold to an innocent purchaser. U. S. v. One Hundred Barrels of Spirits (C. C. 1870) Fed. Cas. No. 15,948.

Tobacco may be forfeited for fraud perpetrated by the manufacturer, even in the possession of a purchaser without knowledge of the fraud. Act July 1866, § 9. U. S. v. Eight Hundred Caddies of Tobacco (D. C. 1869) Fed. Cas. No. 15,036.

See also, notes under § 6352, ante.

18. Conviction as bar to forfeiture proceedings.—After an officer and stockholder of a corporation engaged in distilling is convicted for a violation of the internal revenue law, an action cannot be maintained to enforce the forfeiture of the corporation's property for the same offense, even though the forfeiture is resisted only by the other stockholders. U. S. v. One Distillery (D. C. 1890) 43 Fed. 846, judgment affirmed (1899) 19 Sup. Ct. 624, 174 U. S. 149, 43 L. Ed. 929,

following U. S. v. McKee (C. C. 1877) Fed. Cas. No. 15,688.

One who has been fined and imprisoned under 5993, ante, for illicit distilling, is estopped to claim as his own the distillery and spirits forfeited thereby; and such a conviction is not a bar to the proceeding in rem required by this section to declare and perfect the forfeiture. U. S. v. Three Copper Stills, etc. (D. C. 1890) 47 Fed. 495.

19. Suit on distiller's bond as barring or abating forfeiture proceedings.—A suit in another court on the distiller's bond, commenced before an information for forfeiture under Act June 30, 1864, § 68, or before seizure of the property, does not bar or abate the forfeiture proceeding. U. S. v. Three Hundred and Ninety-Six Barrels of Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,502.

20. Suit by owner for property pending forfeiture proceedings.—Owners of property seized for forfeiture by a collector of internal revenue cannot maintain an action for the property, pending the proceedings in rem to enforce the forfeiture. Averill v. Smith (1872) 84 U. S. (17 Wall.) 82, 21 L. Ed. 613.

21. Forfeiture proceedings as civil or criminal.—An information in rem for forfeiture of property for violation of the internal revenue law is a civil and not a criminal proceeding. Such a proceeding is essentially different from an action in personam to recover a statutory penalty. Lilienthal's Tobacco v. U. S. (1877) 97 U. S. 237, 24 L. Ed. 901.

22. Jurisdiction of forfeiture proceedings.—Jurisdiction to proceed by information for the condemnation of property forfeited under the revenue laws depends upon the possession of the property, actual or constructive. U. S. v. Ninety-Two Barrels of Rectified Spirits (C. C. 1871) Fed. Cas. No. 15,892.

23. Informations and other pleadings.—An information under this section is sufficient if it follow the language of the statute, and without an express averment that the taxes were not paid. U. S. v. Seventeen Empty Barrels (C. C. 1875) Fed. Cas. No. 16,255; Same v. Sixteen Hogsheads of Tobacco (D. C. 1867) Fed. Cas. No. 16,302.

A libel of information against a vessel, to procure her forfeiture for a violation of the revenue laws, must aver that she has been seized for the offense, and that the seizure still subsists. The Washington (C. C. 1857) Fed. Cas. No. 17,221.

Where property seized as forfeited before information filed is bonded as for a seizure made under Act July 13, 1866, § 9, a verdict of condemnation on a count based upon section 26 cannot be sustained. U. S. v. Ninety-Two Barrels of Rectified Spirits (C. C. 1871) Fed. Cas. No. 15,892.

The difficulty is not remedied by the fact that after the information was filed the property was reseized, and then taken possession of by the marshal on a monition founded on the information, and then rebonded by its owner. Id.

An information of forfeiture must aver that the property sought to be adjudged forfeited was used in the illicit distillation charged, or was the product of such distillation. U. S. v. One Distillery (D. C. 1865) Fed. Cas. No. 15,929.

A description of property claimed as forfeited as "all the boilers, stills, and other vessels used in the distillation of spirits, and all the distilled spirits—being about twelve barrels—now in the distillery owned by W.," is not sufficiently specific. Id.

An information for a forfeiture of liquor may properly contain distinct articulations. U. S. v. Three Hundred and Ninety-Six Barrels of Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,502.

Such information should contain the formal conclusion prescribed by the rules of the supreme court, "contrary to the form of the statute," etc. Id.

An information for a forfeiture under Act June 30, 1864, § 68, does not embrace the causes mentioned in section 48. Id.

The original information may be amended after 20 days by adding new articles containing additional causes of forfeiture. Id.

Causes of forfeiture may be inquired into at the trial which had not come to the collector at the time he seized the property; but causes omitted from the pleading should be set out by amendment. U. S. v. Three Hundred and Ninety-Six Barrels of Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,503.

The allegations in the information must be sufficiently specific to enable the claimant to traverse them, and the court to see that, if proved, a violation of the statute exists. The technical precision of an indictment is not necessary. Id.

Under the supreme court rules, general denials or issues are permissible in informations on the exchequer side of the court in cases under the internal revenue act. Id.

A demurrer, and not a motion to quash an information in rem on the exchequer side of the court, is the proper mode of reaching technical or substantial defects. Id.

The information should aver the fact that the tools, implements, and other personal property were found in the place or building or within the yard or inclosure where they were intended to be used. U. S. v. Sixteen Hogsheads of Tobacco (D. C. 1867) Fed. Cas. No. 16,302.

Where a forfeiture of tobacco is claimed in two distinct charges based on separate provisions of law, the dis-

trict attorney will not be required to elect between them. U. S. v. Eight Hundred Caddies of Tobacco (D. C. 1869) Fed. Cas. No. 15,036.

An information upon Act 1864, § 48, as amended by Act 1866, § 9, may be amended on the trial by adding a count on section 44 of the latter act. U. S. v. Whisky (D. C. 1870) Fed. Cas. No. 16,671.

An information to obtain the forfeiture of property must state in distinct allegations the matters relied on as ground for forfeiture. In re Eighteen Thousand Gallons of Distilled Spirits (D. C. 1871) Fed. Cas. No. 4,317.

The remedy of the claimant where the libel of information does not distinctly state the grounds of forfeiture is by motion to make the pleading more definite. Id.

The government will not be compelled to elect which of the several allegations in a libel of information will be relied on to sustain the forfeiture prayed for. Id.

24. Limitation as defense.—On an information to enforce a forfeiture the statute of limitations is available as a defense under a plea of the general issue. U. S. v. Six Fermenting Tubs (D. C. 1868) Fed. Cas. No. 16,296. See U. S. v. Belding (C. C. 1870) Fed. Cas. No. 14,562.

25. Competency of person making seizure.—The adoption by the government of a seizure under the internal revenue laws cures any defect in the competency to seize of the person who made the seizure. U. S. v. Five Hundred and Eight Barrels of distilled Spirits (C. C. 1867) Fed. Cas. Nos. 15,113, 15,114.

26. Seizure without process.—A collector, deputy collector, or inspector of internal revenue may, without process, enter any building where distilled spirits subject to tax are produced or kept, so far as may be necessary for examining the same and may without process seize illicit distilled spirits. U. S. v. Fears (C. C. 1878) Fed. Cas. No. 15,-080.

27. Attachment of property.—Where goods seized by a collector for violation of the internal revenue law, under this section, are attached while in his hands by the marshal on process issued in proceedings for their forfeiture, and a bond for their release is thereafter given by the claimant under section 6361, the proviso to said section, requiring notice of the pendency of the proceedings in court to be given to the parties executing the bond, is inapplicable; such notice being intended to take the place of an actual seizure by the marshal where the goods have been returned to the claimant under the bond before such seizure has been made, and unnecessary where the attachment has been made, and the proceeding in rem is pending when the bond is given. U. S. v. 59,650 Cigars (1906) 146 Fed. 130, 76 C. C. A. 556, affirming judgment (D. C. 1905) 138 Fed. 166.

On a libel to forfeit goods for alleged violation of the revenue laws, where the goods had been seized by, and were in the possession of, a collector of customs, the marshal will be required to attach the property by leaving a copy of the monition with the collector, and a notice requiring him to retain the property until the further order of the court. U. S. v. One Case of Silk (D. C. 1871) Fed. Cas. No. 15,925.

28. Evidence.—Under an information on a seizure of distilled spirits under section 45, Act July 13, 1866, claimant has the burden of showing that the spirits had been lawfully removed, and that the taxes had been paid. U. S. v. Five Hundred and Eight Barrels of Distilled Spirits (C. C. 1867) Fed. Cas. No. 15,113; Same v. Five Hundred and Eight Barrels of Spirits, Id. 15,114; Same v. Eight Casks of Whisky (D. C. 1867) Fed. Cas. No. 15,030.

Act July 13, 1866, § 45, provides that on seizures for the causes therein stated the burden is on the claimant to show that the law had been complied with. The shipment of certain barrels of distilled spirits was made late in 1864 and early in 1865. Nearly all the barrels, when seized, had upon them the inspection marks, "Manufactured prior to 1st September, 1866," though the law requiring such marks was not passed until July 13, 1866. Held, that the burden of proof was not sustained; it being impossible to believe that the spirits mentioned in the certificates of exportation were the same as those that were seized. One Hundred and Ninety-Nine Barrels of Whisky v. U. S. (1876) 94 U. S. 86, 24 L. Ed. 57.

A. made a fictitious sale to B. of a quantity of tobacco the day before the tax thereon was to be increased (checks were passed, but the tobacco was not removed nor delivered), and returned the same as sold; the avowed purpose being to avoid the increased tax. Held, on information for forfeiture, that the sale was proper evidence to be submitted to the jury in proof of intent to defraud the government. Lilienthal's Tobacco v. U. S. (1877) 97 U. S. 237, 24 L. Ed. 901.

Where a manufacturer of tobacco has resorted to various expedients to evade the tax on certain tobacco manufactured by him, the jury may consider his general manner of business in determining whether he intended to defraud the United States in respect to other tobacco in his manufactory, within Act July 13, 1866 (14 Stat. 133), providing for the forfeiture to the United States of all goods in the custody of one intending to sell them in fraud of the internal revenue law. Id.

A permit of a collector to transport spirits from a distillery warehouse to a general bonded warehouse is not evidence of a compliance with the pre-

requisites to a removal of the spirits required by sections 38, 40, Act July 13, 1866. U. S. v. Five Hundred and Eight Barrels of Distilled Spirits (C. C. 1867) Fed. Cas. No. 15,113.

The burden is on the claimant to show that the situation of the property is consistent with his entire innocence of complicity with the offenses for which such articles or raw materials were seized. U. S. v. One Still (C. C. 1867) Fed. Cas. No. 15,954.

Where rectified spirits are seized while in process of sale by a rectifier as free of tax, a claimant has the burden to show that the tax has been paid. Act July 13, 1866, § 45. U. S. v. Six Barrels of Distilled Spirits (C. C. 1867) Fed. Cas. No. 16,294.

Where spirits are found upon a rectifier's premises, and no proof is given that the tax has been paid, it may be assumed as a matter of law and fact that the tax had not been paid. In re Quantity of Distilled Spirits (C. C. 1868) Fed. Cas. No. 11,494.

Evidence of false returns of spirits made and materials used by claimants, through each of several preceding months, is admissible to show an intent to defraud as to goods seized on October 30th. Act July 13, 1866, § 9. U. S. v. Thirty-Six Barrels of High Wines (C. C. 1870) Fed. Cas. No. 16,469.

The fact that nearly all of the same property had been seized a month previously as forfeited for like fraudulent practices, and that a suit to enforce such forfeiture was pending and at issue, is immaterial. Id.

Claimant has the burden of showing a compliance with Act July 13, 1866, § 31, where slight evidence is given showing a failure to comply therewith. U. S. v. Eighteen Barrels High Wines (C. C. 1871) Fed. Cas. No. 15,033.

Under Acts June 30, 1864, § 48; July 13, 1866, § 9; March 31, 1868, § 5; July 20, 1868, §§ 19, 22, 44; June 6, 1872, § 12—no proof is required of the actual complicity of the owner of the property to be forfeited in the fraud or other thing which causes the forfeiture. U. S. v. Distillery at Spring Valley (C. C. 1873) Fed. Cas. No. 14,963.

Distillery books seized by a revenue collector under order of the department may be used as evidence on the trial of a libel for forfeiture filed against the distillery. U. S. v. Distillery at Petersburg (C. C. 1876) Fed. Cas. No. 14,961.

In prosecutions under the internal revenue laws it is incumbent upon the government to show affirmatively the existence of every fact which is an element of the act made penal. This rule, however, does not require every conjecture which may be started by the fertility of counsel to be overthrown. It suffices if, upon the evidence in the case, the existence of the facts can be legitimately presumed. Jackson v. U. S. (C. C. 1884) 21 Fed. 35.

Proof by claimant that proper brands were upon the barrels is insufficient. He must show that the tax has been paid, where such payment is a prerequisite to the removal. U. S. v. Eight Casks of Whisky (D. C. 1867) Fed. Cas. No. 15,030.

The fact that barrels containing spirits purchased in the open market bear all the brands indicating payment of the taxes does not create a presumption that such taxes have been paid. U. S. v. Seventy-Eight Barrels (D. C. 1867) Fed. Cas. No. 16,257.

Section 45 of Act July 13, 1866 (14 Stat. 163), is not rendered unconstitutional by the provision which requires affirmative proof on the part of the claimant of the payment of the taxes due on the spirits seized. Id.

The fact that spirits are properly branded by the government inspectors is not evidence that the taxes on them have been paid. Quantity of Distilled Spirits (D. C. 1868) Fed. Cas. No. 11,494.

The fact that spirits are purchased for less than the amount of the tax upon them is sufficient, in the absence of explanatory circumstances, to show that the purchaser could not have believed that the tax was paid. Id.

The fact that one or more of the sureties on a bond were worthless at the time of its execution, to the knowledge of the principal, is material evidence on the question of the fraudulent intention of the parties. U. S. v. Three Hundred and Eight Caddies of Tobacco (D. C. 1869) Fed. Cas. No. 16,501.

The act which casts upon claimant the burden of proving that the distiller's tax has been paid, held not repealed by Act July, 1868, as to prior seizures. Twenty-Six Barrels and Seventeen Tierces of Distilled Spirits (D. C. 1870) Fed. Cas. No. 14,283.

Proof that tubs were so placed in a distillery that they could be used contrary to the law is not sufficient to warrant a finding that they have been so used. U. S. v. Forty-Eight Hundred Gallons of Spirits (D. C. 1871) Fed. Cas. No. 15,153.

Where the evidence does not agree with the specification of the offense, it is fatal on an information of forfeiture. Id.

Previous fraudulent intent and previous fraudulent acts are admissible to show a fraudulent intent in a subsequent transaction. U. S. v. Quantity of Tobacco (D. C. 1871, 1872) Fed. Cas. Nos. 16,105, 16,106.

A verdict for defendant in a suit to forfeit goods for violation of the internal revenue laws will not be set aside as against the evidence, though as to a small part of the goods the court entertains no doubt that upon the evidence the verdict is wrong. U. S. v. One Hundred and Seventeen Packages of Plug Tobacco (D. C. 1879) Fed. Cas. No. 15,936.

In a proceeding for forfeiture, based

on a charge of fraud in violation of the internal revenue laws, the government will not be required, on motion of an intervening claimant, to produce, for the inspection of such claimant, all books and writings in its possession containing evidence pertinent to the issues, nor to produce or furnish copies of the original measurements of the packages containing the goods in question, such measurements being on file in the office of a collector of internal revenue outside the district where the proceeding is pending. U. S. v. 164 $^{8}/_{100}$ Proof Gallons of Distilled Spirits (D. C. 1897) 81 Fed. 614.

In a proceeding for the forfeiture of distilled spirits on the ground of a fraudulent violation of the internal revenue laws, the government will not be required, on motion of an intervening claimant, to furnish such claimant before trial with the report of the gauger showing the measurements of the packages containing such spirits, such report being on file in the proper district, and the claimant being entitled, on application there, to an inspection or a certified copy of the same. U. S. v. 164 $^{8}/_{100}$ Proof Gallons Distilled Spirits (D. C. 1897) 82 Fed. 204.

Under this section, court held not authorized in summary proceeding to order revenue officers to return property wrongfully seized, which it was intended to use as evidence in a criminal trial. U. S. v. Hee (D. C. 1915) 219 Fed. 1019. See Chaffee v. U. S. (1873) 18 Wall. 516, 21 L. Ed. 908.

29. **Verdict.**—A general verdict, on an information in several counts for a single forfeiture under the internal revenue laws, is valid if one count is good. Snyder v. U. S. (1884) 112 U. S. 216, 5 Sup. Ct. 118, 28 L. Ed. 697.

Where an information of forfeiture in different counts avers several frauds under different sections of the statute, a verdict of forfeiture will be sustained if any one count is good. U. S. v. One Distillery (D. C. 1871) Fed. Cas. No. 15,930.

In a suit to forfeit manufactured tobacco, raw materials, and certain tools, the words "condemning the goods," in a verdict "in favor of the United States," may be rejected as surplusage. U. S. v. Quantity of Tobacco (D. C. 1872) Fed. Cas. No. 16,106a.

30. **Costs.**—The regulation of September 2, 1867, charging informers with a proportionate share of the costs of the proceedings is valid; the secretary's power to issue regulations on the subject not having been previously exhausted. U. S. v. Twelve Barrels of Paraffine Oil (C. C. 1867) Fed. Cas. No. 16,552.

Claimants contesting a forfeiture under Act 1864, § 48, are subject to costs on a judgment of forfeiture. U. S. v. Seven Barrels Distilled Oil (D. C. 1868) Fed. Cas. No. 16,253a.

See, also, notes as to informers under § 6365, post.

Cited without definite application, Whisky Cases (1878) 99 U. S. 594, 25 L. Ed. 399; Coffey v. U. S. (1886) 6 Sup. Ct. 432, 434, 116 U. S. 427, 29 L. Ed. 681; U. S. v. Zucker (1896) 16 Sup. Ct. 641, 642, 161 U. S. 475, 40 L. Ed. 777; Same v. Two Barrels of Whisky (1899) 96 Fed. 479, 480, 37 C. C. A. 518; Same v. Patrick (C. C. 1893) 54 Fed. 338, 344; Same v. Olsen (D. C. 1893) 57 Fed. 579, 583; Same v. Jaedicke (D. C. 1896) 73 Fed. 100, 103; Same v. Two Barrels of Desiccated Eggs (D. C. 1911) 185 Fed. 302.

§ 6356. (R. S. § 3454.) Sales to evade tax; forfeiture.

Whenever any person who is liable to pay any tax upon any goods, wares, or merchandise, sells or causes or allows the same to be sold before the tax is paid to which said property is liable, with intent to avoid such tax, or in fraud of the internal-revenue laws, any debt contracted in such sale, and any security given therefor, unless the same shall have been bona fide transferred to an innocent holder, shall be void, and the collection thereof shall not be enforced in any court. And if such goods, wares, or merchandise have been paid for, in whole or in part, the sum so paid shall be deemed forfeited, and any person who shall sue for the same in an action of debt shall recover from the seller the amount so paid, one half to his own use and the other half to the use of the United States.

Act June 30, 1864, c. 173, § 180, 13 Stat. 305, 306.

Notes of Decisions

Void contract.—A contract in which the consideration was brandy made and sold in violation of the revenue laws of the United States, held void. Creekmore v. Chitwood (1870) 70 Ky. (7 Bush) 317.

§ 6357. (R. S. § 3455.) Disposing of or receiving empty stamped packages, etc.; penalties.

Whenever any person sells, gives, purchases, or receives any box, barrel, bag, vessel, package, wrapper, cover, or envelope of any

kind, stamped, branded, or marked in any way so as to show that the contents or intended contents thereof have been duly inspected, or that the tax thereon has been paid, or that any provision of the internal-revenue laws has been complied with, whether such stamping, branding, or marking may have been a duly authorized act or may be false and counterfeit, or otherwise without authority of law, said box, barrel, bag, vessel, package, wrapper, cover, or envelope being empty, or containing anything else than the contents which were therein when said articles had been so lawfully stamped, branded, or marked by an officer of the revenue, he shall be liable to a penalty of not less than fifty nor more than five hundred dollars. And every person who makes, manufactures, or produces any box, barrel, bag, vessel, package, wrapper, cover, or envelope, stamped, branded, or marked, as above described, or stamps, brands, or marks the same, as hereinbefore recited, shall be liable to penalty as before provided in this section. And every person who violates the foregoing provisions of this section, with intent to defraud the revenue, or to defraud any person, shall be liable to a fine of not less than one thousand nor more than five thousand dollars, or to imprisonment for not less than six months nor more than five years, or to both, at the discretion of the court. And all articles sold, given, purchased, received, made, manufactured, produced, branded, stamped, or marked in violation of the provisions of this section, and all their contents, shall be forfeited to the United States.

Act July 13, 1866, c. 184, § 16, 14 Stat. 152.

Notes of Decisions

What is embraced in the words "anything else."—Substances which are not in themselves taxable under the laws of the United States are not embraced in the words "anything else," as used in this section, providing for a seizure, forfeiture, and penalty for selling packages which contain, at the time of sale, anything else than the contents when the same were lawfully stamped by a revenue officer, even where there is no intent to defraud, and for a much heavier penalty where there is such fraudulent intent. U. S. v. A. Graf Distilling Co. (1908) 28 Sup. Ct. 264, 265, 208 U. S. 198, 52 L. Ed. 452.

Ground for forfeiture.—The sale of a barrel of whisky to which has been added, after such barrel has been properly stamped by a revenue officer, burnt sugar, or caramel, as coloring matter, does not authorize the seizure and forfeiture to the United States provided for by this section, when a barrel or other package contains anything else at the time of sale than the contents which were therein when lawfully stamped. U. S. v. A. Graf Distilling Co. (1908) 28 Sup. Ct. 264, 265, 208 U. S. 198, 52 L. Ed. 452.

False brands placed upon tobacco caddies by a revenue officer without any complicity in the fraud by claimant is no ground of forfeiture U. S. v. Eight Hundred Caddies of Tobacco (D. C. 1869) Fed. Cas. No. 15,036.

Under this section a person cannot buy a package containing distilled spirits, already stamped and branded, and take out the contents and put in other distilled spirits of a lower proof, without rendering the property subject to forfeiture, although the other spirits have paid the tax; and this result follows irrespective of any intent to defraud any private person. But no forfeiture would take place if the proof was reduced by natural causes, or by the addition of water. U. S. v. 9 Casks & Packages of Distilled Spirits (D. C. 1892) 51 Fed. 191.

The provision of this section which subjects to forfeiture every barrel, with its contents, which has been stamped or marked to show that the contents have been duly inspected or the internal revenue tax thereon has been paid, if such barrel contains "anything else" than the contents which were therein when said barrel was so stamped or marked, is plain and unambiguous, and must be literally construed. While the government would be estopped to claim a forfeiture of distilled spirits because of the addition of water thereto after the barrels or casks containing the same had been stamped, where the reduction was made in accordance with the regulation of the department permitting the same, such estoppel is not broader than the regulation, and the addition of a coloring matter to such spirits, such as caramel, is a violation of the statute, which subjects the liquor to forfeiture. U. S. v. Three Packages of Distilled Spirits (D. C. 1903) 125 Fed. 52, judgment reversed Three Packages of Distilled Spirits v. U. S. (1904) 129 Fed. 329, 63 C. C. A. 263.

Where the owner failed to cancel the

inspection brand on oil barrels which had contained kerosene, a sale of the empty barrels worked a statutory forfeiture to the United States, which related back to the time of the offense committed, and thus defeated any title. Dean v. Chapin (1871) 22 Mich. 275.

Information for forfeiture.—An information for a forfeiture of distilled spirits for violation of this section and section 6030, ante, held bad on demurrer, as not sufficiently definite to disclose to the court or claimant the precise nature of the act charged to be a violation of statute. U. S. v. Three Packages of Distilled Spirits (D. C. 1907) 152 Fed. 580.

Evidence in forfeiture proceedings.—Where, on an information to forfeit certain liquors on the ground that distilled spirits of a different quality had been put into the barrels after they were originally stamped and branded, in violation of this section, it was conceded that the claimant was entitled to reduce the proof by the addition of water, and the uncontradicted evidence showed that the spirits contained in the packages had been reduced in proof between 12 and 14 degrees, after they had been gauged and stamped, by the addition of water, in conformity with the law and in the presence of a government gauger, the discrepancy in the percentage of the alcohol contained in the liquor was insufficient to form a basis for an inference that the change was occasioned by the addition of "other spirits of a different quality." Three Packages of Distilled Spirits v. U. S. (1904) 129 Fed. 329, 63 C. C. A. 263, reversing judgment U. S. v. Three Packages of Distilled Spirits (D. C. 1903) 125 Fed. 52.

Where an information for the forfeiture of certain packages of liquors alleged that, after the barrels had been inspected, gauged, and stamped, something else than the contents which were therein when said barrels and packages were so lawfully stamped, branded, and marked, to wit, distilled spirits of a different quality, had been placed therein in violation of this section, evidence that at the time the proof of the liquors was reduced by the addition of water, after the packages had been stamped, some caramel coloring matter had been put into the packages to deepen the color, was not within the information, and therefore inadmissible. Id.

In a proceeding by the United States under this section for the forfeiture of whisky contained in the original distiller's barrels, but in which it is alleged that the whisky is other than that contained in the barrels when they were branded and marked by the gauger and that the claimants in whose possession the barrels were found received the same in such substituted condition with intent to defraud, the burden rests on the government to prove that they were in that condition when so received, and such fact cannot be inferred from the fact that they were in such condition when seized. W. F. Corbin & Co. v. U. S. (1910) 181 Fed. 296, 104 C. C. A. 278.

In such a proceeding it was competent for the government to introduce in evidence tabulated analyses of samples of the whisky in such barrels showing the per cent. of its congeneric properties and for comparison similar analyses of whisky taken from a large number of barrels produced by the same distillery under the same process, out of material in the same proportions and of substantially the same grade, placed in barrels of the same character of wood, treated in the same manner and stored in the same warehouse under practically the same conditions as to moisture and temperature, much of such whisky having been made in the same year, some in different years and a portion on the same day as some of the seized whisky, and the testimony being given by expert chemists who made the analyses. Id.

Decree by default as conclusive.—A decree by default against spirits seized while being removed on a truck is not conclusive against the owner of the truck and horses where he interposes a defense to the libel that the spirits were being removed with intent to defraud the revenue. U. S. v. Two Horses (D. C. 1878) Fed. Cas. No. 16,578.

Decisions under former acts.—See U. S. v. Thomasson (D. C. 1866) Fed. Cas. No. 16,478.

§ 6358. (R. S. § 3456, as amended, Act Feb. 27, 1877, c. 69, § 1.) Penalty and forfeiture by distillers, rectifiers, wholesale liquor-dealers, and manufacturers of tobacco or cigars, for omitting things required, and for doing things forbidden.

If any distiller, rectifier, wholesale liquor-dealer, or manufacturer of tobacco or cigars, shall knowingly or willfully omit, neglect, or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this Title prohibited, if there be no specific penalty or punishment imposed by any other section of this Title for the neglecting, omitting or refusing to do, or for the doing or causing to be done the thing required or prohibited, he shall pay a penalty of one thousand dollars; and if the person so offending be a distiller, rectifier, or

wholesale liquor dealer, all distilled spirits or liquors owned by him or in which he has any interest as owner, and if he be a manufacturer of tobacco or cigars, all tobacco or cigars found in his manufactory shall be forfeited to the United States.

Act July 20, 1868, c. 186, § 96, 15 Stat. 164. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 249.

This section, as enacted in the Revised Statutes, was amended by inserting after the words "a distiller, rectifier, or wholesale," the word "liquor," as set forth here, by Act Feb. 27, 1877, c. 69, § 1, cited above.

Notes of Decisions

See notes under §§ 6342, 5993, 6104, and 6204, ante.

Offenses to which statute applies.—Under Act July 20, 1868, § 96, where the statute has attached no punishment to the doing or omitting of acts required or forbidden, such act or omission, when knowingly or willfully committed, will be punished by the infliction of the penalty and forfeiture provided therein. U. S. v. One Thousand Four Hundred and Twelve Gallons of Distilled Spirits (C. C. 1873) Fed. Cas. No. 15,960; Same v. Ninety-Five Barrels of Distilled Spirits (D. C. 1870) Fed. Cas. No. 15,889; Same v. Four Thousand Eight Hundred Gallons of Spirits (D. C. 1871) Fed. Cas. No. 15,-153.

The rules and regulations which the commissioner of internal revenue is authorized by Act July 20, 1868, § 2, section 5983, ante, to prescribe, cannot have the effect of bringing a case under the operation of the penalty provided in section 96 (this section) if it was already covered by section 57, section 6162, ante, as the regulations of the department cannot have the effect of amending the law. U. S. v. Two Hundred Barrels of Whisky (1877) 95 U. S. 571, 576, 24 L. Ed. 491.

This section imposes upon rectifiers and wholesale liquor dealers the duty of causing to be done everything pertaining to their respective occupations which is necessary in order to enable others acting under the law to do what was required of them. If they fail, and there is no penalty provided for their neglect, they are subject to the provisions of this section, but if any other section prescribes a specific duty which if performed would enable the other parties to act in the proper manner, and a penalty was prescribed for the omission to perform such duty, they were not to be proceeded against under this section. Id.

Doing or omitting to do a thing knowingly and willfully implies not only a knowledge of the thing, but a determination with a bad intent to do it or omit to do it. Felton v. U. S. (1877) 96 U. S. 699, 702, 24 L. Ed. 875.

Parties are presumed to be acquainted with the utensils and machinery used in their business, but the law does not punish them where there is no intent to evade it, and usual means to comply therewith are adopted. Id.

All that is required to avoid the penalties of the law is to use in good faith the ordinary means by the employment of skilled artisans and competent inspectors to secure utensils and machinery which will accomplish the end desired. If defects should then exist, and the end sought be not attained, or defects not then open to observation should subsequently be discovered, the parties cannot be charged with "knowingly and willfully" omitting to do what is required. Id.

A distiller will not be held to a penalty imposed for knowingly and willfully violating the law, where he has procured suitable utensils and machinery, employed competent agents and workmen, and given proper directions to accomplish the end desired, and the violation claimed is a technical one only, and unintended, and arises from defects in the apparatus. Id.

The failure of the rectifier to cause spirits to be gauged and stamped as required by Act July 20, 1868, § 25, section 6102, ante, is punishable by section 57, section 6030, ante, and not by section 96. U. S. v. Two Hundred Barrels of Whisky (C. C. 1874) Fed. Cas. No. 16,585.

The penalties prescribed in section 96, Act July 20, 1868, apply to those who knowingly or willfully do or omit to do the thing forbidden or required, only when there is no specific penalty imposed by any other section of the act. U. S. v. One Rectifying Establishment (D. C. 1869) Fed. Cas. No. 15,-952; Same v. Rectifying Establishment (D. C. 1870) Fed. Cas. No. 16,131.

A distiller who failed to arrange his distillery apparatus, as prescribed by section 16, Act July 20, 1868, has no authority to manufacture spirits, and is subject to the penalty prescribed by section 96; and this whether he intended to defraud the revenue or not. U. S. v. McKim (D. C. 1869) Fed. Cas. No. 15,693.

The knowing and willful omission, neglect, or refusal of the wholesale liquor dealer to cause packages of distilled spirits to be gauged, inspected, and stamped (Act July 20, 1868, § 25) will expose all distilled spirits and liquors owned by him to forfeiture under section 96. U. S. v. One Hundred and Thirty-Three Casks of Distilled Spirits (D. C. 1870) Fed. Cas. No. 15,940.

A distiller does not "omit, neglect, or refuse to do, or cause to be done" anything which the law does not require

him, but some other person, to do. Act July 20, 1868, § 96. U. S. v. Thirty-Seven Barrels of Apple Brandy (D. C. 1870) Fed. Cas. No. 16,466.

Section 96, Act July 20, 1868, is not applicable to offenses under section 47, section 6104, ante, which prescribes a punishment in its own terms for an infraction of its requirements. U. S. v. Thirty-Four Barrels Distilled Spirits (D. C. 1871) Fed. Cas. No. 16,461.

Omissions of a wholesale dealer to stamp or mark packages containing more than five gallons are not within the penalty prescribed in section 96. Act July 20, 1868. Id.

Offense under former penal statute not authorizing indictment.—The rule requiring a criminal or unlawful attempt as an element of an offense does not apply to penal statutes not authorizing indictments. U. S. v. Thomasson (D. C. 1866) Fed. Cas. No. 16,478.

Ground of forfeiture.—Merely tacking a piece of newspaper over the stamped end of a barrel of distilled spirits is no ground of forfeiture under the internal revenue laws and the regulations of the internal revenue department. U. S. v. Three Barrels of Whisky (C. C. 1896) 77 Fed. 963.

Spirits subject to forfeiture under this and former law.—Only the spirits owned by the distiller, rectifier, or wholesale liquor dealer, or those in which he has an interest as owner at the time of the discovery of his offense, are forfeited by section 96. Act July 20, 1868. U. S. v. Two Hundred Barrels of Whisky (C. C. 1874) Fed. Cas. No. 16,585; Same v. Thirty-Seven Barrels of Apple Brandy (D. C. 1870) Fed. Cas. No. 16,466.

Act July 20, 1868 (15 Stat. 164), § 57, ante, § 6030, provides that all distilled spirits found in any cask or package containing 5 gallons or more, and not properly marked and stamped as required by law, shall be forfeited. Held, that the omission of a distiller to cause packages of distilled spirits containing more than 20 gallons each to be gauged, inspected, and stamped according to Act July 20, 1868 (15 Stat. 164), § 25, ante, § 6102, does not warrant forfeiture under section 96, this section; a specified penalty being provided by section 57, ante, § 6030. U. S. v. 200 Barrels of Whisky (1877) 95 U. S. 571, 24 L. Ed. 491.

Spirits manufactured by the distiller, and still owned by him, are liable to forfeiture wherever they may be found in the United States. U. S. v. Three Hundred and Ninety-Six Barrels of Distilled Spirits (D. C. 1866) Fed. Cas. No. 16,502.

Spirits in bond may be forfeited for noncompliance with the provisions of the internal revenue laws. U. S. v. Quantity of Distilled Spirits (D. C. 1867) Fed. Cas. No. 16,100.

The forfeiture denounced by Act July 13, 1866, applies only to spirits in the possession of the offender at the time of the act or neglect causing forfeiture. U. S. v. One Water Cask (D. C. 1869) Fed. Cas. No. 15,966.

Conviction of corporate officer or stockholder as barring suit to enforce forfeiture.—After an officer and stockholder of a corporation engaged in distilling is convicted for a violation of the Internal Revenue Law, an action cannot be maintained to enforce the forfeiture of the corporation's property for the same offense, even though the forfeiture is resisted only by the other stockholders. U. S. v. One Distillery (D. C. 1890) 43 Fed. 846, judgment affirmed (1899) 19 Sup. Ct. 624, 174 U. S. 149, 43 L. Ed. 929.

Separate suits to recover penalty and enforce forfeiture.—Separate suits will lie to recover the penalty of $500, and to enforce a forfeiture for neglect to report the use of vessels, etc., in distilling liquors. Act July 1, 1862. U. S. v. Belding (C. C. 1870) Fed. Cas. No. 14,562.

Conclusiveness of decree of forfeiture.—A decree of forfeiture of spirits for alleged frauds on the revenue is not conclusive in a subsequent proceeding for the forfeiture of the distillery and numerous articles contained therein. U. S. v. One Distillery (D. C. 1871) Fed. Cas. No. 15,930.

Cited without definite application, Whisky Cases (1878) 99 U. S. 594, 25 L. Ed. 399.

§ 6359. (R. S. § 3457.) Package included in forfeiture of goods.

In every case where any goods or commodities are forfeited under any internal-revenue law, all casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained such goods or commodities, respectively, shall be forfeited.

Act July 13, 1866, c. 184, § 14, 14 Stat. 151.

Cited without definite application,
Coffey v. U. S. (1886) 6 Sup. Ct. 432, 434, 116 U. S. 427, 29 L. Ed. 681.

§ 6360. (R. S. § 3458.) Goods seized may be delivered to marshal before process issues.

Any goods, wares, merchandise, articles, or objects which may be

seized, under the provisions of section thirty-four hundred and fifty-three, by any collector or deputy collector, may, at the option of the collector, be delivered to the marshal of the district, and remain in the care and custody and under the control of said marshal, until he shall obtain possession by process of law. And the cost of seizure made before process issues shall be taxable by the court. And where any whisky or tobacco, or other article of manufacture or produce, requiring brands, stamps or marks of whatever kind to be placed thereon, shall be sold upon distraint, forfeiture, or other process provided by law, the same not having been branded, stamped, or marked, as required by law, the officers selling the same shall, upon sale thereof, fix or cause to be affixed the brands, stamps, or marks, so required, and deduct the expense thereof from the proceeds of such sale.

Act June 30, 1864, c. 173, § 48, 13 Stat. 240. Act July 13, 1866, c. 184, § 9, 14 Stat. 112.

Notes of Decisions

Custody of property attached by marshal.—Property seized under the internal revenue laws, when the same is attached by the marshal under judicial process, remains in his possession, and is not in general delivered to the collector, and such property is in the custody of the law, or of the court. Averill v. Smith (1872) 17 Wall. 82, 92, 21 L. Ed. 613.

Discharge of bond.—A bond on which suit was brought, having been executed for the sole purpose of securing payment of taxes, was discharged by forfeiture, seizure, and sale of bonded spirits, and was discharged as against the contention that the forfeiture, being for the fraudulent acts of the distiller in seeking to evade payment of the tax, was quasi criminal and merely a punishment, and not a payment of the tax. In this case the marshal procured from the collector the necessary stamps and placed them on the packages containing the spirits. U. S. v. Ulrici (1884) 4 Sup. Ct. 288, 289, 290, 111 U. S. 38, 28 L. Ed. 344.

Cited without definite application, U. S. v. 59,650 Cigars (D. C. 1905) 138 Fed. 166, 167, affirmed (1906) 146 Fed. 130, 76 C. C. A. 556.

§ 6361. (R. S. § 3459.) Bailing of goods seized; sale for want of bail.

When any property which is seized under the foregoing provisions of section thirty-four hundred and fifty-three is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense, the owner thereof, or the marshal of the district, may apply to the collector of the district to examine it; and if, in the opinion of the said collector, it shall be necessary that the said property should be sold to prevent such waste or expense, he shall appraise the same; and thereupon the owner shall have said property returned to him upon giving bond in such form as may be prescribed by the Commissioner of Internal Revenue, and in an amount equal to the appraised value, with such sureties as the collector shall deem good and sufficient, to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of said appraised value to the collector, marshal, or otherwise, as he may be ordered and directed by the court, which bond shall be filed by said collector with the United States district attorney for the district in which said proceedings in rem may be commenced: Provided, That in case said bond shall have been executed and the property returned before seizure thereof by virtue of the process aforesaid, the marshal shall give notice of pendency of proceedings in court to the parties executing said bond, by personal service or publication, and in such manner and form as the court may direct, and the court shall thereupon have jurisdiction of said matter and parties in the same manner as if such property had been seized by virtue of the process aforesaid. But if said owner shall neglect or refuse to give said bond, the collector shall issue to a deputy collector or to the marshal aforesaid an order to sell the same;

and the deputy collector or marshal shall thereupon advertise and sell the said property at public auction in the same manner as goods may be sold on final execution in said district; and the proceeds of the sale, after deducting the reasonable costs of the seizure and sale, shall be paid to the court aforesaid, to abide its final order, decree, or judgment.

Act June 30, 1864, c. 173, § 48, 13 Stat. 241. Act July 13, 1866, c. 184, § 9, 14 Stat. 112.

Notes of Decisions

1. Power of district court to discharge property on bail.
2. When property will not be released on bond.
3. Application to bond.
4. Delivery of property to claimant.
5. Release on bond as affecting jurisdiction of condemnation proceedings.
6. Sale of released property.
7. Notice to persons executing bond.
8. Defense of surety.
9. Action on bond.
10. Sale of seized property.

1. Power of district court to discharge property on bail.—The district court has power to discharge upon bail property in custody in cases of seizure under Act June 30, 1864, §§ 48, 50. U. S. v. Three Hundred Barrels of Whisky (D. C. 1865) Fed. Cas. No. 16,510. But see Same v. Sixty-Nine Barrels of Rum (D. C. 1865) Fed. Cas. No. 16,307.

2. When property will not be released on bond.—Distillery property seized for violation of the revenue laws will not be released on bond where no profit would be derived by its owner from its lawful use. U. S. v. Two Tons of Coal (C. C. 1867) Fed. Cas. No. 16,590.

Distillery property libeled for alleged violation of the revenue laws will not be bonded where there is reasonable ground to believe on the evidence that the law has been violated. In re Quantity of Distilled Spirits (D. C. 1868) Fed. Cas. No. 11,493.

3. Application to bond.—A claim for delivery, on bond, of goods seized for forfeiture, for violation of the internal revenue laws, is one for a favor, and terms may be imposed. U. S. v. Lot of Leaf Tobacco (D. C. 1867) Fed. Cas. No. 15,627.

On application to bond the government need not furnish the details of its evidence further than is necessary to show reasonable and probable ground to sustain the prosecution. In re Quantity of Distilled Spirits (D. C. 1868) Fed. Cas. No. 11,493.

4. Delivery of property to claimant.—Property seized for forfeiture may be delivered to the claimant on his giving stipulations for its appraised value, less the amount of tax due on it, and paying the latter amount into court. U. S. v. Lot of Leaf Tobacco (D. C. 1867) Fed. Cas. No. 15,627.

5. Release on bond as affecting jurisdiction of condemnation proceedings.—Where property is seized for taxes due from a distiller, its subsequent release on bond does not divest jurisdiction to go on with the condemnation proceedings. U. S. v. Mackoy (C. C. 1872) Fed. Cas. No. 15,696.

6. Sale of released property.—Property so released may be sold by the owner, bona fide, so as to give a good title to the purchaser; but, except where it will interfere with subsequently acquired rights of third persons, the court may reseize the property, and order it sold. U. S. v. Mackoy (C. C. 1872) Fed. Cas. No. 15,696.

7. Notice to persons executing bond.—Where goods, seized by a collector for violation of the internal revenue law, under section 6355, ante, are attached while in his hands by the marshal on process issued in proceedings for their forfeiture, and a bond for their release is thereafter given by the claimant under this section, the proviso to said section, requiring notice of the pendency of the proceedings in court to be given to the parties executing the bond, is inapplicable; such notice being intended to take the place of an actual seizure by the marshal where the goods have been returned to the claimant under the bond before such seizure has been made, and unnecessary where the attachment has been made, and the proceeding in rem is pending when the bond is given. U. S. v. 59,650 Cigars (1906) 146 Fed. 130, 78 C. C. A. 556, affirming judgment (D. C. 1905) 138 Fed. 166.

The notice required to be given to persons executing a bond for the return of property seized is that prescribed by this section, and not the previous rules of the court. U. S. v. Seventeen Empty Barrels (C. C. 1875) Fed. Cas. No. 16,255.

8. Defense of surety.—It is no defense to a bond that it was executed on the agreement that it should be signed by another, and that such other was falsely personated, when defendant procured such personation. U. S. v. Quantity of Distilled Spirits (D. C. 1870) Fed. Cas. No. 16,099.

It is no defense to a surety in a stipulation for property seized that on appeals by the claimant bonds were taken without surety, with the approval of the district attorney, and that

government bonds had been given as further security, which had been stolen. U. S. v. Quantity of Manufactured Tobacco (D. C. 1878) Fed. Cas. No. 16,-102.

9. Action on bond.—While a judgment of condemnation of goods seized for violation of the revenue laws stands unsatisfied, the obligation to pay on a bond given to abide the judgment of the court making the seizure is absolute; and therefore, in an action on such a bond, it is not proper to move to open the judgment of the court which gave the sentence of condemnation on the ground that it erred in holding that a pardon for the criminal offense involved in the breach of law did not bar proceedings to condemn the goods seized. U. S. v. Bergenthal (D. C. 1886) 29 Fed. 444.

10. Sale of seized property.—Perishable property seized under the internal revenue laws may be sold, and the proceeds paid into the registry of the court, and the proceeds represent the property, and the claimant must move the court for orders for the return of the proceeds. Averill v. Smith (1872) 17 Wall. 82, 95, 21 L. Ed. 613.

Where, pursuant to this section, a proceeding was instituted and carried out to sell a barge and a quantity of distilled spirits and utensils for making the same as perishable, the property having been seized for violation of the revenue laws, it is the duty of the purchaser, seeking to avail himself of such title, to make out by proof all the necessary steps required by that provision of the statute to give jurisdiction to the collector to sell. Tracey v. Corse (N. Y. 1873) 45 How. Prac. 316.

The power of making summary sale, conferred upon a collector of internal revenue by this section is ministerial, and a sale made by a collector in a case not within the statute neither devests nor confers a title. Only property seized under and in the cases mentioned in said section is subject to this power. Tracey v. Corse (1874) 58 N. Y. 143.

§ 6362. (R. S. § 3460.) Proceedings on seizure of goods valued at $500 or less; list and appraisement; notice of seizure; claims to be filed; bond of claimant; sale of goods and disposal of proceeds.

In all cases of seizure of any goods, wares, or merchandise, as being subject to forfeiture under any provision of the internal-revenue laws, which, in the opinion of the collector or deputy collector making the seizure, are of the appraised value of five hundred dollars or less, the said collector or deputy collector shall, except in cases otherwise provided, proceed as follows:

First. He shall cause a list containing a particular description of the goods, wares, or merchandise seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers, to be selected by him, who shall be respectable and disinterested citizens of the United States residing within the collection-district wherein the seizure was made. Said list and appraisement shall be properly attested by the said collector or deputy collector and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar and fifty cents a day, to be paid in the manner provided by law for other necessary charges of collectors.

Second. If the said goods are found by the said appraisers to be of the value of five hundred dollars or less, the said collector or deputy collector shall publish a notice, for three weeks, in some newspaper of the district where the seizure was made, describing the articles, and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice.

Third. Any person claiming the goods, wares, or merchandise so seized, within the time specified in the notice, may file with the said collector or deputy collector a claim, stating his interest in the articles seized, and may execute a bond to the United States in the penal sum of two hundred and fifty dollars, with sureties to be approved by the said collector or deputy collector, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bond to the collector or dep-

uty collector, he shall transmit the same, with the duplicate list or description of the goods seized, to the United States district attorney for the district, and said attorney shall proceed thereon in the ordinary manner prescribed by law.

Fourth. If no claim is interposed and no bond is given within the time above specified, the collector or deputy collector, as the case may be, shall give ten days' notice of the sale of the goods, wares, or merchandise by publication, and, at the time and place specified in the notice, shall sell the articles so seized at public auction, and, after deducting the expense of appraisement and sale, he shall deposit the proceeds to the credit of the Secretary of the Treasury.

Act July 13, 1866, c. 184, § 63, 14 Stat. 169. Act June 6, 1872, c. 315, § 40, 17 Stat. 257.

Commissioners appointed by a district judge were authorized, to administer the oaths to the appraisers, by R. S. § 570, which was incorporated into Jud. Code, § 61, ante, § 1043, and was repealed by section 297 of said Code, ante, § 1274.

Notes of Decisions

See notes under § 6355, ante.

Suit against officer for trespass.—Act July 13, 1866, § 63, does not prevent the owner of goods seized unlawfully from suing the seizing officer for trespass. Cardinel v. Smith (C. C. 1867) Fed. Cas. No. 2,395.

A deputy collector of the duty on carriages made a distress under Act Dec. 15, 1814, § 4, and contrary to law sold it at auction for less than half its value, within two hours after seizure and without giving public notice of the time of sale. Held, that he was a trespasser ab initio and liable for damages. Blake v. Johnson (1817) 1 N. H. 91.

See, also, notes under § 5944, ante.

Cited without definite application. Agnew v. Haymes (1905) 141 Fed. 631, 72 C. C. A. 325.

§ 6363. (R. S. § 3461.) Application for remission and return of proceeds; distribution.

Within one year after the sale of any goods, wares, or merchandise, as provided in the preceding section, any person claiming to be interested in the property sold may apply to the Secretary of the Treasury for a remission of the forfeiture thereof, or of any part thereof, and a restoration of the proceeds of the sale; and the said Secretary may grant the same upon satisfactory proof, to be furnished in such manner as he shall prescribe: Provided, That it shall be satisfactorily shown that the applicant, at the time of the seizure and sale of the said property, and during the intervening time, was absent, out of the United States, or in such circumstances as prevented him from knowing of the seizure, and that he did not know of the same; and also that the said forfeiture was incurred without willful negligence or any intention of fraud on the part of the owner of said property. If no application for such restoration is made within one year, as hereinbefore prescribed, the Secretary of the Treasury shall, at the expiration of the said time, cause the proceeds of the sale of the said property to be distributed according to law, as in the case of goods, wares, or merchandise condemned and sold pursuant to the decree of a competent court.

Act July 13, 1866, c. 184, § 63, 14 Stat. 169. Act June 6, 1872, c. 315, § 40, 17 Stat. 257.

§ 6364. (R. S. § 3462.) Search-warrants.

The several judges of the circuit and district courts of the United States, and commissioners of the circuit courts, may, within their respective jurisdictions, issue a search-warrant, authorizing any internal-revenue officer to search any premises within the same, if such officer makes oath in writing that he has reason to believe, and does believe, that a fraud upon the revenue has been or is being committed upon or by the use of the said premises.

Act July 13, 1866, c. 184, § 15, 14 Stat. 152.

Notes of Decisions

Application to special taxes under Oleomargarine Act.—This section and section 5900, ante, apply to the collection of special taxes imposed by the

Oleomargarine Act. Kercheval v. Allen (1915) 220 Fed. 262, 135 C. C. A. 1.

What is included in phrase "goods, wares, and merchandise."—The phrase "goods, wares, and merchandise" is sufficiently broad to include a team of mules used for the removal of spirits with intent to defraud the government, in violation of section 3450. Pilcher v. Faircloth (1902) 33 South. 545, 135 Ala. 311.

Application for warrants.—This section does not state all that must be included in the application for warrants. The fifth amendment to the Constitution provides that "no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized." (1903) 24 Op. Atty. Gen. 685.

Duty of commissioners to issue warrants.—Although no compensation is provided therefor, it is the duty of United States commissioners to issue search warants in internal revenue cases when properly applied for. (1903) 24 Op. Atty. Gen. 685.

Refusal of commissioner to issue warrant.—If a United States commissioner refuses, on proper application, to issue a search warrant, the facts may be brought by petition or otherwise to the attention of the court appointing such recusant officer for such action as it deems proper. (1903) 24 Op. Atty. Gen. 685.

Seizure under warrant as violating constitutional right.—Seizure of articles, papers, and notes by internal revenue officers under a search warrant while making a raid on defendants' place of business for alleged violation of Oleomargarine Act, § 17, section 6229, ante, held not a violation of defendant's constitutional right to be free from unlawful searches and seizures. May v. U. S. (1912) 199 Fed. 53, 117 C. C. A. 431.

Officer, who may execute warrant.—This section does not require that searches thereunder shall be made only by the officer who verified the application for the search warrant. Kercheval v. Allen (1915) 220 Fed. 262, 135 C. C. A. 1.

Legality of search.—Execution of warrant to search premises, under this section, by entering through open door at half past 8 at night, held not illegal. Kercheval v. Allen (1915) 220 Fed. 262, 135 C. C. A. 1.

Liability of officers for damages and actions therefor.—Even though search was limited to revenue officer verifying application for warrant, held, that in action for damages the court's charge, and its refusal of instructions, were not erroneous. Kercheval v. Allen (1915) 220 Fed. 262, 135 C. C. A. 1.

Search warrant, fair on its face, held to protect internal revenue officers, whether proper application was made for the warrant, and whether United States commissioner properly exercised his discretion in issuing it. Id.

Where no complaint was made that internal revenue officers seized any of plaintiff's papers under search warrant, held that, in action for damages, plaintiff could not attack the warrant because it authorized such seizure. Id.

Instruction that collector of internal revenue was liable for acts of deputies shown by the evidence held properly refused, where some of the acts shown were lawful, and not injurious, and there was an issue as to the occurrence of other acts. Id.

Collector of internal revenue held not liable for punitive damages for acts of other revenue officers, and an instruction as to such damages against him was properly refused. Id.

Cited without definite application, U. S. v. Allred (1895) 15 Sup. Ct. 231, 233, 155 U. S. 591, 39 L. Ed. 273; Same v. Hom Hing (D. C. 1892) 48 Fed. 635, 639.

§ 6365. (R. S. § 3463.) Detection and punishment of frauds.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal-revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law.

Act March 2, 1867, c. 169, § 7, 14 Stat. 473.

Notes of Decisions

Offers of reward.—When the government offers a reward for information which shall lead to the "conviction," the conditions of the offer will be deemed complied with if there be a verdict of guilty followed by a motion of the district attorney to suspend judgment on the payment of all costs. Williams v. U. S. (1876) 12 Ct. Cl. 192.

This act is broad enough to sustain an offer of a reward for information leading to the forfeiture of illicit distilleries and the conviction of the persons operating them. The fact that in-

formers may share in the proceeds of forfeited distilleries, under another statute, does not provide for the "expenses" as contemplated by this act. Williams v. U. S. (1876) 12 Ct. Cl. 192.

Information to officers.—The information must be a plain statement in writing of some one substantial cause, matter, or thing, whereby a fine, penalty, or forfeiture shall have been incurred, and it must be sworn to, if required by the officer. U. S. v. Funkhouser (D. C. 1868) Fed. Cas. No. 15,177.

The information must be given to some government official who has the power and duty to act thereon, and, where several causes exist, information of any one is sufficient. Id.; U. S. v. One Hundred Barrels of Distilled Spirits (D. C. 1868) Fed. Cas. No. 15,946.

Revenue officers as informers under former laws.—See U. S. v. Two Hundred and Seventy-Eight Barrels of Distilled Spirits (C. C. 1877) Fed. Cas. No. 16,581; Same v. One Hundred Barrels of Distilled Spirits (D. C. 1868) Fed. Cas. No. 15,946; Same v. Thirty-Four Barrels of Whisky (D. C. 1868) Fed. Cas. No. 16,462; In re Four Cutting Machines (D. C. 1869) Fed. Cas. No. 4,987.

Compensation of informers under former law.—See U. S. v. Twenty-Five Thousand Segars (C. C. 1867) Fed. Cas. No. 16,565; Same v. Ninety-Five Barrels of Distilled Spirits (C. C. 1868) Fed. Cas. No. 15,888; Same v. Twenty-Five Thousand Gallons of Distilled Spirits, Id. 16,564; In re Eight Barrels of Distilled Spirits (D. C. 1867) Fed. Cas. No. 4,316; One Hundred Barrels of Whisky, Id. 10,526; In re One Still, Id. 10,534; In re Twenty-Five Thousand Gallons of Distilled Spirits, Id. 14,282; U. S. v. Hook, Id. 15,387; Same v. One Still, Id. 15,955; Same v. Seven Large Fermenting Tubs, Id. 16,254; Same v. Twenty Barrels of Distilled Spirits, Id. 16,557; Same v. Funkhouser (D. C. 1868) Fed. Cas. No. 15,177; Rice v. Thayer (1870) 105 Mass. 258, 7 Am. Rep. 516.

Cited without definite application, Crane v. U. S. (1888) 23 Ct. Cl. 94.

§ 6366. (Act March 3, 1893, c. 208.) Statement of expenditures for punishment of violations, etc.

Punishment for violations of internal-revenue laws: For detecting and bringing to trial and punishment persons guilty of violating the internal-revenue laws, or conniving at the same, including payments for information and detection of such violations, * *; and the Commissioner of Internal Revenue shall make a detailed statement to Congress once in each year as to how he has expended this sum, and also a detailed statement of all miscellaneous expenditures in the Bureau of Internal-Revenue for which appropriation is made in this act. (27 Stat. 587.)

This was a provision of the sundry civil appropriation act for the fiscal year 1894, cited above.

A substantially similar provision was made by former appropriation acts. The use of the words "once in each year" may be regarded as indicating an intention that the provision shall be permanent, but it is repeated in the same language in the sundry civil appropriation acts for the subsequent years. The provision for the fiscal year 1914 was by Act June 23, 1913, c. 3, § 1, 38 Stat. 20.

§ 6367. (R. S. § 3464.) Purchasing for the Government goods subject to tax.

The privilege of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, which now does or hereafter shall exist by provision of law, shall be extended, under such regulations as the Secretary of the Treasury may prescribe, to all articles of domestic production which are subject to tax by the provisions of this Title.

Notes of Decisions

Withdrawal of spirits from bond.—Packages of distilled spirits purchased by the United States while in a bonded warehouse, and ordered by the secretary of the treasury to be allowed to be withdrawn "free of tax," under the provisions of this section, are thereby withdrawn entirely from the operation of the internal revenue laws, and there is no occasion for the regauging and adjustment of the tax thereon, as upon a withdrawal for private consumption, and the distiller cannot be charged with the tax upon a claimed excess of shrinkage therein. U. S. v. Mullins (1902) 119 Fed. 334, 56 C. C. A. 238, writ of certiorari denied (1903) 23 Sup. Ct. 851, 189 U. S. 513, 47 L. Ed. 924.

Spirits purchased for the National Soldiers' Home at Washington, D. C.,

are purchased "for the use of the United States" within the meaning of this section, and may be withdrawn from bonded warehouses without payment of internal revenue tax. (1905) 25 Op. Atty. Gen. 449.

§ 6368. (R. S. § 3465.) Construction of certain revenue acts.

An act entitled "An act further to provide for the collection of duties on imports," passed March second, eighteen hundred and thirty-three, shall not be so construed as to apply to cases arising under an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," passed June thirtieth, eighteen hundred and sixty-four, or any act in addition thereto or in amendment thereof, nor to any case in which the validity or interpretation of said act or acts shall be in issue.

Act March 2, 1833, c. 57, 4 Stat. 632–635. Act June 30, 1864, c. 173, 13 Stat. 223–306.

Notes of Decisions

Application to direct tax act.—This statute does not apply to the direct tax act. Eaton v. Calhoun (C. C. 1880) 15 Fed. 155, 157.

§ 6369. (Act April 12, 1902, c. 500, § 8.) Lien for taxes on legacies, etc.

All taxes or duties imposed by section twenty-nine of the Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, prior to the taking effect of this Act, shall be subject, as to lien, charge, collection, and otherwise, to the provisions of section thirty of said Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, which are hereby continued in force, as follows:

"Sec. 30. That the tax or duty aforesaid shall be due and payable in one year after the death of the testator and shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee having in charge or trust any legacy or distributive share, as aforesaid, shall give notice thereof, in writing, to the collector or deputy collector of the district where the deceased grantor or bargainer last resided within thirty days after he shall have taken charge of such trust, and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident, or in which the property was located in case of nonresidents, the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered, and the tax thereon paid to such collector; and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax a receipt or receipts for the same in duplicate, which shall be prepared as hereinafter provided. Such receipt or receipts, duly

signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allowed such payment by every tribunal which, by the laws of any State or Territory, is, or may be, empowered to decide upon and settle the accounts of executors and administrators. And in case such executor, administrator, or trustee shall refuse or neglect to pay the aforesaid duty or tax to the collector or deputy collector, as aforesaid, within the time hereinbefore provided, or shall neglect or refuse to deliver to said collector or deputy collector the duplicate of the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall neglect or refuse to deliver the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall deliver to said collector or deputy collector a false schedule or statement of such legacies, property, or personal estate, or give the names and relationship of the persons entitled to beneficial interests therein untruly, or shall not truly and correctly set forth and state therein the clear value of such beneficial interest, or where no administration upon such property or personal estate shall have been granted or allowed under existing laws, the collector or deputy collector shall make out such lists and valuation as in other cases of neglect or refusal, and shall assess the duty thereon; and the collector shall commence appropriate proceedings before any court of the United States, in the name of the United States, against such person or persons as may have the actual or constructive custody or possession of such property or personal estate, or any part thereof, and shall subject such property or personal estate, or any portion of the same, to be sold upon the judgment or decree of such court, and from the proceeds of such sale the amount of such tax or duty, together with all costs and expenses of every description to be allowed by such court, shall be first paid, and the balance, if any, deposited according to the order of such court, to be paid under its direction to such person or persons as shall establish title to the same. The deed or deeds, or any proper conveyance of such property or personal estate, or any portion thereof, so sold under such judgment or decree, executed by the officer lawfully charged with carrying the same into effect, shall vest in the purchaser thereof all the title of the delinquent to the property or personal estate sold under and by virtue of such judgment or decree, and shall release every other portion of such property or personal estate from the lien or charge thereon created by this Act. And every person or persons who shall have in his possession, charge, or custody any record, file, or paper containing, or supposed to contain, any information concerning such property or personal estate, as aforesaid, passing from any person who may die, as aforesaid, shall exhibit the same at the request of the collector or deputy collector of the district, and to any law officer of the United States, in the performance of his duty under this Act, his deputy or agent, who may desire to examine the same. And if any such person, having in his possession, charge, or custody any such records, files, or papers, shall refuse or neglect to exhibit the same on request, as aforesaid, he shall forfeit and pay the sum of five hundred dollars: Provided, That in all legal controversies where such deed or title shall be the subject of judicial investigation, the recital in said deed shall be prima facie evidence of its truth, and that the requirements of the law had been complied with by the officers of the Government: And provided further, That in case of willful neglect, refusal, or false statement by such executor, administrator, or trustee, as aforesaid, he shall be liable to a penalty of not exceeding one thousand dollars, to be recovered with costs of suit. Any tax paid under the provisions of sections twenty-nine and thirty shall be

deducted from the particular legacy or distributive share on account of which the same is charged." (32 Stat. 97.)

This section was part of an act to repeal war-revenue taxation, etc., cited above.

Act June 13, 1898, c. 448, § 29, 30 Stat. 464, mentioned in this section, was one of the sections repealed by section 7 of this act; and section 30 of that act, as amended by Act March 2, 1901, c. 806, § 11, 31 Stat. 948, was continued in force by this section.

Notes of Decisions

Taxes saved by statute.—This section saves only taxes imposed prior to its taking effect. Eidman v. Tilghman (1907) 27 Sup. Ct. 779, 203 U. S. 580, 51 L. Ed. 326, affirming judgment (1905) 136 Fed. 141, 69 C. C. A. 139, which affirmed Tilghman v. Eidman (C. C. 1904) 131 Fed. 651.

The inheritance tax imposed by War Revenue Act 1898, although not "due and payable" under section 30 of that act, as amended by Act March 2, 1901, c. 806, § 11, 31 Stat. 948, until one year after the death of the testator, must be deemed to have become an obligation immediately upon the passing by death of a vested right to the present possession or enjoyment of a legacy or distributive share, so as to be within the saving clause of this section, preserving all taxes "imposed" prior to the taking effect of that act, although the testator's death was less than one year prior to such date, in view of section 14, ante, providing that the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred thereunder, unless the repealing act shall expressly so provide. Hertz v. Woodman (1910) 30 Sup. Ct. 621, 218 U. S. 205, 54 L. Ed. 1001.

Where the interests of certain legatees in two-thirds of the residue of testator's estate were vested in enjoyment, but not in possession, at the time War Revenue Act June 13, 1898, c. 448, §§ 29, 30, 30 Stat. 464, 465, were repealed by Act April 12, 1902, c. 500, §§ 7, 8, 32 Stat. 97, because the executors would not pay any legacy, principal, or income until one year after the granting of letters, such interests were taxable. Ward v. Sage (1911) 185 Fed. 7, 108 C. C. A. 413.

When tax imposed.—The tax provided for by section 29 of the war revenue act of 1898, being an ad valorem tax, was not "imposed," within the meaning of this section, until its assessment. U. S. v. Marion Trust Co. (1907) 27 Sup. Ct. 794, 205 U. S. 539, 51 L. Ed. 1191.

Within the meaning of this section, a tax was "imposed" one year after the death of a testator, and where such year expired prior to July 1, 1898, the tax was collectible, although not assessed until after such date. Title Guarantee & Trust Co. v. Ward (1911) 184 Fed. 447, 107 C. C. A. 41, affirming judgment (C. C. 1908) 164 Fed. 459, and writ of certiorari denied (1911) 31 Sup. Ct. 723, 220 U. S. 620, 55 L. Ed. 613.

A legacy tax under War Revenue Act June 13, 1898, c. 448, § 29, 30 Stat. 464, was not "imposed" within the meaning of the saving clause of this section until its assessment, and there remained no power to make a valid assessment after July 1, 1902, when the repealing act took effect. Farrell v. U. S. (D. C. 1909) 167 Fed. 639.

Cited without definite application, Baldwin v. Eidman (D. C. 1913) 202 Fed. 968.

§ 6370. [Obsolete.]

This section was section 1 of "an act extending the time for the repayment of certain war-revenue taxes erroneously collected," Act July 27, 1912, c. 256, 37 Stat. 240. It provided for the refunding of any internal tax illegally assessed and collected under Act June 13, 1898, c. 448, § 29, which act was repealed by Act April 12, 1902, c. 500, § 7, 32 Stat. 97. It further provided that claims for refundment should be presented on or before Jan. 1, 1914, Act Sept. 8, 1916, c. 463, §§ 200–212, set forth ante, §§ 6336½a–6336½m imposes a new tax designated as an estate tax.

Provisions for refunding taxes paid on legacies and for sums paid for stamps used on export bills of lading, under Act June 13, 1898, were made by Act June 27, 1902, c. 1160, 32 Stat. 406.

Sums paid for stamps used on foreign bills of exchange drawn, between July 1, 1898, and June 30, 1901, against the value of products or merchandise exported, were to be refunded, by a provision of Act Feb. 1, 1909, c. 53, 35 Stat. 590.

The time for the presentation of claims under Act Feb. 1, 1909, c. 53, 35 Stat. 590, was extended by a provision of the urgent deficiency act for the fiscal year 1909, Act Aug. 5, 1909, c. 7, 36 Stat. 120.

By similar provisions of subsequent deficiency appropriation acts, the time for presentation of such claims was further extended to December 1, 1910,

by Act June 25, 1910, c. 385, 36 Stat. 779, to December 1, 1911, by Act March 4, 1911, c. 240, 36 Stat. 1291, and to December 1, 1912, by Act Aug. 26, 1912, c. 408, 37 Stat. 626.

Notes of Decisions

Taxes to be refunded.—Death duties illegally assessed were not the only taxes to be refunded under Act July 27, 1912, collected under War Revenue Act June 13, 1898, § 29. U. S. v. Hvoslef (1915) 35 Sup. Ct. 459, 237 U. S. 1, 59 L. Ed. 813, affirming judgment Hvoslet v. U. S. (D. C. 1913) 217 Fed. 680.

Action against government to recover tax paid.—Claims under Act July 27, 1912, for refunding of stamp taxes under War Revenue Act June 13, 1898, were "founded on a law of Congress," within Judicial Code, § 24, par. 20, ante, § 991(20), conferring jurisdiction on District Courts. U. S. v. Hvoslef (1915) 35 Sup. Ct. 459, 237 U. S. 1, 59 L. Ed. 813, Ann. Cas. 1916A, 286, affirming judgment Hvoslet v. U. S. (D. C. 1913) 217 Fed. 680.

Payment under protest is not necessary to a suit founded on Act July 27, 1912, for refunding of internal tax illegally assessed under War Revenue Act June 13, 1898, § 29. Id.

Act July 27, 1912, providing for the payment of claims for taxes illegally assessed and collected under the War Revenue Act, held to confer on citizens having paid such illegal taxes the right to recover the same against the United States in an action under the Tucker Act; their remedy not being limited to a suit against the collector. Hvoslet v. U. S. (D. C. 1913) 217 Fed. 680, judgment affirmed U. S. v. Hvoslef (1915) 35 Sup. Ct. 459, 237 U. S. 1, 59 L. Ed. 813, Ann. Cas. 1916A, 286.

Refundment of tax under Act July 27, 1902, c. 1160.—See Vanderbilt v. Eidman (1905) 25 Sup. Ct. 331, 337, 196 U. S. 480, 49 L. Ed. 563; McCoach v. Philadelphia Trust, Safe Deposit & Ins. Co. (1907) 27 Sup. Ct. 793, 205 U. S. 539, 51 L. Ed. 921 (affirming judgment [1905] 142 Fed. 120, 73 C. C. A. 610, which affirmed Philadelphia Trust, Safe Deposit & Ins. Co. v. McCoach [C. C. 1905] 135 Fed. 866); U. S. v. Fidelity Trust Co. (1911) 32 Sup. Ct. 59, 222 U. S. 158, 56 L. Ed. 137 (reversing decree Fidelity Trust Co. v. U. S. [1910] 45 Ct. Cl. 362); U. S. v. Jones (1915) 35 Sup. Ct. 261, 236 U. S. 106, 59 L. Ed. 488, Ann. Cas. 1916A, 316 (affirming judgment Jones v. U. S. [1914] 49 Ct. Cl. 408); McCoach v. Pratt (1915) 35 Sup. Ct. 421, 236 U. S. 562, 59 L. Ed. 720 (affirming judgment [1913] 201 Fed. 1021, 119 C. C. A. 666); Land Title & Trust Co. v. McCoach (1904) 129 Fed. 901, 64 C. C. A. 333 (reversing [C. C. 1904] 127 Fed. 381); Philadelphia Trust, Safe Deposit & Ins. Co. v. McCoach (1904) 129 Fed. 906, 64 C. C. A. 338 (reversing judgment [C. C. 1904] 127 Fed. 386); Herold v. Shanley (1906) 146 Fed. 20, 76 C. C. A. 478; Lynch v. Union Trust Co. of San Francisco (1908) 164 Fed. 161, 90 C. C. A. 147 (writ of certiorari denied [1909] 29 Sup. Ct. 702, 214 U. S. 523, 53 L. Ed. 1067); Westhus v. Union Trust Co. of St. Louis (1908) 164 Fed. 795, 90 C. C. A. 441 (rehearing denied [1909] 168 Fed. 617, 94 C. C. A. 95); Chouteau v. Allen (1909) 170 Fed. 412, 95 C. C. A. 582; Muenter v. Union Trust Co. (1912) 195 Fed. 480, 115 C. C. A. 390; U. S. v. Shipley (1912) 197 Fed. 265, 116 C. C. A. 627; Beer v. Moffatt (1913) 209 Fed. 779, 126 C. C. A. 503; Brown v. Kinney (C. C. 1904) 128 Fed. 310 (judgment reversed [1905] 137 Fed. 1018, 70 C. C. A. 679); Shanley v. Herold (C. C. 1905) 141 Fed. 423; Title Guarantee & Trust Co. v. Ward (C. C. 1908) 164 Fed. 459 (judgment affirmed [1911] 184 Fed. 447, 107 C. C. A. 41, and writ of certiorari denied [1911] 31 Sup. Ct. 723, 220 U. S. 620, 55 L. Ed. 613); Farrell v. U. S. (D. C. 1909) 167 Fed. 639; Beer v. Moffatt (D. C. 1912) 192 Fed. 984; (1902) 24 Op. Atty. Gen. 98; (1907) 26 Op. Atty. Gen. 194.

Erroneous or illegal assessment or collection of tax on legacies and successions.—See decisions cited under chapter 10, ante.

§ 6371. [Obsolete.]

See notes to preceding section of this act, ante, § 6370. This was section 2 of Act July 27, 1912, c. 256, and directed the Secretary of the Treasury to pay claims presented under section 1 out of any moneys not otherwise appropriated on establishment of the claims.

Notes of Decisions

See, also, notes under the preceding section.

Jurisdiction as exclusive.—The jurisdiction of the Secretary of the Treasury is not exclusive. Fidelity Trust Co. v. U. S. (1910) 45 Ct. Cl. 362.

CHAPTER ELEVEN A

Increase of Internal Revenue

Sec.
6371a. Effect of partial invalidity of act.
Sec.
6371b. Time when act takes effect.

Act Sept. 8, 1916, c. 463, entitled "An act to increase the revenue, and for other purposes," is divided into nine titles. The subject-matter of these titles has been distributed to appropriate places in the statutes, as follows:

TITLE I.—INCOME TAX

Of this title, §§ 1–15, 17–25, are set forth ante, §§ 6336a–6336x; § 14(d) is set forth ante, § 5948; and § 16 is set forth ante, §§ 5887, 5895, 5896, 5899.

TITLE II.—ESTATE TAX

This title, consisting of §§ 200–212, is set forth ante, §§ 6336½a–6336½m.

TITLE III.—MUNITION MANUFACTURER'S TAX

This title, consisting of §§ 300–312, is set forth ante, §§ 6336¼a–6336¼m.

TITLE IV.—MISCELLANEOUS TAXES

Of this title, § 400 is set forth ante, § 6144a; section 401 is set forth ante, § 6110a; section 402 is set forth ante, §§ 6002, 6110b, 6111, 6112, 6114–6114e; section 403 is set forth ante, § 6127a; section 404 is set forth ante, § 5990; section 405 is set forth ante, § 6070a; section 406 is set forth ante, § 6161; sections 407–410, 412 are set forth ante, §§ 5980a–5980m; section 411 is set forth ante, § 6346a; and section 413 is set forth ante, § 5877a.

TITLE V.—DYESTUFFS

Of this title sections 500–502 are set forth ante, §§ 5291a–5291c.

TITLE VI.—PRINTING PAPER

This title consists of an amendment of paragraph 322 of the Tariff Act, and has been inserted under section 5291, ante.

TITLE VII.—TARIFF COMMISSION

The subject-matter of this title is set forth ante, §§ 5326a–5326l.

TITLE VIII.—UNFAIR COMPETITION

The subject-matter of this title is set forth post, §§ 8836l–8836r.

TITLE IX.

§ 6371a. (Act Sept. 8, 1916, c. 463, § 900.) Effect of partial invalidity of act.

If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in

the controversy in which such judgment shall have been rendered. (39 Stat. 800.)

Section 901 of the above act relates to an appropriation for the militia and has been placed under the title applicable to that subject.

§ 6371b. (Act Sept. 8, 1916, c. 463, § 902.) Time when act takes effect.

Unless otherwise herein specially provided, this Act shall take effect on the day following its passage, and all provisions of any Act or Acts inconsistent with the provisions of this Act are hereby repealed. (39 Stat. 801.)

TITLE XXXVI

DEBTS DUE BY OR TO THE UNITED STATES

Sec.
6372. Priority established.
6373. Liability of executors, etc.
6374. Priority of sureties.
6375. Compromise.
6376. Purchase on execution.
6377. Discharge of poor debtor by Secretary of the Treasury.
6378. Discharge by the President.
6379. Duties and other debts to the United States, in what currency to be paid.
6380. What coin receivable.
6381. National bank notes receivable for debts of United States, except.
6382. Treasury notes payable for debts of United States.
6383. Assignments of claims void, unless, etc.
6384. Restriction on assignments not to apply to payments for rents of post offices to agents of lessors.
6385. Oath by persons prosecuting claims.
6386. Who may administer the oath.
6387. Claims of disloyalists.
6387a. Claims of disloyalists; R. S. § 3480, repealed as to services in Army prior to April 13, 1861.
6388. Proof of loyalty dispensed with as a prerequisite in application for bounty lands.
6389. Retention of money due States in default.
6390. Payment to officers for horses lost in battle, etc.
6391. Payment to officers, etc., for loss of horses purchased in States in insurrection.
6392. Payment to officers, etc., for horses lost; limitation of time for presentation of claims.
6393. Payment to officers, etc., for horses lost; extension of time for filing claims.
6394. Payment to officers, etc., for horses lost; claims not filed within time limited, barred.
6395. Payment to officers, etc., for horses lost; suspension of limitation of time for filing claims.
6396. Payment for property lost while in military service.
6397. Payment for horses lost by capture.
6398. Payment for condemned horses and equipage.
6399. Payment to guardian for horse lost by minor in military service.
6400. Payment to owner for horse furnished and lost in military service.
6401. Auditor may take testimony as to steamboats, etc.
6402. Claims for collecting, etc., volunteers for the war of the rebellion, and for horses, to be presented prior to June 30, 1874.
6403. Settlement of claims of officers and enlisted men for loss of property in military service.
6403a. Settlement of claims of officers and enlisted men for loss of or damage to baggage.
6404. Settlement of claims of officers, seamen, etc., for loss of property in naval service.
6405. Payment of judgments of Court of Claims.
6406. Judgments of Court of Claims to be certified by Secretary of the Treasury; interest.
6407. Payment of judgments and claims against United States subject to off-sets; proceedings.
6408. Payment of judgments against United States to be made on settlements by auditors.
6409. Private claims pending before Congress; taking of testimony by master in chancery.
6410. Private claims pending before Congress; service of subpœna for taking testimony; compensation of officers and witnesses; return of depositions, etc.
6411. Liability of persons making false claims against United States.
6412. Suits for same.
6413. Duty of district attorney as to such cases.
6414. Rights of persons presenting such suits.
6415. Limitation of suit.

§ 6372. (R. S. § 3466.) Priority established.

Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well

to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Act March 3, 1797, c. 20, § 5, 1 Stat. 515. Act March 2, 1799, c. 22, § 65, 1 Stat. 676.

Notes of Decisions

1. Nature of right.
2. General rules of construction.
3. Operation and effect—In general.
4. —— Debts due prior to enactment of statute.
5. —— Local laws or rules as affecting priority.
6. —— Priority in suits in equity.
7. —— Effect as creating lien on debtor's property.
8. Insolvency of debtor in general.
9. —— Voluntary assignment by insolvent debtor in general.
10. —— Acts which constitute an assignment.
11. —— Separate assignments as constituting one transaction.
12. —— Property of debtor included in assignment.
13. —— Burden of proving debtor's assignment includes all his property.
14. —— Necessity of appearance in insolvency proceedings.
15. Bankruptcy of debtor—In general.
16. —— Necessity of proof in bankruptcy proceedings.
17. —— Debtor's discharge in bankruptcy as affecting priority.
18. Attachment by process of law.
19. Persons, property, debts, and debtors affected, in general.
20. —— Debts contracted by foreigners in foreign countries.
21. —— Property and obligations of partnerships and individual partners.
22. —— Proceeds of debtor's surety bond.
23. —— Estates of deceased debtors.
24. —— Real estate or proceeds thereof vested in heirs of deceased debtor.
25. Priority as against adverse rights—In general.
26. —— Exemptions and allowances.
27. —— Expenses.
28. —— Priority over debts due a state.
29. —— Conveyances, assignments, and transfers.
30. —— Mortgages.
31. —— Liens.
32. —— Claims for labor or material.
33. —— Execution, attachment, or other process.
34. Application of payments.
35. Necessity of first exhausting security.
36. —— Loss or waiver of priority.
37. Decree of state courts as bar.
38. Proceedings to enforce.
39. Jurisdiction of courts.

1. Nature of right.—This right of priority is not an attribute of sovereignty, but depends on the acts of Congress. U. S. v. State Bank of North Carolina (1832) 6 Pet. 29, 30, 8 L. Ed. 308; Peoples' Nat. Bank v. Corse (Tenn. 1916) 182 S. W. 917.

2. General rules of construction.—The phrase "debt due to the United States" defined. U. S. v. State Bank of North Carolina (1832) 6 Pet. 29, 35, 8 L. Ed. 308.

Such statutes as this ought to receive a fair and reasonable interpretation according to the just import of their terms. Id.

Rights of government as priority creditor in case of assignments in insolvency by principal and surety defined. Hunter v. U. S. (1831) 5 Pet. 173, 182, 8 L. Ed. 86.

This act has reference to the public good, and must be liberally construed. Beaston v. Farmers' Bank (1838) 12 Pet. 102, 134, 9 L. Ed. 1017.

3. Operation and effect—In general.—In all cases of insolvency or bankruptcy of one indebted to the United States, the government is entitled to priority of payment out of the debtor's property. U. S. v. Fisher (1805) 6 U. S. (2 Cranch) 358, 2 L. Ed. 304. This is true whether the debtor be principal or surety, or is solely, or only jointly with others, liable, and it is immaterial where the debt was contracted. Lewis v. U. S. (1875) 92 U. S. 618, 23 L. Ed. 513. This priority is not a right which supersedes and overrules the assignment of the debtor, as to any property which the United States may afterwards elect to take in execution, so as to prevent its passing by virtue of such assignment to the assignees; but it is a mere right of prior payment, out of the general funds of the debtor in the hands of the assignees. Conard v. Atlantic Insurance Co. (1828) 1 Pet. 386, 438, 7 L. Ed. 189. In a case of insolvency, death, or assignment the property of the debtor passes to the assignee, executor, or administrator; the priority of the United States operating, not to prevent the transmission of the property, but giving them a preference in payment out of the proceeds. Brent v. Bank of Washington (1836) 10 Pet. 596, 611, 9 L. Ed. 547.

Under this act these rules have been clearly established: First, no lien is created; second, the priority established can never attach while the debtor continues the owner and in possession of the property, though he may be unable to pay all his debts; third, no evidence can be received of the insolvency of the debtor until he has been divested of his property in one of the modes stated; and, fourth, whenever the debtor is thus divested of his property, the person who becomes invested with the title is thereby made a trustee for the United States, and is bound to pay the debt first out of the proceeds of the debtor's property. Beaston v. Farmers' Bank (1838) 12 Pet. 102, 132, 9 L. Ed. 1017.

Where a debt originally due to the

United States by virtue of an assessment of an internal revenue tax has been merged in the tax sale and purchase in pursuance thereof by the United States, the United States holds the legal title to the land, and has a full, complete, and adequate remedy at law in the action of ejectment against the original owners in possession, or against any grantee in possession who became such subsequent to the assessment of the tax. U. S. v. Wilson (1886) 6 Sup. Ct. 991, 992, 118 U. S. 86, 30 L. Ed. 110.

The right of the United States to priority in the payment of their debts, and the remedies for its enforcement against assignees of debtors. U. S. v. Clark (C. C. 1826) Fed. Cas. No. 14,-807.

The priority of the United States as a creditor, under this act is secured only when by law or the act of the debtor his property is attached, sequestered or being administered for the benefit of his creditors generally. U. S. v. Wilkinson (C. C. 1878) Fed. Cas. No. 16,695.

4. —— **Debts due prior to enactment of statute.**—This section does not apply to a debt due before the passing of the act, although the balance was not adjusted at the treasury until after the act was passed. U. S. v. Bryan (1815) 9 Cranch, 374, 386, 3 L. Ed. 764.

A debt due to the United States by a deceased revenue officer is entitled to priority of payment from his administrators, whether the debt arose before or after Act March 3, 1797. Commonwealth v. Lewis (Pa. 1814) 6 Bin. 266.

5. —— **Local laws or rules as affecting priority.**—Local laws of state cannot create priority in favor of other creditors and so defeat priority of United States. Field v. U. S. (1835) 9 Pet. 182, 200, 9 L. Ed. 94.

The priority of the United States is not affected by the local rule that lands consisting of different parcels, subject to a general incumbrance, are, in equity, to be charged in the inverse order of alienation of the separate fund. U. S. v. Duncan (C. C. 1850) Fed. Cas. No. 15,003.

6. —— **Priority in suits in equity.**—In a suit in equity the claims of the United States have only the same force as those of a private individual under like circumstances. Hemmer v. U. S. (1912) 204 Fed. 898, 123 C. C. A. 194, reversing decree U. S. v. Hemmer (D. C. 1912) 195 Fed. 790. See In re Strassburger (C. C. 1877) Fed. Cas. No. 13,526.

7. —— **Effect as creating lien on debtor's property.**—This section does not give the United States a lien upon its debtor's property, but only a right to priority of payment out of the same in certain cases. U. S. v. Eggleston (C. C. 1877) Fed. Cas. No. 15,027; Same v. Griswold (C. C. 1881) 8 Fed. 496; People's Nat. Bank v. Corse (Tenn. 1916) 182 S. W. 917. This act does not create any lien upon the property of a deceased debtor, but merely points out a mode of distribution. (1857) 9 Op. Atty. Gen. 28.

Where, on default of a government contractor, a United States officer took the contractor's machinery and materials to complete the work, and after its completion retained the same, claiming it as against the amount alleged to be due by the contractor for breach of the contract, the United States has no property interest therein, and it is subject to seizure under process of the state court. U. S. v. Moses (1911) 185 Fed. 90, 107 C. C. A. 310.

The United States, as a creditor, has a prior lien over other creditors in the distribution of the assets of an insolvent national bank in charge of a receiver. U. S. v. Cook County Nat. Bank (C. C. 1879) Fed. Cas. No. 14,-853.

8. **Insolvency of debtor in general.**—The insolvency must be a legal and known insolvency manifested by some notorious act of the debtor pursuant to law. Prince v. Bartlett (1814) 8 Cranch, 431, 433, 3 L. Ed. 614.

The word "insolvency" referred to in these acts means a legal insolvency which, whenever it occurs, the right of preference arises to the United States as well as in other specified cases to which the Acts of 1797-99 have extended the cases of insolvency. Thelusson v. Smith (1817) 2 Wheat. 396, 425, 4 L. Ed. 271.

Mere inability of the debtor to pay all his debts is not an insolvency, but it must be manifested in one of the three ways pointed out in the explanatory clause of the section. Conard v. Atlantic Insurance Co. (1828) 1 Pet. 386, 438, 7 L. Ed. 189.

Where postal and money order funds have been deposited by a deputy postmaster, without security, in a bank which subsequently becomes insolvent, a bill by the United States, claiming a priority over other creditors, will be dismissed. Cook County Nat. Bank v. U. S. (1882) 2 Sup. Ct. 561, 107 U. S. 445, 27 L. Ed. 537.

The United States have a preference in the payment of customhouse bonds only in cases of notorious insolvency, such as assignment of the debtor's property, absconding, etc. U. S. v. King (C. C. 1801) Fed. Cas. No. 15,536.

To entitle the United States to a preference over other creditors, it must be shown that the debtor was insolvent, and had voluntarily assigned all his property for the benefit of his creditors, or that an attachment had been taken out against his property as an absent and absconding debtor, and prosecuted to effect. McLean v. Rankin (N. Y. 1808) 3 Johns. 369.

The United States is not entitled to a preference in the payment of bonds

given for duties, over the general creditors of the debtor, unless the debtor is actually insolvent and his insolvency is manifested by some notorious act. Marshall v. Barclay (N. Y. 1828) 1 Paige, 159.

The priority of the United States as a creditor under the revenue laws begins with the insolvency of the debtor, and attaches to all the property vested in him at that time. Hopkins v. Duffy (Pa. 1878) 9 Lanc. Bar, 125.

The insolvency of a debtor, to create a preference in favor of the United States as a creditor, must be a legal insolvency, and such is a discharge under the insolvent laws. Id.

9. —— Voluntary assignment by insolvent debtor in general.—Priority attaches in virtue of an assignment by the insolvent debtor for the benefit of creditors and notice to the syndics, and it is their duty to make known the debts due to the United States under tableau of distribution as having priority. Field v. U. S. (1835) 9 Pet. 182, 200, 9 L. Ed. 94.

An assignment by partners of all their effects for the payment of their debts, for which the partnership estate is inadequate, is an act of insolvency which will give the United States preference in the payment of their debts against the firm or its members. U. S. v. Shelton (C. C. 1821) Fed. Cas. No. 16,272.

The United States have no priority in payment of their debts, unless the assignment by the debtor be a general assignment, or in the case of legal insolvency, where, by operation of law, the debtor's property is taken out of his hands to be distributed by others. U. S. v. Clark (C. C. 1826) Fed. Cas. No. 14,807.

A judgment in favor of the United States arising out of a fraudulent entry of goods is, in case of the debtor's insolvency, entitled to the same preference given to bonds for the payment of duties, but only in case of a general assignment of the debtor's property. U. S. v. Wood (C. C. 1841) Fed. Cas. No. 16,755.

This right to priority of payment arises only in certain cases, one of which is where a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof. U. S. v. Griswold (C. C. 1881) 8 Fed. 496.

The United States are not entitled to a priority of payment, where a debtor is insolvent, but has made no assignment, either voluntarily or by process of law. Smith v. Tinker (Conn. 1806) 2 Day, 236.

An assignment of property by a debtor, for the payment of debts, must be a general assignment, or made with intent to evade the claims of the United States, or it is not such an insolvency as will give the United States priority. Marshall v. Barclay (N. Y. 1828) 1 Paige, 159.

10. —— Acts which constitute an assignment.—A debtor assigns his property within the meaning of this act when he confesses judgments for amounts equal in the aggregate to the value of such property and the priority of the United States thereupon attaches. U. S. v. Griswold (C. C. A. 1881) 8 Fed. 496.

An assignment, to entitle the United States to their priority must be an assignment of all the debtor's property, but it need not be for the benefit of all his creditors. U. S. v. Mott (C. C. 1822) Fed. Cas. No. 15,826.

A deed by a debtor of the United States conveying all his property to trustees for payment of his debts, not including the debts of the United States, is an act of insolvency, so that the priority of the United States immediately attaches. U. S. v. Marshal of District of North Carolina (C. C. 1833) Fed. Cas. No. 15,727.

A conveyance, by a known insolvent, of all his property, to one or more creditors in discharge of their own claims, not exceeding the sum due them, is not a "voluntary assignment," within this act, so as to be affected by the priority of the United States, unless made with intent to evade such priority. U. S. v. McLellan (C. C. 1838) Fed. Cas. No. 15,698.

The assignment of partnership property and the individual property of one partner does not establish the insolvency of the firm, so as to entitle the United States, a creditor of the firm, to maintain a bill to enforce its priority. U. S. v. Couch (C. C. 1841) Fed. Cas. No. 14,874.

A judgment confessed by a debtor for an amount equal to the value of his assets, with intent to defraud the United States, is not such an assignment as will give priority to United States. Bush v. U. S. (C. C. 1882) 14 Fed. 321.

A consignment of goods by a debtor abroad, though insolvent, with directions to have them sold and the proceeds paid to his creditors in New York, is not such an assignment as will entitle the United States to a preference. McLean v. Rankin (N. Y. 1808) 3 Johns. 369.

An assignment by a debtor, who is insolvent, of his property in trust for the benefit of a single creditor, which contains no provision for the benefit of creditors generally is not within this act. Bouchaud v. Dias (1848) 1 N. Y. (1 Comst.) 201, reversing Dias v. Bouchaud (N. Y. 1843) 10 Paige, 445.

11. —— Separate assignments as constituting one transaction.—To entitle the United States to a priority, there must be an actual, though not a declared, insolvency, and the assignment must be general; but a party cannot, by assigning all his property by different acts, defeat the priority, under the pretext that the assignments are

partial. U. S. v. United States Bank (La. 1844) 8 Rob. 262.

To entitle the United States to a preference in the payment of bonds given for duties over the general creditors of the debtor, where an insolvent debtor makes an assignment voluntarily for the benefit of his creditors, it must appear that the assignment was of all of the property of the debtor; but where a debtor is actually insolvent, and, intending to assign his whole property, first makes an assignment of a portion for the benefit of some of his creditors, and afterwards makes another assignment of the residue of his property for the benefit of the remainder of his creditors, the two assignments will be regarded as one transaction, and the United States will be entitled to a preference. Marshall v. Barclay (N. Y. 1828) 1 Paige, 159.

If an insolvent make an assignment of part of his estate for the benefit of creditors, and at another time another part for the same purpose, such assignments are to be construed as one transaction, in reference to the claim of the United States for priority of payment, though, if one fund has paid all the United States' debt, it is entitled to contribution from the other. Downing v. Kintzing (Pa. 1816) 2 Serg. & R. 326.

12. —— Property of debtor included in assignment.—This section gives the United States no lien on the real estate of their debtor until suit brought, so that an assignment for the benefit of creditors to show insolvency under this section must be an assignment of all the debtor's property, and not a part. U. S. v. Hooe (1805) 3 Cranch, 73, 90, 2 L. Ed. 370.

The United States are not entitled to priority over other creditors upon the ground of the debtor having made an assignment for the benefit of creditors, unless it is proved that the debtor has made an assignment of all his property. U. S. v. Howland (1819) 4 Wheat. 108, 116, 4 L. Ed. 526.

Insolvency or inability to pay debts by a debtor to the United States does not give the United States a preference, unless such insolvency is accompanied by a voluntary assignment of all the property of the debtor for the benefit of his creditors. Thelluson v. Smith (C. C. 1815) Fed. Cas. No. 13,878.

The omission of a small part of the debtor's property from the assignment, by mistake or fraud, will not defeat the priority of the United States. U. S. v. Langton (C. C. 1829) Fed. Cas. No. 15,560.

The United States are not entitled to priority out of funds in the hands of assignees, unless there be a general assignment by the debtor of all his property. U. S. v. Munroe (C. C. 1830) Fed. Cas. No. 15,835.

The priority of the United States is not defeated, it seems, by the fact that the debtor, after assigning his property to trustees for the payment of his debts, recovers property in the right of his wife by legal proceedings, whatever the amount thereof. U. S. v. Marshal of District of North Carolina (C. C. 1833) Fed. Cas. No. 15,727.

Whether property omitted from the debtor's deed is so inconsiderable as to show an intent to evade the statute is a question in the sound discretion of the court. Id.

13. —— Burden of proving debtor's assignment includes all his property.—Where the United States claimed priority on the ground of the debtor having made an assignment of all his property unless the deed of assignment shows it to include the whole, the burden is thrown on the United States to show that it does include all the property. U. S. v. Howland (1819) 4 Wheat. 108, 116, 4 L. Ed. 526.

If an assignment does not on its face purport to be of all the debtor's property, the United States, to obtain priority, must show that it does in fact transfer all. U. S. v. Langton (C. C. 1829) Fed. Cas. No. 15,560.

14. —— Necessity of appearance in insolvency proceedings.—United States need not appear in insolvency proceedings in state courts to preserve priority. Field v. U. S. (1835) 9 Pet. 182, 200, 9 L. Ed. 94.

15. Bankruptcy of debtor—In general.—The provisions of Bankruptcy Act July 1, 1898, c. 541, § 64, post, § 9648, with respect to the payment of taxes and the debts which shall have priority in the distribution of a bankrupt's estate, do not lessen nor affect the rights of the United States under this section. Title Guaranty & Surety Co. v. Guarantee Title & Trust Co. (1909) 174 Fed. 385, 98 C. C. A. 603.

The United States are not bound by the general equity rule for marshaling assets, nor by the rule prescribed by the bankrupt act in conformity thereto, any further than as that rule is founded, in the particular case, on the lien of several parties inter sese. In re Strassburger (C. C. 1877) Fed. Cas. No. 13,526.

Property in hands of trustee in bankruptcy must be first applied in payment of bankrupt's debt to the United States. U. S. v. Dewey (C. C. 1889) 39 Fed. 251.

An agent of the United States in England, cannot, by conforming to the bankrupt laws there, lessen the priority of the United States established here. Harrison v. Sterry (D. C. 1807) Fed. Cas. No. 6,144.

The United States, not being bound by the bankrupt acts, and not being compelled to proceed under them to recover a claim against a bankrupt, is entitled to allowance from the bankrupt estate of its full claim, regardless

of the rights of the creditors. In re Huddell (D. C. 1891) 47 Fed. 206.

The claim of the United States against an agent importing goods for his principal for the duties has priority on the agent becoming a bankrupt. Walkof v. Fox (1915) 153 N. Y. S. 27, judgment affirmed Walkoff v. Same, (1915) 155 N. Y. S. 1146.

16. —— Necessity of proof in bankruptcy proceedings.—The United States need not prove their debt in bankruptcy before filing a bill to enforce their priority of payment. U. S. v. Lewis (C. C. 1875) Fed. Cas. No. 15,595, affirmed in (1875) 92 U. S. 618, 23 L. Ed. 513.

The United States recovering a judgment upon a claim accruing after the commencement of the proceedings in bankruptcy is entitled to priority, and no proof of claim need be made. In re Bousfield & Poole Mfg. Co. (D. C.) Fed. Cas. No. 1,704.

Bankr. Act July 1, 1898, c. 541, § 64, cl. "b," subd. 5, 30 Stat. 563, providing that claims of the United States against the bankrupt shall be entitled to priority of payment, and be paid in full, is in pari materia with this act, and therefore entitles the United States to priority, whether it prove its debt in bankruptcy proceedings or not. In re Stoever (D. C. 1904) 127 Fed. 394.

17. —— Debtor's discharge in bankruptcy as affecting priority.—A debt due to the United States, though it be by one who owes it as a surety only, is not barred by the debtor's discharge with certificate, under the bankrupt act of 1867, although the United States may prove its debt and has priority of other creditors, and though the act provides, in general terms, that the certificate shall release the bankrupt from all debts, claims, liability, and demands which were or might have been proved against his estate in bankruptcy, and that it may be pleaded as a full and complete bar of any such debts, claims, liabilities, or demands. U. S. v. Herron (1873) 20 Wall. 251, 22 L. Ed. 275.

18. Attachment by process of law.—The attachment mentioned is not such an attachment as is authorized by the laws of Missouri, which is for the exclusive benefit of the creditor who makes it. U. S. v. Wilkinson (C. C. 1878) Fed. Cas. No. 16,695.

This act only applies where there had been an overt and notorious act of insolvency recognized by the state, and does not give the United States priority by virtue of an execution levy on a debtor's property, subject to prior attachments sued out by creditors. Bartlet v. Prince (1812) 9 Mass. 431.

If an attachment is taken out and afterwards withdrawn by consent of creditors, without any proceedings under it, it is inoperative, and gives no right of preference to the United States. McLean v. Rankin (N. Y. 1808) 3 Johns. 369.

A surety on a nonresident government contractor's bond who completed the work after attachment of the contractor's property held not to have priority over the attachment by subrogation; the government having no priority, as the attachment was not a sequestration of the contractor's property for distribution. People's Nat. Bank v. Corse (Tenn. 1916) 182 S. W. 917.

19. Persons, property, debts, and debtors affected, in general.—The government's right of priority extends to all the debtor's property until the debt is paid. Hunter v. U. S. (1831) 5 Pet. 173, 182, 8 L. Ed. 86.

This priority extends as well to debts by bonds for duties which are payable after the insolvency or decease of the obligor as to those actually payable or due at the period thereof. In the strictest sense, the bonds for duties is debitum in præsenti, although, looking to the condition, it may be properly said to be solvendum in futuro. It is in this sense that the Legislature is to be understood in the use of the words "debt due to the United States." U. S. v. State Bank of North Carolina (1832) 6 Pet. 29, 30, 8 L. Ed. 308.

All debtors to the United States, whatever their character, may be fairly included within this section, and it is manifest that congress intended to give priority of payment to the United States over all other creditors in the cases stated. Beaston v. Farmers' Bank (1838) 12 Pet. 102, 134, 9 L. Ed. 1017.

Corporations are to be considered persons within this section, and the priority of the United States exists as to debts due by them to the United States. Id.

The language of this section is general and without qualification, the form of indebtedness is immaterial, and it may be by simple contract, specialty, judgment, or decree, and the debt may be legal or equitable and may have been incurred in this country or abroad. The debtors may be joint or several and either principals or sureties. Those affected are persons indebted to the United States. Lewis v. U. S. (1875) 92 U. S. 618, 620, 23 L. Ed. 513.

One who receives public money from a disbursing officer with knowledge that it has been applied in violation of law becomes indebted to the United States. Bayne v. U. S. (1876) 93 U. S. 642, 643, 23 L. Ed. 997.

The provisions of this section and the provisions of the national banking law, being, as applied to demands against national banks, inconsistent and repugnant, the former law must yield to the latter, and is, to the extent of the repugnancy, superseded by

it; hence the provisions of the national banking act protecting the United States by requiring national banks to deposit satisfactory security, withdraws national banks, which have failed from that class of insolvent persons out of whose estates demands of the United States are under this section to be paid in preference to the claims of other creditors. This view of the banking law is not affected by the subsequent enactment in 1867 of the bankrupt act, giving priority to the demands of the United States against the estates of bankrupts. That act dealt only with the estates of persons adjudged insolvent under that law, and covers only the distribution of their estates. Cook County Nat. Bank v. U. S. (1882) 2 Sup. Ct. 561, 563, 107 U. S. 445, 27 L. Ed. 537.

Act March 3, 1797, § 5, declaring that "where any revenue officer or other person thereafter becoming indebted to the United States by bond or otherwise shall become insolvent," the debt due to the United States shall be first satisfied, is limited by the title of the act to persons accountable for public money, and does not apply to all debtors of the United States. U. S. v. Fisher (C. C. 1803) Fed. Cas. No. 15,103.

The priority of the United States does not yield to the claims of any creditors, however high may be the dignity of their debts. U. S. v. Duncan (C. C. 1850) Fed. Cas. No. 15,003.

The priority of the United States, in cases of the bankruptcy or insolvency of their debtors, under the provisions of this section and the following, extends to all classes of debts, and to all the debtor's estate which comes to the hands of his assignee. U. S. v. Barnes (C. C. 1887) 31 Fed. 705, 709.

The United States held to have no priority in the assets of an insolvent national bank. (1871) 13 Op. Atty. Gen. 528.

Congress has a constitutional right to claim a preference out of the estate of a public debtor for debts due to the United States; and by this act they have constitutionally claimed it as against living debtors for all debts contracted thereafter, and as against deceased debtors, whether contracted before or after that law. Commonwealth v. Lewis (Pa. 1814) 6 Bin. 266.

20. —— Debts contracted by foreigners in foreign countries.—The United States were entitled to preference, though the debt was contracted by a foreigner in a foreign country. Harrison v. Sterry (1809) 9 U. S. (5 Cranch) 289, 3 L. Ed. 104.

21. —— Property and obligations of partnerships and individual partners.—The priority of the United States does not extend so as to take the property of a partner from partnership effects to pay a separate debt due by such partner to the United States, when the partnership effects are not sufficient to satisfy the creditor of the partnership. U. S. v. Hack (1834) 8 Pet. 271, 274, 8 L. Ed. 941.

The United States is entitled to priority of payment out of the effects of his bankrupt or insolvent debtor, whether he be principal or surety, or be solely, or only jointly with others, liable, and it is immaterial where the debt was contracted. The United States was the creditor of a firm, A., B. & Co., doing business in London, and consisting of several persons, some of whom resided there. The others resided in this country, and, with another partner, constituted the firm of A. & Co. The members of the latter firm were duly declared bankrupt, and a trustee was appointed under the forty-third section of the bankrupt act of March 2, 1867. Held, that the relations of the bankrupt members of the firm of A., B. & Co. to the United States are the same as if they were severally liable to the United States, and that the United States is entitled to the payment of its debt out of their separate property, in preference and priority to all other debts due by them or either of them, or by the firm of A. & Co. Lewis v. U. S. (1875) 92 U. S. 618, 620, 23 L. Ed. 513.

The United States is under no obligation to pursue the partnership property of its debtor before asserting its right of priority against individual property of insolvent partners. Id.

The United States are not entitled to a preference over firm creditors for the payment of the individual debt of a partner out of the assets of the partnership. U. S. v. Duncan (C. C. 1850) Fed. Cas. No. 15,003; Same v. Evans (D. C. 1836) Fed. Cas. No. 15,062.

The United States are entitled to priority in the separate estate of the partners, although the demand is against the firm; and, if some of the partners reside in a foreign country, they are entitled to priority out of the separate estate of the resident partners. U. S. v. Lewis (C. C. 1875) Fed. Cas. No. 15,595, affirmed in (1875) 92 U. S. 618, 23 L. Ed. 513.

Where a bankrupt firm, through fraudulent undervaluations of goods entered at the custom house, has incurred a forfeiture of their value to the United States, the claim of the latter against the firm for the tort is joint and several; and upon proof of the debt, containing a statement of the facts, the United States is entitled, under this section and section 5101, ante, to priority of payment out of any of the proceeds of either the joint or several estates, without reference to what may be the particular claim of priority in its proof of debt. In re Vetterlein (D. C. 1884) 20 Fed. 109.

22. —— **Proceeds of debtor's surety bond.**—An absolute judgment against the administrator of a surety on the official bond of a federal official, rendered by a federal court sitting in Louisiana, is not objectionable on the theory that it should have been against the administrator, payable only in due course of administration, since, if by the law of that state the judgment is so payable, it will be thus interpreted and enforced, subject to the priority given to the federal government by this section, in the distribution of the proceeds of the estate. Smythe v. U. S. (1903) 23 Sup. Ct. 279, 280, 286, 188 U. S. 156, 47 L. Ed. 425.

This section and the following two sections do not give the United States such right of priority in a fund paid into court by the surety on the bond of a contractor for government work in discharge of the obligation of the bond, which under the statute and its terms secures the claims of other creditors of the insolvent contractor as well as that of the United States, and in the absence of statutory provision such right of priority does not exist. The fact that the United States first commenced an action on the bond does not give it a right to priority, and, the fund having been paid into court, the right of the United States therein under the statute may properly be determined by the court as against other creditors brought in without objection, although the action is one at law. U. S. v. Heaton (1904) 128 Fed. 414, 416, 63 C. C. A. 156, modifying (C. C. 1903) 124 Fed. 699.

23. —— **Estates of deceased debtors.**—In case of the insolvency of surviving judgment debtors in a suit on a bond for customs duties, the United States may in equity recover the debt out of the assets of a deceased judgment debtor, whose estate was also insolvent, in virtue of their general priority. U. S. v. Cushman (C. C. 1836) Fed. Cas. No. 14,908.

State statutes in relation to the proof of claims against decedents' estates are not binding on the United States in the collection of their debts. U. S. v. Backus (C. C. 1855) Fed. Cas. No. 14,491.

A debt due from the administrator, and returned on the inventory as solvent, is presumed to have been collected, and is therefore assets in his hands applicable to the payment of a debt due from the deceased to the United States. U. S. v. Eggleston (C. C. 1877) Fed. Cas. No. 15,027.

In view of this and the following sections, and admitting a deputy United States marshal's right to compensation for services performed after the death of the marshal, the fees and costs arising from which he had paid the administrator, he occupied no better position than any other creditor, and his claim, with others, must be postponed to the claim of the government arising out of the settlement of the marshal's accounts, and on which it had recovered a judgment against his administrator. In re Gregory's Estate (Pa. 1876) 2 Wkly. Notes Cas. 430, 33 Leg. Int. 140.

24. —— **Real estate or proceeds thereof vested in heirs of deceased debtor.**—This act does not give a priority out of the real estate, or the proceeds of the real estate, belonging to or vested in the heirs of the debtor. U. S. v. Crookshank (N. Y. 1831) 1 Edw. Ch. 233.

25. **Priority as against adverse rights—In general.**—A judgment gives to the judgment creditor a lien on the debtor's lands, and a preference over all subsequent judgment creditors, but the act of Congress defeats this preference in favor of the United States in cases specified in the sixty-fifth section of the act of 1799. Thelusson v. Smith (1817) 2 Wheat. 396, 425, 4 L. Ed. 271.

Where debtor has conveyed his property or it has been seized under execution before right of preference has accrued to United States, such property is not subject to priority. Id.

This act does not affect any lien existing when the event took place which gave the United States priority, nor does this preference attach if the debtor has conveyed, mortgaged, or transferred his property in the ordinary course of business. Brent v. Bank of Washington (1836) 10 Pet. 596, 611, 9 L. Ed. 547.

A bona fide conveyance, mortgage, or execution, before the right of preference in the United States has accrued by an act of insolvency, will pass the right of property freed from liability for debts due to the United States. U. S. v. Delaware Ins. Co. (C. C. 1823) Fed. Cas. No. 14,942.

The equitable right of the assignee of stock taken as security for money loaned is not subject to preference of United States for debts of assignor. U. S. v. Cutts (C. C. 1832) Fed. Cas. No. 14,912.

The priority of the United States does not supersede a mortgage on land, nor a judgment made perfect by the issue of an execution and a levy on real estate. U. S. v. Duncan (C. C. 1850) Fed. Cas. No. 15,003.

The acts giving the United States preference in cases of insolvency will not be so construed as to destroy prior legal liens. U. S. v. Sheriff of Charleston (D. C. 1803) Fed. Cas. No. 16,276.

In view of this and the following sections, and admitting a deputy United States marshal's right to compensation for services performed after the death of the marshal, the fees and costs arising from which he had paid the administrator, he occupied no better position than any other creditor, and his claim with others, must be postponed to the claim of the government arising out of the settlement of the marshal's ac-

counts, and on which it had recovered a judgment against his administrator. In re Gregory's Estate (Pa. 1876) 2 Wkly. Notes Cas. 430, 33 Leg. Int. 140.

26. —— **Exemptions and allowances.**—R. S. § 1042, ante, § 1706, which provides that a poor convict, who has been imprisoned 30 days solely because of the nonpayment of a fine or fine and costs, may be released on making oath that he has not any property exceeding $20 in value, "except such as is by law exempt from being taken on execution for debt," construed in connection with R. S. § 1041, ante, § 1705, providing for the collection of fines and penalties by execution against the property of the defendant "in like manner as judgments in civil cases are enforced," evidences an intention on the part of Congress to place the United States on an equality with civil contract creditors in the enforcement of judgments in criminal and penal cases, and to give the families of poor convicts the full benefit of the exemption and homestead laws of the states as against such judgments; and, in the absence of any statute expressly providing therefor, an execution on a judgment for a fine in favor of the United States cannot be levied on the defendant's homestead in Virginia, although under the state law such homestead is only exempt from contract debts, and not from judgments for torts or in favor of the commonwealth in criminal cases. Allen v. Clark (1903) 126 Fed. 738, 62 C. C. A. 58, affirming decree Clark v. Allen (D. C. 1902) 114 Fed. 374.

Where to an execution for a debt due the government there was a return of no property found in excess of the homestead and personal property exemptions allowed by the constitution and laws of the state, on motion by the United States district attorney for an alias execution to be issued to the marshal, and for an order of court directing him to make a levy and sale of the property without regarding such exemptions, held, that he was entitled to the order asked for. U. S. v. Howell (C. C. 1881) 9 Fed. 674.

State exemption laws are inapplicable to debts due from a citizen to the United States. Id.

The United States have not priority, over the allowance to the widow of a deceased debtor, under the state law. Postmaster General v. Robbins (D. C. 1829) Fed. Cas. No. 11,314.

27. —— **Expenses.**—Expenses incurred by an assignee in insolvency in recovering a demand are chargeable on the fund, and the right of the United States to priority attaches to the residue. U. S. v. Hunter (C. C. 1828) Fed. Cas. No. 15,427.

The administrator is bound to discharge taxes and funeral charges before satisfying the claim of the United States as a creditor. U. S. v. Eggleston (C. C. 1877) Fed. Cas. No. 15,027.

A debt due to the United States is to be preferred to the expenses of the last illness; but, where the same have been duly paid by the administrator without notice of the claim of the government, the priority of the latter is lost. Id.

The necessary expenses of administration are to be paid before a debt due to the United States. Id.

28. —— **Priority over debts due a state.**—This act does not give priority to the United States against the lien of a particular state. U. S. v. Nicholls (Pa. 1805) 4 Yeates, 251.

29. —— **Conveyances, assignments, and transfers.**—The fact that a creditor gave up his intention of levying in consideration of a general assignment in trust, first to pay his claim and then the debt of the United States, will not prevent the assignment being fraudulent and void as against the United States. U. S. v. Mott (C. C. 1822) Fed. Cas. No. 15,826.

This act does not create a lien on the debtor's estate, so as to avoid conveyances to a bona fide purchaser, made before an insolvency be declared according to law. Otis v. Warren (1819) 16 Mass. 53.

30. —— **Mortgages.**—Where one indebted to the United States mortgaged his property, and confessed judgment in favor of the mortgagee, which acts were held to be a voluntary assignment by the debtor, so that the priority given the United States then attached, the sale under such judgment will be set aside, and the matter referred to a master to determine the liens existing, and to sell the property to satisfy the same according to their priorities. U. S. v. Griswold (C. C. 1881) 8 Fed. 496.

A debtor of the United States may assign his property, within the meaning of this statute, by means of judgments confessed in favor of various persons for amounts equal in the aggregate to the value thereof, and the priority of the United States will thereupon attach to the property and prevail against said judgments, but subject to all prior valid liens thereon. G., being liable to the United States in a sum more than equal to the value of his property, for money fraudulently obtained from the treasury, asked L. & B. to loan him $10,000 on his note and mortgage, then exhibited, which they declined, but let him have $3,500 on the same, with a credit indorsed on the note of $6,500, and recorded the mortgage for the full amount. Held, that upon the facts the mortgagees did not take the mortgage in excess of the loan for the purpose of aiding the mortgagor to hinder, delay, or defraud the United States, and therefore it was not fraudulent as to them. Id.

Whether the United States have priority over mortgages executed on land of the debtor, whilst a debtor to the United States, quære. (See Act March

8, 1797, c. 20.) (1820) 1 Op. Atty. Gen. 414.

Where a collector of customs executed a mortgage upon his real estate to indemnify his sureties, and then died insolvent, and in debt to the United States, the mortgage to the sureties is valid and effectual against the United States. (1857) 9 Op. Atty. Gen. 28.

31. —— **Liens.**—A prior lien on a policy for the premium of an insurance is overreached by the right of preference of the United States, even though the preference be founded on a subsequent act of insolvency. (1823) 1 Op. Atty. Gen. 616.

The priority of the United States cannot reach back over any valid lien whether it be general or specific. (1857) 9 Op. Atty. Gen. 28.

32. —— **Claims for labor or material.**—The priority over claims for labor against a bankrupt estate which the United States possessed under this and the following sections does not exist since the passage of Bankruptcy Act July 1, 1898, § 64. Guarantee Title & Trust Co. v. Title Guaranty & Surety Co. (1912) 32 Sup. Ct. 457, 224 U. S. 152, 56 L. Ed. 706, reversing judgment Title Guarantee & Surety Co. v. Guarantee Title & Trust Co. (1909) 174 Fed. 385, 98 C. C. A. 603.

Materialmen obtained from government contractors a power of attorney to collect $6,000 out of the last payment, and were promised payment by the naval secretary of the lighthouse board, if they would continue deliveries, but were told by the secretary of the treasury that the account must be stated in the name of the contractors and receipted for by them, before payment to the materialmen. The contract was forfeited, and the work completed by the government for $726.10 less than the contract price; the last installment never becoming due the contractors. Held, that the materialmen could recover from the government only $726.10. Coates v. U. S. (1893) 53 Fed. 989, 4 C. C. A. 138.

The lien of laborers and materialmen will be preferred to a judgment lien in favor of the United States. Phillips v. The Thomas Scattergood (D. C. 1828) Fed. Cas. No. 11,106.

33. —— **Execution, attachment, or other process.**—The priority of the United States does not entitle them to prior satisfaction by attachment and levy over prior attaching creditors. U. S. v. Canal Bank (C. C. 1844) Fed. Cas. No. 14,715.

Execution creditors may sell vessels on which the government has a lien under chattel mortgages made for advances to build them, subject to such lien, where a sale under the mortgages can only be had on six months' notice. U. S. v. Collins (C. C. 1858) Fed. Cas. No. 14,834.

The priority of the United States gives no lien on property which is under execution when it accrued. U. S. v. Mechanics' Bank (D. C. 1829) Fed. Cas. No. 15,756.

The priority given to the United States in the payment of debts due on custom house bonds, out of the estates of insolvents, supersedes a foreign attachment laid on the property of the insolvent, prior to the insolvency; and such debts must be first paid out of the funds attached in the hands of the garnishee. Willing v. Bleeker (Pa. 1816) 2 Serg. & R. 221.

A debtor's property, if personal, is devested by a fi. fa., so as not to be liable to the preference of the United States as a creditor under a claim accruing thereafter; and, if real estate, it is devested by a levy and sale by the sheriff. Hopkins v. Duffy (Pa. 1878) 9 Lanc. Bar 125.

34. **Application of payments.**—This act does not give to one part of a debt due to the United States a priority over any other part, nor does it affect the right of the debtor to apply a payment of money in his hands to either of two debts to the United States. U. S. v. Cochran (C. C. 1825) Fed. Cas. No. 14,821.

In cases of running accounts, where debits and credits are made at different times, the payments are to be deemed as made towards items antecedently due in the order of time in which they stand in the account. U. S. v. Wardwell (C. C. 1828) Fed. Cas. No. 16,-640.

The officers of the treasury department have not the right to make application of payments against the will of the debtor or of his administrator. Id.

Where the United States have various debts due by bonds with different sureties, payments by the assignees must be applied pro rata. U. S. v. Amory (C. C. 1830) Fed. Cas. No. 14,-443.

If a debtor of the government fail to make an application of payments, the government may do so. If both fail, the law will make the application, but it cannot do so to the prejudice of the rights of the debtor's sureties. U. S. v. Linn (C. C. 1841) Fed. Cas. No. 15,606.

35. **Necessity of first exhausting security.**—The United States may enforce their right of priority without first exhausting securities which they may hold. U. S. v. Lewis (C. C. 1875) Fed. Cas. No. 15,595, affirmed in (1875) 92 U. S. 618, 23 L. Ed. 513.

36. —— **Loss or waiver of priority.**—Voting for an assignee in bankruptcy and proving the debt before the commissioners did not deprive the United States of their right to priority of payment. Harrison v. Sterry (1809) 9 U. S. (5 Cranch) 289, 3 L. Ed. 104.

An action by the government held not

barred by any statute of limitations. U. S. v. Hoar (C. C. 1821) Fed. Cas. No. 15,373.

The failure of the United States to present its claim against the estate of a deceased United States marshal constitutes no defense to an action against the sureties on his official bond. U. S. v. Adams (C. C. 1892) 54 Fed. 114.

Where one of two partners had given bonds with sureties to the United States for duties on merchandise imported by the firm upon which there was subsequently found to be due the sum of $30,000, and deeds of trust to a third person were afterwards executed, conveying, among other property and claims, a certain debt due the firm from the government of Naples on account of the seizure of a schooner and cargo in which they had an interest, which, under the convention of the King of the two Sicilies, had been awarded to them, and now claimed and demanded by the trustees under the deeds of trust, they alleging that the debt of the United States for duties had been extinguished by the taking of the bond of one partner with sureties, held that, notwithstanding the decision of Judge Washington in the case of the United States v. Astley & Brooks, the debt remains against the firm, and must be first deducted from the amount awarded to them before payment can be made to them or their assignees. (1835) 2 Op. Atty. Gen. 719.

Where a receiver of public moneys at Kalamazoo received in payment for public lands the notes of a specie-paying bank that afterwards suspended specie payments, and then took from the bank a draft on another bank which was returned dishonored, and a receiver of assets having been appointed under the laws of Michigan, with whom the receiver of public moneys filed a claim for this debt, held that, notwithstanding the acts of the latter, the legal priority of the United States to payment still exists. (1841) 3 Op. Atty. Gen. 625.

37. Decree of state courts as bar.—The United States, not made parties to a bill in a state court for the payment of partnership debts out of partnership assets in the hands of the administrator of a partner who had died insolvent indebted to the United States, are not bound by the decree rendered therein. U. S. v. Duncan (C. C. 1850) Fed. Cas. No. 15,003.

38. Proceedings to enforce.—Where the United States had secured a joint judgment against the debtor and sureties on a joint and several bond, it could not thereafter maintain a bill in equity to reach the assets of the estate of a deceased surety. U. S. v. Price (1850) 9 How. 83, 13 L. Ed. 56.

If both principal and surety be insolvent and assign to the same person, the funds of the principal to the extent of the surety's claim are deemed assets of the surety; so that, if he also be indebted to the United States, they may sue in equity against the assignee to insure their priority. U. S. v. Hunter (C. C. 1828) Fed. Cas. No. 15,426.

The Massachusetts trustee process lies in favor of the United States against assignees to whom property has been assigned to pay debts due on customhouse bonds, although the assignment passed the entire property to the assignees in trust. U. S. v. Langton (C. C. 1829) Fed. Cas. No. 15,560.

This act applies to equitable as well as legal debts; but such priority cannot be enforced in a suit at law brought in the name of a private creditor, who has assigned his claim to the United States. Howe v. Sheppard (C. C. 1835) Fed. Cas. No. 6,772.

A bill to enforce a preference out of estate of insolvent debtor, who has made an assignment cannot be maintained against the debtor without joining the assignee as party defendant. U. S. v. Couch (C. C. 1841) Fed. Cas. No. 14,874.

39. Jurisdiction of courts.—The Circuit Court has jurisdiction, on a bill in equity filed by the United States against the debtor of their debtor, they claiming a priority under Act 1799, c. 128, § 65, notwithstanding the local law of the state where the suit is brought allows a creditor to proceed against the debtor of his debtor, by a peculiar process at law. U. S. v. Howland (1819) 4 Wheat. 108, 115, 4 L. Ed. 526.

The Circuit court had original jurisdiction of an action to enforce priority of debt due the United States from a partnership against property of an individual partner in the hands of his trustee in bankruptcy. Lewis v. U. S. (1875) 92 U. S. 618, 620, 23 L. Ed. 513.

The federal courts held to have jurisdiction of a bill in equity to reach property of the debtor in the hands of trustees notwithstanding that the United States had recovered judgment against the debtor's surety. U. S. v. Myers (C. C. 1836) Fed. Cas. No. 15,-844.

Banking Law N. Y. (Consol. Laws 1909, c. 2) § 19, declares that dividends to be paid by the superintendent of banks out of the assets of institutions in his charge for administration shall be paid to such persons and in such amounts and upon such notice as may be directed by the Supreme Court in the judicial district in which the principal office of such corporation or individual banker is located. Held that, where a New York trust company, prior to failure, had been appointed a depositary for bankruptcy funds, whether deposits made by trustees in bankruptcy were entitled to preference under this Act, giving preference to debts due the United States, was solely within the jurisdiction of the state Supreme Court, and could not be determined on

a motion in bankruptcy for orders requiring the superintendent of banks to pay out such deposits. In re Bologh (D. C. 1911) 185 Fed. 825.

Cited without definite application, U. S. v. Thompson (1876) 93 U. S. 586, 587, 23 L. Ed. 982; Davis v. Elmira Savings Bank (1896) 161 U. S. 275, 16 Sup. Ct. 502, 40 L. Ed. 700; Same v. Beebe (1901) 21 Sup. Ct. 371, 374, 180 U. S. 343, 45 L. Ed. 563; Pond v. U. S. (1901) 111 Fed. 989, 49 C. C. A. 582; King v. Pomeroy (1903) 121 Fed. 287, 294, 58 C. C. A. 209; Waco v. Bryan (1904) 127 Fed. 79, 62 C. C. A. 79; U. S. v. Perth Amboy Shipbuilding & Engineering Co. (C. C. 1905) 137 Fed. 689; In Re Vetterlein (D. C. 1890) 44 Fed. 57, 58; U. S. v. Houston (D. C. 1891) 48 Fed. 207, 210; In re Western Implement Co. (D. C. 1909) 166 Fed. 576 (affirmed [1909] 171 Fed. 81, 96 C. C. A. 185); In re Halsey Electric Generator Co. (D. C. 1909) 175 Fed. 825, 827 (affirmed [1910] 179 Fed. 321, 102 C. C. A. 505, 31 L. R. A. [N. S.] 988, writ of certiorari denied [1911] 31 Sup. Ct. 471, 219 U. S. 587, 55 L. Ed. 347); In re Devlin (D. C. 1910) 180 Fed. 170; (1831) 5 Op. Atty. Gen. 763.

§ 6373. (R. S. § 3467.) Liability of executors, etc.

Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

Act March 2, 1799, c. 22, § 65, 1 Stat. 676.

Taxes due the United States were entitled to priority of payment out of bankrupt estates by the Bankruptcy Act of 1898, Act July 1, 1898, c. 542, § 64, post, § 9648.

Notes of Decisions

Liability in general.—See note under § 6372, ante.

In view of this and the preceding section, and admitting a deputy United States marshal's right to compensation for services performed after the death of the marshal, the fees and costs arising from which he had paid the administrator, he occupied no better position than any other creditor, and his claim with others, must be postponed to the claim of the government arising out of the settlement of the marshal's accounts, and on which it had recovered a judgment against his administrator. In re Gregory's Estate (Pa. 1876) 2 Wkly. Notes Cas. 430, 33 Leg. Int. 140.

Assignees and trustees.—Assignees of debtor are personally liable for failure to give United States preference over other creditors. Conard v. Atlantic Insurance Co. (1828) 1 Pet. 386, 438, 7 L. Ed. 189.

Syndics held not liable to United States unless funds had actually come into their hands. Field v. U. S. (1835) 9 Pet. 182, 9 L. Ed. 94.

An attaching creditor is not liable under this section as trustee for the United States for proceeds realized on his attachment. U. S. v. Wilkinson (C. C. 1878) Fed. Cas. No. 16,695.

The assignee of an insolvent or bankrupt debtor becomes a trustee for the United States, and, when he has notice of the debt due the government, he cannot escape personal liability for the amount of it, to the extent of the value of the assets coming to his hands, if he fails to provide for it before making distribution to other creditors. U. S. v. Barnes (C. C. 1887) 31 Fed. 705; U. S. v. Dewey (C. C. 1889) 39 Fed. 251.

The trustee in bankruptcy of an importer's agent is personally liable for failure to pay the claim of the United States for duties on goods imported for such agent's principal. Walkof v. Fox (1915) 153 N. Y. S. 27, 90 Misc. Rep. 338, judgment affirmed Walkoff v. Same (1915) 155 N. Y. S. 1146.

Executors and administrators.—See note under § 3466. See, also, Smythe v. U. S. (1903) 23 Sup. Ct. 279, 286, 188 U. S. 156, 47 L. Ed. 425.

Where one is adjudged guilty of criminal contempt, the executors or administrators of accused are liable to the payment of the fine imposed. Wasserman v. U. S. (1908) 161 Fed. 722, 724, 88 C. C. A. 582.

Where the United States has recovered judgment against several defendants, its right to revive the judgment against the executor of one of them, since deceased, is not affected by Gen. St. Kan. § 2890, providing that actions against executors and administrators shall be commenced within three years from the time of notice of appointment and giving bond, and that otherwise the claim shall be forever barred. U. S. v. Houston (D. C. 1891) 48 Fed. 207, 210.

As to the payment of inferior debts without notice of claim of the United States, see U. S. v. Hoar (C. C. 1821) Fed. Cas. No. 15,373.

Notice to assignee.—The assignee is liable only if he has notice of the debt to the United States, but the notice need be such only as is sufficient to put a prudent man on inquiry. U. S.

v. Clark (C. C. 1826) Fed. Cas. No. 14,807.

Abatement on assignee's death.—A cause of action against an assignee for wrongfully paying the assets in his hands to other creditors than the United States does not abate on the assignee's death. U. S. v. Dewey (C. C. 1889) 39 Fed. 251.

Estoppel to assert liability.—In cases of bankruptcy the government is not bound to go into the bankruptcy court, nor is its debt barred by a certificate of discharge, but to secure priority in payment from the funds which that court is administering, the right thereto must be asserted in that court and worked out through the bankruptcy court. After an execution had been issued against real estate of one of several joint judgment debtors, another of the debtors was adjudicated a bankrupt. During the administration of his estate the real estate exceeded in value the amount of the whole debt, the execution continued in force, and the officers of the government, with full knowledge of the facts, never asserted the right to priority. Acting on a belief induced by these circumstances that the government relied on the property levied on, the assignee withheld only his bankrupt's contributive portion of the judgment and distributed all the assets according to law. Held that, the officers of the government, having, received its quota of the debts, and having executed a release of the debtor whose property was levied on, the trustee was not personally liable. U. S. v. Murphy (C. C. 1883) 15 Fed. 589.

The right of action against an assignee cannot be lost by waiver, laches, or estoppel, and hence the failure of the United States to prove its claim in bankruptcy does not relieve the assignee of liability for distributing the estate to other creditors. U. S. v. Barnes (C. C. 1887) 31 Fed. 705, 707. See note under § 3466.

Cited without definite application, Guarantee Title & Trust Co. v. Title Guaranty & Surety Co. (1912) 32 Sup. Ct. 457, 224 U. S. 152, 56 L. Ed. 706; In re Vetterlein (D. C. 1890) 44 Fed. 57, 58.

§ 6374. (R. S. § 3468.) Priority of sureties.

Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects which come to the hands of his executor, administrator, or assignee, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, administrator, or assignee of such surety pays to the United States the money due upon such bond, such surety, his executor, administrator, or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States; and may bring and maintain a suit upon the bond, in law or equity, in his own name, for the recovery of all moneys paid thereon.

Act March 2, 1799, c. 22, § 65, 1 Stat. 676.

Notes of Decisions

Operation and effect in general.—A surety on the bond of one in official relation with the government is himself in contract relation with it, and, as he is liable to be sued by it, he has the right to sue it whenever a balance is due from it to which, on the principle of subrogation, he will ultimately be entitled. Shwarz v. U. S. (1900) 35 Ct. Cl. 303.

Where R. D. imported goods in his own vessel, consigned to E. D., who gave bonds for the duties, the invoice showing the goods to be the property of R. D., the sureties of E. D. cannot recover the amount paid by them from R. D. under this section. Childs v. Shoemaker (C. C. 1806) Fed. Cas. No. 2,681.

Where the principal on a bond for duties becomes insolvent and makes an assignment to B., who mixed to avails of the assignment with his own funds and later became a bankrupt, a surety on the bond held to have no right of priority against the assignees of B., though the United States might have been entitled to such priority under this section. Pollock v. Pratt (C. C. 1811) Fed. Cas. No. 11,256.

Persons who become entitled to priority—in general.—The same right of priority which belongs to the government attaches to the claim of an individual who, as surety, has paid money to the government. Hunter v. U. S. (1831) 5 Pet. 173, 187, 8 L. Ed. 86, affirming U. S. v. Hunter (C. C. 1828) Fed. Cas. No. 15,426.

A surety who has discharged a duty bond to the United States is entitled to be subrogated only to the preference and priority of the United States to be first paid out of the estate of the principal. U. S. v. Preston (C. C. 1824) Fed. Cas. No. 16,087.

A surety on a customhouse bond, after paying it, has the same priority as

the United States against the estate of his principal in the hands of an assignee. U. S. v. Hunter (C. C. 1828) Fed. Cas. No. 15,426, affirmed Hunter v. U. S. (1831) 5 Pet. 173, 187, 8 L. Ed. 86.

By Act Aug. 4, 1790, § 45, it is directed that the United States, in case a bond for duties becomes due, shall be first satisfied in all cases of insolvency, or where any estate in the hands of executors or administrators shall be insufficient to pay all the debts due from the deceased. Act May 2, 1792, provides (section 18) that, where the sureties in bonds for duties pay the same, they shall have the same advantage, priority, and preference as are secured to the United States for the recovery thereof. Held, that the surety in a bond for duties of goods on importation into the United States, who pays the same to the custom house, has no preference for his debt, where the principal absconds as an insolvent, unless he has made an assignment, or process in the nature of a domestic attachment has issued against him, or he has been declared a bankrupt. Gallagher v. Davis (Pa. 1800) 2 Yeates, 548.

A surety on a nonresident government contractor's bond who completed the work after attachment of the contractor's property held not to have priority over the attachment by subrogation; the government having no priority, as the attachment was not a sequestration of the contractor's property for distribution. People's Nat. Bank v. Corse (Tenn. 1916) 182 S. W. 917.

—— United States revenue officers.—The complainant, as collector of internal revenue, held not entitled, by way of subrogation, to the rights of the United States as a preferred creditor. Wilkinson v. Babbitt (C. C. 1877) Fed. Cas. No. 17,668.

A United States revenue officer, paying to the government the amount of a dishonored check received by him from a government debtor, is entitled to be subrogated to the rights of the United States against such debtor. In re McBride (D. C. 1878) Fed. Cas. No. 8,662.

—— Sureties on bail bonds in criminal cases.—This section has no application to bail bonds in criminal cases, and where a prisoner released on bail forfeits his recognizance, his sureties may not recover against him or his estate the amount they are compelled to pay by reason of the default. U. S. v. Ryder (1884) 4 Sup. Ct. 196, 200, 110 U. S. 729, 28 L. Ed. 308.

Actions to enforce priority.—A surety in a civil bond who is subrogated to the rights of the United States must bring the action in his own name, and not in the name of the United States. U. S. v. Ryder (1884) 4 Sup. Ct. 196, 200, 110 U. S. 729, 28 L. Ed. 308.

A surety cannot maintain assumpsit in the name of the United States against the assignees of the principal. U. S. v. Preston (C. C. 1824) Fed. Cas. No. 16,087. See, also, Johns v. Brodhag (C. C. 1804) Fed. Cas. No. 7,362.

Sureties' rights as affected by other legislation.—Surety's right by subrogation to like priority is not affected by Bankr. Act July 1, 1898, c. 541, § 64, 30 Stat. 563; Title Guaranty & Surety Co. v. Guarantee Title & Trust Co. (1909) 174 Fed. 385, 98 C. C. A. 603.

Act March 2, 1799, § 65, does not repeal the provisions of the law of the United States which give to the surety who pays bonds for duties a preference over other creditors. Mott v. Maris (C. C. 1808) Fed. Cas. No. 9,880; Harrison v. Sterry (D. C. 1807) Fed. Cas. No. 6,144.

When right of priority attaches.—See note under § 3466. See, also, U. S. v. Heaton (1904) 128 Fed. 414, 417, 63 C. C. A. 156.

Right of priority over labor claims against a bankrupt's estate.—Guarantee Title & Trust Co. v. Title Guaranty & Surety Co. (1912) 32 Sup. Ct. 457, 224 U. S. 152, 56 L. Ed. 706. See note under § 3466.

Cited without definite application, U. S. v. Fisher (1805) 2 Cranch, 358, 387, 2 L. Ed. 304; Conard v. Atlantic Ins. Co. (1828) 1 Pet. 386, 438, 7 L. Ed. 189; Wasserman v. U. S. (1908) 161 Fed. 722, 724, 88 C. C. A. 582.

§ 6375. (R. S. § 3469.) Compromise.

Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accordingly. But the provisions of this section shall not apply to any claim arising under the postal laws.

Act March 3, 1863, c. 76, § 10, 12 Stat. 740.

Notes of Decisions

1. Claims subject to compromise—In general.
2. —— Claims arising under postal laws.
3. —— Judgments in general.
4. —— Judgments under contract labor act.

5. —— Claims for violation of "oleomargarine" statutes.
6. —— Claims against bondsmen on criminal recognizance.
7. —— Fines, penalties, and forfeitures in general.
8. —— Fines and penalties in criminal actions.
9. —— Libel or seizure of merchandise.
10. —— Prosecution by individual to recover statutory penalties.
11. —— Claims to ownership of real estate.
12. Grounds for compromise—In general.
13. —— Uncertainty of obtaining judgment.
14. —— Circumstances of hardship to particular individuals.
15. Authority of Attorney General to compromise pending litigation.
16. Power of district attorney limited by treasury regulations.
17. Authority of agents or officers to recommend compromise.
18. —— Customs officers.
19. —— Comptroller of treasury.
20. —— Auditors of treasury.
21. Discretion of agent.
22. Authority to take lands in compromise of claims.
23. Effect of compromise or release with respect to sureties or joint debtors.
24. Conclusiveness of unauthorized compromise judgment.

1. Claims subject to compromise—In general.—Where an action is brought by the United States against delinquent corporations which have failed to file a return under Corporation Tax Act, § 38, section 6300 et seq., ante, the verdict must specifically state the amount of the penalty not less than $1,000, after which the corporations' only remedy (other than appeal) is to apply for a compromise under section 5952 and this section. U. S. v. Acorn Roofing Co. (D. C. 1912) 204 Fed. 157.

The power to compromise claims in favor of the United States which includes judgments on recognizances is vested by law in the Secretary of the Treasury with respect to all claims save those arising under the postal laws. (1897) 21 Op. Atty. Gen. 494.

The power given the Secretary by section 5952 to compromise cases arising under the internal revenue laws extends only to suits commenced by the government to recover taxes; while the ampler power of compromise given him by this section is limited to claims in favor of the United States, and does not include suits against the United States. (1901) 23 Op. Atty. Gen. 507.

The Secretary of the Treasury has no power to compromise a suit brought against a collector of internal revenue for the recovery of taxes claimed to have been illegally collected from plaintiff. Id.

While the Secretary of the Treasury has no authority to compromise a claim in favor of the United States which has been reduced to judgment, affirmed by the highest court, and which is clearly collectible, this section confers upon him the authority to compromise all other claims in favor of the United States, except those arising under the postal laws. (1902) 23 Op. Atty. Gen. 631.

The claim of the United States against the North American Commercial Company, for interest, involving disputed questions of law and fact, is clearly one subject to compromise. Id.

2. —— Claims arising under postal laws.—Claims founded on judgment entered upon forfeited recognizances taken in prosecution of offenses against the postal laws do not arise under the postal laws, within the meaning of the exception in that section. (1885) 18 Op. Atty. Gen. 277.

3. —— Judgments in general.—The Secretary of the Treasury has no power to compromise a final judgment in favor of the United States, which is clearly collectible. That section only authorizes a compromise of a claim which is in some way doubtful. (1900) 23 Op. Atty. Gen. 18; (1895) 21 Op. Atty. Gen. 264 (reaffirming opinion of July 11, 1894 [1894] 21 Op. Atty. Gen. 50); (1902) 23 Op. Atty. Gen. 631.

But by virtue of authority conferred by section 10 of Act March 3, 1863, c. 76, judgments obtained by the United States in civil proceedings instituted under the internal revenue laws may be compromised by the Secretary of the Treasury, upon the report and recommendation of the attorney or agent of the government and of the Solicitor of the Treasury. (1871) 13 Op. Atty. Gen. 479.

Claims in favor of the government, founded on judgments entered upon forfeited recognizances taken in the prosecution of offenses against the postal laws, may be compromised by the Secretary of the Treasury under the provisions and upon the considerations imposed by this section. (1885) 18 Op. Atty. Gen. 277.

Judgments on recognizances may be subject to compromise. (1897) 21 Op. Atty. Gen. 494.

4. —— Judgments under contract labor act.—It is doubtful if the power given to the Secretary of the Treasury by section 3469, Revised Statutes, to compromise "any claim" extends to a judgment recovered by the United States against a corporation in a suit for a penalty for violation of the contract labor law of February 26, 1885 (23 Stat. 332). (1889) 19 Op. Atty. Gen. 344.

Neither section 2 of Act March 3, 1891 (26 Stat. 1084), nor any other previous law referred to in that section, authorizes the Secretary of the Treasury, or any one, to settle or compromise judgments entered under section 3 of Contract-Labor Act Feb. 26, 1885 (23 Stat. 333). (1893) 20 Op. Atty. Gen. 530, adhering to (1889) 19 Op. Atty. Gen. 345.

The Secretary of the Treasury has no

authority, under this section to compromise a suit to recover a penalty incurred under the alien contract labor law. (1909) 27 Op. Atty. Gen. 241.

5. —— **Claims for violation of "oleomargarine" statutes.**—The officers of the Treasury Department are authorized, in accordance with the provisions of section 3229, R. S., section 5952, ante, to compromise a case involving a violation of the "Oleomargarine" statutes, upon terms which, in their judgment, are just and reasonable. (1907) 26 Op. Atty. Gen. 282.

6. —— **Claims against bondsmen on criminal recognizance.**—The Secretary of the Treasury has power to compromise a claim against the surety in a forfeited recognizance for the appearance of a person charged with crime. (1868) 12 Op. Atty. Gen. 543.

Claims in favor of the government, founded on judgments entered upon forfeited recognizances taken in the prosecution of offenses against the postal laws, may be compromised by the Secretary of the Treasury. (1885) 18 Op. Atty. Gen. 277.

7. —— **Fines, penalties and forfeitures in general.**—The remedy offered by sections 17 and 18 of the act of June 22, 1874 (18 Stat. 189), post, §§ 10132, 10133, to one who is exposed to a fine, penalty, or forfeiture, in the cases provided for in that act is not exclusive, but relief, by way of compromise, may also be extended under this section. (1894) 20 Op. Atty. Gen. 727; (1879) 16 Op. Atty. Gen. 259; (1894) 20 Op. Atty. Gen. 727.

The fines imposed after a verdict of guilty of the statutory misdemeanor of allowing certain foreign pauper immigrants to land after being ordered to detain them are not a claim in favor of the United States within the meaning of this section, and cannot be compromised under that statute. (1893) 20 Op. Atty. Gen. 685.

A forfeiture cannot be remitted, under Act July 24, 1897, § 32, after it has been adjudged and decreed. (1899) 22 Op. Atty. Gen. 491.

8. —— **Fines and penalties in criminal actions.**—The fines imposed after a verdict of guilty of the statutory misdemeanor of allowing certain pauper immigrants to land after being ordered to detain them, are not a claim in favor of the United States within the meaning of section 3469, R. S., and cannot be compromised under that statute. (1893) 20 Op. Atty. Gen. 685.

That section does not confer upon the Secretary of the Treasury any duty with respect to the administration of the criminal laws of the United States, and does not extend to the compromise of a right to or suit for a penalty imposed as a punishment for the violation of law. (1909) 27 Op. Atty. Gen. 241; U. S. v. George (C. C. 1869) Fed. Cas. No. 15,198.

9. —— **Libel or seizure of merchandise.**—Where merchandise was seized and libeled under section 32 of Act July 24, 1897, there was not a proper case for a compromise. (1899) 22 Op. Atty. Gen. 491.

10. —— **Prosecution by individual to recover statutory penalties.**—The interest or share of the private prosecutor in any judgment obtained in an action under section 6411 et seq., post, is his private property, and the United States cannot compromise, remit, or release it by pardon or otherwise. U. S. v. Griswold (D. C. 1885) 24 Fed. 361, 365, affirmed (C. C. 1887) 30 Fed. 762, 763.

The Secretary of the Treasury has power to compromise a judgment rendered in the name of the United States for damages and penalties incurred under sections 3490–3493, R. S., sections 6411–6414, post, notwithstanding the fact that the prosecution was instituted and prosecuted to final judgment by an individual who thereby acquired an interest in the judgment. (1884) 18 Op. Atty. Gen. 72. See U. S. v. Morris (1825) 10 Wheat. 246, 6 L. Ed. 314.

11. —— **Claims to ownership of real estate.**—This section was intended to provide for compromising claims in favor of the United States which are of a personal character. It does not extend to claims to real property to which the United States asserts ownership and has a record title. (1879) 16 Op. Atty. Gen. 385.

Certain land in Pennsylvania was set off to the United States on execution against a debtor, over which the government subsequently exercised acts of ownership by leasing and offering the same for sale. One S. claims title to the land through certain persons who, as is alleged, owned it previous to the levy on the execution; and, he being in possession, an action of ejectment has been brought by the government against him, which is still pending. He proposes to compromise by paying to the government a certain sum, and the United States to abandon the suit and the title to the property. Held, that this section does not confer authority to entertain the compromise proposed. Id.

12. **Grounds for compromise—In general.**—In passing on cases submitted to him for compromise, under section 5952, ante, and this section, the Secretary of the Treasury, while he is not at liberty to act from motives merely of compassion or charity, may consider not only the pecuniary interests of the government, but take into view general considerations of justice and equity and of public policy. (1881) 17 Op. Atty. Gen. 213.

13. —— **Uncertainty of obtaining judgment.**—The Solicitor of the Treasury may properly recommend the acceptance of a compromise offered in

discharge of a claim of the United States before judgment, where the defendant is able to pay the amount of the claim, but where the district attorney advises acceptance upon the ground that, from want of evidence to establish the facts on which a verdict must depend, he doubts his ability to obtain a judgment. This case distinguished from that considered in the opinion of January 8, 1879 (16 Op. Atty. Gen. 617). (1879) 16 Op. Atty. Gen. 259.

14. —— **Circumstances of hardship to particular individuals.**—The Secretary of the Treasury is not authorized to remit or release any portion of a judgment indebtedness on considerations of hardship to particular individuals. The authority to "compromise" relates to claims of doubtful recovery or enforcement. (1879) 16 Op. Atty. Gen. 617; (1894) 21 Op. Atty. Gen. 50, distinguishing (1871) 13 Op. Atty. Gen. 479, and (1884) 18 Op. Atty. Gen. 72.

15. **Authority of Attorney General to compromise pending litigation.**—The Attorney General may absolutely dismiss or discontinue suits in which the government is interested; a fortiori he may terminate the same upon terms, at any stage, by way of compromise or settlement. (1899) 22 Op. Atty. Gen. 491.

The doubt as to the authority of the Attorney General, expressed in opinion of February 10, 1894 (20 Op. Atty. Gen. 714), not concurred in. Id.

Except as modified by section 5952, ante, and this section, the power to determine whether a compromise should be made of pending litigation would seem to rest with the Attorney General; such suits being necessarily under his control and subject to his direction. (1901) 23 Op. Atty. Gen. 507.

16. **Power of district attorney limited by treasury regulations.**—A district attorney had no power to compromise a claim in favor of the United States where the regulations established by the solicitor of the treasury under section 377, ante, authorized such a compromise only under special circumstances, which did not exist. U. S. v. Beebe (1901) 21 Sup. Ct. 371, 374, 180 U. S. 343, 45 L. Ed. 563.

17. **Authority of agents or officers to recommend compromise.**—The "agent" referred to in that section is one who has special charge of a claim for the purposes of collection or enforcement, in the same way that the district or special attorney has, though he need not possess their professional character. (1896) 21 Op. Atty. Gen. 361.

18. —— **Customs officers.**—A customs officer, having power to seize property claimed as forfeited for violation of the customs laws, who in the performance of his duty actually makes a seizure in order to enforce the claim of the government to the property seized, is an "agent having charge of" the claim within the meaning of this section. In such case, upon a report from him recommending that the claim be compromised, the Solicitor of the Treasury would be authorized under that section to make a recommendation to the Secretary of the Treasury concerning the same matter. (1880) 16 Op. Atty. Gen. 570.

19. —— **Comptroller of treasury.**—The comptroller of the treasury is not an "agent" within the meaning of this section. (1896) 21 Op. Atty. Gen. 361.

20. —— **Auditors of treasury.**—The auditors of the treasury are agents of the government in the broad sense of the term, but are more properly called officers, and were not intended to be included within the meaning of the word "agent" in this section. (1896) 21 Op. Atty. Gen. 367.

21. **Discretion of agent.**—An agent charged with enforcing claims due the United States may exercise reasonable discretion in the management and compromise of suits. U. S. v. Hudson (C. C. 1843) Fed. Cas. No. 15,413.

22. **Authority to take lands in compromise of claims.**—The executive may compromise doubtful claims by taking a conveyance of lands, in satisfaction, and may afterwards sell and convey them. U. S. v. Hudson (C. C. 1843) Fed. Cas. No. 15,413.

Under Act May 29, 1830, the solicitor of the treasury has authority to compromise suits and take lands in trust for the United States, and control and dispose of the same. U. S. v. Lane (C. C. 1844) Fed. Cas. No. 15,559.

23. **Effect of compromise or release with respect to sureties or joint debtors.**—While a defendant is charged in execution, the debt is considered as satisfied, and a discharge of one codebtor is a discharge of all. U. S. v. Parker (C. C. 1797) Fed. Cas. No. 15,992.

Where two persons are bound jointly or jointly and severally in an obligation, the release of one will discharge the other. U. S. v. Thompson (D. C. 1836) Fed. Cas. No. 16,487.

The release of one obligor on a joint and several obligation to the United States after a judgment obtained against the other is not available to the latter. Id.

Where a joint judgment has been rendered against two defendants, a release of one of them subsequent to the judgment will discharge the other. Id.

24. **Conclusiveness of unauthorized compromise judgment.**—There was no ratification of an unauthorized judgment of compromise entered in favor of the United States, nor any laches in

attacking it, where there was a delay of a little more than five years after the judgment was entered before steps were taken to set it aside, but this was due to the fact that no one having authority to act had any knowledge of the facts until that time. U. S. v. Beebe (1901) 21 Sup. Ct. 371, 375, 180 U. S. 343, 45 L. Ed. 563.

Cited without definite application, U. S. v. Richardson (C. C. 1881) 9 Fed. 804, 808; Same v. Knabe (C. C. 1906) 147 Fed. 802; Eager v. U. S. (1900) 35 Ct. Cl. 447.

§ 6376. (R. S. § 3470.) Purchase on execution.

At every sale, on execution, at the suit of the United States, of lands or tenements of a debtor, the United States may, by such agent as the Solicitor of the Treasury shall appoint, become the purchaser thereof; but in no case shall the agent bid in behalf of the United States a greater amount than that of the judgment for which such estate may be exposed to sale, and the costs. Whenever such purchase is made, the marshal of the district in which the sale is held shall make all needful conveyances, assignments, or transfers to the United States.

Act May 26, 1824, c. 172, § 2, 4 Stat. 51.

The Solicitor of the Treasury was authorized to rent or sell unproductive lands or other property of the United States acquired under judicial process or otherwise in the collection of debts, by R. S. § 3749, post, § 6942; to have charge of lands and other property assigned, etc., to the United States, and of trusts created for the United States in payment of debts, and of the sale and disposal of lands so assigned, etc., by R. S. § 3750, post, § 6946; and to release real estate acquired by the United States in payment of a debt, where such debt is afterward paid in money, by R. S. § 3751, post, § 6947.

§ 6377. (R. S. § 3471.) Discharge of poor debtor by Secretary of the Treasury.

Any person imprisoned upon execution issuing from any court of the United States, for a debt due to the United States, which he is unable to pay, may, at any time after commitment, make application, in writing, to the Secretary of the Treasury, stating the circumstances of his case, and his inability to discharge the debt; and thereupon the Secretary may make, or require to be made, an examination and inquiry into the circumstances of the debtor, by the oath of the debtor, which the Secretary, or any other person by him specially appointed, is authorized to administer, or otherwise, as the Secretary shall deem necessary and expedient, to ascertain the truth; and upon proof made to his satisfaction, that the debtor is unable to pay the debt for which he is imprisoned, and that he has not concealed or made any conveyance of his estate, in trust, for himself, or with an intent to defraud the United States, or to deprive them of their legal priority, the Secretary is authorized to receive from such debtor any deed, assignment, or conveyance of his real or personal estate, or any collateral security, to the use of the United States. Upon a compliance by the debtor with such terms and conditions as the Secretary may judge reasonable and proper, the Secretary must issue his order, under his hand, to the keeper of the prison, directing him to discharge the debtor from his imprisonment under such execution. The debtor shall not be liable to be imprisoned again for the debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterward, belong to the debtor. The benefit of this section shall not be extended to any person imprisoned for any fine, forfeiture, or penalty, incurred by a breach of any law of the United States, or for moneys had and received by any officer, agent, or other person, for their use; nor shall its provisions extend to any claim arising under the postal laws.

Act June 6, 1798, c. 49, §§ 1, 3, 1 Stat. 561, 562.

Other provisions for discharge of poor debtors from imprisonment on any

judgment in a civil case, obtained in behalf of the Post-Office Department, are contained in R. S. § 410, ante, § 602.

Notes of Decisions

Necessity of assignment of debtor's estate.—This act requires an assignment of the debtor's estate, real and personal, as a preliminary to his discharge. (1820) 5 Op. Atty. Gen. 727.

Effect of assignment to United States as against prior assignments.—After an assignment under a state insolvent law, a subsequent assignment of the same property by the debtor to the United States will pass no title to the property. Hunter v. U. S. (1831) 5 Pet. 173, 182, 8 L. Ed. 86.

Payment of costs.—Where imprisoned debtors are discharged on payment of costs, it is to be inferred that the condition embraced only the cost of suit in the cases in which they were imprisoned, and not the expenses of the examination made under this act. The expenses of the examination may be paid from the judiciary fund. (1841) 3 Op. Atty. Gen. 614.

Discharge of debtor as release of debt or sureties thereon.—The discharge of the principal in a bond to the United States, who is imprisoned under a ca. sa. issued against him, and who has assigned all his property for the use of the United States, does not impair or affect the rights of the United States to proceed against sureties for the amount due upon the judgment, and unpaid. U. S. v. Stansbury (1828) 1 Pet. 573, 575, 7 L. Ed. 267.

A discharge from prison by operation of law does not prevent the judgment creditor from prosecuting his judgment against the debtor's estate. Hunter v. U. S. (1831) 5 Pet. 173, 186, 8 L. Ed. 86.

A discharge of the principal held not a release of the debt against the surety. Id.

The discharge of a debtor from imprisonment does not discharge his coobligors and sureties in the bond from their liability. U. S. v. Sturges (C. C. 1826) Fed. Cas. No. 16,414.

See, also, notes under § 6378, post.

Discretion of secretary to refuse relief.—The Secretary of the Treasury may, in his discretion, refuse a discharge on account of circumstances taken in connection with the application of the property of debtors to their private creditors. He may have evidence that renders them unfit subjects for relief. But the application of all the debtor's effects to the payment of private creditors is not of itself a legal bar to their release. (1833) 2 Op. Atty. Gen. 552.

§ 6378. (R. S. § 3472.) Discharge by the President.

Whenever any person is imprisoned upon execution for a debt due to the United States, which he is unable to pay, and his case is such as does not authorize his discharge by the Secretary of the Treasury, under the preceding section, he may make application to the President, who, upon proof made to his satisfaction that the debtor is unable to pay the debt, and upon a compliance by the debtor with such terms and conditions as the President shall deem proper, may order the discharge of such debtor from his imprisonment. The debtor shall not be liable to be imprisoned again for the same debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterward, belong to the debtor.

Act March 3, 1817, c. 114, 3 Stat. 399.

Notes of Decisions

Operation and effect in general.—This section gives to the president full power to order such discharge upon such terms and conditions as he may think proper, and the party shall not be imprisoned again for the same offense. U. S. v. Ringgold (1834) 8 Pet. 150, 164, 8 L. Ed. 899.

This remedy for the relief of poor debtors is not exclusive, so as to prevent relief under other statutes. U. S. v. Tetlow (D. C. 1872) Fed. Cas. No. 16,456.

Where debtor discharged by president made subsequent agreement with marshal for payment of poundage fees and defaulted thereon, he could not be detained on a new ca. sa. U. S. v. Smith (C. C. 1826) Fed. Cas. No. 16,327.

Under this act the power of the President to discharge public debtors from imprisonment is expressly limited to cases in which the person is imprisoned upon execution; the judgment which shall have been obtained is to remain good and sufficient in law, and may be satisfied out of any estate which may then, or at any time afterwards, belong to the debtor. The act is not applicable to the case of a debtor against whom there has been yet no judgment, and who is imprisoned, not upon execution, but upon mesne process. (1818) 1 Op. Atty. Gen. 231.

He cannot discharge a debtor to the United States imprisoned on a warrant of distress issued from the Treasury Department by the letter of Act March 3, 1817, c. 114; yet, where the debtor will confess judgment, and will submit to a capias thereon at once, and to be thereby brought within the description of the act, the President may legally discharge him. (1829) 2 Op. Atty. Gen. 285.

The president held to have no authority to order refund to debtor of moneys paid into treasury several years after such payment. (1829) 2 Op. Atty. Gen. 189.

Discharge of debtor as a release of sureties.—In an action against one of two sureties in a joint and several bond given to the United States, a discharge of the other surety by the president under Act March 3, 1817, cannot be given in evidence under a plea of payment. U. S. v. Beattie (D. C. 1829) Fed. Cas. No. 14,554.

At common law the release of one obligor is the release of all the rest; and, unless this effect is prevented by the provisions of this act (which is doubtful), a discharge by the President of an insolvent debtor from imprisonment would also discharge his sureties from their liability. (1820) 1 Op. Atty. Gen. 367.

See, also, Hunt v. U. S. (C. C. 1812) Fed. Cas. No. 6,900.

The discharge of a principal debtor under this act does not discharge the sureties of such debtor. (1822) 5 Op. Atty. Gen. 746.

Cited without definite application, U. S. v. Dillin (1909) 168 Fed. 813, 816, 94 C. C. A. 337.

§ 6379. (R. S. § 3473, as amended, Act Feb. 27, 1877, c. 69, § 1.) Duties and other debts to the United States, in what currency to be paid.

All duties on imports shall be paid in gold and silver coin only, coin certificates or in demand Treasury notes, issued under the authority of the acts of July seventeen, eighteen hundred and sixty-one, chapter five; and February twelve, eighteen hundred and sixty-two, chapter twenty; and all taxes and all other debts and demands than duties on imports, accruing or becoming due to the United States, shall be paid in gold and silver coin, Treasury notes, United States notes, or notes of national banks.

Act Aug. 6, 1846, c. 90, § 18, 9 Stat. 64. Act Dec. 23, 1857, c. 1, § 6, 11 Stat. 258. Act July 17, 1861, c. 5, § 1, 12 Stat. 259. Act Aug. 5, 1861, c. 46, § 5, 12 Stat. 313. Act Feb. 12, 1862, c. 20, 12 Stat. 338. Act Feb. 25, 1862, c. 33, §§ 1, 5, 12 Stat. 345, 346. Act July 11, 1862, c. 142, § 1, 12 Stat. 532. Act March 3, 1863, c. 73, §§ 3, 5, 12 Stat. 710, 711. Act June 3, 1864, c. 106, § 23, 13 Stat. 106. Act June 30, 1864, c. 172, § 2, 13 Stat. 218. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 249.

This section, as enacted in the Revised Statutes, did not contain the words "coin certificates"; and it contained a further provision, at the end of the section, as follows: "And upon every such payment credit shall be given for the amount of principal and interest due on any Treasury note not received in payment on the day when the same are received."

It was amended, by striking out said provision, and by inserting the words "coin certificates," to read as set forth here, by Act Feb. 27, 1877, c. 69, § 1, last cited above.

Certificates issued on deposit of silver dollars, authorized by the Bland-Allison Coinage of Silver Act of Feb. 28, 1878, c. 20, were made receivable for customs, taxes, and all public dues, by section 3 of that act, post, § 6454.

Treasury notes issued in payment for purchases of silver under the Sherman Purchase of Silver Act of July 14, 1890, c. 708, were made receivable for customs, taxes, and all public dues, by section 2 of that act, post, § 6475.

Gold certificates issued on deposit of gold coin, authorized by the Currency Act of March 14, 1900, c. 41, were made receivable for customs, taxes, and all public dues, by section 6 of that act, post, § 6567.

Collectors of customs and of internal revenue were authorized to receive for duties on imports and internal taxed certified checks drawn on national and state banks and trust companies, by Act March 2, 1911, c. 191, § 1, ante, § 5711.

Notes of Decisions

Payment of state taxes.—This section has no reference to taxes imposed by state authority. Lane County v. Oregon (1868) 7 Wall. 71, 74, 19 L. Ed. 101.

Validity of drafts accepted in violation of this act.—Where, by reason of the disordered condition of the country, and the danger of transporting gold, a collector of internal revenue accepted drafts in payment of duties, his violation of the law will not preclude him from maintaining an action on such draft, notwithstanding the fact

that he had rendered to the government a statement of the payment of the taxes. Miltenberger v. Cooke (1873) 18 Wall. 421, 427, 21 L. Ed. 864.

Cited without definite application, Cooke v. U. S. (1875) 91 U. S. 389, 400, 401, 404, 23 L. Ed. 237; Detrick v. Balfour (C. C. 1881) 8 Fed. 468, 471.

§ 6380. (R. S. § 3474.) What coin receivable.

No gold or silver other than coin of standard fineness of the United States, shall be receivable in payment of dues to the United States, except as provided in section twenty-three hundred and sixty-six, Title "Public Lands," and in section thirty-five hundred and sixty-seven, Title "Coinage, Weights, and Measures."

Act Aug. 31, 1852, c. 108, § 2, 10 Stat. 97, 98. Act Feb. 21, 1857, c. 56, §§ 2, 3, 11 Stat. 163.

R. S. § 2366, ante, § 4775, mentioned in this section, provided that foreign coins might be received in payments on account of public lands, at the value fixed in accordance with R. S. § 3564; but said section 3564 was superseded by Act Aug. 27, 1894, c. 349, § 25, post, § 6536.

R. S. § 3567, post, § 6539, also mentioned in this section, provided that certain Spanish and Mexican coins should be receivable at the Treasury and its offices, and at the post-offices and land-offices, at valuations prescribed.

§ 6381. (R. S. § 3475.) National bank notes receivable for debts of United States, except.

The notes of national banks shall be received at par for all debts and demands owing by the United States to any person within the United States, except interest on the public debt, or in redemption of the national currency.

Act June 3, 1864, c. 106, § 23, 13 Stat. 106.

National bank notes were to be received at par in all parts of the United States in payment of taxes, excises, public lands, and all other dues to the United States, except duties on imports; and also for all salaries and other debts and demands owing by the United States to individuals, corporations, and associations within the United States, except interest on the public debt, and in redemption of the national currency, by R. S. § 5182, post, § 9721.

§ 6382. (R. S. § 3476.) Treasury notes payable for debts of United States.

Treasury notes bearing interest may be paid to any creditor of the United States at their face value, excluding interest, or to any creditor willing to receive them at par, including interest.

Act March 3, 1863, c. 73, § 2, 12 Stat. 710. Act June 30, 1864, c. 172, § 2, 13 Stat. 218.

Payments for sites for public buildings under the Treasury Department were to be by drafts or checks payable to the grantors of such sites, by Act March 2, 1889, c. 411, § 1, post, § 6904.

§ 6383. (R. S. § 3477.) Assignments of claims void, unless, etc.

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

Act July 29, 1846, c. 66, 9 Stat. 41. Act Feb. 26, 1853, c. 81, § 1, 10 Stat. 170.

The provisions of this section were not to apply to payments for rent of post-office quarters to agents of the lessors, by a provision of Act May 27, 1908, c. 206, post, § 6384.

Notes of Decisions

1. Nature and purpose of act.
2. Enactment, amendment, and repeal.
3. Construction and validity of act.
4. Operation and effect—In general.
5. Retroactive operation.
6. Effect as to liens for labor or material.
7. Acts of officers as affecting operation of act.
8. Necessity of strict compliance.
9. Assignments or transfers within this section—Agreements to make assignments or deliver warrants to assignee.
10. —— Transfer of stock in corporation holding claim against United States.
11. —— Assignments or powers of attorney in consideration of services in collecting claims.
12. —— Assignments made to secure loans or advances.
13. —— Transfer by mortgage.
14. —— Formation of partnership or corporation to perform contract.
15. —— Assignments from one partner to another.
16. —— Subcontracts let by contractor.
17. —— Assignment by way of compromise or settlement.
18. —— Assignment or transfer by operation of law.
19. —— Assignments for benefit of creditors and title of trustees or receivers in bankruptcy or insolvency.
20. —— Assignment of claims after issuance of draft in payment thereof.
21. Payment to a trustee by agreement between parties.
22. Custom and usage as affecting assignments.
23. Jurisdiction of courts to determine validity of assignments or transfers.
24. Effect of payments or delivery of warrants to assignees or attorneys in fact made in disregard of act.
25. Claims within purview of statute—In general.
26. —— Claims pending before courts or commissions.
27. —— Judgments or decrees of court.
28. —— Claims not payable by warrant.
29. —— Claims against officers and employés of the government.
30. —— Claims for customs duties illegally exacted.
31. —— Claims for sugar bounties.
32. —— Moneys due on contracts.
33. —— Drawbacks on re-exported goods.
34. —— Claims against Chinese indemnity fund.
35. —— Claims of Indian nation.
36. —— Claims for rent.
37. —— Entryman's claim for repayment on cancellation of entry.
38. —— Money taken from prisoner accused of crime.
39. —— Witness and jury fees.
40. —— Pay accounts of army officers.
41. —— Vouchers.
42. —— Claims for goods sold Indians.
43. —— Indian annuities.
44. Right of assignor to repudiate assignment.
45. Rights of assignee under invalid assignment against persons receiving fund.
46. Right of assignee to sue in court of claims.
47. Equitable rights of assignee.
48. Effect as between parties to assignment.
49. Right to set-off as affected by assignment.
50. Effect of assignment as to rights of a surety.
51. Validity of assignments as against trustee in bankruptcy.
52. Right of principal to sue on contract made in agent's name.
53. Judgment or decision against assignee as bar to assignor's claims.
54. Liability of officer in advising assignors as to the law.

1. Nature and purpose of act.—The sole object of the statute is to protect the government, not the claimant, and the statute would utterly fail in its sole object if powers of attorney and assignments were irrevocable and enforceable by the courts. Milliken v. Barrow (C. C. 1895) 65 Fed. 888, 892, affirmed (1896) 74 Fed. 612, 20 C. C. A. 559.

The purpose of the statute was not to protect individuals, nor to regulate the business transactions of private persons, but to prevent frauds upon the Treasury, and it is in the nature of a statute of frauds. Buffalo Bayou, B. & C. R. Co. v. U. S. (1880) 16 Ct. Cl. 238.

2. Enactment, amendment, and repeal.—Act Feb. 26, 1853, c. 81, § 1, was re-enacted in this section in almost the same words. Ball v. Halsell (1896) 16 Sup. Ct. 554, 555, 161 U. S. 72, 40 L. Ed. 622. And thus Congress gave a legislative construction of the act of February 26, 1853, showing that such section was not considered to have been repealed by the act of February 24, 1866 (10 Stat. 612), establishing the Court of Claims. U. S. v. Gillis (1877) 95 U. S. 407–416, 24 L. Ed. 503.

The restrictions of this act are not repealed by the provisions of Act March 3, 1863 (12 Stat. 765), reorganizing the Court of Claims. Martin v. U. S. (1867) 3 Ct. Cl. 64.

3. Construction and validity of act.—As this section was passed prior to the execution of the power of attorney and assignment produced, this construction impairs no previous contract obligations, nor infringes any vested right. (1849) 5 Op. Atty. Gen. 85.

The provision in that section making void "all powers of attorney, orders, or other authorities for receiving payment" of any claim upon the United States, or any part or share thereof, is not limited to powers of attorney, etc., relating to claims which are to be paid by Treasury warrant, but extends to those which relate to claims otherwise payable. (1879) 16 Op. Atty. Gen. 261.

The word "assigns" in the said acts of 1894 (28 Stat. 342) and 1896 (29

that h
ment
the
(187
864.

§ 6.
St.
ex
T
s

s intended to point out the
ities who took over by for-
ent all rights to or inter-
ntract, or such measure of
nterest as carve out a
are in the undertaking it-
its risks and incidents.
recognized must take in
with the method and for-
ovided by this section.
p. Atty. Gen. 156.

ation and effect—In general.
ter of a portion of a claim
a bill of exchange is in
nd evasion of this section
Peirce v. U. S. (1865) 1
judgment affirmed The
ances (1868) 7 Wall. 666,

effect of the law as in-
hat assignments of claims
government, whatever be
eration, are mere naked
attorney, revocable at pleas-
case obligatory upon the
Lopez v. U. S. (1889) 24

of attorney to draw mon-
e Treasury upon a claim not
or assigned is within this
and must be executed subse-
the date of the warrant for
ment of the claim. (1858) 9
Gen. 188.

visions in Act March 3, 1875,
and Act June 19, 1878, c. 313,
ertain payments be made to the
or, his assigns, or legal rep-
ives, held not to remove the
from the operation of this
(1878) 16 Op. Atty. Gen. 153.

a balance is due a contractor,
ere are conflicting claimants, the
er course is to keep the custody
e balance until the respective
ts of claimants to it have been de-
ined by a decree of the court.
) 20 Op. Atty. Gen. 578.

The head of a Department is pro-
ited by this section from co-operat-
with a contractor having a balance
him in the Treasury in assigning
balance to an outsider before the
uing of a warrant or warrants for
ment of the amount proposed to be
signed. Id.

Under this section assignments of claims against United States government, unless made in accordance with statute, held void. Porter v. Title Guaranty & Surety Co. (1912) 121 P. 348, 21 Idaho, 312.

A transfer of a claim on the government is invalid, unless the claim has been adjudicated and a warrant issued for its payment. Wood's Ex'rs v. Dialogue (Pa. 1881) 38 Leg. Int. 260.

re the fund awarded to the
tates against a foreign state
ayment of certain claims is
he treasury for distribution,
aims thereto are to be estab-
legal proceedings, though the
ates assumes no liability be-
yond their payment of the fund, such claims are against the United States, within the meaning of this section. Manning v. Leighton (1891) 65 Vt. 84, 26 Atl. 258, 24 L. R. A. 684.

5. Retroactive operation.—Warrants of attorney executed before the date of act are exempt from its provisions. (1858) 9 Op. Atty. Gen. 188.

6. Effect as to liens for labor or material.—A creditor, who sold boilers to the bankrupt with the understanding that they were to be used in a vessel being built under contract for the United States, held to have no lien upon the boilers, nor upon the contract or its proceeds, in view of this section, making void the assignment of any interest in government contracts. In re Waters-Colver Co. (D. C. 1913) 206 Fed. 845.

7. Acts of officers as affecting operation of act.—Certain contractors agreed to build for the lighthouse board a steamer for $66,900, payable in instalments at specified stages in the work; the contract and all moneys due thereunder to be forfeited for breach. Materialmen, who had been promised payment of their claims out of certain installments, obtained from the contractors a power of attorney authorizing them to collect $6,000 out of the last installment, and placed it on file with the naval secretary of the lighthouse board, who promised that if they would continue the delivery of materials the government would pay their claim to the amount of $6,000. At this time the government had the right to annul the contract for breach. In a correspondence with the naval secretary, who was in doubt whether the money could be thus paid under this section, and section 3737, ante, the secretary of the treasury stated that the claim could be paid only on condition that the account for the money when due under the contract should be stated in the name of the contractors, and receipted for by them before payment to the materialmen. Several months later the contract was forfeited for breach. The last installment never became due to the contractors, and the vessel was completed by the board at a cost, not including this claim, of $726.10 less than the contract price. Held, that the materialman could recover from the government only the sum of $726.10. Coates v. U. S. (1893) 53 Fed. 989, 990, 4 C. C. A. 138.

Under this section and R. S. § 3737, post, § 6890, a person having a contract with the United States cannot transfer or assign any part of the money coming to him thereunder so as to affect any one but himself, and the acceptance by a disbursing agent of the United States of an order upon such fund has no validity against third persons. Greenville Sav. Bank v. Lawrence (1896) 76 Fed. 545, 22 C. C. A.

646, affirming decree Lawrence v. U. S. (C. C. 1896) 71 Fed. 228.

No officer of the government can do any act which will take assignments and powers of attorney out of the statute. Hitchcock v. U. S. (1892) 27 Ct. Cl. 185.

8. Necessity of strict compliance.—Assignment of claim against the United States held void as between assignor and assignee as well as between all other parties, for failure to comply absolutely with this section. Manhattan Commercial Co. v. Paul (1916) 111 N. E. 76, 216 N. Y. 481.

9. Assignments or transfers within this section—Agreements to make assignments or deliver warrants to assignee.—An agreement between contractors with the United States government and a creditor that the contractors will not receive payments except in the presence of such creditor, and will immediately transfer the same to him, does not contravene this section, which is merely for the convenience and protection of the government. Leonard v. Whaley (1895) 91 Hun, 304, 36 N. Y. S. 147.

This section does not invalidate a bond given by a government contractor to deliver to the assignee of its claims against the government the warrants issued thereon. Levison v. Illinois Surety Co. (1915) 153 N. Y. S. 70, 167 App. Div. 747.

10. —— Transfer of stock in corporation holding claim against United States.—A transfer of stock by a stockholder of a corporation which holds a claim against the government cannot be regarded as the assignment of a portion of the claim within the meaning of the statutes. Kellogg Bridge Co. v. U. S. (1879) 15 Ct. Cl. 111.

11. —— Assignments or powers of attorney in consideration of services in collecting claims.—Under this section a personal agreement by the claimant with another person to pay to such person a percentage of whatever sum Congress through the efforts of such person may appropriate in payment does not constitute a lien on the fund to be appropriated. Burke v. Child (1874) 21 Wall. 441, 447, 22 L. Ed. 623.

A. employed B. to collect a claim against the United States. Before its allowance, or the issue of a warrant for its payment, he drew, in favor of C., an order on B., payable out of any moneys coming into his hands on account of said claim. B. accepted it, and D. became the holder of it in good faith and for value. A. refused to recognize its validity after the warrant in his favor had been issued, or to indorse the latter. Held: (1) That the order became upon its acceptance, and in the absence of any statutory prohibition, an equitable assignment pro tanto of the claim; (2) that, under this section, the accepted order was void, and that D. took no interest in the claim, and acquired no lien upon the fund arising therefrom. Spofford v. Kirk (1878) 97 U. S. 484, 488, 24 L. Ed. 1032.

So far as the contract for the prosecution of a claim against the United States makes the payment of the compensation for services rendered thereunder a lien upon the claim and upon any draft, money, or evidence of indebtedness which may be issued thereon, it is repugnant to this section. Nutt v. Knut (1906) 26 Sup. Ct. 216, 219, 200 U. S. 13, 50 L. Ed. 348, affirming decree (1904) 36 South. 689, 84 Miss. 465.

A power of attorney for the collection of a claim against the government, not executed in the presence of "two attesting witnesses after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof," is void under this section. Stow v. U. S. (1869) 5 Ct. Cl. 362.

Where a claimant executed a power of attorney to another, authorizing him to prosecute a claim before Congress and to appoint a third person to assist him, and therein assigned to each of them one-fourth of what might be recovered, authorizing them to receive the same; and the claim being subsequently allowed by Congress (by Act March 3, 1849, c. 164), and demand of payment of one-half thereof, pursuant to said assignment, being made at the Treasury by the two attorneys, it was objected to by the administrators of the claimant, and refused on account of noncompliance with this act. Held, that the latter act clearly prohibits payment to the attorneys, except they produce a warrant of attorney executed subsequent to the passage of the act allowing the claim, reciting the amount, properly executed, attested, and acknowledged. (1849) 5 Op. Atty. Gen. 85.

A contract between an attorney and a client for the collection of a claim against the United States, in which it is stipulated that the attorney shall present, prosecute, and recover the claim as the agent and attorney of the client, is "a power of attorney, order, or other authority for receiving payment" of the money so recovered within the meaning of this section, and, unless executed in accordance with the provisions thereof, is absolutely null and void. (1904) 25 Op. Atty. Gen. 279.

A., as administratrix of the estate of B., entered into a contract with C., an attorney, by which C. was to prosecute, at his own expense, a claim for cotton of B. seized by the government in 1863; if C. recovered nothing he was to receive nothing for his fees and disbursements, but if he should be successful, in whole or in part, he was to pay A. only $50 per bale for every bale he should recover judgment for, and the

balance was to go to him. Full power was given him to execute all necessary vouchers, receipts, etc. Held, that the agreement was a mere personal contract for a contingent fee, and was not an assignment or transfer of the claim, or any part or share of it, or interest in it to C., absolute or conditional; and therefore was not within the prohibition of this section. Wassell v. Armstrong (1880) 35 Ark. 247.

An attorney's agreement to prosecute a claim against the United States for a fee contingent on the amount allowed is not a pro tanto assignment of the claim to the attorney, within this section. Child v. Trist (D. C. 1873) 1 MacArthur, 1.

An assignment by a client of a portion of a claim which he is prosecuting against the government, as a fee for his services, comes within the meaning of this section, which prohibits the assignment of claims against the United States. Woods v. Dickinson (D. C. 1889) 7 Mackey, 301.

A contract by a claimant, employing an attorney to prosecute a claim against the United States in the Court of Claims on a contingent fee of 50 per cent. of the amount recovered, and stipulating that the fee shall be a lien on any draft issued by the government in payment of the claim, is not an assignment of a claim against the United States, within the meaning of R. S. § 3737, post, § 6890, or this section. Roberts v. Consaul (1905) 24 App. D. C. 551.

A contract between an attorney and a person having a claim against the United States, whereby the attorney is expressly given a lien for his fee on any check which may be issued by the United States in settlement of the claim, is not within the meaning of this section, prohibiting the assignment of claims against the United States, or of any interest therein. Jones v. Rutherford (1905) 26 App. D. C. 114.

An agreement that an attorney would prosecute a claim against the United States, and should receive for his services 20 per cent. of the amount of such claim when collected, was within this section. Jones v. Blacklidge (1872) 9 Kan. 562, 12 Am. Rep. 503.

An agreement between an attorney at law and his client for the payment of a certain sum for the former's professional services in prosecuting Alabama claims of the client recited that the sum agreed upon "should in some form be charged upon or paid out of any sums to be recovered on the Alabama claims." Held, that there was no effective assignment to the attorney of any right in those claims, and that, even if there were, this section would be a bar. Newell v. West (1889) 149 Mass. 520, 21 N. E. 954.

In an agreement reciting that the holders of certain claims for damages by Confederate cruisers constituted K. their true and lawful attorney, in their names to collect said claims, and agreeing in consideration of the services of K., that he and his legal representatives or assigns should be entitled to retain 25 per cent. of the amount collected, was more than a power of attorney, and was not void as being in conflict with Act June 23, 1874, c. 459, prohibiting any assignment or transfer of claims such as K. was employed to collect, to secure services rendered. Grapel v. Hodges (1889) 112 N. Y. 419, 20 N. E. 542.

12. —— **Assignments made to secure loans or advances.**—There is no claim against the United States, and therefore no assignment of it, within this section, where one having a contract to do work for the United States, before doing any work under it, contracts with another to obtain advances with which to do the work, agreeing to make payment for the advances out of the moneys to be received from the government for the work, and executes a power of attorney to such other person, authorizing him to collect all money to become due on the contract with the government. Dulaney v. Scudder (1899) 94 Fed. 6, 36 C. C. A. 52.

The assignment by a bankrupt to a bank, as collateral security for money borrowed, of claims against the United States under contracts only partially performed, such assignments not being witnessed or acknowledged, was ineffective, and the claims passed by operation of law to the bankrupt's trustee for the benefit of general creditors. National Bank of Commerce of Seattle v. Downie (1908) 161 Fed. 839, 88 C. C. A. 657.

A power of attorney from a government contractor to a bank to secure future advances held void. Hitchcock v. U. S. (1892) 27 Ct. Cl. 185.

R. S. § 3737, post, § 6890, declares that no contract with the United States shall be transferred, by the party to whom such contract is given, to any other party, and that such transfer shall cause the annulment of the contract so far as the United States is concerned, and this section declares the formalities to be observed on the transfer of any claim against the United States. Held, that where contractors for a government building were unable to complete the work, and an agreement was made between them and their creditors whereby the creditors were to provide the funds necessary for completion, and moneys received from the government were to be distributed among the creditors, and one of the creditors thereafter, on completion of the work, obtaining all the money due under the contract, applied it to its debt, and was subsequently garnished in a suit against the other creditors, the United States not being interested, section 3737, post, § 6890, and this sec-

tion had no application to the determination of the parties' rights. Ferwell v. American Surety Co. (1900) 28 South. 755, 80 Miss. 782, 92 Am. St. Rep. 625.

A shipbuilding company having contracts with the federal government for the building of several vessels, by depositing the contracts in a bank with power of attorney authorizing it to collect payments by the government on the contract, on the faith of which the bank made loans to the company, effectuated a valid equitable assignment of the contracts. S. H. Hawes & Co. v. Wm. R. Trigg Co. (Va. 1909) 65 S. E. 538.

13. —— **Transfer by mortgage.**—A voluntary mortgage for the security of a debt, and finally completed and made absolute by judicial sale, comes within this section, which provides that the assignment of a claim against the United States must be made in the presence of two attesting witnesses, after the allowance of the claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. St. Paul & D. R. Co. v. U. S. (1885) 5 Sup. Ct. 366, 367, 112 U. S. 733, 28 L. Ed. 861; Flint & P. M. R. Co. v. Same (1885) 5 Sup. Ct. 368, 112 U. S. 737, 28 L. Ed. 862.

14. —— **Formation of partnership or corporation to perform contract.**—See § 6890, post.

This section and R. S. § 3737, post, § 6890, do not invalidate a partnership formed between a party to whom the government has given the contract and other persons whose means are required to carry it out; and written promises to such moneyed partners by the other to pay back out of the contract money his portion of the fund advanced do not bring the case within those sections. Hobbs v. McLean (1886) 6 Sup. Ct. 870, 117 U. S. 567, 29 L. Ed. 940.

A contract of partnership to bid for and carry out a mail contract in the name of one partner held not invalid, under this section, as an assignment of a claim against the United States. Hegness v. Chilberg (1915) 224 Fed. 28, 139 C. C. A. 492.

A corporation formed to carry out a government contract held not an assignee of the contract nor a subcontractor, but a mere agent for the contractor. U. S. v. Axman (C. C. 1906) 152 Fed. 816, 821.

15. —— **Assignments from one partner to another.**—An assignment of the claim by one partner to another is void under this section, and see Sines' case p. 12, ante. Cooper v. U. S. (1863) 1 Ct. Cl. 85.

16. —— **Subcontracts let by contractor.**—See § 6890, post.

That a contractor for doing certain work for the government may make subcontracts, in the execution of the work undertaken, is nowhere forbidden; and neither this section nor Id. § 3737, post, § 6890, applies to such case. Manning v. Ellicott (1896) 9 App. D. C. 71.

An agreement by a sculptor that, in the event of an award to him by a congressional commission of a contract for a certain statue for which he had submitted designs, he would enter into a contract with a contractor for stone work for the erection by the latter of a granite pedestal for such statue, and that, to the amount of such pedestal, the contractor should be made a party to the contract between the commission and the sculptor, is not void under either this section or section 3737, post, § 6890, providing that the transfer of a contract with the United States, or any interest therein, shall cause the annulment of the contract transferred so far as the United States are concerned. Id.

17. —— **Assignment by way of compromise or settlement.**—Where a shipowner conveys in general terms his interest in a ship and voyage to one of his co-owners, including "any claims by the owners of said ship against the United States government, * * * being a compromise sale and settlement of all matters pertaining to the ship," and congress subsequently appropriates money for a pre-existing claim of such ship against the government, the conveyance is not void under this section. Jernegan v. Osborn (1892) 155 Mass. 207, 29 N. E. 520.

18. —— **Assignment or transfer by operation of law.**—The United States may, in their discretion, exercised through the proper officers, pay a debt due to the estate of a decedent either to the administrator appointed in the state of his domicile, or to the ancillary administrator duly appointed in the District of Columbia. Wyman v. U. S. (1884) 3 Sup. Ct. 417, 109 U. S. 654, 27 L. Ed. 1068.

Where, by special act of congress, money is made payable to certain minor children in Louisiana, a payment in the District of Columbia, to the attorney of their tutrix, appointed under the laws of Louisiana, is a valid payment. Taylor v. Bemiss (1884) 3 Sup. Ct. 441, 110 U. S. 42, 28 L. Ed. 64.

This section was enacted to protect the government, and not the claimant, and does not apply to a case in which a court of competent jurisdiction, in an action by a creditor against the claimant, makes an order forbidding him to collect the claim, except through a receiver, who shall hold the proceeds subject to the order of such court. Price v. Forrest (1899) 19 Sup. Ct. 434, 173 U. S. 410, 43 L. Ed. 749.

It is not inconsistent with this section for a court for the protection of a creditor to forbid a claimant to col-

lect his demand except through a receiver. Borcherling v. U. S. (1900) 35 Ct. Cl. 311.

A payment to a person acting under a power of attorney from one of several executors is valid, coexecutors being regarded in law as an individual person, and the act of any one of them, in respect to the administration of the effects, as the act of all. (1827) 2 Op. Atty. Gen. 66.

This section will not prevent a court of competent jurisdiction as to the subject-matter and parties from making such orders as may be necessary and appropriate to prevent one who has a claim for money against the government from withdrawing the proceeds of such claim from the reach of his creditors, provided such orders do not interfere with the examination and allowance or rejection of such claim by the proper officers of the government, nor in anywise obstruct any action that such officer may legally take under the statutes relating to the allowance or payment of claims against the United States. Sanborn v. Maxwell (1901) 18 App. D. C. 245.

19. —— **Assignments for benefit of creditors and title of trustees or receivers in bankruptcy or insolvency.**—A voluntary assignment for the benefit of creditors or an assignment by operation of law does not come within the section. Erwin v. U. S. (1878) 97 U. S. 392, 397, 24 L. Ed. 1065; Goodman v. Niblack (1880) 102 U. S. 556, 559, 26 L. Ed. 229; Butler v. Goreley (1892) 13 Sup. Ct. 84, 86, 87, 146 U. S. 303, 36 L. Ed. 981 (affirming Goreley v. Butler [1888] 16 N. E. 734, and distinguishing St. Paul & D. R. Co. v. U. S. [1885] 5 Sup. Ct. 366, 112 U. S. 733, 28 L. Ed. 861); Calder v. Henderson (1893) 54 Fed. 802, 806, 4 C. C. A. 584; In re Ghazal (1909) 174 Fed. 809, 98 C. C. A. 517; Milliken v. Barrow (C. C. 1895) 65 Fed. 888, 891 (affirmed [1896] 74 Fed. 612, 20 C. C. A. 559); Burke v. U. S. (1877) 13 Ct. Cl. 231; Morgan v. Same (1878) 14 Ct. Cl. 319; St. Paul & D. R. Co. v. Same (1883) 18 Ct. Cl. 405; Flint & P. M. R. Co. v. Same, Id. 420; George Howes & Co. v. Same (1889) 24 Ct. Cl. 170; Redfield v. Same (1892) 27 Ct. Cl. 393; McKay v. Same, Id. 422; American Tobacco Co. v. Same (1897) 32 Ct. Cl. 207; People's Trust Co. v. Same (1903) 38 Ct. Cl. 359; (1894) 21 Op. Atty. Gen. 75; Price v. Forrest (1896) 35 A. 1075, 54 N. J. Eq. 669 (affirmed [1897] 37 A. 1117); Stanford v. Lockwood (N. Y. 1881) 24 Hun, 291.

20. —— **Assignment of claims after issuance of draft in payment thereof.**—When it is settled by the decree of court of competent jurisdiction that the holder of certain treasury drafts has no right or title to them, nor to the warrants or claims which they represent, and that such claims have been duly assigned to the present claimant, and that the drafts have never been indorsed by the payees, a prima facie right of recovery is established, though the drafts be still outstanding. Kinney v. U. S. (1884) 19 Ct. Cl. 671.

Semble a claim against the government may be duly assigned, though the treasury draft drawn therefor never reached the claimant and at the time of the assignment was in the hands of a third person. Id.

21. **Payment to a trustee by agreement between parties.**—There being a question as to the assignment of a contract with reference to the improvement of the harbor at Brunswick, Ga., under the river and harbor acts of 1894 (28 Stat. 342) and 1896 (27 Stat. 208), all parties may execute an agreement in the nature of a trust to embody a release to the United States as to a present payment and an agreement to release as to future payments, and providing for payment to a trustee for disbursement. (1898) 22 Op. Atty. Gen. 156.

22. **Custom and usage as affecting assignments.**—No proof of a custom can be received to show that claims against the United States, such as the so-called Montana militia vouchers, can be transferred by mere delivery. Creighton v. Black (1876) 2 Mont. 354.

23. **Jurisdiction of courts to determine validity of assignments or transfers.**—In an action by a material man, to whom a government contractor assigned the money coming to him from the government before any warrant therefor had issued, against another person, to whom the contractor also made an assignment, and to whom the money was actually paid, a defense by the latter that the assignment made to plaintiff was in violation of this section is not the assertion of a right or title under the statute, so as to give the supreme court jurisdiction to review a judgment against the defendant by the highest court of the state. Conde v. York (1898) 18 Sup. Ct. 234, 168 U. S. 642, 42 L. Ed. 611.

An appeal from the Court of Appeals of the District of Columbia reversing a decree enforcing a lien of attorneys on a fund or a claim against the United States allowed by the federal Supreme Court over the objection that the question raised concerning the construction of this section has been so foreclosed that the construction of the statute was not in question, in view of the difference between the two lower courts as to the effect of an interlocutory consent decree, and the effect of the statute on the rights of the parties to make the agreement, irrespective of its operation on the United States and the application of the statute to the case presented. McGowan

v. Parish (1913) 33 Sup. Ct. 521, 228 U. S. 312, 57 L. Ed. 849.

Complainant brought suit in a state court to subject a judgment, obtained by the defendant against the United States in the court of claims, to the payment of a judgment he had against defendant, and for injunction to restrain defendant from collecting, transferring, or otherwise disposing of said claim against the government, and for the appointment of a receiver to collect and hold the fund. The suit was removed to the United States court, and, upon motion to remand, held, that the suit involved the construction of this section, and the motion was therefore denied. Willard v. Mueller (C. C. 1885) 23 Fed. 209.

This provision does not affect the jurisdiction of the court in cases under the Bowman Act. On the contrary, it constitutes a defense to a suit by the assignee. Forehand v. U. S. (1888) 23 Ct. Cl. 477.

An appeal to the United States Supreme Court from a decision of this court denying the validity of an attorney's contractual lien will not be allowed upon the ground that the construction of this section, a law of the United States, has been drawn into question by the defendants, where a previous decision of that court has held such a lien void under that statute, for the reason that the question is no longer an open one. Parish v. McGowan (1912) 39 App. D. C. 184.

24. Effect of payments or delivery of warrants to assignees or attorneys in fact made in disregard of act.—A claimant against the United States who executed a power of attorney defectively, and who, with knowledge of the facts, co-operated in the prosecution of an action brought in the name of the principal in the power, and who allowed a settlement of the claim to be made, was estopped from disputing the validity of the settlement, though powers of attorney are by statute void unless executed in the manner prescribed. Stowe v. U. S. (1873) 19 Wall. 13, 16, 22 L. Ed. 144.

Where a claim against the United States was allowed by the proper officers of the treasury, and a part thereof paid to the assignees of the claimant, on his receipt for the whole sum, the United States, when sued by them for the balance, cannot, on the ground that the assignment was not executed in the manner prescribed by law, set up as a counterclaim the amount so paid; but, by paying a part of the claim to the assignees, the United States did not waive its right to withhold from them the residue. McKnight v. U. S. (1878) 98 U. S. 179, 25 L. Ed. 115.

Payment to an attorney in fact, constituted such by power of attorney executed by the claimants before the allowance of their claim by congress or by the proper department, is good as between the government and such claimants, where the power of attorney has not been revoked at the time payment is made, notwithstanding the provisions of Act July 29, 1846 (9 Stat. 41), and Act Feb. 26, 1853 (10 Stat. 170), prohibiting payment to attorneys, unless the warrant of attorney was executed after the allowance of the claim. Bailey v. U. S. (1883) 3 Sup. Ct. 272, 275, 109 U. S. 432, 27 L. Ed. 988.

Though the assignment of a claim against the government be void, yet, if the Treasury recognizes the assignment and pays the amount found due on an accounting to the assignee, an action will not lie to recover it back. McKnight v. U. S. (1877) 13 Ct. Cl. 292.

Where a payment is made by the officers of the treasury upon a power of attorney properly authenticated, actually given, and sufficiently comprehensive in terms, its validity or invalidity under the statute is no longer in question, and no party to the transaction is at liberty to deny the effectiveness of the payment. Bailey v. U. S. (1879) 15 Ct. Cl. 490.

Courts cannot enforce assignments or powers which the statute declares void. But if a government creditor voluntarily gives such an assignment or power, and the officers of the treasury treat it as valid and pay the debt to the person named therein, the parties would thereby take the instrument out of the operation of the statute, and courts must then deal with it as if no such statute existed. Buffalo Bayou, B. & C. R. Co. v. U. S. (1880) 16 Ct. Cl. 238.

Assignments of claims and powers of attorney void under the statute may be recognized by the accounting officers and accounts be stated in favor of the assignees, and payments made thereon will be conclusive upon the assignors and discharge the indebtedness. Lopez v. U. S. (1889), 24 Ct. Cl. 84.

A power of attorney given by a builder to a bank to secure future advances for the erection of a public building, which authorizes the bank to "receive our last estimate from the United States on our contract for erection of U. S. custom house at Galveston," is void. The Secretary of the Treasury could give effect to such an instrument only by paying "the last estimate," which payment would be obligatory upon the contractor. Hitchcock v. U. S. (1892) 27 Ct. Cl. 185.

A claim was presented to the Southern Claims Commissioners, under Act March 3, 1871, c. 116, the claimant describing himself in his application as "Alexander Anderson, of Augusta county, Virginia." The commissioners made favorable report thereon, finding the amount due claimant to be $175. Their report was adopted by Congress, and by act of March 3, 1873, c. 339, the Secretary of the Treasury was authorized to pay $175, "out of any moneys

in the Treasury not otherwise appropriated," to "Alexander Anderson, of Virginia." In the meantime a claim had also been presented to the Commissioners in the name of Alexander Anderson, of Amelia county, Virginia, which was not allowed. The latter claimant, in March, 1873, gave F. a power of attorney to receive for him the $175 allowed by said act to "Alexander Anderson, of Virginia," describing himself as "Alexander Anderson, of Amelia Courthouse, of the county of Amelia, in the state of Virginia." The money was paid to F. on filing said power, who had acted in good faith, and was not informed of the mistake until after he turned over the money to his principal. Held, that F. is under no legal liability for the money, but his principal is liable, either at the suit of the rightful claimant or of the United States. (1878) 16 Op. Atty. Gen. 193.

Where a contractor with the Quartermaster's Department failed to perform certain work, and an arrangement was effected whereby his bondsmen should take charge of and complete the work, the contractor executing and delivering to them a power of attorney, by which they were authorized to receive and receipt for the money due on the contract, advised, that the Department may recognize this power of attorney, and that payment to said bondsmen upon their receipted vouchers thereunder will discharge the government. (1889) 19 Op. Atty. Gen. 289.

Moneys due by the United States to a contractor may be paid to him through his attorney in fact, constituted for that purpose, notwithstanding it is claimed that one of the sureties entered into a subcontract with the contractor by which he was to receive all moneys to be paid on the contract, such subcontractor not having filed any notice of such agreement or made any claim to payment. Id.

The moneys due by the United States to a contractor may be paid to him through his attorney in fact, constituted for that purpose, notwithstanding it is claimed that one of the sureties entered into a subcontract with the contractor by which he was to receive all moneys to be paid on the contract, such subcontractor not having filed any notice of such agreement or made any claim to payment. (1893) 20 Op. Atty. Gen. 643.

The practice of the Treasury Department of delivering warrants to attorneys who have prosecuted claims before the Department, except under the safeguards of this section, is not warranted by law. (1904) 25 Op. Atty. Gen. 279.

The Secretary of the Treasury may recall his action in delivering a warrant to an attorney not entitled under the law to receive it, and may take necessary measures, by issuing a new warrant or otherwise, to pay the money involved to the party for whom it was appropriated by Congress. Id.

In so recalling a warrant and issuing a new one, the government does not become liable to the attorney for the amount of his fee for recovering the claim. Id.

This section is for the protection of the government, and under it the government has no concern in the disposition of a warrant after placing it in the hands of one authorized to receive it by the claimant. Farmers' Nat. Bank v. Robinson (1898) 53 P. 762, 59 Kan. 777.

25. Claims within purview of statute —In general.—Every claim against the United States however raised, of whatever nature it may be, and wherever and whenever presented, is embraced in this statute. U. S. v. Gillis (1877) 95 U. S. 407, 413, 24 L. Ed. 503.

A voluntary assignment of naked claims against the government for the purpose of suit or in view of litigation or otherwise cannot be countenanced, and this statute embraces every claim or right to demand money from the United States, however arising, of whatsoever nature, and whenever and wherever prosecuted. Emmons v. U. S. (C. C. 1911) 189 Fed. 414.

The term "claim" held not to include claims for supplies furnished the Oregon expedition to protect the emigrants of 1854. Dowell v. Cardwell (D. C. 1877) Fed. Cas. No. 4,039.

An assignment or transfer of a claim arising under the "captured and abandoned property act" (12 Stat. 820), executed before a judgment is recovered, is void under this act. Martin v. U. S. (1867) 3 Ct. Cl. 64.

A sale of all claims due a vessel and her owners is, as an assignment of a claim on the government for the destruction of the vessel while in its service, void. Ely v. U. S. (1865) 19 Ct. Cl. 658.

The Alabama claims became by operation of Act June 5, 1882 (22 Stat. 98), claims against the United States, and subject to the provisions regulating transfers and assignments. George Howes & Co. v. U. S. (1889) 24 Ct. Cl. 170. See Williamson v. Colcord (D. C. 1875) Fed. Cas. No. 17,752.

Sundry parties having conflicting claims against the government under a statute making provision to defray the expenses of removing the Choctaw Indians from the state of Mississippi, an arrangement between them was made to refer the matter to the arbitration of J. M. C. and P. R. F., with power of attorney to receive the money on their behalf and receipt for the same to the United States. Held, that this is not a case of the transfer or assignment of a claim, or of agency thereof, forbidden by this act. (1853) 6 Op. Atty. Gen. 60.

An order may be made by the Secretary of the Interior directing pay-

ment of the certificates given by the Superintendent of the Census in cases where such certificates are assigned in strict conformity to this section. (1882) 17 Op. Atty. Gen. 266.

The provisions of this section do not apply to undisputed claims, or any claim about which no question is made as to its validity or extent. (1883) 17 Op. Atty. Gen. 545.

Where a contract was made for roofing a courthouse at a fixed price, and a power of attorney given to receive a part of such price as security for material purchased by the contractor, advised, that the power was not affected by this section; as no doubt existed concerning the right of the contractor to receive the amount so secured. Id.

An assignment of an indebtedness admittedly due by the United States is not prohibited by this section. (1894) 21 Op. Atty. Gen. 75, approving (1881) 17 Op. Atty. Gen. 545.

This section applies only to such claims as require allowance by some accounting officer, an ascertainment of the amounts due thereon, and the issuance of a warrant for their payment. (1899) 22 Op. Atty. Gen. 637.

Checks of disbursing officers of the government drawn upon the public treasury or an assistant treasurer of the United States may be properly indorsed and transferred by either the payee, indorsee, or by an agent of either, acting as such under a power of attorney from such payee or indorsee. Id.

An assignment of a claim against the United States for work unperformed, with power to certain trustees to prosecute the unfinished work, and to collect moneys that may thereafter become due, confers no rights on the assignee, as against the United States, in view of this section. American Surety Co. v. U. S. (1898) 24 South. 388, 76 Miss. 289.

26. —— **Claims pending before courts or commissions.**—A commission called together, in pursuance of treaty stipulations or otherwise, to settle and adjust disputed claims, with a view to their ultimate payment and satisfaction, is, for that purpose, a quasi court; and there is nothing illegal, immoral, or against public policy in an agreement by an attorney at law to present and prosecute a claim before it, either at a fixed compensation, or for a reasonable percentage upon the amount recovered, and such agreement is not within this section, as it does not constitute a lien on funds. Wright v. Tebbitts (1875) 91 U. S. 252, 253, 23 L. Ed. 320.

This section applies to suits in the court of claims established by Act 1855, incorporated into section 1059. Emmons v. U. S. (C. C. 1891) 48 Fed. 43, 44.

It is inferable from the decisions of the Supreme Court in the Floyd Acceptance Cases (7 Ct. Cl. 75) and in Anderson Case (Id. 121), and from Act June 25, 1868 (15 Stat. 75, § 4), that an assignment of claims or choses in action against the government is not void under the act to prevent frauds upon the Treasury Feb. 26, 1853 (10 Stat. 170). The purpose of the act must be restricted to matters before the Treasury, and not to matters coming within the jurisdiction of the courts. The former decisions of the court holding assignments void must be overruled. See the Floyd Acceptance Cases (1865) 1 Ct. Cl. 270; Cote Case (1867) 3 Ct. Cl. 64; Lawrence v. U. S. (1872) 8 Ct. Cl. 252.

At the common law a chose in action was from its nature deemed unassignable, and the same principle formerly covered claims against the United States, but the acts establishing and reorganizing the Court of Claims provide for the litigation of assigned claims. They may be litigated, and do not come within the prohibition of Act Feb. 26, 1853 (10 Stat. 170). Cavender v. U. S. (1872) 8 Ct. Cl. 281.

27. —— **Judgments or decrees of court.**—The transfer or assignment of a decree rendered against the United States after act Feb. 26, 1853 (10 Stat. 170), regulating the transfers of claims against the United States, is subject to the provisions of that statute, and a transfer made before the "issuing of a warrant for the payment thereof is void." Adams v. U. S. (1867) 3 Ct. Cl. 312.

A debt settled by judgment in the Court of Claims, and due from the United States, does not come within the purview and operation of this section. (1867) 12 Op. Atty. Gen. 216.

28. —— **Claims not payable by warrant.**—The only cases where assignments of any claim on the United States or any part thereof are recognized is where a warrant has already been issued, and, where there are any cases where the claim cannot be paid by a warrant, they do not come within the exception, but are affected by the general language. Hager v. Swayne (1893) 13 Sup. Ct. 841, 843, 149 U. S. 242, 37 L. Ed. 719.

29. —— **Claims against officers and employés of the government.**—The claims of deputy marshals for compensation are claims against the marshal personally, and not against the United States, and hence not within this section, prohibiting the assignment of the latter class of claims. Douglas v. Wallace (1896) 16 Sup. Ct. 485, 161 U. S. 346, 40 L. Ed. 727, affirming Wallace v. Douglas (1889) 103 N. C. 19, 9 S. E. 453 and (1895) 116 N. C. 659, 21 S. E. 387.

Judgments against collectors for an excess of duties collected are not "claims upon the United States," with-

in this section. Burke v. Davis (C. C. 1894) 63 Fed. 456.

30. —— **Claims for customs duties illegally exacted.**—An assignment of an unliquidated claim for customs duties alleged to have been illegally exacted is void under this section. The John Shillito Co. v. McClung (1892) 51 Fed. 868, 2 C. C. A. 526, affirming judgment (C. C. 1891) 45 Fed. 778.

Judgments against collectors for an excess of duties collected are "not claims upon the United States," within the meaning of this section; but, even if such judgments are claims upon the United States, the statute does not affect assignments to the real owner of the judgments, made by an agent in whose name they were rendered, by order of a court, since such statute applies only to voluntary assignments. Burke v. Davis (C. C. 1894) 63 Fed. 456, 458.

31. —— **Claims for sugar bounties.**—There is nothing in the sugar bounty provision of the act of October 1, 1890, or in this section or section 3737, post, § 6890, to prevent the sugar planter from pledging the bounty to become payable on his crop, before his claims therefore have been presented and allowed, and a treasury warrant issued. Barrow v. Milliken (1896) 74 Fed. 612, 20 C. C. A. 559, applying Hobbs v. McLean (1886) 6 Sup. Ct. 870, 117 U. S. 567, 29 L. Ed. 940, and writ of certiorari denied (1897) 17 Sup. Ct. 991, 167 U. S. 746, 42 L. Ed. 1210.

The prohibition in this section against assigning claims applies only to claims existing at the time of the transfer, and not to such as are merely possibilities, as where, before raising sugar, a planter assigns the bounty to be paid upon such sugar as may be raised, under Act Oct. 1, 1890. Milliken v. Barrow (C. C. 1895) 65 Fed. 888.

32. —— **Moneys due on contracts.**—Under this section and section 3737, post, § 6890 an assignment by a public contractor of a claim against the United States for money accruing on a building contract was void, both as against the United States, the contractor's surety, the laborers, and materialmen. Henningsen v. U. S. Fidelity & Guaranty Co. (1906) 143 Fed. 810, 74 C. C. A. 484, decree affirmed (1908) 28 Sup. Ct. 389, 208 U. S. 404, 52 L. Ed. 547.

33. —— **Drawbacks on re-exported goods.**—This section affects only perfected claims, and does not apply to a claim for drawbacks on re-exported goods, made in the name of one to whom the outward bill of lading is indorsed with authority to act for custom house purposes, since the regulations of the treasury department provide that the person producing the bill of lading so indorsed shall be deemed the exporter for the purpose of making entry, and receiving the drawback or refund. Kennedy v. U. S. (1899) 95 Fed. 127, 37 C. C. A. 25, affirming judgment (C. C. 1897) 79 Fed. 893.

34. —— **Claims against Chinese indemnity fund.**—The statute does not apply to a claim against the Chinese indemnity fund under control of the Department of State. Hubbell v. U. S. (1879) 15 Ct. Cl. 546.

35. —— **Claims of Indian nation.**—An assignment by an Indian nation of a part interest in a claim held by it against the United States in accordance with R. S. § 2103, ante, § 4087, and a subassignment made in accordance with section 2106, ante, § 4090, are not prohibited or rendered invalid by this section. Dexter v. Meigs (1890) 47 N. J. Eq. (2 Dick.) 488, 21 Atl. 114.

36. —— **Claims for rent.**—Where a demand for rent due from the United States is assigned as security before the claim has been allowed, the assignee may assert his rights against persons named in warrants subsequently issued by the treasury therefor, and against a mortgagee of the premises not entitled to the rents, notwithstanding this section, as the object of the section is merely to prevent frauds on the treasury. Freedman's Sav. & Trust Co. v. Shepherd (1888) 8 Sup. Ct. 1250, 1256, 127 U. S. 494, 32 L. Ed. 163.

37. —— **Entryman's claim for repayment on cancellation of entry.**—Under this section the assignee of one whose entry on timber lands is canceled by the commissioner of the general land office after he has made all the necessary payments cannot sue to recover the money so paid. Emmons v. U. S. (C. C. 1890) 42 Fed. 26.

An assignment of a claim against the United States for money paid to the Land Office by plaintiff's assignors as the purchase price and fees, pursuant to a timber land entry which was erroneously rejected, was invalid and insufficient to sustain an action against the government by the assignee in a federal court. Emmons v. U. S. (C. C. 1911) 189 Fed. 414.

An entryman's claim for repayment on the cancellation of his entry is not assignable. Commonwealth Title Ins. & Trust Co. v. U. S. (1902) 37 Ct. Cl. 532.

38. —— **Money taken from prisoner accused of crime.**—Money taken from one arrested for larceny from a post office was retained by the inspector under the erroneous supposition that it was the money stolen. Held, that an order by the prisoner to the inspector to pay it to a third person was not an assignment under this section. U. S. v. Ferguson (1897) 78 Fed. 103, 24 C. C. A. 1, affirming judgment Ferguson v. U. S. (D. C. 1894) 64 Fed. 88.

39. —— **Witness and jury fees.**—The claim of a witness for the United States for fees earned by attendance on a fed-

eral court as fixed by section 848, ante, is a claim against the marshal, and not against the government, and therefore not within the prohibition of this section, and an action will lie by the assignee of witness' certificates on the bond of a marshal who has received the money to pay them in his official capacity, but has failed to do so. Bollin v. Blythe (C. C. 1891) 46 Fed. 181, 183.

Marshals, when paying witnesses and jurors, must be governed by the general laws applicable to powers of attorney and assignments of claims. Lopez v. U. S. (1889) 24 Ct. Cl. 84.

A witness, or the assignee of his claim, may be paid either directly from the Treasury or through a marshal. Id.

40. —— **Pay accounts of army officers.**—This section does not forbid the transfer or assignment of their pay accounts by army officers after the same become due. Such accounts may be lawfully transferred or assigned when due, the regulations of the Army relating to this subject (par. 1349, art. XLV, Regulations of 1863) being complied with. (1877) 15 Op. Atty. Gen. 271.

41. —— **Vouchers.**—In consideration of a deed of certain land, defendant assigned to complainant what purported to be a voucher of a claim against the United States. The conditions prescribed by this section had not been complied with. The voucher transferred to complainant was not the one issued to the original claimants, but had been surreptitiously taken from the files of the congressional committee on claims, which defendant probably knew, as also the fact that the claim it represented had been disallowed by the federal supreme court. Held, that the transfer to complainant did not give him even an equitable right to the payment of the voucher by special act of congress or otherwise, and that the deed was without consideration. Austin v. Felton (C. C. 1890) 41 Fed. 161.

The sale of a quartermaster's voucher by a contractor to a third person works a transfer of his claim against the government, or of so much of it as may be represented by the voucher. But such vouchers are not in any sense negotiable paper, and the purchaser will take them subject to all the equities that may exist against the contractor. Nevertheless they are evidences of indebtedness sufficient in themselves to support prima facie an action. Lawrence v. U. S. (1872) 8 Ct. Cl. 252.

The assignment of a voucher is void. Harris v. U. S. (1892) 27 Ct. Cl. 177.

An approved account or voucher for transportation performed for the Navy Department by F. & C., contractors, was issued by the chief of the Bureau of Steam Engineering in favor of and delivered to H. & Son, who were brokers for F. & C. The latter claim that the amount appropriated by Act June 14, 1878, c. 191, to pay for the transportation, should be paid to them, and not to H. & Son. Held, that the account or voucher issued as aforesaid is not a negotiable paper; that a transfer or assignment thereof would be void under this section; that the appropriation was made for the purpose of paying F. & C., and not any alleged claim of H. & Son; and that the Navy Department may treat such approved account or voucher as a nullity, and issue an approved account in favor of F. & C. and transmit it to them directly. (1878) 16 Op. Atty. Gen. 191.

Persons who receive the so-called Montana militia vouchers without the formalities which this section prescribes acquire no title. Creighten v. Black (1876) 2 Mont. 354.

42. —— **Claims for goods sold Indians.**—Claims for goods sold to the Sisseton and Wahpeton bands of the Sioux tribe of Indians, allowed by the head men of such bands, under treaty stipulations of the United States for the payment of such claims, are direct claims against the United States, under this section, and an assignment thereof prior to December 8, 1860, and prior to allowance is void. Becker v. Sweetzer (1870) 15 Minn. 427 (Gil. 346).

43. —— **Indian annuities.** — It is doubtful whether Indian annuities granted by the government ought to be regarded as legally assignable unless made so by law. (1851) 5 Op. Atty. Gen. 285.

44. **Right of assignor to repudiate assignment.**—Powers of attorney to collect claims upon the United States, and voluntary assignments of such claims, are revocable at will, prior to the payment of the claims by the government. Milliken v. Barrow (C. C. 1895) 65 Fed. 888, 891, affirmed (1896) 74 Fed. 612, 20 C. C. A. 559.

Where an assignment of a claim against the government is void under this section, the assignor may repudiate the assignment at any time before actual payment, and bring an action in his own name. Belt's Executrix v. U. S. (1879) 15 Ct. Cl. 92.

S., having a contract with the Engineer Department for dredging in the Occoquan river, by the terms of which the compensation named therein was to be paid to him from time to time, gave to I. a power of attorney (declared in the instrument to be irrevocable), "to demand, receive, and receipt for, to the proper disbursing officer of the United States, all moneys, warrants, drafts, vouchers, and checks that may become due and payable to me (S.) from the United States for work," etc. Subsequently S. notified the engineer officer in charge that he revoked the power of attorney. Held, that by force of this section said power of attorney was without legal effect with respect to the claim of the contractor against the

United States for his compensation; that he might at any time revoke it, and when revoked it is not for the officers of the United States to consider whether the revocation was rightful or wrongful. (1879) 16 Op. Atty. Gen. 261.

A power of attorney given to collect a claim against the government, with an agreement that the donee of the power shall receive "a sum equal to 50 per cent. of the amount allowed" on the claim, is not a power coupled with an interest, and is revocable, and, such power having been given to a firm, one of the members of which has since died, whereby the firm became dissolved, such power cannot be executed by the surviving members, and power should not be recognized. (1890) 19 Op. Atty. Gen. 483.

45. Rights of assignee under invalid assignment against persons receiving fund.—This section is intended only to protect the government, and does not affect the rights of an assignee of a fund due and to become due a government contractor, as against one who subsequently receives such fund with notice of the prior assignment. York v. Conde (1892) 66 Hun, 316, 20 N. Y. Supp. 961.

This section is intended merely for the protection of the government, and a bona fide assignment without such formalities is good so far as to enable the assignee, after the government has paid over the money to the claimant, to enforce, as against him or those who take with notice, the interest given by the assignment. York v. Conde (1895) 147 N. Y. 486, 42 N. E. 193, affirming (1893) 71 Hun, 614, 24 N. Y. Supp. 1149.

Assignments specifically describing a claim against the United States may pass it, or portions of it, to those who pay a value for it, and the first in order of time is first in right. Appeal of Mann (1852) 18 Pa. (6 Harris) 249.

46. Right of assignee to sue in court of claims.—An assignee of a claim cannot prosecute such claim in the court of claims. Sines v. U. S. (1863) 1 Ct. Cl. 12.

The assignee or holder of a nonassignable claim transferred by bill of exchange cannot maintain suit thereon in his own name. Jackson v. U. S. (1865) 1 Ct. Cl. 260.

An action under the abandoned or captured property act cannot be maintained by the assignee in the name of the assignor unless his authority from the assignor is clearly shown. Silverhill v. U. S. (1869) 5 Ct. Cl. 610; Crowell v. U. S. (1870) 6 Ct. Cl. 23.

The verification of the petition by the executrix of a deceased assignor in such action sufficiently connects him with the case. Pullen v. U. S. (1871) 7 Ct. Cl. 507.

One who is in legal effect merely the assignee of a claim against the Government cannot maintain an action upon it, though he holds an official voucher for it issued to him in his own name. Johnston v. U. S. (1877) 13 Ct. Cl. 217.

47. Equitable rights of assignee.—Under the decision in Gillis' Case (1877) 95 U. S. 407, 24 L. Ed. 503, this court will not enforce equitable rights of an assignee of a claim against the United States under an assignment which is made in violation of the provisions of the statute. Burke v. U. S. (1877) 13 Ct. Cl. 231.

48. Effect as between parties to assignment.—The illegality, under this section of a clause in a contract for the prosecution of a claim against the United States, making the payment of compensation for the services rendered thereunder a lien upon the claim and upon any draft, money, or evidence of indebtedness that may be issued thereon, does not invalidate so much of the contract as provides for the payment for such services of a sum equal to one-third of the amount allowed on the claim. Nutt v. Knut (1906) 26 Sup. Ct. 216, 219, 200 U. S. 13, 50 L. Ed. 348.

A contract pledging a claim against the United States in payment of a subsisting debt, though void as a contract, under this section is admissible as evidence of an acknowledgment of the debt sufficient to take it out of the statute of limitations. Thompson v. Shepherd (D. C. 1882) 1 Mackey, 385.

An agreement containing an assignment by a claimant to an attorney of an interest in a claim against the government for services to be performed by the attorney in the prosecution of the claim, being void under this section, the attorney, in an action to recover his fees, cannot successfully declare on an oral agreement in precisely the same terms as the written agreement, but antedating the latter by two days, and secure the admission in evidence of the written agreement as an admission by the claimant of his employment of the plaintiff at a specified amount of compensation, in support of the declaration; any antecedent oral agreement being merged in the subsequent written contract. Owens v. Wilkinson (1902) 20 App. D. C. 51.

The provision in a contract with an attorney, whereby he is to receive a percentage of the amount recovered upon a claim, will stand, although a further provision giving him a lien therefor is void under this section. Parish v. McGowan (1912) 39 App. D. C. 184.

The provisions of this section are for the benefit of the United States only, and hence, where the government had recognized the assignees' rights by passing a special act making the judgment recovered by them the foundation of an appropriation, such assignment was valid as between the parties,

though it did not comply with the statutory formalities. Thayer v. Pressey (1900) 56 N. E. 5, 175 Mass. 225.

Under this section all assignments of claims on the United States are void in law and equity, and cannot be enforced between the parties. Wood's Ex'rs v. Dialogue (Pa. 1881) 38 Leg. Int. 260.

This section was enacted to protect the government, and not the parties to the assignment, so that an assignment of shipbuilding contracts with the federal government, with power to collect the payments to become due thereunder, being valid between the parties, was not made invalid by the statute, where the government voluntarily deposited the money in court to be disposed of by the parties upon completion of the contracts. S. H. Hawes & Co. v. Wm. R. Trigg Co. (1909) 65 S. E. 538, 110 Va. 165.

49. Right of set-off as affected by assignment.—The right of set-off is not affected by an assignment of the claim. U. S. v. Harris (1897) 77 Fed. 821, 23 C. C. A. 483.

See note under § 6407, post.

50. Effect of assignment as to rights of a surety.—The equity of a surety of a contractor held superior to an assignment. Henningsen v. United States Fidelity & Guaranty Co. (1908) 28 Sup. Ct. 389, 208 U. S. 404, 52 L. Ed. 547; Id. (1906) 143 Fed. 810, 813, 74 C. C. A. 484.

Between February and May, 1890, a bank, in reliance on an agreement by a contractor, employed by the government in 1888 to build a custom house, to deliver to it the 10 per cent. of the contract price reserved by the government, made certain advances to the contractor, which it was alleged, were used in completing the building. In May, 1890, the contractor defaulted, and his surety completed the work. Held, that the lien, if any, acquired by the bank upon the fund reserved by the government, was subordinate to the equity of the surety therein, arising at the date of the contract, since it must be recognized that the terms on which the original contract was made by the United States were in no wise affected or changed by the agreement subsequently made with the Prairie Bank. Prairie State Nat. Bank v. U. S. (1896) 17 Sup. Ct. 142, 144, 164 U. S. 227, 41 L. Ed. 412.

51. Validity of assignments as against trustee in bankruptcy.—Assignments as collateral security for a loan of unallowed claims against the United States on account of contracts for furnishing materials to the various departments of the government, being in direct opposition to this section, can confer no interest in the assignees, as against the trustee in bankruptcy of the assignors. National Bank of Commerce v. Downie (1910) 31 Sup. Ct. 89, 90, 218 U. S. 345, 54 L. Ed. 1065, 20 Ann. Cas. 1116, affirming judgment (1908) 161 Fed. 839, 88 C. C. A. 657.

An assignment of a claim against the United States for money due under a contract is void to transfer the claim, as against the trustee in bankruptcy of the assignor, unless executed with the formalities required by this section, and unless the claim has been previously allowed and a warrant issued for its payment, which is essential to its assignability under this section. Guarantee Title & Trust Co. v. First Nat. Bank of Huntingdon, Pa. (1911) 185 Fed. 373, 107 C. C. A. 429, modifying order In re Pittsburgh Industrial Iron Works (D. C. 1910) 179 Fed. 151. Order affirmed on rehearing Guarantee Title & Trust Co. v. First Nat. Bank of Huntington (1911) 193 Fed. 52, 113 C. C. A. 382.

52. Right of principal to sue on contract made in agent's name.—An action may be maintained in the Court of Claims by a principal in his own name, though the contract is in the name of his agent. And joining such agent as party plaintiff, though he have no legal interest, will not defeat the action. Ramsdell v. U. S. (1866) 2 Ct. Cl. 508.

53. Judgment or decision against assignee as bar to assignor's claims.—Where an assignment of a claim is void by statute, a judgment against the assignee will not bar a suit by the assignor. Belt's Executrix v. U. S. (1879) 15 Ct. Cl. 92.

54. Liability of officer in advising assignors as to the law.—An attorney for persons having claims against the government on account of a readjustment of their salaries as postmasters under Act June 12, 1896, Act March 3, 1883, and Act Aug. 4, 1886, has no right of action against the postmaster general because he informed the claimants that they were under no obligation to respect any transfer, assignment, or power of attorney which this section declared null and void. Spalding v. Vilas (1896) 16 Sup. Ct. 631, 633, 635, 161 U. S. 483, 40 L. Ed. 780.

Cited without definite application, Delaware City S. & P. Steamboat Nav. Co. v. Reybold (1892) 12 Sup. Ct. 290, 292, 142 U. S. 636, 35 L. Ed. 1141; McKee v. Lamon (1895) 16 Sup. Ct. 11, 14, 159 U. S. 317, 40 L. Ed. 165; Burdon Cent. Sugar Refining Co. v. Payne (1897) 17 Sup. Ct. 754, 757, 167 U. S. 127, 42 L. Ed. 105; Hoffeld v. U. S. (1902) 22 Sup. Ct. 927, 929, 186 U. S. 273, 46 L. Ed. 1160; Smedley v. Speckman (1907) 157 Fed. 815, 85 C. C. A. 179; U. S. v. Griswold (D. C. 1887) 30 Fed. 604, 605; Hoffeld v. U. S. (1901) 36 Ct. Cl. 26; Chicago & A. R. Co. v. U. S. (1911) 46 Ct. Cl. 396; Knapp v. Same, Id. 601; (1868) 12 Op. Atty. Gen. 407; (1878) 16 Op. Atty. Gen. 227; (1885) 18 Op. Atty. Gen. 129; (1890) 19 Op. Atty. Gen. 638.

§ 6384. (Act May 27, 1908, c. 206.) Restriction on assignments not to apply to payments for rents of post offices to agents of lessors.

Hereafter the provisions of section thirty-four hundred and seventy-seven of the Revised Statutes shall not apply to payments for rent of post-office quarters made by postmasters to duly authorized agents of the lessors. (35 Stat. 411.)

This was a provision of the postal service appropriation act for the fiscal year 1909, cited above.

R. S. § 3477, mentioned in this provision, is set forth ante, § 6383.

§ 6385. (R. S. § 3478.) Oath by persons prosecuting claims.

Any person prosecuting claims, either as attorney or on his own account, before any of the Departments or Bureaus of the United States, shall be required to take the oath of allegiance, and to support the Constitution of the United States, as required of persons in the civil service.

Act July 17, 1862, c. 205, § 1, 12 Stat. 610.

R. S. § 1756, prescribed the oath which every person elected or appointed to any office of honor or profit, either in the civil, military, or naval service, except the President and certain persons provided for by section 1757, was required to take before entering upon the duties of the office to which he was elected or appointed. R. S. § 1757, ante, § 3218, prescribed the oath which persons not ineligible to office by the fourteenth amendment to the Constitution, but who, on account of participation in the rebellion, could not take the oath prescribed by section 1756, were to take. R. S. § 1756, was repealed by Act May 13, 1884, c. 46, § 2, ante, § 3216, which further provided that all oaths should be taken as provided for by section 1757.

Former officers, clerks, or employés in any of the Departments were not to prosecute claims in any of them, within two years after ceasing to be such officer, clerk, or employé, by R. S. § 190, ante, § 272.

Notes of Decisions

Admissibility of oath in evidence.— Where the name, residence, and occupation of the claimant are identical with those of the person described in an oath taken under an amnesty proclamation, it is a sufficient identification, and the oath may be admitted in evidence without further proof that the claimant was the person by whom it was made. Backer v. U. S. (1871) 7 Ct. Cl. 551.

§ 6386. (R. S. § 3479.) Who may administer the oath.

The oath provided for in the preceding section may be taken before any justice of the peace, notary public, or other person who is legally authorized to administer an oath in the State or district where the same may be administered.

Act July 17, 1862, c. 205, § 2, 12 Stat. 610.

§ 6387. (R. S. § 3480.) Claims of disloyalists.

It shall be unlawful for any officer to pay any account, claim, or demand against the United States which accrued or existed prior to the thirteenth day of April, eighteen hundred and sixty-one, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion, or in favor of any person who during such rebellion was not known to be opposed thereto, and distinctly in favor of its suppression; and no pardon heretofore granted, or hereafter to be granted, shall authorize the payment of such account, claim, or demand, until this section is modified or repealed. But this section shall not be construed to prohibit the payment of claims founded upon contracts made by any of the Departments, where such claims were assigned or contracted to be assigned prior to the first day of April, eighteen hundred and sixty-one, to the creditors of such contractors, loyal citizens of loyal States, in payment of debts incurred prior to the first day of March, eighteen hundred and sixty-one.

Res. March 2, 1867, No. 46, 14 Stat. 571.

The provisions of this section were not to apply to the payment of the amounts due to mail contractors for mail services performed in the States in rebellion and before said States engaged in war against the United States, by

Act March 3, 1877, c. 105, 19 Stat. 362, which is omitted, as temporary merely.

Proof of loyalty during the War of the Rebellion, as a prerequisite in applications for bounty lands where the proof otherwise showed that the applicant was entitled thereto, was dispensed with by Act March 11, 1898, c. 57, post, § 6388.

In so far as this section affects payments for services in the Army prior to April 13, 1861, it was repealed by Act July 6, 1914, c. 136, post, § 6387a.

Notes of Decisions

Necessity of showing compliance with conditions of pardon.—Where there is a provision in a pardon that it shall "be of no effect until the said H. H. shall take the oath prescribed" in a certain proclamation, it is not sufficient to produce such an oath taken before the pardon was granted, and the pardon cannot be given in evidence. Haym v. U. S. (1871) 7 Ct. Cl. 443.

Where a pardon is offered in evidence by the party in whose favor it was granted, which in terms "is to begin and take effect" from the day on which he takes a prescribed oath, the burden of proof is on the party to show affirmatively that he complied with its condition by taking the oath. Waring v. U. S. (1871) 7 Ct. Cl. 501.

It is an inflexible rule that he who seeks to avail himself of the benefits of a pardon granted conditionally must show a rigid compliance with the conditions which it imposes. Scott's Ex'r v. U. S. (1872) 8 Ct. Cl. 457.

Claims affected by this section.—The act, by implication, prohibits officers from paying claims which originated after the war began. Chesapeake & O. R. Co. v. U. S. (1885) 20 Ct. Cl. 49.

This section held not to affect the payment of certificates of funded stock issued under Act Oct. 13, 1848. (1868) 12 Op. Atty. Gen. 407.

This section held applicable only to natural persons, not to corporations. (1871) 13 Op. Atty. Gen. 398.

But see Chesapeake & O. R. Co. v. U. S. (1885) 20 Ct. Cl. 49.

In May, 1861, Simeon Hart, then a resident of New Mexico, delivered commissary stores to the government at certain military posts in that territory, for which he received a voucher from the proper officer, but payment thereof was withheld in consequence of an order issued from the War Department during the same month. Hart subsequently took an active part in the rebellion, but was pardoned by the President in November, 1865. He afterward assigned said voucher to two creditors, loyal persons, by whom payment of the same is now demanded. On a question whether payment is prohibited by this section, held, that the case presented is not within the prohibition of that resolution, the claim having accrued after April 13, 1861. (1872) 14 Op. Atty. Gen. 145.

The proviso in this section was intended only to make an exception in favor of claims existing prior to April 13, 1861, which had been assigned or agreed to be assigned to loyal citizens of loyal states prior to April 1, 1861, in payment of debts incurred prior to March 1, 1861. It does not relate to claims additional to those mentioned in the preceding words of the resolution. Id.

A naval officer in 1860 became entitled to a share in the proceeds of a captured slaver, the amount of which was certified to the Treasury Department by the Secretary of the Navy, but remains unpaid, and in 1861 resigned his commission and entered the Confederate service. Held that by force of this section payment of such share can not now be made, notwithstanding the President's proclamation of amnesty of December 25, 1868, and that to authorize its payment an act of Congress is necessary. (1886) 18 Op. Atty. Gen. 421.

The prohibition contained in this section is applicable to claims for bounty land; the intent of Congress being to include therein all manner of claims and demands—not only pecuniary, but other claims as well. (1878) 15 Op. Atty. Gen. 451. See § 6388, post.

Authority of officers to transmit claims to court of claims.—This section in effect prohibits the heads of departments from transmitting claims of disloyalists to the court of claims. Hart's Adm'r v. U. S. (1879) 15 Ct. Cl. 414; Id. (1880) 16 Ct. Cl. 459.

Effect of other statutes relating to claims.—R. S. § 1063, ante, § 1139, confers on claimants neither right nor remedy which did not exist before, and does not extend to claims reserved for future legislation by section 3480, ante. Hart's Adm'r v. U. S. (1880) 16 Ct. Cl. 459.

Removal of political disabilities.—Where the payment of a claim against the government would otherwise come within the prohibition of this section, the fact that the political disabilities of the claimant imposed by the third section of the fourteenth amendment of the Constitution have since been removed by Congress does not free the claim from the operation of that resolution; the prohibition of payment still continues. (1873) 14 Op. Atty. Gen. 329.

—— Effect of general amnesty proclamation.—The proclamation of December 25, 1868 (15 Stat. 711), relieves a citizen coming within its terms from making proof of loyalty in an action under the Abandoned or Captured Property Act. Witkowski v. U. S. (1871) 7 Ct. Cl. 393.

Where one guilty of giving aid or

comfort to the rebellion dies without pardon and before the General Amnesty Proclamation December 25, 1868, the proclamation does not obliterate the offense; and his administratrix cannot maintain an action for the proceeds of his captured property in the Treasury. Meldrim v. U. S. (1871) 7 Ct. Cl. 595.

—— **Effect of pardon.**—Where a person who has "promoted, encouraged, or sustained" the late so-called "Rebellion" has been granted full pardon and amnesty by the president, this does not entitle him to recover claims against the United States for supplies furnished prior to April 13, 1861, payment of such claims being prohibited by this section, and this, independent of the provision of that resolution that a pardon shall not authorize such payments. Hart v. U. S. (1886) 6 Sup. Ct. 961, 118 U. S. 62, 30 L. Ed. 96.

Where a pardon "is to begin and take effect" from the day on which a prescribed oath is taken by the party, it does not take effect until the oath be taken. The formal acceptance of the pardon does not supersede the necessity of taking the oath. Waring v. U. S. (1871) 7 Ct. Cl. 501.

A pardon restores to civil rights, to the enjoyment of property, the right to sue, etc., but does not confer the right to take money from the Treasury where Congress have enacted that it shall not be paid by executive officers to persons who "promoted, encouraged, or in any manner sustained the late rebellion." Hart's Adm'r v. U. S. (1879) 15 Ct. Cl. 414.

This section operated upon nothing conferred by the pardon of the executive, and does not conflict with the pardoning power of the President. Hart's Adm'r v. U. S. (1880) 16 Ct. Cl. 459.

Cited without definite application, Selma R. & D. R. Co. v. U. S. (1891) 11 Sup. Ct. 638, 639, 139 U. S. 560, 35 L. Ed. 266; (1875) 14 Op. Atty. Gen. 526; (1877) 15 Op. Atty. Gen. 652. See note under § 6396.

§ 6387a. (Act July 6, 1914, c. 136.) Claims of disloyalists; R. S. § 3480, repealed as to services in Army prior to April 13, 1861.

That section thirty-four hundred and eighty of the Revised Statutes of the United States be, and the same is hereby, repealed so far as it affects payments for services in the Army of the United States prior to April thirteenth, eighteen hundred and sixty-one. (38 Stat. 454.)

This was an act entitled "An act to repeal section 3480 of the Revised Statutes of the United States," cited above.

R. S. § 3480, is set forth ante, § 6387.

§ 6388. (Act March 11, 1898, c. 57.) Proof of loyalty dispensed with as a prerequisite in application for bounty lands.

Section thirty-four hundred and eighty of the Revised Statutes of the United States be, and the same is hereby, so far, and no further, modified and repealed as to dispense with proof of loyalty during the late war of the rebellion as a prerequisite in any application for bounty land where the proof otherwise shows that the applicant is entitled thereto. (30 Stat. 274.)

This was an act to repeal in part and to limit R. S. § 3480.

Cited without definite application, (1878) 15 Op. Atty. Gen. 451. See note under § 6387.

§ 6389. (R. S. § 3481.) Retention of money due States in default.

Whenever any State is in default in the payment of interest or principal on investments in stocks or bonds issued or guaranteed by such State and held by the United States in trust, the Secretary of the Treasury shall retain the whole, or so much thereof as may be necessary, of any moneys due on any account from the United States to such State, and apply the same to the payment of such principal and interest, or either, or to the re-imbursement, with interest thereon, of moneys advanced by the United States on account of interest due on such stocks or bonds.

Act March 25, 1870, c. 30, 16 Stat. 77.

A requirement that on the settlement of claims of certain states any bonds or other evidences of debt of either of said States held by the United States on any account whatever shall be credited as offsets to the United States was made by Act May 27, 1902, c. 887, 32 Stat. 235.

Notes of Decisions

West Virginia's share of debt of Virginia to United States.—This section makes it the duty of the Secretary of the Treasury to insist upon the right of

set-off against the demands of the state of West Virginia for refund of the direct tax to the extent of the equitable proportion of the debt of Virginia to the United States for which West Virginia is liable. (1891) 20 Op. Atty. Gen. 240.

See, also (1887) 18 Op. Atty. Gen. 581.

§ 6390. (R. S. § 3482.) Payment to officers for horses lost in battle, etc.

Any field, or staff, or other officer, mounted militiaman, volunteer, ranger, or cavalryman, engaged in the military service of the United States, who sustains damage without any fault or negligence on his part, while in the service, by the loss of a horse in battle, or by the loss of a horse wounded in battle, which dies of the wound, or which, being so wounded, is abandoned by order of his officer and lost, or who sustains damage by the loss of any horse by death or abandonment because of the unavoidable dangers of the sea, when on board a United States transport vessel, or because the United States fails to supply transportation for the horse, and the owner is compelled by the order of his commanding officer to embark and leave him, or in consequence of the United States failing to supply sufficient forage, or because the rider is dismounted and separated from his horse and ordered to do duty on foot at a station detached from his horse, or when the officer in the immediate command orders the horse turned out to graze in the woods, prairies, or commons, because the United States fails to supply sufficient forage, and the loss is consequent thereon, or for the loss of necessary equipage, in consequence of the loss of his horse, shall be allowed and paid the value thereof, not to exceed two hundred dollars. But any payment which is made to any one for the use and risk, or for forage, after the death, loss, or abandonment of his horse, shall be deducted from the value thereof, unless he satisfies the paymaster at the time he makes the payment, or thereafter shows, by proof, that he was remounted, in which case the deduction shall only extend to the time he was on foot. And any payment made to any person above mentioned, on account of clothing to which he is not entitled by law, shall be deducted from the value of his horse or accouterments.

Act March 3, 1849, c. 129, § 1, 9 Stat. 414.

Officers and enlisted men were entitled to payment under this section for horses which had been purchased by them in States in insurrection, and payment was not to be refused in any case where the loss resulted from any exigency or necessity of the military service unless it was caused by the fault or negligence of the officer or enlisted man, by Act June 22, 1874, c. 395, post, §§ 6391, 6392.

No claims for horses lost prior to January 1, 1872, were to be audited or paid unless presented before June 30, 1874, by R. S. § 3489, post, § 6402. And no claims under Act March 3, 1849, c. 129, § 1, which was incorporated into this section of the Revised Statutes, or under the amendment thereto by Act June 22, 1874, c. 395, § 1, post, § 6391, were to be considered unless presented prior to January 1, 1876, by section 2 of said amendatory act, post, § 6392. After the date limited, the time was extended to one year from the passage of the act by Act Jan. 9, 1883, c. 15, post, §§ 6393, 6394; and the limitation was suspended for a period of three years by Act Aug. 13, 1888, c. 868, § 2, post, § 6395.

A permanent appropriation to pay for horses and other property lost, etc., in the military service, under the provisions of this Title, was made by R. S. § 3689, post, § 6799.

Provisions for the settlement of claims of officers and men in the military service for the loss of personal effects were made by Act March 3, 1885, c. 335, post, § 6403, and Act March 4, 1915, c. 143, § 1, post, § 6403a.

Notes of Decisions

See notes under §§ 6391, 6394, 6396, post.

Construction, operation, and effect in general.—The statute regards the separation of a man from his horse by compelling him to do duty at another station as a proximate cause, and in such a case the court cannot go behind that cause to inquire whether the separation was brought about by the

soldier's neglect. Valdez v. U. S. (1880) 16 Ct. Cl. 550.

The statute casts all risks upon the government where "the rider was dismounted and separated from his horse, and ordered to do duty at a station detached from his horse." In contemplation of the statute, the soldier is entitled to retain the care and custody of his own horse so long as he is held responsible for its loss. Id.

The purpose of this act, so far as it relates to officers or soldiers furnishing their own horses, was twofold: To enable the government to hire horses at low rates; to apportion the risk between the owner and the employer. Id.

The obligations which the statutes cast upon the government and upon the officer or soldier furnishing his own horse stated. Id.

In time of war and in conflicts with Indians, horses, if killed, or captured without negligence or undue carelessness on the part of their owners, will be paid for by the government, under this section. Sibley v. U. S. (1914) 49 Ct. Cl. 242.

By the term "battle" the statute includes all the encounters which may occur between the troops of contending armies. Powell v. U. S. (1865) 1 Ct. Cl. 400.

"Use" of a horse, in this act, does not mean the active employment of the animal in a military expedition. (1858) 9 Op. Atty. Gen. 151.

The word "mounted" does not necessarily imply that the soldier is either on his horse or with his horse. It indicates the general character of the corps or service. Id.

Under this act the fact of a payment having been made to a soldier as a mounted man after the loss of his horse is not conclusive evidence that he was remounted during the time for which he was paid. (1858) 9 Op. Atty. Gen. 185.

This act is a remedial statute, and should accordingly be construed so as to advance the remedy. (1861) 10 Op. Atty. Gen. 21.

Claims of officers and soldiers for horses lost in the military service, where their horses were in service simply as a part of the equipment belonging to and furnished by them, are allowable only under the provisions of the first section. (1874) 14 Op. Atty. Gen. 360.

The first and second sections of this act provide respectively for a separate and distinct class of claims. The two classes distinguished from each other. Id.

Lieutenant Mansur went on an expedition up the Red River, leaving his horse and saddle behind with the regiment to which he belonged. During his absence the horse and saddle were, by order of the colonel of his regiment, taken and used in the military service without his knowledge and consent, and while so in such service were lost. Claim being made by him for the value of the property under this act, held, that the case falls within the second section, and not the first section, of that act. (1874) 14 Op. Atty. Gen. 367.

Amendment by subsequent acts.—Act June 22, 1874 (18 Stat. 193, c. 395), section 6391, post, in effect amends section 3482, ante, so as practically to do away with the specification therein contained of cases wherein compensation for the loss of horses in battle may be allowed, and in lieu thereof authorizes such allowance "where the loss resulted from any exigency or necessity of the military service." Thomas v. U. S. (1880) 16 Ct. Cl. 522.

Persons who may receive relief.—An officer who is not required by the army regulations to be "mounted," but who is detailed on duty which, in the opinion of his commanding general, renders it "necessary and proper" for him to be mounted, may recover for horses lost in battle. (9 Stat. L. 414.) Powell v. U. S. (1865) 1 Ct. Cl. 400.

A deserter cannot recover for his horse, captured by the enemy, under Act March 3, 1849 (9 Stat. 414, c. 129), though his claim comes within the very letter of the statute. Tapia v. U. S. (1880) 16 Ct. Cl. 561.

The statutes in force which provide indemnity for officers' horses lost in certain circumstances apply to officers of the regular Army as well as to volunteers. (1857) 8 Op. Atty. Gen. 293.

Under this act mounted volunteers are entitled to compensation for horses lost or destroyed by unavoidable accident while in the service of the United States. (1859) 9 Op. Atty. Gen. 334.

Equipment for which payment may be made.—The relief given to an officer by the statute cannot be extended so as to include swords, pistols, or any other property than horses and horse equipage. Powell v. U. S. (1865) 1 Ct. Cl. 400.

The "equipage" referred to by the statute is horse equipage; and by the term "necessary equipage" is meant only the equipage prescribed by regulations. Id.

An officer may recover for more than one horse lost in the same battle; but the recovery is limited to the number which the army regulations require him to keep. Id.

The statute makes no distinction between a soldier's horse and horse equipments. Where the loss was due to the same cause, the liability follows the same rule. Valdez v. U. S. (1880) 16 Ct. Cl. 550.

Requisite facts to authorize recovery.—To authorize a judgment it is necessary to prove: (1) That the claimant owned a horse which he took into the military service; (2) that the horse was lost; (3) that the loss resulted from an exigency or necessity of the military service; and (4) that the loss

was without fault or negligence on the part of the claimant. Irby v. U. S. (1883) 18 Ct. Cl. 259.

Effect of acceptance of commutation instead of forage.—When soldiers furnish their own forage and receive commutation pay therefor, they are estopped from setting up, under this act, that the loss was "in consequence of the United States failing to supply sufficient forage." Valdez v. U. S. (1880) 16 Ct. Cl. 550.

If a soldier choses to accept commutation instead of forage, he cannot recover compensation for the horse which he may starve by his mistaken economy. (1858) 9 Op. Atty. Gen. 151.

The receipt of commutation for forage is not conclusive evidence that the soldier had previously elected to take it; but it throws on him the burden of showing that he could not obtain forage in kind. (1859) 9 Op. Atty. Gen. 334.

Negligence or fault of owner or his agents.—Where it is not shown that the safety of the horse was properly provided for by the keeper, who was a representative and agent of the owner, and for whose conduct and acts he is responsible, the plaintiff is not entitled to recover. Sibley v. U. S. (1914) 49 Ct. Cl. 242.

Jurisdiction of third auditor and awards made by him.—See note under § 6396, post.

Certain provisions in the Act March 3, 1849 (9 Stat. 414), which, it has been thought, gave exclusive jurisdiction to the third auditor of claims for horses lost in battle are repealed by section 5596, ante. Thomas v. U. S. (1880) 16 Ct. Cl. 522.

Decisions under former acts.—See (1822) 1 Op. Atty. Gen. 543; (1833) 2 Op. Atty. Gen. 570; (1834) 2 Op. Atty. Gen. 658; (1814) 5 Op. Atty. Gen. 701.

Cited without definite application, Terrill v. U. S. (1893) 28 Ct. Cl. 465; Cox v. U. S. (1906) 41 Ct. Cl. 86; Little v. U. S. (1906) Id. 408; (1871) 13 Op. Atty. Gen. 507. See note under § 6396, post.

§ 6391. (Act June 22, 1874, c. 395, § 1.) Payment to officers, etc., for loss of horses purchased in States in insurrection.

The first section of the act of March third, eighteen hundred and forty-nine, providing for the payment for horses and equipments lost by officers or enlisted men in the military service, shall not be construed to deny payment to such officers or enlisted men, for horses which may have been purchased by them in States in insurrection; and payment in any case shall not be refused where the loss resulted from any exigency or necessity of the military service, unless it was caused by the fault or negligence of such officers or enlisted men. (18 Stat. 193.)

This was the first section of an act to amend Act March 3, 1849, c. 129, section 1 of which, mentioned in this section, was incorporated in R. S. § 3482, ante, § 6390. This section may be regarded as applicable to the construction of said R. S. § 3482.

Section 2 of this act, limiting the time for presentation of claims, is set forth post, § 6392.

Notes of Decisions

See notes under § 6390, ante.

Exigencies within this section.—Where a horse was killed on a government transport, it was an exigency within the statute; and where the horse was in charge of the agents of the government, and not of the owner, it was not caused by his "fault or negligence." Hardie v. U. S. (1904) 39 Ct. Cl. 250.

Cited without definite application, Cox v. U. S. (1906) 41 Ct. Cl. 86.

§ 6392. (Act June 22, 1874, c. 395, § 2.) Payment to officers, etc., for horses lost; limitation of time for presentation of claims.

No claims under said section or this amendment thereto shall be considered unless presented prior to the first day of January eighteen hundred and seventy-six. (18 Stat. 193.)

See notes to preceding section of this act, ante, § 6391.

Subsequent provisions relating to the time for presentation of the claims mentioned were made by Act Jan. 9, 1883, c. 15, and Act Aug. 13, 1888, c. 868, § 2, post, §§ 6393–6395.

§ 6393. (Act Jan. 9, 1883, c. 15, § 1.) Payment to officers, etc., for horses lost; extension of time for filing claims.

The time for filing claims for horses and equipments lost by officers and enlisted men in the military service of the United States, which expired by limitation on the thirty-first day of December, eight-

een hundred and seventy-five, be, and the same is hereby, extended to one year from and after the passage of this act; and that all such claims filed in the proper department before the passage of this act shall be deemed to have been filed in due time, and shall be considered and decided without refiling. (22 Stat. 401.)

This section and the section next following were an act entitled "An act to extend the time for filing claims for horses and equipments lost by officers and enlisted men in the service of the United States, and for other purposes."

The limitation mentioned in this section as having expired on December 31, 1875, was imposed by Act June 22, 1874, c. 395, § 2, ante, § 6392.

A subsequent provision suspending the limitation on the presentation of such claims for a period of three years was made by Act Aug. 13, 1888, c. 868, § 2, post, § 6395.

§ 6394. (Act Jan. 9, 1883, c. 15, § 2.) Payment to officers, etc., for horses lost; claims not filed within time limited, barred.

All claims arising under the act approved March third, eighteen hundred and forty-nine, entitled "An act to provide for the payment of horses and other property lost or destroyed in the military service of the United States," and all acts amendatory thereof, which shall not be filed in the proper department within one year from and after the passage of this act, shall be forever barred, and shall not be received, considered, or audited by any department of the government. (22 Stat. 401.)

Act March 3, 1849, c. 129, mentioned in this section, was incorporated into R. S. § 3482, ante, § 6390, and R. S. §§ 3483, 3485–3487, post, §§ 6396, 6398–6400.

See notes to R. S. § 3482, ante, § 6390, and subsequent provisions, §§ 6391, 6392, and to section 1 of this act, ante, § 6393.

Notes of Decisions

Construction.—"Filed in the proper department" construed. Hardie v. U. S. (1904) 39 Ct. Cl. 250.

Jurisdiction of court of claims as affected by this act.—This act is no limitation on the jurisdiction of the court of claims. Hardie v. U. S. (1904) 39 Ct. Cl. 250; Cox v. U. S. (1906) 41 Ct. Cl. 86.

§ 6395. (Act Aug. 13, 1888, c. 868, § 2.) Payment to officers, etc., for horses lost; suspension of limitation of time for filing claims.

The limitation heretofore imposed by law on the presentation by officers or soldiers of claims for the loss of horses and equipments in the military services, during the late war is hereby suspended for the period of three years. (25 Stat. 437.)

This section was part of an act to extend the provisions of previous acts for the muster and pay of certain volunteer officers and enlisted men. The other provisions of that act, contained in section 1 thereof, are omitted as temporary merely.

§ 6396. (R. S. § 3483.) Payment for property lost while in military service.

Every person who sustains damage by the capture or destruction by an enemy, or by the abandonment or destruction by the order of the commanding general, the commanding officer, or quartermaster, of any horse, mule, ox, wagon, cart, sleigh, harness, steamboat or other vessel, railroad-engine or railroad-car, while such property is in the military service, either by impressment or contract; or who sustains damage by the death or abandonment and loss of any horse, mule, or ox, while in the service, in consequence of the failure on the part of the United States to furnish the same with sufficient forage, or whose horse, mule, ox, wagon, cart, boat, sleigh, harness, vessel, railroad-engine, or railroad-car is lost or destroyed by unavoidable accident while such property is in the service, shall be allowed and paid the value thereof at the time when such property was taken into the service, except in cases where the risk to which

the property would be exposed was agreed to be incurred by the owner: Provided, It appears that such loss, capture, abandonment, destruction, or death was without any fault or negligence on the part of the owner of the property, and while the property was actually employed in the service of the United States.

Act March 3, 1849, c. 129, § 2, 9 Stat. 415. Act March 3, 1863, c. 78, § 5, 12 Stat. 743.

Notes of Decisions

1. Enactment, amendment, and repeal.
2. Construction, operation, and effect in general.
3. Proximate cause of loss.
4. Claims within this section.
5. What acts constitute impressment.
6. Voluntary navigation and control by owners of vessel.
7. Assessment of damages.
8. —— Use and service after damage to vessel.
9. Damages or expense incurred after damage to vessel.
10. —— Lighterage in floating grounded vessel.
11. Right of insurer to subrogation.
12. Authority of Secretary of War to require judicial determination.
13. Jurisdiction of court of claims.
14. Burden of proof and sufficiency of evidence.
15. —— Proof of loyalty.
16. Jurisdiction and authority of third auditor, and awards made by him.

1. Enactment, amendment, and repeal.—This section is not repealed by the fourth section of the legislative, executive, and judicial appropriation act July 12, 1870 (chapter 251). The repealing clause of the latter section operates exclusively on sections 1 and 7 of the former act. (1871) 13 Op. Atty. Gen. 507.

2. Construction, operation, and effect in general.—Government held not liable for loss of vessel in military service. Reybold v. U. S. (1872) 15 Wall. 202, 206, 21 L. Ed. 57.

The cases in which contractors and owners of impressed property may recover examined. Powell v. U. S. (1865) 1 Ct. Cl. 400.

The term "war risk," in a policy wherein the government is the insurer, cannot be extended beyond "the acts of the public enemy" or "the casualties of war." The government does not insure against its own acts. Bogert v. U. S. (1866) 2 Ct. Cl. 159.

Where property was in service by impressment or contract, and not merely by being a part of the equipment furnished by the officer or soldier, such claims are allowable under the provisions of this section, which contains no restrictions as to persons. (1874) 14 Op. Atty. Gen. 360.

Where the question is whether the boat was or was not in the military service by contract, the distinction between a contract which imports the letting of the boat for hire (locatio rei), and one importing merely the carriage of goods for hire (locatio operis mercium vehendarum), is material; contracts of the former kind only being within the statute. (1875) 14 Op. Atty. Gen. 536.

3. Proximate cause of loss.—It is the proximate cause of loss which determines the liability of the insurer, and not the remote. Hence, where the defendants during the war of the rebellion insure in the charter party of a schooner against the "war risk," and she is driven by a gale within range of the enemy's batteries, but is then at anchor and safe from the perils of the sea, after which the batteries open upon her and destroy her ground tackle, so that, she goes ashore and is captured, the acts of the enemy constitute the proximate cause of the loss, and the defendants are liable. Baker v. U. S. (1867) 3 Ct. Cl. 76.

4. Claims within this section.—One who contracted with the government to transport from port to port, remote from any seat of war, stores and supplies not forming any portion of the stores or supplies of an advancing or retreating army, is not a person in the military service of the United States within this section and a petition alleging attack and capture by hostile Indians without fault of contractor is not sufficient. Guttman v. U. S. (1873) 18 Wall. 84, 21 L. Ed. 816.

This section authorizes payment only for property lost in military service and does not apply to property lost by reason of delay by order of army officers to prevent its reaching the enemy. U. S. v. Irwin (1888) 127 U. S. 125, 8 Sup. Ct. 1033, 32 L. Ed. 99.

The United States held to be charterers of a vessel upon a contract of affreightment, and not liable for its loss. Shaw v. U. S. (1876) 93 U. S. 235, 239, 23 L. Ed. 880.

This act does not apply to the teams of an army contractor, since they are not in the service of the United States. Grant v. U. S. (1863) 1 Ct. Cl. 61.

Where a quartermaster, with the approval of his commanding general, detains a contractor's ice barge, but enters into an agreement to deliver her at a certain place within a fixed period "or pay a fair valuation for the same," the government will be liable if the barge be not returned. Conrad v. U. S. (1867) 3 Ct. Cl. 89.

This section held not to apply to property of a contractor in military service, and while so used under the control and management of such con-

tractor. Porter v. U. S. (1873) 9 Ct. Cl. 356.

Property intended for sale to the Mormons in Utah was seized by the Johnston expedition in 1857 to prevent its reaching the insurgents, and was subsequently used by the army. Held, the owners were entitled to recover value. (1861) 10 Op. Atty. Gen. 21.

Marshall O. Roberts is entitled to compensation for the loss of the steamer Star of the West under the circumstances of that case. (1862) 10 Op. Atty. Gen. 310.

A barge used for transportation of merchandise, and owned by a person not in the military service, is within the species of property enumerated in the fifth section of this section as property to be paid for when lost in the military service of the United States. (1868) 12 Op. Atty. Gen. 362.

Where the loss of a steamboat has been caused by carelessness, a claim for its value does not fall within the provisions of the second section of this section. (1869) 13 Op. Atty. Gen. 120.

The facts and circumstances presented in the claims of C. A. Perry & Co. failing to show that the claimant's property was destroyed while in the military service of the United States either by impressment or contract, held, that the claim is not within the provisions of this section. (1872) 14 Op. Atty. Gen. 137.

This section held to apply to the claim of an officer whose horse was impressed and lost in military service while such officer was absent on duty. (1874) 14 Op. Atty. Gen. 367.

A vessel chartered by quartermaster's department was used as transport in expedition against Port Royal, S. C., and in such service lost at sea without fault of owner and while under control of United States officers. Held, owners entitled to recover. (1879) 16 Op. Atty. Gen. 242.

The steamer "Joseph Pierce," at the time of her destruction by fire, July 31, 1865, was not in the military service of the United States either by contract or impressment, and accordingly the accounting officers of the Treasury had no jurisdiction to allow the value thereof to the owners. (1881) 17 Op. Atty. Gen. 90.

5. What acts constitute impressment.—An order to the owners of a vessel to get her ready under pain of impressment to transport a cargo held not to make the government owners for the voyage. Reed v. U. S. (1870) 11 Wall. 591, 601, 20 L. Ed. 220, reversing (1868) 4 Ct. Cl. 132.

Where a vessel, which has gone to a Southern port during the rebellion with a cargo for the government, is compelled, under protest, by a quartermaster to proceed to another port, but is not seized nor taken from the possession of the master and crew, she is "impressed" into the military service and is not "appropriated" within the meaning of Act July 4, 1864 (13 Stat. 381); so that an injury suffered by reason of the impressment is not "damage" done by the army within the meaning of the last act. Kimball v. U. S. (1869) 5 Ct. Cl. 252.

Horses which constitute a part of the equipment of officers and soldiers, furnished by themselves, are not in the military service by "contract," much less by "impressment," within the meaning of the term as employed in this section. (1874) 14 Op. Atty. Gen. 360.

To make an impressment binding upon the government it is essential that there be shown to have existed such an emergency as justified the officer in taking the property; but this, together with an actual taking, or what is equivalent thereto, being satisfactorily established by the claimant, nothing more remains to be proven by him under that head. (1875) 14 Op. Atty. Gen. 536.

A threat to seize a vessel unless certain troops and ammunition are received and transported, resulting in the compulsory submission of the master of the vessel, does not constitute an impressment. (1881) 17 Op. Atty. Gen. 90.

6. Voluntary navigation and control by owners of vessel.—An owner, navigating his vessel through his own master and crew, cannot recover for her loss by fire, although the vessel was in the military service of the government by impressment, and the loss was without fault or negligence on the part of the owners or their representatives. The voluntary navigation of the vessel by the owners, after impressment, changes the character of the transaction from impressment to contract, and retaining control of her navigation takes the case out of the statute. Shaw v. U. S. (1873) 9 Ct. Cl. 388.

In June, 1865, a steamboat was chartered by the government to run on the Chattahoochee and Appalachicola rivers, the management of the craft being left in charge of the owners. While under charter it was accidentally lost by fire, held, that the boat was not in the military service within the meaning of this section, and the United States incurred no liability for the loss. (1877) 15 Op. Atty. Gen. 205.

7. Assessment of damages.—The government is an insurer of a steamboat impressed into its military service, and hence in the assessment of damages for her service a deduction should be made from ordinary rates. Russell v. U. S. (1869) 5 Ct. Cl. 121.

8. —— Use and service after damage to vessel.—Where payments have been made for the services of a steamboat after she has been incapacitated, and the defendants have become liable for her loss, but before her value has

been fixed or paid under Act March 3, 1849 (9 Stat. 414), and the defendants do not ask that the payments be reexamined, the court will not disturb the transaction, nor treat the payments as a set-off. Reed v. U. S. (1868) 4 Ct. Cl. 132. And see Reed v. U. S. (1870) 11 Wall. 591, 601, 20 L. Ed. 220.

Where a vessel is taken from the owners and impressed into the military service and suffers injuries while navigated by government officers, the owners may recover for her use and service during the period of her repairs. Dozier v. U. S. (1873) 9 Ct. Cl. 342.

9. Damages or expense incurred after damage to vessel.—Under Act March 3, 1849 (9 Stat. 414), the United States stand in the relation of insurers of a boat taken for military purposes, and fulfill that obligation by paying for her value when destroyed or lost in their service; and that payment relates back to the commencement of the accident by which the boat is finally destroyed, and they are not liable for damages in the meantime. Reed v. U. S. (1868) 4 Ct. Cl. 132. And see Reed v. U. S. (1870) 11 Wall. 591, 601, 20 L. Ed. 220.

The United States are not liable for a per diem compensation of a steamboat taken for military purposes after the owners abandoned the boat and made their protest to cover their insurance. Id.

10. —— Lighterage in floating grounded vessel.—Where a boat, impressed into the military service, grounds, by reason of being overladen by a quartermaster, the defendants are liable for the lighterage paid by the owner in getting her afloat. Russell v. U. S. (1869) 5 Ct. Cl. 121.

11. Right of insurer to subrogation.—Where a vessel which has been impressed into the military service is lost, and the insurers pay the owner the amount of certain policies on the vessel, they may maintain an action in the name of the owner, under Act March 3, 1849 (9 Stat. 414), and Act March 3, 1863 (12 Stat. 743). Shaw v. U. S. (1872) 8 Ct. Cl. 488.

The insurers and underwriters are entitled to be subrogated to the rights of the owners to the extent of the loss paid. (1870) 13 Op. Atty. Gen. 182.

12. Authority of Secretary of War to require judicial determination.—Where a vessel was lost while in the military service of the government, and it appeared that the owner had a just legal claim on the insurers for the loss, the Secretary of War was advised not to entertain an application for indemnity from the government until the liability of the insurance company should be judicially determined. (1862) 10 Op. Atty. Gen. 267.

Where a claim against the United States for the value of property lost in the military service, filed under the provisions of this act had been adjusted by the accounting officers of the Treasury, and the amount found due the claimant certified to the Secretary of War for the issue of a requisition for payment, held, that it was competent to the Secretary of War, if it should appear that this claim belonged to the class described in the seventh section of Act June 25, 1868, c. 71, to withhold his requisition and cause the claim to be transmitted to the Court of Claims for adjudication, notwithstanding the amount found due thereon had been certified to him as aforesaid. (1869) 13 Op. Atty. Gen. 164.

13. Jurisdiction of Court of Claims.—Whether property was impressed into the military service is a jurisdictional question, which may be inquired into in any judicial proceeding based upon a judgment or award of the third auditor. Porter v. U. S. (1885) 20 Ct. Cl. 307.

Act July 4, 1864, c. 240, "to restrict the jurisdiction of the Court of Claims," does not repeal this act. (1868) 12 Op. Atty. Gen. 362.

14. Burden of proof and sufficiency of evidence.—When the evidence of ownership is incomplete a party cannot recover for property taken or destroyed by the government. Wiggins v. U. S. (1866) 2 Ct. Cl. 345.

In a steamboat claim under this section, the burden of proof rests on the claimant, and before he can become entitled to compensation for the loss of his property he must prove everything made essential by the act—the ownership, the military service, the destruction, the unavoidable character of the accident, and the entire absence of fault or negligence on his part. (1871) 13 Op. Atty. Gen. 381.

To bring a claim for the loss of a steamboat within this section, it must be shown: First, that the boat was in the military service either by impressment or contract; second, that the loss occurred while the boat was actually employed in such service; third, that it was caused by an unavoidable accident, and not through any fault or negligence on the part of the owner; fourth, that the case is not one wherein the risk was agreed to be incurred by the owner. (1875) 14 Op. Atty. Gen. 536.

15. —— Proof of loyalty.—It is not the duty of the accounting offices of the Treasury to require of claimants proof of loyalty. (1877) 15 Op. Atty. Gen. 652.

16. Jurisdiction and authority of third auditor, and awards made by him.—An award made by the third auditor in favor of the owner of a vessel taken by the government under a contract must be deemed to be an award on the contract, and not a "judgment"

under these acts. Bogert v. U. S. (1866) 2 Ct. Cl. 159.

If an award by the third auditor for a vessel destroyed in the military service of the United States under this act is a "statutory judgment" which may be set up as an estoppel, it is in the nature of a record, and cannot be proved by parol. Bogert v. U. S. (1867) 3 Ct. Cl. 18.

The third auditor has exclusive jurisdiction over the accounts and claims for horses and other property destroyed in the military service, under Act Jan. 18, 1837, c. 5. (1842) 4 Op. Atty. Gen. 16.

The act of Congress does not confer upon the auditor a general power of revision over all the accounts of the claimant, and over all payments allowed to him for forage, for other horses than the one dead, lost, or abandoned. (1858) 9 Op. Atty. Gen. 151.

The third auditor, in adjusting, under this act, a claim for the value of a horse lost in the service of the United States, has the right to go behind the settlement of the paymaster after the second comptroller's approval thereof. Id.

A claim for the value of a vessel seized jure belli at New Orleans, upon the capture of that city by the United States naval forces, turned over to the army, and afterwards captured by the rebels, is not within the jurisdiction conferred upon the third auditor by this act. (1865) 11 Op. Atty. Gen. 378.

The third auditor and second comptroller have no power, since the passage of act Feb. 21, 1867, to settle a claim for the value of a barge owned by residents of New Orleans, which was lost in 1864, in the Mississippi river, while under impressment by the military authorities. (1868) 12 Op. Atty. Gen. 362.

This act placed all claims presented under it within the exclusive jurisdiction of the third auditor. It made him the sole tribunal and his awards, called judgments, final. (1882) 17 Op. Atty. Gen. 352.

The award made by the third auditor on the 10th of May, 1861, under that law, in favor of James and Richard H. Porter, was binding upon all officers of the government; the act July 28, 1866 (14 Stat. 327) being inapplicable. (1882) 17 Op. Atty. Gen. 352, overruling (1869) 13 Op. Atty. Gen. 9.

§ 6397. (R. S. § 3484.) Payment for horses lost by capture.

The two preceding sections shall extend to all cases of the loss of horses by any officer, non-commissioned officer, or private in the military service of the United States, while in the line of his duty in such service, by capture by the enemy, whenever it shall appear that such officer, non-commissioned officer, or private was ordered by his superior officer to surrender to the enemy, and such capture was made in pursuance of such surrender.

Act June 25, 1864, c. 150, 13 Stat. 182.

The two preceding sections mentioned in this act were R. S. §§ 3482, 3483, ante, §§ 6390, 6396.

Act Feb. 28, 1902, c. 134, §§ 1, 2, 32 Stat. 43, provided for payment for horses, side arms, and baggage taken from Confederate officers and soldiers in violation of terms of surrender. By its provisions the Quartermaster General was directed to investigate claims and pay them on proof therein set out being made. Act March 3, 1903, c. 1006, § 1, 32 Stat. 1048, limited the time for filing such claims to one year, which time was successively extended by Act April 27, 1904, c. 1630, § 1, 33 Stat. 401, Act May 30, 1908, c. 227, § 1, 35 Stat. 499, and Res. June 25, 1910, No. 38, 36 Stat. 883; the last mentioned resolution extending the time to two years from its passage. These acts are omitted, as temporary merely.

Cited without definite application, Tapia v. U. S. (1880) 16 Ct. Cl. 561 (see note under § 6390, ante); (1871) 13 Op. Atty. Gen. 507 (see note under § 6396, ante).

§ 6398. (R. S. § 3485.) Payment for condemned horses and equipage.

Whenever any horse is condemned by a board of officers, on account of his unfitness for service, in consequence of the Government failing to supply forage, such horse and his equipage shall be allowed and paid for: Provided, It shall be proven, by satisfactory evidence, whether oral or written, that the condemned horse and the equipage were turned over to a quartermaster of the Army, whether any receipt therefor was given and produced, or not.

Act March 3, 1849, c. 129, § 7, 9 Stat. 416.

§ 6399. (R. S. § 3486.) Payment to guardian for horse lost by minor in military service.

When any minor engaged in the military service of the United States, and provided with a horse or equipments, or with military accouterments, by his parent or guardian, dies, without paying for the property, and the same is lost, captured, destroyed, or abandoned in the manner before mentioned, such parent or guardian shall be allowed pay therefor, on making satisfactory proof, as in other cases, and the further proof that he is entitled thereto by having furnished the same.

Act March 3, 1849, c. 129, § 5, 9 Stat. 415.

§ 6400. (R. S. § 3487.) Payment to owner for horse furnished and lost in military service.

When any person other than a minor, engaged in the military service, is provided with a horse or equipments, or with military accouterments, by any person, being the owner thereof, who takes the risk of such horse, equipments, or military accouterments, on himself, and the same is lost, captured, destroyed, or abandoned, in the manner before mentioned, such owner shall be allowed pay therefor, on making satisfactory proof, as in other cases, and the further proof that he is entitled thereto, by having furnished the same, and having taken the risk on himself.

Act March 3, 1849, c. 129, § 6, 9 Stat. 416.

§ 6401. (R. S. § 3488.) Auditor may take testimony as to steamboats, etc.

In executing so much of the preceding sections as provides for payment for steamboats and other vessels, and railroad engines or cars, lost or destroyed while in the military service of the United States, the Third Auditor of the Treasury is authorized, in person, or in such manner as he may deem most compatible with the public interests, to take testimony, and make such investigations as he may deem necessary in adjudicating claims; and for such necessary expenses incurred therein, payment may be made upon proper vouchers, certified and approved by the Third Auditor.

Act June 25, 1864, c. 147, § 6, 13 Stat. 160.

The Third Auditor was designated Auditor for the Interior Department, by the Dockery Act of July 31, 1894, c. 174, § 3, ante, § 417.

§ 6402. (R. S. § 3489.) Claims for collecting, etc., volunteers for the war of the rebellion, and for horses, to be presented prior to June 30, 1874.

No claims against the United States, for collecting, drilling, or organizing volunteers for the war of the rebellion, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four. No claims for horses lost prior to the first day of January, eighteen hundred and seventy-two, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four.

Act March 3, 1873, c. 226, § 1, 17 Stat. 500.

Other provisions relating to limitations of the time for presenting claims for horse lost were made by Act June 22, 1874, c. 395, § 2, Act Jan. 9, 1883, c. 15, and Act Aug. 13, 1888, c. 858, § 2, ante, §§ 6392–6395.

Provisions for payment of particular claims of States for expenses incurred in raising volunteers, and for other similar advances and expenditures, are contained in the urgent deficiency appropriation act of Feb. 14, 1902, c. 17, 32 Stat. 30, and in the act for the allowance of certain claims, etc., Act May 27, 1902, c. 887, 32 Stat. 235.

Notes of Decisions

Application to war claims of states.— The limitation prescribed by this section for auditing and paying certain claims against the United States does not apply to war claims in behalf of states for which provision was made

by Act July 27, 1861, c. 21. (1879) 16 Op. Atty. Gen. 284.

The words "for collecting, drilling, or organizing volunteers" must be understood as meant to be descriptive of and as applying to that class of war claims only which had theretofore been provided for by Acts Aug. 5, 1861, c. 51, July 5, 1862, c. 133, Feb. 9, 1863, c. 25, and June 15, 1864, c. 124; the provisions of these acts to which reference is made being construed to cover claims of individuals and not those of states, for the subjects therein designated. Id.

It is the duty of the administrative officers of the War Department and the accounting officers of the Treasury Department to proceed with the examination and auditing of these claims, that proper estimates may be submitted to Congress therefor. Id.

Cited without definite application, Terrill v. U. S. (1893) 28 Ct. Cl. 465.

§ 6403. (Act March 3, 1885, c. 335.) Settlement of claims of officers and enlisted men for loss of property in military service.

That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service of the United States which has been, or may hereafter be, lost or destroyed in the military service, under the following circumstances:

First. When such loss or destruction was without fault or negligence on the part of the claimant.

Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.

Third. Where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances.

And the amount of such loss so ascertained and determined shall be paid out of any money in the Treasury not otherwise appropriated, and shall be in full for all such loss or damage: Provided, That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered: And provided further, That this act shall not apply to losses sustained in time of war or hostilities with Indians: And provided further, That the liability of the Government under this act shall be limited to such articles of personal property as the Secretary of War, in his discretion shall decide to be reasonable, useful, necessary, and proper for such officer or soldier while in quarters, engaged in the public service in the line of duty: And provided further, That all claims now existing shall be presented within two years and not after from the passage of this act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction. (23 Stat. 350.)

This was an act entitled "An act to provide for the settlement of the claims of officers and enlisted men of the Army for loss of private property destroyed in the military service of the United States."

Similar provisions as to claims for loss of property of officers, seamen, and others in the naval service, were made by Act March 2, 1895, c. 190, post, § 6404.

Provisions for the payment to officers, etc., in the military service for horses and equipments lost were made by R. S. §§ 3482–3489, and acts supplementary thereto, ante, §§ 6390–6395.

The provisions of this section were extended to cover loss of or damage to baggage of officers and enlisted men by Act March 4, 1915, c. 147, § 1, post, § 6403a.

Notes of Decisions

Extent and nature of jurisdiction conferred on treasury and war departments.—The statute does not confer exclusive jurisdiction on the accounting officers of the treasury. Pursell v. U. S. (1911) 46 Ct. Cl. 509.

Whether the loss happened under the circumstances described in the statute,

and comes within the provisions thereof, is a question for the determination of the proper accounting officers of the Treasury, and so does not appertain to the administration of the War Department. (1890) 19 Op. Atty. Gen. 693.

The duty of the Secretary of War in the case of a claim under this act is limited to the determination of whether the property for the loss of which indemnity is claimed was "reasonable, useful, necessary, and proper" for the claimant. Id.

Loss occurring during officer's leave of absence.—The absence of an officer properly on leave at the time of the loss will not exclude him from the relief given by the statute if the loss was without fault of negligence on his part. Purssell v. U. S. (1911) 46 Ct. Cl. 509.

Finality of award.—Where the claim of an army officer for the loss of private property in the service was audited, allowed, and paid in the usual manner, the government could not reclaim the money without showing that it was obtained by fraud or under a mistake of fact, notwithstanding Act July 31, 1894, providing that a revision of an account by the comptroller of the treasury may be obtained within a year after it has been settled by the auditor. U. S. v. Olmsted (1902) 118 Fed. 433, 55 C. C. A. 249.

A payment made pursuant to this act cannot be recovered back, in the absence of mistake or fraud, which is not shown by a complaint stating that, after payment of the claim, the department disallowed the claim for the reason that the loss was not without fault of the claimant; this being but an allegation of the reason assigned by the department for its action, and not an allegation of the fact that the loss was not without his fault. U. S. v. Willcox (1902) 118 Fed. 729, 55 C. C. A. 519.

Where the claim of an army officer against the government for the value of personal property lost in the service, presented under this section was allowed by the auditor for the war department, and paid, the government cannot recover the amount so paid from such officer upon a petition showing that the claim was subsequently revised by the comptroller and disallowed because of the insufficiency of the proofs, and that the auditor thereafter settled the claim, and charged the amount back to the officer, there being no allegation of fraud or mistake, or that the claim was not in fact one properly allowable under the statute; and especially where it is not shown that the officer was advised of the action taken after the payment was made. U. S. v. Olmsted (C. C. 1900) 106 Fed. 286.

Acceptance by claimant of amount allowed as satisfaction.—The acceptance by the claimant of the amount allowed by the accounting officers operate as a satisfaction of the claim. Purssell v. U. S. (1911) 46 Ct. Cl. 509.

Effect of act as limiting jurisdiction of court of claims.—This act has no application to the judiciary and is no limitation on the jurisdiction of the court of claims in cases for horses lost in the military service. Cox v. U. S. (1906) 41 Ct. Cl. 86.

§ 6403a. (Act March 4, 1915, c. 143, § 1.) Settlement of claims of officers and enlisted men for loss of or damage to baggage.

The provisions of the Act of March third, eighteen hundred and eighty-five (Twenty-third Statutes, page three hundred and fifty), entitled "An Act to provide for the settlement of the claims of officers and enlisted men of the Army for loss of private property destroyed in the military service of the United States," shall hereafter extend to cover loss of or damage to the regulation allowance of baggage of officers and enlisted men sustained in shipment under orders, to the extent of such loss or damage over and above the amount recoverable from the carrier furnishing the transportation. (38 Stat. 1077.)

This was a part of the Army appropriation act for the fiscal year 1916, cited above.

Act March 3, 1885, c. 355, mentioned in this section, is set forth ante, § 6403.

§ 6404. (Act March 2, 1895, c. 190.) Settlement of claims of officers, seamen, etc., for loss of property in naval service.

That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers, petty officers, seamen, and others in the naval service of the United States which has been or may hereafter be lost and destroyed in the naval service by shipwreck or other marine disaster, under the following circumstances:

First. When such loss or destruction was without fault or negligence on the part of the claimant.

Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.

And the amount of such loss or losses which have accrued prior to the passage of this Act so ascertained and determined upon settlement by the proper accounting officers of the Treasury shall be paid out of any money in the Treasury not otherwise appropriated, and all losses that shall hereafter accrue shall be certified by the Secretary of the Treasury at the commencement of each regular session to the Speaker of the House of Representatives who shall lay the same before Congress for consideration, and shall be in full for all such loss or damage: Provided, That any claim which shall be presented and acted upon under authority of this Act shall be held as finally determined, and shall never thereafter be reopened or considered: And provided further, That this Act shall not apply to losses sustained in time of war: And provided further, That the liability of the Government under this Act shall be limited to such articles of personal property as are required by the United States Naval Regulations, and in force at the time of loss or destruction, for such officers, petty officers, seamen, or others engaged in the public service, in the line of duty: And provided further, That the amounts which have been paid to persons in the naval service under sections two hundred and eighty-eight, two hundred and eighty-nine, and two hundred and ninety of the Revised Statutes shall be deducted in the settlement of all claims under this Act: And provided further, That the value of the article or articles lost or destroyed shall be their value at the date of loss or destruction: And provided further, That all claims now existing shall be presented within two years, and not after, from the passage of this Act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction. That nothing in this Act shall be construed to authorize the reopening or payment of any claims for losses of private property on vessels sunk or otherwise destroyed prior to August twentieth, eighteen hundred and eighty-four. (28 Stat. 962.)

This was an act entitled "An act to provide for the reimbursement of officers and seamen for property lost or destroyed in the naval service of the United States."

Similar provisions as to claims for loss of property of officers and enlisted men in the military service were made by Act March 3, 1885, c. 335, ante, § 6403, and Act March 4, 1915, c. 143, § 1, ante, § 6403a.

§ 6405. (R. S. § 1089.) Payment of judgments of Court of Claims.

In all cases of final judgments by the Court of Claims, or, on appeal, by the Supreme Court, where the same are affirmed in favor of the claimant, the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the Court of Claims, and signed by the chief justice, or, in his absence, by the presiding judge of said court.

Act March 3, 1863, c. 92, § 7, 12 Stat. 766.

By a subsequent provision the Secretary of the Treasury was required to certify to Congress for appropriation only such judgments as were not to be appealed, or such judgments as, having been appealed, had been decided to be due and payable. Act Sept. 30, 1890, c. 1126, § 1, post, § 6406.

Provisions for deducting, from any judgment recovered or other claim duly allowed against the United States, the amount of any indebtedness of the plaintiff or claimant to the United States, were made by Act March 3, 1875, c. 149, § 1, post, § 6407.

The Secretary of the Treasury was required, at the commencement of each session of Congress, to report the amount of each claim allowed to the Speak-

er of the House of Representatives and the presiding officer of the Senate, by a provision of Act July 7, 1884, c. 334, § 1, ante, § 398.

The section of the Revised Statutes next following this section, R. S. § 1090, allowed interest, where a judgment of the Court of Claims in favor of the claimant was appealed from and affirmed by the Supreme Court, at the rate of five per cent. per annum, from the date of presentation of a certified copy of the judgment to the Secretary of the Treasury, as provided by this section. It was superseded by a provision of Act Sept. 30, 1890, c. 1126, § 1, post, § 6406.

Notes of Decisions

Claims within jurisdiction of court of claims.—The jurisdiction of the court of claims is restricted to money claims, and does not extend to land claims or for specific performance. U. S. v. Jones (1889) 9 Sup. Ct. 669, 131 U. S. 1, 33 L. Ed. 90.

Situs of claim.—While a debt due from the United States has no locality in the District of Columbia, yet when an appropriation has been made by Congress to pay a finding by the court of claims in favor of a claimant, and nothing remains to be done but the issuance by the Treasurer of the United States of a check to the claimant in payment of the claim, the fund has a locality in this District as between the Treasurer and the claimant, or one having an equitable lien on the fund created by contract with the claimant. Roberts v. Consaul (1905) 24 App. D. C. 551.

Object and effect of presenting certified copy of judgment.—The certified copy of a judgment of the court of claims on which a judgment creditor is paid at the Treasury bears no command; runs not against the property of the defendants; nor is the Secretary of the Treasury in any sense an officer of the court. It therefore contains none of the ingredients of a writ of execution. Brown v. U. S. (1870) 6 Ct. Cl. 171.

Power of secretary to examine or revise judgment.—This statute applies to special appropriations made for the satisfaction of a particular judgment and the Secretary has no power whatever to go behind the judgment in his examination, nor is the right of appeal affected by R. S. § 236, ante, § 368. U. S. v. Jones (1886) 7 Sup. Ct. 283, 284, 119 U. S. 477, 30 L. Ed. 440.

Propriety of payment within ninety days after judgment, right of appeal having been waived.—If the right of appeal from judgments of the Court of Claims in the direct tax cases be waived by both parties by stipulations on record, no legal objection would exist to the payment by the Treasury Department of such claims prior to the expiration of the ninety days within which appeals must be taken. (1890) 20 Op. Atty. Gen. 547.

It is, however, deemed unwise for the Department of Justice to adopt any general rule giving such stipulations. Id.

Right of set-off.—The Treasury has authority to set off an indebtedness due from a claimant to the government against a judgment recovered by him. Labadie v. U. S. (1898) 33 Ct. Cl. 476.

Appropriations from which claims may be paid.—When there are legal liabilities on the part of the government, its creditors on that account cannot obtain payment until there is an appropriation therefor. If no direct appropriation for that purpose exists, they may bring action in this court, and if they obtain judgment they may have the same paid out of any money appropriated for the payment and satisfaction of private claims. Mitchell v. U. S. (1883) 18 Ct. Cl. 281, judgment reversed 19 Ct. Cl. 703, 109 U. S. 146, 3 Sup. Ct. 151.

Cited without definite application, U. S. v. Alire (1867) 6 Wall. 573, 574, 576, 18 L. Ed. 947; U. S. v. Real Estate Sav. Bank (1881) 104 U. S. 728, 732, 26 L. Ed. 908; Interstate Commerce Commission v. Brimson (1894) 14 Sup. Ct. 1125, 1135, 154 U. S. 447, 38 L. Ed. 1047; U. S. v. Barber (1896) 74 Fed. 483, 489, 20 C. C. A. 616; White v. Arthur (C. C. 1882) 10 Fed. 80, 87; Pacific Railroad v. U. S. (1891) 26 Ct. Cl. 564.

§ 6406. (Act Sept. 30, 1890, c. 1126, § 1.) Judgments of Court of Claims to be certified by Secretary of the Treasury; interest.

Hereafter it shall be the duty of the Secretary of the Treasury to certify to Congress for appropriation only such judgments of the Court of Claims as are not to be appealed, or such appealed cases as shall have been decided by the Supreme Court to be due and payable. And on judgments in favor of claimants which have been appealed by the United States and affirmed by the Supreme Court, interest, at the rate of four per centum per annum, shall be allowed and paid from the date of filing the transcript of judgment in the Treasury Department up to and including the date of the mandate of affirmance by the Supreme Court: Provided, That in no case shall interest be al-

lowed after the term of the Supreme Court at which said judgment was affirmed. (26 Stat. 537.)

These were provisions of the deficiency appropriation act for the fiscal year 1890, cited above.

A provision for interest, where a judgment in favor of the claimant was appealed from and affirmed by the Supreme Court, at the rate of five per cent. per annum from the date of presentation of a certified copy of the judgment to the Secretary of the Treasury, as provided by R. S. § 1089, ante, § 6405, made by R. S. § 1090, was superseded by this provision.

Final judgments or decrees rendered in suits brought under the provisions of the Tucker Act of March 3, 1887, c. 359, bore interest from the date of the rendition thereof to the time when an appropriation was made for the payment thereof, at the rate of four per centum per annum, by section 10 of said act, ante, § 1578.

Notes of Decisions

Effect of provision allowing interest.—Interest on the judgments of the court of claims is regulated by this act, and not by section 10 of the Tucker Act. Pacific Coast S. S. Co. v. U. S. (1897) 33 Ct. Cl. 36; Mosby v. U. S. (1897) 33 Ct. Cl. 58.

A statute providing that the government shall pay interest on judgments is as binding as an agreement. Hobbs v. U. S. (1884) 19 Ct. Cl. 220.

The allowance of interest is not a matter of discretion with either court, but of legal right. State of New York v. U. S. (1896) 31 Ct. Cl. 276.

Judgments entitled to bear interest.—The liability assumed by the government does not include the payment of interest upon judgments recovered against collectors of customs, and such interest cannot be collected. White v. Arthur (C. C. 1882) 10 Fed. 80, 91.

Interest is not recoverable on a judgment in the court of claims, where the judgment was founded on a tort, and the case had been referred to the court under a special act (25 Stat. 1334), which contained no provision in relation to interest. Bunton v. U. S. (C. C. 1894) 62 Fed. 171.

If the defendants appeal from a judgment in favor of a claimant, and it be affirmed, he will be entitled to interest, notwithstanding that he himself appealed as to certain demands adversely decided. Hobbs v. U. S. (1884) 19 Ct. Cl. 220.

Where a judgment is affirmed so far as it is in favor of a claimant, and is reversed so far as it is adverse to him, he is entitled to have interest added by the Court of Claims on the former, and incorporated into the final judgment rendered under the mandate. State of New York v. U. S. (1896) 31 Ct. Cl. 276.

The statutes do not contemplate interest on a judgment reversed for an error of the trial court in giving the claimant too much. Mosby v. U. S. (1897) 33 Ct. Cl. 58.

Only such judgments of the Court of Claims as have been appealed from to the Supreme Court and affirmed by the latter are interest-bearing under that section, and they become interest-bearing from the date of their presentation in good faith for payment. (1887) 18 Op. Atty. Gen. 548.

Semble that a presentation made by a claimant who afterwards takes an appeal from the judgment is of no avail. Id.

Where a judgment by the Court of Claims in favor of a claimant was appealed by the United States to the Supreme Court, which court reversed the judgment, and directed the Court of Claims to enter judgment for a larger amount in favor of claimant, interest is not allowable on the latter sum. Id.

Necessity of appropriation for payment of interest before such payments can be made.—Interest cannot lawfully be paid on a judgment of the Court of Claims against the United States where no appropriation is made for the payment of interest. (1892) 20 Op. Atty. Gen. 423.

Acceptance of payment as bar to recovery of interest.—A claimant who accepts, in payment of a judgment of the court of claims, a sum of money appropriated by congress for that purpose, by an act which declares that such sum shall be "in full satisfaction of the judgment," cannot thereafter maintain a suit to recover interest on such judgment. Pacific R. Co. v. U. S. (1895) 15 S. Ct. 766, 158 U. S. 118, 39 L. Ed. 918.

Decisions under former statutes.—This section is still in force as to the subject to which it relates. U. S. v. Jones (1889) 9 Sup. Ct. 669, 671, 131 U. S. 1, 33 L. Ed. 90.

Cited without definite application, U. S. v. Blackfeather (1894) 15 Sup. Ct. 64, 69, 155 U. S. 180, 39 L. Ed. 114; U. S. v. Barber (1896) 74 Fed. 483, 486, 20 C. C. A. 616; Commissioners of the Sinking Fund v. Buckner (C. C. 1891) 48 Fed. 533, 535.

§ 6407. (Act March 3, 1875, c. 149.) Payment of judgments and claims against United States subject to off-sets; proceedings.

When any final judgment recovered against the United States or other claim duly allowed by legal authority, shall be presented

to the Secretary of the Treasury for payment, and the plaintiff or claimant therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Secretary to withhold payment of an amount of such judgment or claim equal to the debt thus due to the United States; and if such plaintiff or claimant assents to such set off, and discharges his judgment or an amount thereof equal to said debt or claim, the Secretary shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff, or claimant, denies his indebtedness to the United States, or refuses to consent to the set-off, then the Secretary shall withhold payment of such further amount of such judgment, or claim, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Secretary to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Secretary with six per cent. interest, thereon for the time it has been withheld from the plaintiff. (18 Stat. 481.)

This was an act entitled "An act to provide for deducting any debt due the United States from any judgment recovered against the United States by such debtor."

Notes of Decisions

1. Operation and effect in general.
2. Nature of remedy.
3. Right of executive officers to re-examine judgment or set off debits litigated in the suit.
4. Conclusiveness of set-off acquiesced in by creditor.
5. Failure to withhold money due contractor as affecting sureties on contractor's bond.
6. Necessity of suit or action to enforce or preserve right of set-off.
7. Amount to be withheld.
8. Debts and claims subject to set-off in general.
9. —— Set-off against moneys due states.
10. —— Set-off against salaries of federal judges.
11. —— Set-off against money taken from claimant's person while under arrest for forging money orders.
12. Decisions prior to enactment of statute.

1. Operation and effect in general.—The authority to settle claims due to and from the United States by setting one off against the other, as provided in this section is thereby conferred exclusively on the secretary of the treasury, and not on any court. U. S. v. Griswold (D. C. 1887) 30 Fed. 604.

The right of set-off where the government is both debtor and creditor is established and provided for by section 1766, and by this act, but it exists independently of those enactments and is founded upon section 236. Taggart v. U. S. (1881) 17 Ct. Cl. 322.

It is the duty of the accounting officers in proper cases to set off the demand of the United States against the moneys due its debtor. George Howes & Co. v. U. S. (1889) 24 Ct. Cl. 170. See, also, Schooner Henry v. U. S. (1900) 35 Ct. Cl. 393.

The Treasury has authority to set off an indebtedness due from a claimant to the government against a judgment recovered by him. Labadie v. U. S. (1898) 33 Ct. Cl. 476.

2. Nature of remedy.—This act does not create a lien on the money due to the claimant in favor of the government. U. S. v. Ennis (C. C. 1904) 132 Fed. 133.

Set-off differs from a lien, inasmuch as the former belongs exclusively to the remedy, and is merely a right to insist, if the party thinks proper to do so, when sued by his creditor, on a counter demand, which can only be enforced through the medium of judicial proceedings; whilst the latter is, in effect, a substitute for a suit. (1834) 2 Op. Atty. Gen. 663.

3. Right of executive officers to re-examine judgment or set off debits litigated in the suit.—This statute gives the accounting officers of the government no authority to re-examine the judgment, but provides a way of payment and satisfaction if the creditor shall at the time of the presentation of his judgment be a debtor of the United States for anything except what is included in the judgment, which is conclusive as to everything it embraces. U. S. v. Jones (1886) 7 Sup. Ct. 283, 285, 119 U. S. 477, 30 L. Ed. 440.

This act gave the accounting officers of the United States no authority to re-examine the judgment, but merely to offset it with another claim, and

hence the treasury had no appellate jurisdiction, but that the same was vested in the United States supreme court. Id.

Where the government, as defendant, has sought to use an independent demand against the claimant by way of set-off, the Secretary of the Treasury cannot afterward use it to reduce a judgment recovered by the claimant; but where the government did not set up in the suit its independent cross-demand, the Secretary may assert it as a set-off against the judgment in the manner provided by this act. In the former case his action would be an unconstitutional assumption of judicial power; in the latter, constitutional and legal. Bonnafon v. U. S. (1878) 14 Ct. Cl. 484.

4. Conclusiveness of set-off acquiesced in by creditor.—Where a judgment creditor of the government elects to allow a cross-demand or set-off asserted by the Secretary of the Treasury in the manner provided by this act, he cannot afterward maintain an action on his judgment for the balance so set off. Bonnafon v. U. S. (1878) 14 Ct. Cl. 484.

5. Failure to withhold money due contractor as affecting sureties on contractor's bond.—The failure of the Treasury Department to withhold any part of a payment due to a government contractor on account of a claim of the United States against him for a prior breach of the contract, as authorized and required by this act, does not release the sureties on the contractor's bond from liability for such claim. U. S. v. Ennis (C. C. 1904) 132 Fed. 133.

6. Necessity of suit on action to enforce or preserve right of set-off.—A judgment against the United States can neither be enforced by process nor transferred so as to prevent the government from setting off against it any cross-demand against the judgment plaintiff, especially in view of this act, expressly requiring such set-off. Hence there is no necessity nor ground for the issuance of a preliminary injunction or restraining order by a court of equity, in a suit by the United States to set off cross judgments, to prevent the transfer of his judgment by the defendant. Teller v. U. S. (1901) 113 Fed. 463, 51 C. C. A. 297.

7. Amount to be withheld.—If there be due the claimant any sum over and above that which is necessary to make good the debt, it ought not to be retained, but should be paid to him, or to his lawful assignee. (1844) 4 Op. Atty. Gen. 316.

8. Debts and claims subject to set-off in general.—Bonds deposited under sections 9701, 9706, post, to secure the circulation of a national bank, are held by the government as a trustee, and the surplus of the proceeds thereof, after payment of the notes, cannot be set off by the government against an unsecured deposit of postal funds, but must be distributed ratably among all the creditors. Cook County Nat. Bank v. U. S. (1882) 2 Sup. Ct. 561, 107 U. S. 445, 27 L. Ed. 537.

The United States have the right to retain moneys awarded, under the French treaty of 1831, to a firm of which one member is indebted to the government upon a bond for duties on goods imported for the firm, and to apply the same upon the bond. (1836) 3 Op. Atty. Gen. 163.

Where a disbursing agent of the government is in apparent default in respect to the moneys intrusted to him, and there be sufficient due him from the government to make good the deficiency, it is proper thus to satisfy the claim for such dues. (1844) 4 Op. Atty. Gen. 316.

Where the same person is contractor for two articles under separate contracts, and fulfills one and fails in the other, and presents his account to the Treasury for settlement, the accounting officer may set off, in the adjustment, such amount as may be due from him to the government upon his claim against it. (1845) 4 Op. Atty. Gen. 380.

Where a contractor for supplies for the navy, who was bound in separate contracts to furnish sugar and tea in stipulated quantities during a fiscal year, made default in respect to the sugar, but furnished the tea by causing it to be shipped to the naval storekeeper by a firm in New York, to whom the contractor indorsed over bills for the same made out in his name, payment of which has been refused on account of the contractor's defalcation on the contract for sugar, held, that the sale of the tea was made by the firm to the contractor, and not to the government, and that the amount due therefor may be withheld and set off as against the damages sustained by the government on account of the nonfulfillment of the other contract. (1847) 4 Op. Atty. Gen. 551.

9. —— Set-off against moneys due states.—The balance of $95,588.63, due the United States from the late territorial government of Florida, ought not to be set off in the extinguishment of the appropriation of $75,000 made by Congress by Act Feb. 27, 1851, c. 12, for reimbursing to the state of Florida moneys advanced for supplies and service of the local troops called into service during the year 1849. (1851) 5 Op. Atty. Gen. 455.

By compact between the United States and the state of Wisconsin, when the latter was admitted into the Union, it was agreed that the United States would pay to the state 5 per cent. of the net proceeds of the sale

of public lands within the same, for the use of its schools, provided that certain liabilities of the territory of Wisconsin on account of lands granted by the United States for canals therein shall be paid and discharged by the state. Held, that the United States cannot make a set-off of the 5 per cent. school fund to pay the canal debt, because the former is a special trust fund; but that the United States may retain the money in trust itself until the state discharges its obligation in the other respect to the United States. (1854) 6 Op. Atty. Gen. 732.

The amount claimed to be due from the state of Kansas to the United States on account of the direct tax should be retained out of the amount appropriated for payment to that state by Act March 3, 1881 (21 Stat. 414, 428). (1881) 17 Op. Atty. Gen. 228.

The withholding the amount of the "2 and 3 per cent. funds" due the state of Mississippi, and crediting the state therewith on account of the direct tax, was unwarranted by law, as no liability rests upon the state for the payment of such tax. (1884) 17 Op. Atty. Gen. 671.

The Secretary of the Treasury is authorized under Act March 2, 1891 (26 Stat. 822), to repay to the state of Vermont the full amount of the direct tax collected under Act Aug. 5, 1861 (12 Stat. 292), notwithstanding the existence of an unadjusted claim of the United States for arms, accouterments, clothing, etc., overdrawn by that state during the Civil War, under the act of 1808 (now section 1661, R. S., section 3054, ante), a portion of which were afterwards sold by the state, and the proceeds covered into the Treasury, and against which the state has a counterclaim for uniforms, garrison and camp equipage, etc., furnished its own military organizations during that war. (1891) 20 Op. Atty. Gen. 134.

The act of March 3, 1875 (18 Stat. 455), directing the Secretary of War to credit to the respective states the sums charged against them for overdrawal of arms and the ordnance stores during the Civil War, upon a showing by such states of a faithful disposition thereof, and to refuse credit where such stores have been sold or otherwise misapplied, is without effect upon the question above considered. Id.

It is the duty of the Secretary of the Treasury to withhold from the amount to be paid the state of Indiana, under Act March 2, 1891 (26 Stat. 822), providing for a refund of the direct taxes collected under Act Aug. 5, 1861 (12 Stat. 292), an amount equal to the indebtedness of that state to the United States arising from certain overpayments. (1892) 20 Op. Atty. Gen. 363.

10. —— Set-off against salaries of federal judges.—The salary of a federal judge should not be withheld as falling within this act to meet a judgment recovered against him as surety for a former government employé. (1893) 20 Op. Atty. Gen. 626.

11. —— Set-off against money taken from claimant's person while under arrest for forging money orders.—In a suit by one who has been convicted of obtaining money from postmasters on forged money orders to recover from the government money taken from his person by a post office inspector, the government can set off the amount of any moneys shown to have been fraudulently obtained from postmasters, though not identified with the money taken from the plaintiff's person. U. S. v. Harris (1897) 77 Fed. 821, 23 C. C. A. 483.

12. Decisions prior to enactment of statute.—(1823) 1 Op. Atty. Gen. 590; (1824) 1 Op. Atty. Gen. 700; (1858) 9 Op. Atty. Gen. 198; (1859) 9 Op. Atty. Gen. 401; (1868) 12 Op. Atty. Gen. 431.

§ 6408. (Act Feb. 18, 1904, c. 160, § 1.) Payment of judgments against United States to be made on settlements by auditors.

Hereafter in all cases of final judgments and awards rendered against the United States by the Court of Claims, and of final judgments rendered against the United States by the circuit and district courts of the United States, payment thereof under appropriations made by Congress shall be made on settlements by the auditor for the department or branch of the public service having jurisdiction over the subject-matter out of which the claims arose. (33 Stat. 41.)

This was a provision, following appropriations for payment of judgments of the Court of Claims, in the urgent deficiency appropriation act for the fiscal year 1904, cited above.

§ 6409. (Act Feb. 3, 1879, c. 40, § 1.) Private claims pending before Congress; taking of testimony by master in chancery.

Any committee of either house of Congress before which any private claim against the United States may at any time be pending, being first thereto authorized by the House appointing them, may order testimony to be taken, and books and papers to be examined,

and copies thereof, proved, before any standing master in chancery of the circuit of the United States within the judicial district where such testimony or evidence is to be taken. Such master in chancery, upon receiving a copy of the order of such committee, signed by its chairman, setting forth the time and place when and where such examination is to be had, the questions to be investigated, and, so far as may be known to the committee, the names of the witnesses to be examined on the part of the United States, and the general nature of the books, papers, and documents to be proved, if known, shall proceed to give to such private parties reasonable notice of the time and place of such examination, unless such notice shall have been or shall be given by such committee or its chairman, or by the attorney or agent of the United States, or waived by such private party. And such master shall issue subpœnas for such witnesses as may have been named in the order of such committee, and such others as the agent or other representative of the United States hereinafter mentioned shall request. And he shall also issue subpœnas at the request of such private party, or parties, for such witnesses within such judicial district as they may desire: Provided, That the United States shall not be liable for the fees of any officer for serving any subpœna for any private party, nor for the fees of any witness on behalf of such party. Said committee may inform the district attorney of the United States for the district where the testimony is to be taken of the time, place, and object of such examination, and request his attendance in behalf of the government in conducting such examination, in which case it shall be his duty to attend in person, or by an assistant employed by him, to conduct such examination on the part of the United States, or such committee may, at its option, appoint an agent or attorney, or one of its own members, for that purpose, as they may deem best; and in that event, if the committee shall not be unanimous, the minority of the committee may also appoint such agent or attorney or member of such committee to attend and take part in such examination. (20 Stat. 278.)

This section and the section next following were an act entitled "An act to provide for taking testimony, to be used before Congress, in cases of private claims against the United States."

§ 6410. (Act Feb. 3, 1879, c. 40, § 2.) Private claims pending before Congress; service of subpœna for taking testimony; compensation of officers and witnesses; return of depositions, etc.

It shall be the duty of the marshal of the United States for the district in which the testimony is to be taken to serve, or cause to be served, all subpœnas issued in behalf of the United States under this act, in the same manner as if issued by the circuit court for his district; and he shall, upon being first paid his fees therefor, serve any subpœnas that may be issued at the instance of such private party or parties. And the said master may, in his discretion, appoint any other person to serve any subpœna. Such master shall have full power to administer oaths to witnesses, and the same power to issue attachments to compel the attendance of witnesses and the production of books, papers and documents, as the circuit or district court of his district would have in a case pending before it; and it shall be his duty to report the conduct of contumacious witnesses before him to the house of Congress appointing such committee. The compensation of such master in chancery, and of marshals and deputy marshals, and of any person appointed to serve papers, shall be the same as for like services in equity cases in the circuit court of the United States; And the compensation of witnesses shall be the same as for like attendance and travel of wit-

nesses before such circuit courts; And all such fees and compensation of officers and witnesses on behalf of the United States, and other expenses of all investigations which may be had under the provisions of this act on the part of the United States, shall be paid out of the contingent fund of the branch of Congress appointing such committee. Said master, when the examination is concluded, shall attach together all the depositions and exhibits, and attach thereto his certificate setting forth or referring to the authority by which they were taken, any notices he may have given, the names of the witnesses for whom subpœnas or attachments were issued, the names of witnesses who attended, with the time of attendance and mileage and fees of each witness on behalf of the United States, which he may require to be shown by affidavit, his own fees, the fees of the marshal, his deputies or other persons serving papers, giving the items, and such other facts in relation to the circumstances connected with the taking of the depositions as he may deem material. He shall then seal up such depositions and papers securely, direct them to the chairman of such committee at Washington, stating briefly on the outside the nature of the contents, and place the same in the post-office, paying the postage thereon; and said package shall be opened only in the presence of such committee. The chairman of any committee ordering testimony to be taken under this act shall, at least ten days before the time fixed for such examination, and within two days after the adoption of such order, cause a copy thereof to be directed and delivered to the Attorney-General of the United States, or sent to him by mail at the Department of Justice, to enable him to give such instructions as he may deem best to the district attorney of the district where such testimony is to be taken, who may, and, if required by the Attorney-General, shall, though not requested by the committee, appear for the United States in person or by assistant, and take such part in such examination as the Attorney-General shall direct. (20 Stat. 279.)

See note to preceding section of this act, ante, § 6409.

§ 6411. (R. S. § 3490.) Liability of persons making false claims against United States.

Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title "Crimes," shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit.

Act March 2, 1863, c. 67, § 3, 12 Stat. 698.

R. S. § 5438, mentioned in this section, prescribed the punishment for making, causing to be made, or presented any false or fraudulent claim against the United States, or conspiring to defraud the United States by such claim, or paying moneys on such claim, etc., or purchasing equipment from persons not having authority to sell the same. It was incorporated into the Criminal Code, in section 35 thereof, post, § 10199, and was repealed by section 341 thereof, post, § 10515.

Notes of Decisions

1. Nature and incidents of penal suit.
2. Elements of offense giving rise to forfeiture.
3. Persons liable to penalty.
4. What constitutes false account.
5. Necessity of authority or consent of United States attorney to bring suit.
6. Sufficiency of complaint.
7. Burden of proof, and admissibility and sufficiency of evidence.
8. Right of private prosecutor to control and direct action.
9. Right of prosecutor to copies of official papers.
10. Conclusiveness of adverse judgment on relator.
11. Appeal and review—Service of notices.
12. Limitations.

See, also, post, § 10199, and notes thereunder.

1. Nature and incidents of penal suit.—The right of the United States to sue

for recovery of money obtained from it by means of a fraudulent claim is one existing at common law, and the remedy given by this act is cumulative, and not exclusive. Pooler v. U. S. (1904) 127 Fed. 519, 62 C. C. A. 307.

2. Elements of offense giving rise to forfeiture.—A forfeiture cannot occur under R. S. § 5438, post, § 10199, without the party incurring the same being guilty of both fraudulent intent and conduct, while a violation of the customs and navigation laws involving a forfeiture or penalty may, and often does, occur without fraudulent intent or willful negligence. U. S. v. Griswold (D. C. 1885) 24 Fed. 361, 365, affirmed (C. C. 1887) 30 Fed. 762.

3. Persons liable to penalty.—The word "person" does not include corporations within the meaning of this section. U. S. v. Kansas Pac. Ry. Co. (D. C. 1877) Fed. Cas. No. 15,506.

A paymaster's clerk in the navy is in the naval forces of the United States, and hence not liable to the penalties prescribed by this section. U. S. v. Bogart (D. C. 1869) Fed. Cas. No. 14,616.

Counsel retained to argue a cause pending in the court of claims is not within the purview of this and the following sections. U. S. v. Moore (D. C. 1879) 3 MacArthur, 226.

An officer who conspires with others to obtain money by false accounts is guilty of falsification, though he may be ignorant of the items of any particular account. U. S. v. Russell (D. C. 1884) 19 Fed. 591.

4. What constitutes false account.—An account including items for services not actually rendered or moneys not actually paid is a false account. U. S. v. Russell (D. C. 1884) 19 Fed. 591.

5. Necessity of authority or consent of United States attorneys to bring suit.—The action to recover a penalty or damages for making a false claim against the United States under this and the following sections may be brought without the previous authority or consent of the district attorney; and under Civ. Code Or. § 7981, the complaint may be subscribed by the attorney of the person who brings it. U. S. v. Griswold (D. C. 1877) Fed. Cas. No. 15,266.

6. Sufficiency of complaint.—The verified complaint in an action to recover a penalty and damages for making a false claim against the United States is a sufficient affidavit for the arrest of defendant. U. S. v. Griswold (D. C. 1877) Fed. Cas. No. 15,266.

7. Burden of proof, and admissibility and sufficiency of evidence.—The government must prove its case beyond a reasonable doubt, and defendant may introduce evidence of good character, for the proceeding, while civil in form, is criminal in its nature. U. S. v. Shapleigh (1893) 54 Fed. 126, 4 C. C. A. 237.

The government must show that defendant not only presented a false or fraudulent claim, but that he knew it to be such; and the jury are not warranted in inferring such knowledge merely from the fact that he acted negligently and without ordinary business prudence. Id.

8. Right of private prosecutor to control and direct action.—In an action brought by an informer to recover damages and forfeitures for collecting false claims from the treasury, the person who sues represents the United States therein, and also in all suits and proceedings brought or taken in aid of an execution, or to enforce the judgment therein, and is entitled to control the same. Bush v. U. S. (C. C. 1882) 13 Fed. 625.

Where a person has, pursuant to these, sections, in the name of the United States, sued a party for defrauding the United States by making false claims, defraying all the expenses of the suit, and obtained judgment of $23,576 the secretary of the treasury cannot, under section 3469, authorizing him to compromise claims in favor of the United States, satisfy the judgment for $100, and thus confiscate such prosecutor's right to the costs and one-half said judgment, as provided by section 3491. U. S. v. Griswold (C. C. 1887) 30 Fed. 762.

An action brought by a private prosecutor under these sections is what was known at common law as a "popular" or qui tam action, and is under the sole and exclusive control of said prosecutor, subject to the restriction on his right to discontinue the same, contained in section 3491, ante, and his interest or share in any judgment obtained therein is his absolute private property, and the United States cannot compromise, remit, or release the same by pardon or otherwise. U. S. v. Griswold (D. C. 1885) 24 Fed. 361, 363, affirmed (C. C. 1887) 30 Fed. 762.

The Secretary of the Treasury has power under section 6375, ante, to compromise a judgment rendered in the name of the United States for damages and penalties under this and the following sections, though the prosecution was instituted and prosecuted by an individual who thereby acquired an interest in the judgment. (1884) 18 Op. Atty. Gen. 72.

9. Right of prosecutor to copies of official papers.—An application for copies of papers on file in a Department, to be used by the applicant in a suit promoted by him under these sections, stands upon the same footing with a like application by a plaintiff in any other private suit. (1876) 15 Op. Atty. Gen. 562.

10. Conclusiveness of adverse judgment on relator.—Relator in a qui tam action founded on these sections is equally concluded by a judgment in the court of claims against the United States. U. S. v. Moore (D. C. 1879) 3 MacArthur, 226.

11. Appeal and review—Service of notices.—Upon a bill of review to correct a decree given in favor of the United States, the subpœna to appear and answer may be served on the district attorney. Bush v. U. S. (C. C. 1882) 13 Fed. 625.

12. Limitations.—Time does not run against the sovereign government. U. S. v. City of Alexandria (C. C. 1882) 19 Fed. 609.

Section 3 of Act March 2, 1863, c. 67, § 10199 post, to prevent and punish frauds on the government, contemplates two proceedings, one civil and the other criminal, of which the former is subject to the limitation prescribed by the seventh section of that act (this section), and the latter to that prescribed by the thirty-second section of Act April 30, 1790, c. 9, ante, § 1708. (1872) 14 Op. Atty. Gen. 54.

Cited without definite application, Regan v. U. S. (1910) 183 Fed. 293, 105 C. C. A. 505, 31 L. R. A. (N. S.) 1073.

§ 6412. (R. S. § 3491.) Suits for same.

The several district courts of the United States, the supreme court of the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall, wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit. Such suit may be brought and carried on by any person, as well for himself as for the United States; the same shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or discontinued without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent.

Act March 2, 1863, c. 67, § 4, 12 Stat. 698.

Jurisdiction of suits for enforcement of penalties and forfeitures under any law of the United States was given to the district courts by Jud. Code, § 24, par. 9, ante, § 991 (9).

Notes of Decisions

See note under § 6411, ante.

§ 6413. (R. S. § 3492.) Duty of district attorney as to such cases.

It shall be the duty of the several district attorneys of the United States for the respective districts, for the District of Columbia, and for the several Territories, to be diligent in inquiring into any violation of the provisions of section thirty-four hundred and ninety by persons liable to such suit, and found within their respective districts or Territories, and to cause them to be proceeded against in due form of law for the recovery of such forfeiture and damages. And such person may be arrested and held to bail in such sum as the district judge may order, not exceeding the sum of two thousand dollars, and twice the amount of the damages sworn to in the affidavit of the person bringing the suit.

Act March 2, 1863, c. 67, § 5, 12 Stat. 698.

Notes of Decisions

See note under § 6411, ante.

§ 6414. (R. S. § 3493.) Rights of persons presenting such suits.

The person bringing said suit and prosecuting it to final judgment shall be entitled to receive one-half the amount of such forfeiture, as well as one-half the amount of the damages he shall recover and collect; and the other half thereof shall belong to and be paid over to the United States; and such person shall be entitled to receive to his own use all costs the court may award against the defendant, to be allowed and taxed according to any provision of law or rule of court in force, or that shall be in force in suits between private parties

in said court: Provided, That such person shall be liable for all costs incurred by himself in the case, and shall have no claim therefor on the United States.

Act March 2, 1863, c. 67, § 6, 12 Stat. 698.

Notes of Decisions

See note under § 6411, ante.

§ 6415. (R. S. § 3494.) Limitation of suit.

Every such suit shall be commenced within six years from the commission of the act, and not afterward.

Act March 2, 1863, c. 67, § 7, 12 Stat. 698.

DECISIONS ON CLAIMS IN GENERAL

See note under § 6411, ante.

Payment under Act May 24, 1824, c. 144, "for relief of the assignees and legal representatives of John H. Piatt," may be made to the assignees to the amount of their assignment; and as the amount for which the claim was assigned was not fixed in the assignment, it having been given for advances "made and to be made," the accounting officers must examine into and ascertain the amount actually due the assignees thereon. (1824) 1 Op. Atty. Gen. 692.

The person appointed Secretary of the Treasury ad interim has a claim upon the government for the usual, or, if there be no usual, for a reasonable, compensation for his services in that capacity; but an appropriation is necessary. (1842) 4 Op. Atty. Gen. 122.

An application by the sureties on a bond given to the United States under Guano Island Act Aug. 18, 1856, c. 164, for release from their obligation, held not to present grounds for action by the President. (1864) 11 Op. Atty. Gen. 30.

Semble that the proprietors of land adjacent to Lake Huron, Mich., have no legal right to stone taken from the bed of that lake, in front of their property, by other persons, and delivered by the latter on the government works, the ownership of such bed being apparently in the state. Under the circumstances presented, the claim of such proprietors for the stone so taken and delivered may properly be resisted by the United States officer in charge of the works. (1881) 17 Op. Atty. Gen. 59.

The owners of an American vessel wrecked on the South Pacific Ocean, whose master paid the United States consul at Apia for clothing supplied the crew out of the wages due the crew, they having subsequently recovered judgment for their wages in a United States court, have no valid claim against the United States for the money paid by the consul. The remedy, if any, is against the consul and the sureties on his bond. (1887) 19 Op. Atty. Gen. 22.

The United States is not liable to its citizens for the consequences of the wrongs or shortcomings of its officers. Id.

In an action by the United States for use and occupation or for mesne profits, where the recovery is of a sum in the nature of rent, interest is allowed on each annual sum from the end of the year. (1898) 22 Op. Atty. Gen. 172.

The Secretary of the Treasury held to have no discretion to pass upon the question whether an amount appropriated by Act July 1, 1898, c. 546, § 1, 30 Stat. 613, for the payment to a certain individual, or any portion thereof, ought to be paid; said provision being mandatory. (1899) 22 Op. Atty. Gen. 295.

The ordnance and other stores belonging to the several states, taken or accepted by the government for use in the war with Spain, should not be returned in kind, but should be paid for at the price agreed upon, or in the absence of an agreement, what they were worth. (1899) 22 Op. Atty. Gen. 372.

Where blank transportation requests were delivered to an officer of the United States Army in such form as to require but the filling of the blanks and his signature to make them Government orders upon carriers for the transportation therein indicated, and where these blanks were issued fraudulently to persons not entitled to them, and railroad companies furnished transportation upon the orders, in the absence of negligence and bad faith on the part of the carriers, the United States is liable for the transportation thus furnished. (1900) 23 Op. Atty. Gen. 161.

TITLE XXXVII

COINAGE

This title of the Revised Statutes, "Coinage, Weights and Measures," included, in addition to the sections of the Revised Statutes set forth here, the further sections, §§ 3569 and 3570, thereof, relating to weights and measures. Those sections are transferred to a title inserted as additional to the original titles of the Revised Statutes and designated as Title LVI H, "Weights and Measures," post, §§ 8898–8907, which also contains the statutory provisions subsequent to the Revised Statutes relating to weights and measures.

Sec.
6416. Enumeration of mints and assay-offices.
6417. Mint at New Orleans reopened.
6418. Assaying and stamping of bullion at New Orleans mint.
6419. Silver bullion for New Orleans mint.
6420. Coinage of gold and silver at Denver mint.
6421. Officers of Denver mint; salaries; repeal.
6422. Laws applicable to Denver mint.
6423. Officers, clerks, etc., at Denver mint; salaries.
6424. Assay-office at Helena established.
6425. Refining at Helena assay-office authorized; charges.
6426. Assay-office at St. Louis.
6427. Assay-office at Deadwood.
6428. Assay-office at Deadwood, how conducted.
6429. Assay-office at Seattle; officers.
6430. Assay-office at Salt Lake City; officers, etc.
6431. Officers of mints.
6432. Positions of coiner and melter and refiner abolished; employés to be appointed by Secretary of the Treasury.
6433. Superintendents of certain mints to perform duties of treasurer.
6434. Salaries of officers of mints.
6435. Salaries of assistants, clerks, and laborers employed in the mints.
6436. Salaries under Director.
6437. Oath of office of officers, assistants, and clerks.
6438. Bonds of officers, assistants, and clerks.
6439. Who to act in absence of Director, superintendent, or other officer.
6440. General duties of superintendents of mints.
6441. Same subject.
6442. Coins reduced in weight by abrasion.
6443. Duties of superintendents in respect to coin and bullion.
6444. Duties of assayers.
6445. Duties of melters and refiners.
6446. Duties of coiners.
Sec.
6447. Duties of engravers; dies for coins; new designs.
6448. Gold coins of the United States, and their weight.
6449. Coinage of three-dollar and one-dollar gold pieces and three-cent nickel piece discontinued.
6450. Withdrawal and recoinage.
6451. Recoinage of gold coins.
6452. Silver coins and their weight.
6453. Coinage of standard silver dollars; weight and inscriptions; legal tender; gold certificates not to be paid in silver.
6454. Silver certificates; payment of customs, etc., therewith.
6455. Representation of United States at international monetary conference; appointment of commissioners; compensation and expenses.
6456. Issue of one, two, and five dollar silver certificates.
6457. Standard for gold and silver coins.
6458. Minor coins; their weight and alloy.
6459. Issue of other coins prohibited.
6460. Coinage for foreign countries.
6461. Inscriptions upon coins.
6462. Inscription on certain coins of motto "In God we trust."
6463. Gold and silver bars.
6464. Exchange of gold coins for gold bars.
6465. Coining gold bullion; when deposits may be refused.
6466. Silver bullion may be received for forming into bars.
6467. Weighing bullion and ascertaining its value.
6468. Assay of bullion.
6469. Assayer to report to superintendent quality of bullion assayed.
6470. Charges for converting bullion, etc., into coin.
6471. Repeal of provision for charge for converting bullion into coin.
6472. Assayer to verify calculations of the value of deposits and countersign certificate.
6473. Purchase of bullion for silver coinage; the silver-profit fund.

Sec.
6474. Purchase of silver bullion, and issue of Treasury notes in payment thereof.
6475. Redemption of Treasury notes; limitation on amount outstanding; legal tender; national bank reserve fund; parity of metals.
6476. Coinage of silver dollars; seigniorage.
6477. Determination of quality of bullion; charges and deductions.
6478. Repeal of provisions for purchase of silver bullion; gold and silver as standard money; parity.
6479. Coinage of silver bullion purchased under Act July 14, 1890, c. 708.
6480. Standard unit of value.
6481. Redemption of United States notes and Treasury notes; redemption fund, maintenance; reissue of redeemed United States notes.
6482. Legal-tender quality of silver dollar or other money not affected by act.
6483. Cancellation of Treasury notes upon coinage of silver dollars and issue of silver certificates.
6484. Denominations of silver certificates.
6485. Coinage of silver bullion into subsidiary coins.
6486. Recoinage of uncurrent subsidiary silver coins.
6487. International bi-metallism not to be precluded by act.
6488. Limitation of amount of subsidiary silver coins removed.
6489. United States notes of small denominations to be issued, and equal amount of higher denominations retired, when outstanding silver certificates insufficient.
6490. Paying out silver coins for gold coins authorized.
6491. Exchange of subsidiary silver coin for lawful money.
6492. Exchange of lawful money for subsidiary silver coin.
6493. Free transportation of silver coin.
6494. Purchase of metal for minor coinage; the minor coinage profit fund.
6495. Delivery of minor coins, redemption.
6496. Cleaning, reissue, and recoinage of minor coins.
6497. Transfer of bullion for formation into ingots.
6498. Ingots to be assayed, and receipted for.
6499. Delivery of ingots to coiner for coinage.
6500. Standard of ingots used for coinage.
6501. Preparation and stamping of bars for payment of deposits.
6502. Deviations allowed in adjusting weights of gold coins.
6503. Deviations allowed in adjusting weight of silver coins.
6504. Of minor coins.
6505. Delivery of coins by coiner, and trial of pieces.
6506. Trial-pieces to be sealed up and transmitted quarterly to the mint at Philadelphia.
6507. Disposals of clippings, etc.
6508. Yearly settlement of accounts of coiner, melter, and refiner.
6509. Allowance for wastage.
6510. Statement of balance-sheet to be forwarded by superintendent to Director of Mint.
6511. Delivery of coin or bars to depositor.
6512. Payment in money to depositors when value ascertained.
6513. Payment for bullion in coin certificates; charges to depositors, how expended.
6514. Repeal of provision for payment for bullion in coin certificates at assay-offices other than the one in New York.
6515. Exchange of unparted bullion for fine bars.
6516. Refining and parting of bullion at mints and New York assay-office; expenses, how defrayed; exchange of unparted bullion for fine bars.
6517. Refining and parting of bullion at mints and New York assay-office; expenses, how defrayed.
6518. Appointment and meeting of assay-commissioners.
6519. Standard troy pound of Bureau of Standards to be standard for regulation of coinage.
6520. Standard weights for mints and assay-offices.
6521. Yearly destruction of obverse working-dies.
6522. National and other medals may be struck at mint at Philadelphia.
6523. Money arising from charges and deductions to be covered into Treasury.
6524. Business of assay-office at New York.
6525. Transfer of gold mint bars from New York assay-office to assistant treasurer's office; redemption of coin certificates or exchange for gold coins.
6526. Appointment of officers at New York.
6527. Duties, etc., of officers at New York.
6528. Salaries of officers at New York.
6529. Appointment and salaries of assistants and employés at New York.
6530. Business of mint at Denver and of assay-offices at Boise City and Charlotte.
6531. Appointment of officers at Denver, Boise City, and Charlotte.

Sec.
6532. Powers and duties of assayers at assay-offices; compensation of employés.
6533. Bond and oath of officers and clerks.
6534. Laws relating to mints extended to assay-offices.
6535. Decimal system established.
6536. Value of foreign coins, how ascertained.
6537. Value of the sovereign or pound sterling.
6538. Recoinage of foreign coins.
6539. Spanish and Mexican coins.
6540. Their transmission for recoinage.

§ 6416. (R. S. § 3495.) Enumeration of mints and assay-offices.

The different mints and assay-offices shall be known as—

First. The mint of the United States at Philadelphia.

Second. The mint of the United States at San Francisco.

Third. The mint of the United States at New Orleans.

Fourth. The mint of the United States at Carson.

Fifth. The mint of the United States at Denver.

Sixth. The United States assay-office at New York.

Seventh. The United States assay-office at Boise City, Idaho.

Eighth. The United States assay-office at Charlotte, North Carolina.

Act Feb. 12, 1873, c. 131, § 66, 17 Stat. 435.

The mint at New Orleans having been closed during the war of the rebellion, its reopening was provided for by Act June 20, 1874, c. 328, § 1, post, § 6417; the assaying and stamping of bullion thereat was authorized by Act Aug. 15, 1876, c. 287, § 1, post, § 6418; and the supplying of said mint with silver bullion for coinage into standard silver dollars and all smaller denominations of silver was authorized by Act March 15, 1898, c. 68, § 1, post, § 6419.

Coinage at the Denver mint of gold and silver was authorized, and further provisions, relating to that mint were made, by Act Feb. 20, 1895, c. 105, and Act March 18, 1904, c. 716, § 1, post, §§ 6420–6423.

The mints at Carson City and at Denver and the assay-office at Boise City were made depositaries for public moneys by R. S. § 3592, post, § 6579.

Additional assay-offices were established as follows: At Helena, Mont., by Act May 12, 1874, c. 168, § 1, post, § 6424; at St. Louis, Mo., by Act Feb. 1, 1881, c. 33, § 1, post, § 6426; at Deadwood, S. D., by Act June 11, 1896, c. 420, § 1, post, § 6427, and Act Feb. 19, 1897, c. 265, § 1, post, § 6428; at Seattle, Wash., by Act May 21, 1898, c. 348, post, § 6429; and at Salt Lake City, Utah, by Act May 30, 1908, c. 223, post, § 6430.

The refining and parting of gold and silver for casting it into bars, ingots, or discs, at the Helena assay-office, was authorized by Act March 2, 1895, c. 177, § 1, post, § 6425.

The refining and parting of bullion at the mints of the United States and the assay-office at New York were authorized by Act June 19, 1878, c. 329, § 1, and Act July 7, 1898, c. 571, § 1, post, §§ 6516, 6517.

The establishment of a mint at Manila, and the coinage of silver and minor coins for use in the Philippine Islands, were authorized, and the laws of the United States relating to mints and coinage, so far as applicable, were extended to the coinage of said Islands, by provisions of Act July 1, 1902, c. 1369, §§ 76–83, Act March 2, 1903, c. 980, ante, §§ 3886–3892.

§ 6417. (Act June 20, 1874, c. 328, § 1.) Mint at New Orleans reopened.

To reopen the branch mint at New Orleans to be conducted hereafter as a mint, subject to the provisions and restrictions of the coinage act of eighteen hundred seventy-three. (18 Stat. 97.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1875, cited above.

The provisions of Act Feb. 12, 1873, c. 131, mentioned in this provision, were incorporated into R. S. §§ 3495–3562, included in this chapter of the Revised Statutes.

The mint at New Orleans was authorized by R. S. § 3495, ante, § 6416.

The assaying and stamping of bullion were authorized by Act March 3, 1877, c. 102, § 1, post, § 6418.

The Secretary of the Treasury was authorized to supply the mint with silver bullion for the coinage of silver dollars, etc., by Act March 15, 1898, c. 68, § 1, post, § 6419.

§ 6418. (Act March 3, 1877, c. 102, § 1.) Assaying and stamping of bullion at New Orleans mint.

Mint at New Orleans, Louisiana: * * And the assaying and stamping of bullion is hereby authorized, subject to the provisions of the coinage act of eighteen hundred and seventy-three. (19 Stat. 307.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1878, cited above.

The same provision was made in the similar act for the preceding year, Act Aug. 15, 1876, c. 287, § 1, 19 Stat. 158.

The provisions of the Coinage Act of Feb. 12, 1873, c. 131, mentioned in this provision, were incorporated into R. S. §§ 3495–3562, included in this chapter of the Revised Statutes.

The mint at New Orleans was authorized by R. S. § 3495, ante, § 6416. Its reopening was authorized by Act June 20, 1874, c. 328, § 1, ante, § 6417.

The Secretary of the Treasury was authorized to supply the mint with silver bullion for the coinage of silver dollars, etc., by Act March 15, 1898, c. 68, § 1, post, § 6419.

An appropriation for an assayer and other officers and workmen, with a provision that the assayer should have general charge of the institution, as under R. S. § 3560, post, § 6532, was made in the legislative, executive, and judicial appropriation act for the fiscal year 1915, Act July 16, 1914, c. 141, § 1, 38 Stat. 477. Similar appropriation acts for the fiscal years 1912, 1913 and 1914 contained similar provisions. Previous acts provided for a superintendent as well as an assayer and other officers, etc. The appropriations for the fiscal years 1916 and 1917 were for "assayer in charge, who shall also perform the duties of melter," etc. See Act May 10, 1916, c. 117, § 1, 39 Stat.

§ 6419. (Act March 15, 1898, c. 68, § 1.) Silver bullion for New Orleans mint.

The Secretary of the Treasury is hereby authorized to supply the mint at New Orleans with silver bullion for conversion into standard silver dollars and all smaller denominations of silver. (30 Stat. 296.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1899, cited above.

The mint at New Orleans was authorized by R. S. § 3495, ante, § 6416. Its reopening was authorized by Act June 20, 1874, c. 328, § 1, ante, § 6417.

§ 6420. (Act Feb. 20, 1895, c. 105, § 1.) Coinage of gold and silver at Denver mint.

Hereafter there shall be carried on at the branch mint of the United States at Denver, in the State of Colorado, the coinage of gold and silver. (28 Stat. 673.)

This section and the two sections next following were an act entitled "An act to provide for coinage at the branch mint at Denver, Colorado."

Until the mint and assay office at Denver should become a coinage mint, in accordance with law, it was provided that the mint should be continued as an assay-office, that the business transacted at such mint should be continued therein, and that the appropriations already made should be applicable to such mint, by a provision in the legislative, executive, and judicial appropriation act for the fiscal year 1896, Act March 2, 1895, c. 177, § 1, 28 Stat. 784, 786, which is omitted, as temporary and as superseded by the operation of the mint as a coinage mint under the provisions of this act.

The provision for continuing the mint as an assay-office was continued in successive appropriation acts for subsequent years down to 1904, but was not repeated thereafter. Appropriations for new machinery, etc., for its equipment for coinage operations, were made by Act March 3, 1903, c. 1007, § 1, 32 Stat. 1109, and Act April 28, 1904, c. 1762, 33 Stat. 463, and provisions for the force necessary for the proper operation of the mint were made by Act March 18, 1904, c. 716, § 1, post, § 6423.

§ 6421. (Act Feb. 20, 1895, c. 105, § 2.) Officers of Denver mint; salaries; repeal.

The provisions of sections thirty-four hundred and ninety-six and thirty-four hundred and ninety-seven of the Revised Statutes of the United States are hereby made applicable to the mint of the United States at Denver, Colorado, and so much of sections thirty-five hundred and fifty-eight, thirty-five hundred and fifty-nine, thirty-five hundred and sixty, and thirty-five hundred and sixty-one of the

Revised Statutes of the United States as relates to the mint at Denver, Colorado, are hereby repealed; and that the compensation of the officers of said mint shall be the same as those of the mint at Carson City, Nevada. (28 Stat. 673.)

R. S. § 3496, mentioned in this section, enumerating the officers of the mints, is set forth post, § 6431. R. S. § 3497, also mentioned in this section, providing that the superintendent of certain mints should perform the duties of treasurers of such mints, is set forth post, § 6433. R. S. §§ 3558–3561, also mentioned in this section and repealed in so far as they related to the Denver mint were provisions applicable to the mint at Denver while conducted as an assay-office. See notes to section 1 of this act, ante, § 6420.

The salaries of the officers of the mint at Carson City were prescribed by R. S. § 3498, post, § 6434.

Subsequent provisions for officers of the mint at Denver and their salaries were made by Act March 18, 1904, c. 716, § 1, post, § 6423, and Act Aug. 23, 1912, c. 350, post, § 6432.

§ 6422. (Act Feb. 20, 1895, c. 105, § 3.) Laws applicable to Denver mint.

All laws and parts of laws in force in relation to the mints of the United States, and for the government of the officers and persons employed therein, shall be applicable to the mint at Denver. (28 Stat. 673.)

§ 6423. (Act March 18, 1904, c. 716, § 1.) Officers, clerks, etc., at Denver mint; salaries.

Whenever the Secretary of the Treasury shall determine that it is necessary for the proper operations of the mint at Denver, Colorado, the following force may be appointed in lieu of the foregoing, at the yearly compensation herein stated, namely: Superintendent, at four thousand five hundred dollars; assayer, melter and refiner, and coiner, at three thousand dollars each; chief clerk, at two thousand five hundred dollars; weigh clerk, at one thousand six hundred dollars; clerk, at one thousand four hundred dollars; two calculating clerks, at one thousand four hundred dollars each; and two clerks at one thousand two hundred dollars each; and any unexpended balance of the foregoing appropriation shall be available for payment of this latter force. (33 Stat. 109.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1905, cited above.

The "foregoing appropriation," mentioned in this provision and omitted here as temporary, provided for the salaries of an assayer in charge, a melter, a chief clerk, a weigh clerk, a clerk, two calculating clerks, and two clerks. The appropriation for the mint at Denver for the fiscal year 1917 was by act May 10, 1916, c. 117, § 1, 39 Stat.

The positions of coiner and melter and refiner in all mints, and the assay-office at New York, were abolished, and their duties cast on the superintendents, by Act Aug. 23, 1912, c. 350, post, § 6432.

§ 6424. (Act May 12, 1874, c. 168, § 1.) Assay-office at Helena established.

The Secretary of the Treasury is hereby authorized and required to establish an assay-office at Helena, in the Territory of Montana, the said assay-office to be conducted under the provisions of the act entitled "An act revising and amending the laws relative to the mints, assay-offices, and coinage of the United States," approved February twelfth, eighteen hundred and seventy-three. (18 Stat. 45.)

Section 2 of this act, relating to the construction of a building at Helena for use as the assay-office, is omitted, as temporary merely.

The provisions of Act Feb. 12, 1873, c. 131, mentioned in this section, were incorporated into R. S. §§ 3495–3562, included in this chapter of the Revised Statutes.

A refinery at the Helena assay-office was established by Act March 2, 1895, c. 177, § 1, post, § 6425.

§ 6425. (Act March 2, 1895, c. 177, § 1.) Refining at Helena assay-office authorized; charges.

The Secretary of the Treasury is hereby authorized and required to establish at the United States assay office at Helena, Montana, a refinery for refining and parting gold and silver and for casting the same into bars, ingots, or discs.

The charges for these operations shall be fixed by the Director of the Mint, with the approval of the Secretary of the Treasury, to equal, but not to exceed, the expenses thereof, and all provisions of law relating to the refineries of the mints and assay offices shall apply to the parting and refining of bullion at the assay office at Helena, Montana. (28 Stat. 784, 786.)

These were provisions of the legislative, executive, and judicial appropriation act for the fiscal year 1896, cited above.

§ 6426. (Act Feb. 1, 1881, c. 33, § 1.) Assay-office at St. Louis.

The Secretary of the Treasury is hereby authorized and required to establish an assay-office at Saint Louis, in the State of Missouri; the said office to be conducted under the provisions of an act entitled "An act revising and amending the laws relative to the mints, assay-offices, and coinage of the United States," approved February twelfth, eighteen hundred and seventy-three. (21 Stat. 322.)

Section 2 of this act, providing for quarters for the assay-office in the post-office building, is omitted, as temporary merely.

The provisions of Act Feb. 12, 1873, c. 131, mentioned in this section, were incorporated into R. S. §§ 3495–3562, included in this chapter of the Revised Statutes.

§ 6427. (Act June 11, 1896, c. 420, § 1.) Assay-office at Deadwood.

Assay office at Deadwood, South Dakota: For establishing an assay office at Deadwood, in the State of South Dakota. (29 Stat. 414.)

This was a provision of the sundry civil appropriation act for the fiscal year 1897, cited above.

The manner of conducting the office was prescribed by Act Feb. 19, 1897, c. 265, § 1, post, § 6428.

§ 6428. (Act Feb. 19, 1897, c. 265, § 1.) Assay-office at Deadwood, how conducted.

Assay office at Deadwood, South Dakota: * * and said assay office shall be conducted under the provisions of the Act entitled "An Act revising and amending the laws relative to the mints, assay offices, and coinage of the United States," approved February twelfth, eighteen hundred and seventy-three. (29 Stat. 559.)

The office is established by Act June 11, 1896, c. 420, § 1.

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1898, cited above.

The part of the provision omitted here authorized the Secretary of the Treasury to use the unexpended balance of the appropriation made by Act June 11, 1896, c. 420, § 1, which established the assay-office, ante, § 6427, for rent for a building, apparatus, and wages.

The provisions of Act Feb. 12, 1873, c. 131, mentioned in this provision, are incorporated into R. S. §§ 3495–3562, included in this chapter of the Revised Statutes.

§ 6429. (Act May 21, 1898, c. 348.) Assay-office at Seattle; officers.

The Secretary of the Treasury is hereby authorized and required to establish an assay office of the United States at Seattle, in the State of Washington; said assay office to be conducted under the provisions of the Act entitled, "An Act revising and amending the laws relating to the mints and assay offices and the coinage of the United States," approved February twelfth, eighteen hundred and seventy-three; that the officers of the assay office shall be an assayer in charge, at a salary of two thousand five hundred dollars per annum,

who shall also perform the duties of melter; chief clerk, at a salary of one thousand five hundred dollars per annum. (30 Stat. 420.)

The provisions of Act Feb. 12, 1873, c. 131, mentioned in this act, were incorporated into R. S. §§ 3495–3562, included in this chapter of the Revised Statutes.

Further provisions of this act relating to rent of building for assay-office and appropriation of money for rent, salary, etc., are omitted, as temporary merely.

The appropriation for the assayer in charge and other officers and employés for the fiscal year 1917 was made by the legislative, executive, and judicial appropriation act for that year, Act May 10, 1916, c. 117, § 1, 39 Stat.

§ 6430. (Act May 30, 1908, c. 223.) Assay-office at Salt Lake City; officers, etc.

The Secretary of the Treasury is hereby authorized and required to establish an assay office of the United States at Salt Lake City, in the State of Utah; said assay office to be conducted under the provisions of the Act entitled "An Act revising and amending the laws relating to the mints and assay offices and the coinage of the United States," approved February twelfth, eighteen hundred and seventy-three; that the officers of the assay office shall be an assayer in charge, at a salary of two thousand five hundred dollars per annum, who shall also perform the duties of melter; chief clerk, at a salary of one thousand five hundred dollars per annum; and the Secretary of the Treasury is hereby authorized to rent a suitable building for the use of said assay office, and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty thousand dollars for salary of assayer in charge, chief clerk, and wages of workmen, rent, and contingent expenses. (35 Stat. 474.)

This was an act entitled "An act to establish an assay-office at Salt Lake City, State of Utah."

The provisions of Act Feb. 12, 1873, c. 131, mentioned in this section, were incorporated into R. S. §§ 3495–3562, included in this chapter of the Revised Statutes.

Somewhat different provisions for officers and clerks were made by subsequent appropriation acts. The provision for the fiscal year 1917, was by Act May 10, 1916, c. 117, § 1, 39 Stat.

§ 6431. (R. S. § 3496.) Officers of mints.

The officers of each mint shall be a superintendent, an assayer, a melter and refiner, and a coiner; and, for the Mint at Philadelphia, an engraver; all to be appointed by the President, by and with the advice and consent of the Senate.

Act Feb. 12, 1873, c. 131, § 3, 17 Stat. 424.

The positions of coiner and melter and refiner in each coinage mint, and melter and refiner in the assay-office at New York, were abolished and their duties cast upon the superintendent, by Act Aug. 23, 1912, c. 350, post, § 6432.

The Secretary of the Treasury was authorized to constitute any superintendent of mint or assayer of any assay-office an assistant treasurer of the United States, without additional compensation, to receive gold coin and bullion on deposit for the purposes provided in R. S. § 254, post, § 6564, by Act June 8, 1878, c. 170, post, § 6565.

The superintendent of the mint at Carson City and the superintendent of the assay-office at Boise City were made assistant treasurers of the United States by R. S. § 3594, post, § 6583.

Notes of Decisions

Cashier.—The cashier of the mint is not an officer thereof. U. S. v. Cole (C. C. 1904) 130 Fed. 620, 621; Scully v. U. S. (C. C. 1910) 193 Fed. 185, 189.

Cited without definite application, U. S. v. Cole (C. C. 1904) 130 Fed. 614.

§ 6432. (Act Aug. 23, 1912, c. 350, § 1.) Positions of coiner and melter and refiner abolished; employés to be appointed by Secretary of the Treasury.

The position of coiner, which has heretofore existed in each of the coinage mints, and the position of melter and refiner, which has heretofore existed in each of the coinage mints and in the United States

assay office at New York, are hereby abolished, to take effect on and after July first, nineteen hundred and twelve, and on and after that date the duties and responsibilities heretofore imposed by law on the officers holding said positions in each of said mints and the assay office shall devolve upon the superintendents of said institutions; and all assistants and employees of the mints and assay offices of the United States shall, from and after July first, nineteen hundred and twelve, be appointed by the Secretary of the Treasury. (37 Stat. 384.)

This was a provision of the legislative, executive and judicial appropriation act for the fiscal year 1912, cited above.

§ 6433. (R. S. § 3497.) Superintendents of certain mints to perform duties of treasurer.

The superintendents of the mints at Philadelphia, San Francisco, and New Orleans shall be, and perform the duties of, treasurers of said mints respectively.

Act Feb. 12, 1873, c. 131, § 65, 17 Stat. 435.

The provisions of this section and R. S. § 3496, ante, § 6431, were made applicable to the mint at Denver, by Act Feb. 20, 1895, c. 105, § 2, ante, § 6421.

Cited without definite application,
U. S. v. Cole (C. C. 1904) 130 Fed. 614.

§ 6434. (R. S. § 3498.) Salaries of officers of mints.

The officers of the several mints shall be entitled to the following salaries, to be paid monthly:

First. The superintendents of the mints at Philadelphia and San Francisco, to four thousand five hundred dollars a year each.

Second. The assayers, melters and refiners, and the coiners of those mints, to three thousand dollars a year each.

Third. The engraver of the Mint at Philadelphia, to three thousand dollars a year.

Fourth. The superintendent of the mint at Carson City to three thousand dollars a year.

Fifth. The assayer, the melter and refiner, and the coiner of the mint at Carson City, to two thousand five hundred dollars a year each.

Act Feb. 12, 1873, c. 131, § 12, 17 Stat. 426.

The provisions of this section fixing the salaries of the officers of the mint at Carson City were made applicable to the mint at Denver by Act Feb. 20, 1895, c. 105, § 2, ante, § 6421; but subsequent provisions, enumerating the officers of the mint at Denver and fixing their salaries, of Act March 18, 1904, c. 716, § 1, ante, § 6423, superseded so much of said Act Feb. 20, 1895, c. 105, § 2, as made this section applicable to the mint at Denver.

The positions of coiner and of melter and refiner were abolished by Act Aug. 23, 1912, c. 350, ante, § 6432.

The Secretary of the Treasury was authorized to constitute any superintendent of mint or assayer of any assay-office an assistant treasurer of the United States, without additional compensation, to receive gold coin and bullion on deposit as provided for by R. S. § 254, post, § 6564, by Act June 8, 1878, c. 170, post, § 6565.

Appropriations for salaries of officers of the mints, and for the assistants, clerks, etc., are made in the annual appropriation acts. The provisions for the fiscal year 1917 were by Act May 10, 1916, c. 117, § 1, 39 Stat.

Unless otherwise specially authorized by law, no money appropriated by any act shall be available for payment to any person receiving more than one salary, when the combined amount of said salaries exceeds $2,000 per annum, with certain enumerated exceptions, by Act May 10, 1916, c. 117, § 6, as amended by Act Aug. 29, 1916, c. 417, ante, § 3230a.

The officers and employés of the United States whose salaries are appropriated for in the legislative, executive, and judicial appropriation act for the fiscal year 1916, Act March 4, 1915, c. 141, 38 Stat. 1049, are established and continued from year to year to the extent that they are appropriated for by Congress, by § 6 of said act, ante, § 3228b.

All laws or parts of laws inconsistent with rates of salaries or compensation appropriated by the legislative, executive, and judicial appropriation acts are repealed, and the rates of salaries or compensation of officers or employés appro-

priated for in said acts are to constitute the rate of salary or compensation of such officers or employés, respectively, until otherwise fixed by an annual rate of appropriation or other law, by Act July 16, 1914, c. 141, § 6, ante, § 3228a.

§ 6435. (R. S. § 3499.) Salaries of assistants, clerks, and laborers employed in the mints.

There shall be allowed to the assistants and clerks of the several mints such annual salaries as the Director of the Mint may, with the approbation of the Secretary of the Treasury, determine, and to the workmen employed therein such wages as may be customary and reasonable according to their respective stations and occupations, to be determined by the superintendent, and approved by the Director of the Mint. The salaries provided for in this and the preceding section, and the wages of workmen permanently engaged, shall be payable in monthly installments.

Act Feb. 12, 1873, c. 131, § 12, 17 Stat. 426.
See notes to preceding section.

Notes of Decisions

Pay for extra time.—In the absence of agreement to pay for time beyond eight hours per day the government can not be held responsible. Collins v. U. S. (1889) 24 Ct. Cl. 340.

§ 6436. (Act June 20, 1874, c. 328, § 1.) Salaries under Director.

Hereafter all salaries under the Director of the Mint at Washington and at the various mints shall be at the rates appropriated for in this act. (18 Stat. 96.)

This was a provision accompanying an appropriation for the office of the Director of the Mint, in the legislative, executive, and judicial appropriation act for the fiscal year 1875, cited above.

The "rates appropriated for," mentioned in this provision, were practically superseded by subsequent appropriations for officers, clerks, and employés, and rates of compensation different from those fixed by this act. The appropriations for the officers, clerks, and employés in the office of the Director of the Mint for the fiscal year 1917, were made by the legislative, executive, and judicial appropriation act of May 10, 1916, c. 117, § 1, 39 Stat.

§ 6437. (R. S. § 3500.) Oath of office of officers, assistants, and clerks.

Every officer, assistant, and clerk appointed for any mint shall, before he enters upon the execution of his office, take an oath before some judge of the United States, or judge of some court of record of the State in which such mint is located, faithfully and diligently to perform the duties thereof; in addition to other official oaths prescribed by law, such oath, duly certified, shall be transmitted to the Secretary of the Treasury. The superintendent of each mint may require such oath from any of the employés of the mint.

Act Feb. 12, 1873, c. 131, § 10, 17 Stat. 425.

Other official oaths were prescribed by R. S. § 1756, which was repealed by Act May 13, 1884, c. 46, § 2, ante, § 3216, and R. S. § 1757, ante, § 3217.

A different oath for officers and clerks of the mint at Denver and the assay-office at Boise City was prescribed by R. S. § 3561, post, § 6533, but so much of that section as related to the Denver mint was repealed by Act Feb. 20, 1895, c. 105, § 2, ante, § 6421.

§ 6438. (R. S. § 3501.) Bonds of officers, assistants, and clerks.

The superintendent, the assayer, the melter and refiner, and the coiner of each mint, before entering upon the execution of their respective offices, shall become bound to the United States, with one or more sureties, approved by the Secretary of the Treasury, in the sum of not less than ten nor more than fifty thousand dollars, with condition for the faithful and diligent performance of the duties of his office. Similar bonds may be required of the assistants and clerks, in such sums as the superintendent shall determine, with the approbation of the Director of the Mint; but the same shall not be construed to relieve the superintendent or other officers from liability to the United

States for acts, omissions, or negligence of their subordinates or employés; and the Secretary of the Treasury may, at his discretion, increase the bonds of the superintendents.

Act Feb. 12, 1873, c. 131, § 11, 17 Stat. 425.

The bonds of the officers and clerks of the mint at Denver and the assay-office at Boise City were prescribed by R. S. § 3561, post, § 6533, but so much of that section as related to the Denver mint was repealed by Act Feb. 20, 1895, c. 105, § 2, ante, § 6421.

The positions of coiner and melter and refiner were abolished by Act Aug. 23, 1912, c. 350, ante, § 6432.

Notes of Decisions

Necessity of bond.—Under this section the cashier of the mint may be required to give a bond for the faithful performance of any duty intrusted to him. U. S. v. Cole (C. C. 1904) 130 Fed. 620.

The assayer, chief coiner, and treasurer of the mint cannot execute their offices legally unless they have given bonds for the faithful performance of their duties. (1793) 5 Op. Atty. Gen. 687.

Liability on bond.—Under this section the bond of an assistant or clerk should be conditioned, like that of a superintendent, for "the faithful and diligent performance of the duties of his office," and is therefore valid, as a statutory bond, only so far as it is prospective in its character. U. S. v. Jones (C. C. 1896) 77 Fed. 717.

On a bond given by an assistant melter and refiner of a mint, conditioned that he "has faithfully performed" and "shall continue to faithfully perform" the duties of his office, recovery cannot be had for a defalcation occurring prior to the execution of the bond, unless it be alleged that all or part of the funds unaccounted for were in his hands when the bond was given, or that legal regulations of the treasury department required him to give bond for past transactions. Id.

Under this section and section 6445, post, a melter and refiner is liable on his official bond given "for the faithful and diligent performance" of his duties for the embezzlement of bullion by his assistant, although the theft was not committed through any fault of his own. U. S. v. Zabriskie (C. C. 1898) 87 Fed. 714, 718.

Under this section the officer is virtually an insurer, and cannot be relieved even against an unavoidable loss except only when the loss occurs by an act of God or the public enemy and without any neglect on the part of the officer. U. S. v. Smythe (C. C. 1900) 120 Fed. 30, 31, affirmed (1901) 107 Fed. 376, 46 C. C. A. 354.

§ 6439. (R. S. § 3502.) Who to act in absence of Director, superintendent, or other officer.

Whenever any officer of a mint or assay-office shall be temporarily absent, on account of sickness or any other cause, it shall be lawful for the superintendent, with the consent of such officer, to appoint some person attached to the mint to act in the place of such officer during his absence; but all such appointments shall be forthwith reported to the Director of the Mint for his approval; and in all cases whatsoever the principal shall be responsible for the acts of his representative. In case of the temporary absence of the superintendent, the chief clerk shall act in his place; in case of the temporary absence of the Director of the Mint the Secretary of the Treasury may designate some one to act in his place.

Act Feb. 12, 1873, c. 131, § 9, 17 Stat. 425.

§ 6440. (R. S. § 3503.) General duties of superintendents of mints.

The superintendent of each mint shall have the control thereof, the superintendence of the officers and persons employed therein, and the supervision of the business thereof, subject to the approval of the Director of the Mint. He shall make reports to the Director of the Mint at such times and according to such forms as the Director may prescribe; which shall exhibit in detail, and under appropriate heads, the deposits of bullion, the amount of gold, silver, and minor coinage, and the amount of unparted, standard, and refined bars issued, and such other statistics and information as may be required.

Act Feb. 12, 1873, c. 131, § 4, 17 Stat. 424.

Notes of Decisions

Assistant melter and refiner.—Under this section and section 6441, post, the assistant melter and refiner is appointed "upon recommendation and nomina-

tion in writing" by the melter and refiner subject to the approval of the director of the mint. U. S. v. Zabriskie (C. C. 1898) 87 Fed. 714, 716.

Liability for acts of subordinates.—Under this section and section 6443, the superintendent of the mint is not relieved from liability to the United States for acts, omissions, or negligence of his subordinates or employés, and the duties prescribed are as much a part of the condition of his bond as if the same were written therein. Smythe v. U. S. (1901) 107 Fed. 376, 380, 46 C. C. A. 354, affirming (C. C. 1900) 120 Fed. 30, and affirmed (1903) 23 Sup. Ct. 279, 188 U. S. 156, 47 L. Ed. 425.

§ 6441. (R. S. § 3504.) Same subject.

He shall keep and render, quarter-yearly, to the Director of the Mint, for the purpose of adjustment according to such forms as may be prescribed by the Secretary of the Treasury, regular and faithful accounts of his transactions with the other officers of the mint and the depositors; and shall also render to him a monthly statement of the ordinary expenses of the mint or assay-office under his charge. [He shall also appoint all assistants, clerks, one of whom shall be designated "chief clerk," and workmen employed under his superintendence; but no person shall be appointed to employment in the offices of the assayer, melter and refiner, coiner, or engraver, except on the recommendation and nomination in writing of those officers, respectively. He shall forthwith report to the Director of the Mint the names of all persons appointed by him, the duties to be performed, the rate of compensation, the appropriation from which compensation is to be made, and the grounds of the appointment; and if the Director of the Mint shall disapprove the same, the appointment shall be vacated.]

Act Feb. 12, 1873, c. 131, § 4, 17 Stat. 424.

The words of this section inclosed in brackets were in part superseded by the abolition of the positions of coiner and of melter and refiner of all mints and of melter and refiner at the New York assay-office, and possibly were wholly superseded by the further provision that all employés of the mints and assay-offices should be appointed by the Secretary of the Treasury, by Act Aug. 23, 1912, c. 350, § 1, ante, § 6432.

Notes of Decisions

Cashier.—The appointment of a cashier of a mint by the superintendent under this section did not make him an officer of the United States. U. S. v. Cole (C. C. 1904) 130 Fed. 614, 616; Scully v. U. S. (C. C. 1910) 193 Fed. 185, 189.

Assistant melter and refiner.—See U. S. v. Zabriskie (C. C. 1898) 87 Fed. 714, 716; note under § 6440, ante.

Cited without definite application, Smythe v. U. S. (1903) 23 Sup. Ct. 279, 280, 188 U. S. 156, 47 L. Ed. 425; U. S. v. Smythe (C. C. 1900) 120 Fed. 30, affirmed (1901) 107 Fed. 376, 46 C. C. A. 354.

§ 6442. (R. S. § 3505.) Coins reduced in weight by abrasion.

Any gold coins of the United States, if reduced in weight by natural abrasion not more than one-half of one per centum below the standard weight prescribed by law, after a circulation of twenty years, as shown by the date of coinage, and at a ratable proportion for any period less than twenty years, shall be received at their nominal value by the United States Treasury and its offices, under such regulations as the Secretary of the Treasury may prescribe for the protection of the Government against fraudulent abrasion or other practices.

Act Feb. 12, 1873, c. 131, § 14, 17 Stat. 426.

Notes of Decisions

Silver coin.—This particularity in the limitation and allowance as to gold coin is not found in the case of the natural abrasion in silver coin, and so long as a genuine silver coin is worn only by natural abrasion, and is not appreciably diminished in weight, and retains the appearance of a coin duly issued from the mint, it is legal tender for its original value. Jersey City & B. R. Co. v. Morgan (1895) 16 Sup. Ct. 276, 277, 160 U. S. 288, 40 L. Ed. 430.

§ 6443. (R. S. § 3506.) Duties of superintendents in respect to coin and bullion.

The superintendent of each mint shall receive and safely keep, until legally withdrawn, all moneys or bullion which shall be for the use or the expenses of the mint. He shall receive all bullion brought to the mint for assay or coinage; shall be the keeper of all bullion or coin in the mint, except while the same is legally in the hands of other officers; and shall deliver all coins struck at the mint to the persons to whom they shall be legally payable. From the report of the assayer and the weight of the bullion, he shall compute the value of each deposit, and also the amount of the charges or deductions, if any, of all which he shall give a detailed memorandum to the depositor; and he shall also give at the same time, under his hand, a certificate of the net amount of the deposit, to be paid in coins or bars of the same species of bullion as that deposited, the correctness of which certificate shall be verified by the assayer, who shall countersign the same, and in all cases of transfer of coin or bullion, shall give and receive vouchers, stating the amount and character of such coin or bullion.

Act Feb. 12, 1873, c. 131, § 4, 17 Stat. 424.

Notes of Decisions

Liability on bond.—The liability of a superintendent of a mint under a bond conditioned that he would discharge his duties according to law and safely keep such moneys that came into his hands by virtue of his office is not to be determined by the principles of the law of bailment, but by the special contract evidenced by his bond, and it is no defense to a suit brought by the government upon such a bond that the moneys which were in custody had been destroyed by fire which occurred without his fault or negligence. Smythe v. U. S. (1903) 23 Sup. Ct. 279, 283, 188 U. S. 156, 47 L. Ed. 425.

A receipt given by a superintendent of a mint for a certain quantity of bullion, and his admissions in reports and accounts that he holds it, are at least prima facie evidence that it came into his possession; and, in an action against him to recover the value of bullion which he cannot produce, evidence which shows only that it might have been removed before he assumed office is not sufficient to require submission to the jury of the question whether he ever really received it. Bosbyshell v. U. S. (1896) 77 Fed. 944, 23 C. C. A. 581, writ of error dismissed (1899) 19 Sup. Ct. 873, 43 L. Ed. 1186; Drexel v. Same, 77 Fed. 944, 23 C. C. A. 581, writ of error dismissed (1899) 19 Sup. Ct. 875, 43 L. Ed. 1186, affirming judgment U. S. v. Bosbyshell (D. C. 1896) 73 Fed. 616.

A failure by the director of the mint to observe a rule prescribing that he shall, at the annual settlement, require the weighing and counting of all bullion in the mint, does not relieve a superintendent of a mint of his responsibility for bullion in his custody. Id.

When the superintendent of a mint, on assuming office, has receipted for a certain quantity of bullion, the same is thereafter in his custody, though it was not actually counted or weighed by him, but was locked and sealed up in a cage in the mint, under the certificate as to its amount of a mint inspector by whom it had previously been weighed and counted, upon the faith of which certificate the superintendent receipted for it, and though one of the keys of such a cage, without which it could not be opened, is deposited in the bureau of the mints, at Washington, and the other is not actually delivered to the superintendent by his predecessor. Id.

The superintendent and his bondsmen are responsible for the loss of bullion which he has received and which he cannot produce, though it has been stolen or lost without his fault. Bosbyshell v. U. S. (1896) 77 Fed. 944, 945, 23 C. C. A. 581, affirming (D. C. 1896) 73 Fed. 616, and writ of error dismissed (1899) 19 Sup. Ct. 873, 43 L. Ed. 1186.

Whether the superintendent of a mint was at fault or not, he and his sureties are liable on his bond, "for the faithful discharge of his duties" for the loss by fire of public moneys which the law required him to keep safely, and pay over when required. Smythe v. U. S. (1901) 107 Fed. 376, 46 C. C. A. 354, affirming judgment U. S. v. Smythe (C. C. 1900) 120 Fed. 30, and judgment affirmed (1903) 23 Sup. Ct. 279, 188 U. S. 156, 47 L. Ed. 425.

Under this section the superintendent of the mint is not relieved from liability to the United States for acts, omissions, or negligence of his subordinates or employés, and the duties prescribed are as much a part of the condition of his bond as if the same were written therein. Id.

Under this section, in an action on the bond of a superintendent of a mint to recover for his failure to account for and pay over public moneys

received, it is no defense that such money consisted of treasury notes, and that they were accidentally burned, and the ashes and remnants were turned over to the United States, and therefore the government suffered no damage, since the defendant's obligation secured by his bond was not to indemnify the public against damage, but to "receive and safely keep until legally withdrawn all moneys," etc. U. S. v. Smythe (C. C. 1900) 120 Fed. 30, 31, affirmed (1901) 107 Fed. 376, 46 C. C. A. 354.

Under this section the superintendent of a mint is liable to the United States on his bond for currency officially received by him as public moneys, but which was destroyed by fire in a vault through the negligence of a subordinate in leaving it upon a box containing inflammable materials. Id.

The obligation of a superintendent of a mint to "safely keep" all moneys and bullion, etc., until legally withdrawn implies an obligation to deliver to his successor, and he and his sureties are liable for any failure therein. U. S. v. Bosbyshell (D. C. 1896) 73 Fed. 616, 619, affirmed (1896) 77 Fed. 944, 23 C. C. A. 581.

—— **Defense.**—No damage is not a good plea in defense to an action against a mint superintendent to recover on his official bond, conditioned "for the faithful discharge of his duties," for a loss by fire of moneys which his bond required him to keep safely, and pay over when required. Smythe v. U. S. (1901) 107 Fed. 376, 46 C. C. A. 354, judgment affirmed (1903) 23 Sup. Ct. 279, 188 U. S. 156, 47 L. Ed. 425.

—— **Measure of damages.**—The face value of treasury notes destroyed by fire while in the custody of the superintendent of the mint at New Orleans, and not the cost to the United States government of issuing new notes, is the measure of damages in an action on his official bond, conditioned for the safe-keeping of the moneys in his custody, to recover the amount of a shortage in his accounts caused by the destruction of such notes. Smythe v. U. S. (1903) 23 Sup. Ct. 279, 285, 188 U. S. 156, 47 L. Ed. 425, affirming judgment (1901) 107 Fed. 376, 46 C. C. A. 354, which affirms U. S. v. Smythe (C. C. 1900) 120 Fed. 30.

Liability of cashier.—Where the combination of the lock of the vault of the mint was in possession of the superintendent, the chief clerk, and cashier of the mint, the cashier was not liable for theft of money therefrom by the chief clerk. U. S. v. Cole (C. C. 1904) 130 Fed. 614.

§ 6444. (R. S. § 3507.) Duties of assayers.

The assayer shall assay all metals and bullion, whenever such assays are required in the operations of the mint; and shall make assays of coin or samples of bullion whenever required by the superintendent.

Act Feb. 12, 1873, c. 131, § 5, 17 Stat. 425.

§ 6445. (R. S. § 3508.) Duties of melters and refiners.

The melter and refiner shall execute all the operations which are necessary in order to form ingots of standard silver or gold, and alloys for minor coinage, suitable for the coiner, from the metals legally delivered to him for that purpose; and shall also execute all the operations which are necessary in order to form bars conformable in all respects to the law, from the gold and silver bullion delivered to him for that purpose. He shall keep a careful record of all transactions with the superintendent, noting the weight and character of the bullion, and shall be responsible for all bullion delivered to him until the same is returned to the superintendent and the proper vouchers obtained.

Act Feb. 12, 1873, c. 131, § 6, 17 Stat. 425.

The positions of coiner and melter and refiner in all mints, and of melter and refiner in the assay-office at New York were abolished, and their duties cast upon the superintendent, by Act Aug. 23, 1912, c. 350, § 1, ante, § 6432.

Notes of Decisions

Liability on bond.—See U. S. v. Zabriskie (C. C. 1898) 87 Fed. 714, 716; notes under § 6438, ante.

§ 6446. (R. S. § 3509.) Duties of coiners.

The coiner shall execute all the operations which are necessary in order to form coins, conformable in all respects to the law, from the standard gold and silver ingots, and alloys for minor coinage,

legally delivered to him for that purpose; and shall be responsible for all bullion delivered to him, until the same is returned to the superintendent and the proper vouchers obtained.

Act Feb. 12, 1873, c. 131, § 7, 17 Stat. 425.

The positions of coiner and melter and refiner in all mints were abolished, and their duties cast upon the superintendent, by Act Aug. 23, 1912, c. 350, § 1, ante, § 6432.

§ 6447. (R. S. § 3510, as amended, Act Sept. 26, 1890, c. 944.) Duties of engravers; dies for coins; new designs.

The engraver shall prepare from the original dies already authorized all the working-dies required for use in the coinage of the several mints, and, when new coins, emblems, devices, legends, or designs are authorized, shall, if required by the Director of the Mint, prepare the devices, models, hubs, or original dies for the same. The Director of the Mint shall have power, with the approval of the Secretary of the Treasury, to cause new designs or models of authorized emblems or devices to be prepared and adopted in the same manner as when new coins or devices are authorized. But no change in the design or die of any coin shall be made oftener than once in twenty-five years from and including the year of the first adoption of the design, model, die, or hub for the same coin: Provided, That no change be made in the diameter of any coin: And provided further, That nothing in this section shall prevent the adoption of new designs or models for devices or emblems already authorized for the standard silver dollar and the five-cent nickel piece as soon as practicable after the passage of this act. But the Director of the Mint shall nevertheless have power, with the approval of the Secretary of the Treasury, to engage temporarily for this purpose the services of one or more artists, distinguished in their respective departments of art, who shall be paid for such service from the contingent appropriation for the mint at Philadelphia.

Act Feb. 12, 1873, c. 131, § 8, 17 Stat. 425. Act Sept. 26, 1890, c. 944, 26 Stat. 484.

This section was amended by Act Sept. 26, 1890, c. 944, cited above, by inserting the provisions beginning with the words "The Director of the Mint shall have power with the approval of the Secretary of the Treasury to cause new designs," etc., and ending with the words "as soon as practicable after the passage of this act," as set forth here.

Notes of Decisions

New designs for existing coins.—This section does not authorize the Director of the Mint, with the approval of the Secretary of the Treasury, to accept and pay for new designs for existing coins. His authority thereunder, as regards the preparation of original dies, is limited to those intended for new coins. (1887) 19 Op. Atty. Gen. 16.

§ 6448. (R. S. § 3511.) Gold coins of the United States, and their weight.

The gold coins of the United States shall be a [one-dollar piece], which, at the standard weight of twenty-five and eight-tenths grains, shall be the unit of value; a quarter-eagle, or two and a half dollar piece; [a three-dollar piece;] a half-eagle, or five-dollar piece; an eagle, or ten-dollar piece; and a double-eagle, or twenty-dollar piece. And the standard weight [of the gold dollar shall be twenty-five and eight-tenths grains;] of the quarter-eagle, or two and a half dollar piece, sixty-four and a half grains; [of the three-dollar piece, seventy-seven and four-tenths grains;] of the half-eagle, or five-dollar piece, one hundred and twenty-nine grains; of the eagle, or ten-dollar piece, two hundred and fifty-eight grains; of the double-eagle, or twenty-dollar piece, five hundred and sixteen grains.

Act Feb. 12, 1873, c. 131, § 14, 17 Stat. 426.

The words of this section inclosed in brackets were superseded by the dis-

continuance of the coinage of the one-dollar and three-dollar gold pieces by Act Sept. 26, 1890, c. 945, post, §§ 6449, 6450.

The gold dollar of the fineness established by this section was made the standard unit of value by Act March 14, 1900, c. 41, § 1, post, § 6480.

Notes of Decisions

Contract—Damages.—A contract to pay a sum in gold and silver coin is in legal effect a contract to deliver a certain weight of gold and silver of a certain fineness, to be ascertained by count, but damages for nonperformance may be recovered at law, assessed in lawful money of the United States. Butler v. Horwitz (1868) 7 Wall. 258, 260, 19 L. Ed. 149.

Judicial notice.—The court will take judicial notice of the value of denominational coin of the United States. Ector v. State (1904) 48 S. E. 315, 120 Ga. 543.

Cited without definite application, Bronson v. Rodes (1868) 7 Wall. 229, 247, 19 L. Ed. 141; Jersey City & B. R. Co. v. Morgan (1895) 16 Sup. Ct. 276, 277, 160 U. S. 288, 40 L. Ed. 430.

§ 6449. (Act Sept. 26, 1890, c. 945, § 1.) Coinage of three-dollar and one-dollar gold pieces and three-cent nickel piece discontinued.

From and after the passage of this act the coinage of the three-dollar gold piece, the one-dollar gold piece, and the three-cent nickel piece be, and the same is hereby, prohibited, and the pieces named shall not be struck or issued by the Mint of the United States. (26 Stat. 485.)

This section and the following section were part of an act entitled "An act to discontinue the coinage of the three-dollar and one-dollar gold pieces and three-cent nickel piece."

Section 3 of the act repealed all laws in conflict with this act.

The coinage of the three-dollar and one-dollar gold pieces was authorized by R. S. § 3511, ante, § 6448. The coinage of the three-cent nickel piece was authorized by R. S. § 3515, post, § 6458.

§ 6450. (Act Sept. 26, 1890, c. 945, § 2.) Withdrawal and recoinage.

As fast as the said coins shall be paid into the Treasury of the United States they shall be withdrawn from circulation and be recoined into other denominations of coins. (26 Stat. 485.)

§ 6451. (R. S. § 3512.) Recoinage of gold coins.

Any gold coins in the Treasury of the United States, when reduced in weight by natural abrasion more than one-half of one per centum below the standard weight prescribed by law, shall be recoined.

Act Feb. 12, 1873, c. 131, § 14, 17 Stat. 426.

Appropriations for recoinage of light-weight gold coins, as required by this section, are made each year in the sundry civil appropriation acts. The provision for the fiscal year 1917, was by Act July 1, 1916, c. 209, § 1, 39 Stat.

On the discontinuance of the coinage of the three-dollar and one-dollar gold pieces, by Act Sept. 26, 1890, c. 945, § 1, ante, § 6449, as fast as said coins were paid into the Treasury they were to be withdrawn from circulation and recoined into other denominations, by section 2 of that act, ante, § 6450.

§ 6452. (R. S. § 3513.) Silver coins and their weight.

The silver coins of the United States shall be [a trade-dollar] a half-dollar, or fifty-cent piece, a quarter-dollar, or twenty-five-cent piece, a dime, or ten-cent piece; and [the weight of the trade-dollar shall be four hundred and twenty grains troy;] the weight of the half-dollar shall be twelve grams and one-half of a gram; the quarter-dollar and the dime shall be, respectively, one-half and one-fifth of the weight of said half-dollar.

Act Feb. 12, 1873, c. 131, § 15, 17 Stat. 427.

The words of this section inclosed in brackets were repealed by the repeal of all laws and parts of laws authorizing the coinage and issuance of United States trade-dollars by Act March 3, 1887, c. 396, § 3, 24 Stat. 635.

The legal-tender quality of the trade-dollar was abolished, and the Secretary of the Treasury was authorized to limit the coinage thereof, by Res. July 22, 1876, No. 17, § 2, 19 Stat. 215.

The coinage of silver twenty-cent pieces was authorized by Act March 3,

1875, c. 143, 18 Stat. 478. That act was repealed, and the coinage of such pieces prohibited, by Act May 2, 1878, c. 79, 20 Stat. 47.

The coinage of silver dollars of the weight of 412½ grains Troy of standard silver was authorized by Bland-Allison Act of Feb. 28, 1878, c. 20, § 1, post, § 6453.

The use of silver bullion, purchased under the provisions of the Sherman Act of July 14, 1890, c. 708, post, §§ 6474–6477, for the coinage of subsidiary silver coins was authorized by Act March 14, 1900, c. 41, § 8, post, § 6485.

Provisions for the issue of silver certificates, their redemption, and their legal-tender quality, were made by Act Feb. 28, 1878, c. 20, § 3, Act March 3, 1887, c. 362, § 1, and Act March 14, 1900, c. 41, §§ 5, 7, post, §§ 6454, 6456, 6483, 6484.

The issue of Treasury notes in payment for silver bullion, and their redemption and cancellation, were provided for in Act July 14, 1890, c. 708, Act Nov. 1, 1893, c. 8, and Act March 14, 1900, c. 41, post, §§ 6474–6478, 6480–6486.

Provisions for the purchase of silver bullion and its coinage into silver dollars were made by R. S. § 3526, Act Feb. 28, 1878, c. 20, Act July 14, 1890, c. 708, Act Nov. 1, 1893, c. 8, Act June 13, 1898, c. 448, § 34, and Act March 14, 1900, c. 41, post, §§ 6453, 6454, 6473–6486.

The purchase of silver bullion for the coinage of subsidiary silver coins for the redemption of legal-tender notes and fractional currency was authorized by Res. July 22, 1876, No. 17, § 4, post, § 6547.

Provisions for the redemption of legal-tender notes were made by Act Jan. 14, 1875, c. 15, § 3, as amended by Act March 3, 1887, c. 378, § 3, and Res. July 22, 1876, No. 17, post, §§ 6543, 6545–6547.

The coinage and issue of silver coins of the denominations of ten, twenty-five, and fifty cents in redemption of an equal number and amount of fractional currency of similar denominations was authorized by Act Jan. 14, 1875, c. 15, § 1, post, § 6542. A similar provision was made by Act April 17, 1876, c. 63, § 2, post, § 6544, except that it authorized the coinage of twenty-cent pieces to be used for that purpose. The Secretary of the Treasury was authorized to issue the silver coin at any time in the Treasury to an amount not exceeding $10,000,000, in exchange for an equal amount of legal-tender notes, and the notes so received were to be kept as a special fund, to be reissued only upon the retirement and destruction of an equal amount of fractional currency received at the Treasury in payment of dues to the United States, by Res. July 22, 1876, No. 17, § 1, post, § 6545. Section 3 of said resolution, post, § 6546, authorized, in addition to the amount authorized for the redemption of the fractional currency, the manufacture of subsidiary coins to an amount not to exceed in the aggregate at any time, including the amount of subsidiary silver coin and of fractional currency, $50,000,000. Section 4 of said resolution, post, § 6547, authorized the purchase of silver bullion for the coinage of said coins.

Fractional currency presented for redemption was to be redeemed in any moneys in the Treasury not otherwise appropriated, by Act June 21, 1879, c. 34, § 3, post, § 6548.

Cited without definite application, Jersey City & B. R. Co. v. Morgan (1895) 16 Sup. Ct. 276, 277, 160 U. S. 288, 40 L. Ed. 430; Rae v. Homestead Loan & Guaranty Co. (1899) 20 Sup. Ct. 341, 343, 176 U. S. 121, 44 L. Ed. 398; U. S. v. Lissner (C. C. 1882) 12 Fed. 840, 841.

§ 6453. (Act Feb. 28, 1878, c. 20, § 1.) Coinage of standard silver dollars; weight and inscriptions; legal tender; gold certificates not to be paid in silver.

There shall be coined, at the several mints of the United States, silver dollars of the weight of four hundred and twelve and a half grains Troy of standard silver, as provided in the act of January eighteenth, eighteen hundred thirty-seven, on which shall be the devices and superscriptions provided by said act; which coins together with all silver dollars heretofore coined by the United States, of like weight and fineness, shall be a legal tender, at their nominal value, for all debts and dues public and private, except where otherwise expressly stipulated in the contract. * * And provided further, That nothing in this act shall be construed to authorize the payment in silver certificates of deposit issued under the provisions of section two hundred and fifty-four of the Revised Statutes. (20 Stat. 25.)

This was the first section of the Bland-Allison Coinage of Silver Act, entitled "An act to authorize the coinage of the standard silver dollar and to restore its legal-tender character."

The portion of this section omitted here authorized and directed the Secretary of the Treasury to purchase not less than two nor more than four million dollars' worth per month of silver bullion, at the market price, to be coined as fast as purchased into silver dollars, and appropriated money therefor. It was repealed by Act July 14, 1890, c. 708, § 5, 26 Stat. 289.

Section 2 of the act provided for the calling of an international monetary conference, and for the appointment of commissioners thereto. It is omitted, as temporary merely.

Section 3 of the act is set forth post, § 6454.

Section 4 of the act repealed all inconsistent acts and parts of acts.

The provisions of Act Jan. 18, 1837, c. 3, 5 Stat. 137, mentioned in this section, were as follows:

"Sec. 8. That the standard for both gold and silver coins of the United States shall hereafter be such, that of one thousand part by weight, nine hundred shall be of pure metal, and one hundred of alloy; and the alloy of the silver coins shall be copper. * * *

"Sec. 9. That of the silver coins, the dollar shall be of the weight of four hundred and twelve and one-half grains. * * *"

"Sec. 13. That upon the coins struck at the mint there shall be the following devices and legends: Upon one side of each of said coins there shall be an impression emblematic of liberty, with an inscription of the word LIBERTY, and the year of the coinage; and upon the reverse of each of the gold and silver coins there shall be the figure or representation of an eagle, with the inscription United States of America, and a designation of the value of the coin. * * *"

Provisions relating to the inscriptions on the coins were made by Rev. St. § 3517, post, § 6461.

Rev. St. § 254, mentioned in this section, set forth post, § 6564, authorized the deposit of gold coin and bullion, and the issuance therefor of gold certificates. See, also, Act July 12, 1882, c. 290, § 12, and Act March 14, 1900, c. 41, § 6, as amended, post, §§ 6566, 6567.

Other provisions for the purchase of silver bullion and its coinage into standard silver dollars were made by R. S. § 3526, and Act July 14, 1890, c. 708, Act Nov. 1, 1893, c. 8, Act June 13, 1898, c. 448, § 34, Act March 14, 1900, c. 41, post, §§ 6473–6486.

Notes of Decisions

Validity.—The questions affecting the constitutionality of the provision of this act, known as the "Bland-Allison Act," were conclusively determined by the decision of the supreme court of the United States. Baldwin v. Baker (1899) 80 N. W. 36, 121 Mich. 259, 6 Detroit Leg. N. 431. See, also, Legal Tender Cases (1870) 12 Wall. 457, 20 L. Ed. 287; Juilliard v. Greenman (1884) 110 U. S. 444, 4 Sup. Ct. 122, 28 L. Ed. 204.

§ 6454. (Act Feb. 28, 1878, c. 20, § 3.) Silver certificates; payment of customs, etc., therewith.

Any holder of the coin authorized by this act may deposit the same with the Treasurer or any assistant treasurer of the United States, in sums not less than ten dollars, and receive therefor certificates of not less than ten dollars each, corresponding with the denominations of the United States notes. The coin deposited for or representing the certificates shall be retained in the Treasury for the payment of the same on demand. Said certificates shall be receivable for customs, taxes, and all public dues, and, when so received, may be reissued. (20 Stat. 26.)

See notes to section 1 of this act, ante, § 6453.

Further provisions relating to the issue and redemption of silver certificates were made by Act March 3, 1887, c. 362, § 1, and Act March 14, 1900, c. 41, §§ 5, 7, post, §§ 6456, 6483, 6484.

Notes of Decisions

Trade dollar.—The United States Treasurer is not authorized to receive "trade dollars" at par in exchange for silver certificates under the third section of Act Feb. 28, 1878 (20 Stat. 25). Nor are such dollars receivable at par in payment of public dues. (1886) 18 Op. Atty. Gen. 417.

Silver certificates.—The Secretary of the Treasury has authority to issue silver certificates in exchange for all standard silver dollars which have been properly coined and put into circulation and are offered at the Treasury for exchange in sums not less than $10. Whether such silver represents profit or seigniorage is immaterial. (1891) 20 Op. Atty. Gen. 124.

§ 6455. (Act March 3, 1897, c. 376, § 1.) Representation of United States at international monetary conference; appointment of commissioners; compensation and expenses.

Whenever after March fourth, eighteen hundred and ninety-seven, the President of the United States shall determine that the United States should be represented at any international conference called by the United States or any other country with a view to securing by international agreement a fixity of relative value between gold and silver as money by means of a common ratio between these metals, with free mintage at such ratio, he is hereby authorized to appoint five or more commissioners to such international conference; and for compensation of said commissioners, and for all reasonable expenses connected therewith, to be approved by the Secretary of State, including the proportion to be paid by the United States of the joint expenses of any such conference, the sum of one hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated. (29 Stat. 624.)

This was the first section of an act to provide for the representation of the United States by commissioners at any international monetary conference thereafter to be called and to enable the President to otherwise promote an international agreement.

Section 2 of the act authorized the President to call an international conference for the purposes specified in section 1, and to appoint special envoys to such of the nations of Europe as he might designate to seek an agreement for said purposes. Section 3 repealed previous provisions for appointment of delegates to such international conference similar to those of this act. These sections are omitted, as temporary merely.

§ 6456. (Act March 3, 1887, c. 362.) Issue of one, two, and five dollar silver certificates.

The Secretary of the Treasury is hereafter authorized and required to issue silver-certificates in denominations of one, two, and five dollars; and the silver certificates herein authorized shall be receivable, redeemable, and payable in like manner and for like purposes as is provided for silver-certificates by the act of February twenty-eighth, eighteen hundred and seventy-eight, entitled "An act to authorize the coinage of the standard silver dollar, and to restore its legal-tender character;" and denominations of one, two, and five dollars may be issued in lieu of silver-certificates of larger denominations in the Treasury, or in exchange therefor upon presentation by the holders; and to that extent said certificates of larger denominations shall be cancelled and destroyed. (24 Stat. 515.)

This was a provision of the sundry civil appropriation act for the fiscal year 1888, cited above.

Other provisions relating to the issue and redemption of silver certificates were made by Act Feb. 28, 1878, c. 20, ante, §§ 6453, 6454, and Act March 14, 1900, c. 41, § 7, post, § 6484.

§ 6457. (R. S. § 3514.) Standard for gold and silver coins.

The standard for both gold and silver coins of the United States shall be such that of one thousand parts by weight nine hundred shall be of pure metal and one hundred of alloy. The alloy of the silver coins shall be of copper. The alloy of the gold coins shall be of copper, or of copper and silver; but the silver shall in no case exceed one-tenth of the whole alloy.

Act Feb. 12, 1873, c. 131, § 13, 17 Stat. 426.

Notes of Decisions

Judicial notice.—A court will take judicial notice of the worth of a dollar. Reed v. State (1902) 92 N. W. 321, 66 Neb. 184.

§ 6458. (R. S. § 3515.) Minor coins; their weight and alloy.

The minor coins of the United States shall be a five-cent piece, a ⌈three-cent piece,⌉ and a one-cent piece. The alloy for the five [and

three] cent pieces shall be of copper and nickel, to be composed of three-fourths copper and one-fourth nickel. The alloy of the one-cent piece shall be ninety-five per centum of copper and five per centum of tin and zinc, in such proportions as shall be determined by the Director of the Mint. The weight of the piece of five cents shall be seventy-seven and sixteen-hundredths grains troy; [of the three-cent piece, thirty grains;] and of the one-cent piece, forty-eight grains.

Act Feb. 12, 1873, c. 131, § 16, 17 Stat. 427.

The words of this section inclosed in brackets were superseded by the discontinuance of the coinage of the three-cent piece by Act Sept. 26, 1890, c. 945, ante, §§ 6449, 6450.

Notes of Decisions

"Minor coins."—The coins referred to in this section are alone known as "minor coins"; there is no such thing known to the law as "minor silver coinage." U. S. v. Bicksler (D. C. 1881) 1 Mackey, 341.

Under this section and R. S. § 3587, post, § 6574, making minor coins legal tender at their nominal value for an amount not exceeding 25 cents in any one payment, proof that defendant stole 85 cents in United States 5-cent pieces held to sustain an indictment for theft of 85 cents lawful current money of the United States. Black v. State (1904) 46 Tex. Cr. R. 107, 79 S. W. 311.

Judicial notice.—The court will take judicial notice that there is lawful current coin in the United States, representing the value of five cents, called a nickel, and that there is no money called a nickel other than such lawful coin. Barddell v. State (1906) 39 South. 975, 144 Ala. 54.

Cited without definite application, Martin v. Rhode Island Co. (1911) 78 Atl. 548, 32 R. I. 162, 32 L. R. A. (N. S.) 695, Ann. Cas. 1912C, 1283.

§ 6459. (R. S. § 3516.) Issue of other coins prohibited.

No coins, either of gold, silver, or minor coinage, shall hereafter be issued from the Mint other than those of the denominations, standards, and weights set forth in this Title.

Act Feb. 12, 1873, c. 131, § 17, 17 Stat. 427.

The coinage of coins for foreign countries was authorized by Act Jan. 29, 1874, c. 19, post, § 6460.

§ 6460. (Act Jan. 29, 1874, c. 19.) Coinage for foreign countries.

It shall be lawful for coinage to be executed at the mints of the United States for any foreign country applying for the same, according to the legally prescribed standards and devices of such country, under such regulations as the Secretary of the Treasury may prescribe; and the charge for the same shall be equal to the expenses thereof, including labor, materials, and use of machinery, to be fixed by the director of the mint, with the approval of the Secretary of the Treasury: Provided, That the manufacture of such coin shall not interfere with the required coinage of the United States. (18 Stat. 6.)

This was an act entitled "An act authorizing coinage to be executed at the mints of the United States for foreign countries."

§ 6461. (R. S. § 3517.) Inscriptions upon coins.

Upon the coins there shall be the following devices and legends: Upon one side there shall be an impression emblematic of liberty, with an inscription of the word "Liberty" and the year of the coinage, and upon the reverse shall be the figure or representation of an eagle, with the inscriptions "United States of America" and "E Pluribus Unum," and a designation of the value of the coin; but on [the gold dollar and three-dollar piece,] the dime, five, [three,] and one cent piece, the figure of the eagle shall be omitted; and on the reverse of the silver trade-dollar the weight and the fineness of the coin shall be inscribed.

Act Feb. 12, 1873, c. 131, § 18, 17 Stat. 427.

The words of this section inclosed in brackets were superseded by the discontinuance of the coinage of the one-dollar and three-dollar gold pieces and the three-cent nickel piece by Act Sept. 26, 1890, c. 945, § 1, ante, § 6449.

The inscriptions to be placed upon the standard silver dollars were prescribed by Act Feb. 28, 1878, c. 20, § 1, ante, § 6453.

The motto "In God we trust" was to be inscribed on certain denominations of gold and silver coins, by Act May 18, 1908, c. 173, § 1, post, § 6462.

§ 6462. (Act May 18, 1908, c. 173, § 1.) Inscription on certain coins of motto "In God we trust."

The motto "In God we trust," heretofore inscribed on certain denominations of the gold and silver coins of the United States of America, shall hereafter be inscribed upon all such gold and silver coins of said denominations as heretofore. (35 Stat. 164.)

This was the first section of an act entitled "An act providing for the restoration of the motto 'In God we trust' on certain denominations of the gold and silver coins of the United States."

Section 2 provided that the act should take effect thirty days after its approval.

§ 6463. (R. S. § 3518.) Gold and silver bars.

At the option of the owner gold or silver may be cast into bars of fine metal, or of standard fineness, or unparted, as he may prefer, with a stamp upon the same designating the weight and fineness, and with such devices impressed thereon as may be deemed expedient to prevent fraudulent imitation, and no such bars shall be issued of a less weight than five ounces.

Act Feb. 12, 1873, c. 131, § 19, 17 Stat. 427.

The exchange of gold bars for gold coin was authorized by Act May 26, 1882, c. 190, as amended by Act March 3, 1891, c. 541, § 3, and Act March 3, 1901, c. 867, post, § 6464.

§ 6464. (Act May 26, 1882, c. 190, as amended, Act March 3, 1891, c. 541, § 3, and Act March 3, 1901, c. 867.) Exchange of gold coins for gold bars.

The superintendent of the coinage mints and of the United States assay office at New York may, with the approval of the Secretary of the Treasury, but not otherwise, receive United States gold coin from any holder thereof in sums of not less than five thousand dollars, and pay and deliver in exchange therefor gold bars in value equaling such coin so received: Provided, That the Secretary of the Treasury may make, in his discretion, such exchange without charge, or may impose a charge therefor. (22 Stat. 97. 26 Stat. 948. 31 Stat. 1446.)

This was an act entitled "An act to authorize the receipt of United States gold coin in exchange for gold bars."

This act, as originally enacted, was as follows:

"That the superintendents of the coinage mints, and of the United States assay-office at New York, are hereby authorized to receive United States gold coin from any holder thereof in sums not less than five thousand dollars, and to pay and deliver in exchange therefor gold bars in value equalling such coin so received."

It was amended by Act March 3, 1891, c. 541, § 3, cited above, so as to require the approval of the Secretary of the Treasury before exchanges could be made, and to authorize the Secretary to make a charge for the exchange.

It was further amended by Act March 3, 1901, c. 867, also cited above, to read as set forth here.

Notes of Decisions

Mandatory provision. — The words "are hereby authorized," in Act May 26, 1882 (22 Stat. 97), providing for the exchange of gold bars for gold coin by the superintendents of the coinage mints and of the assay office at New York, are to be construed as mandatory upon those officers. (1890) 19 Op. Atty. Gen. 575.

It is not discretionary with the Secretary of the Treasury to refuse such exchange, nor can he lawfully direct those officers so to do. Id.

Charges.—A charge for the preparation of the bars cannot be exacted on an exchange thereof for coin under said act. (1890) 19 Op. Atty. Gen. 576, reaffirmed (1890) 19 Op. Atty. Gen. 594.

§ 6465. (R. S. § 3519.) Coining gold bullion; when deposits may be refused.

Any owner of gold bullion may deposit the same at any mint, to be formed into coin or bars for his benefit. It shall be lawful, however, to refuse any deposit of less value than one hundred dollars, or any bullion so base as to be unsuitable for the operations of the Mint. In cases where gold and silver are combined, if either metal be in such small proportion that it cannot be separated advantageously, no allowance shall be made to the depositor for its value.

Act Feb. 12, 1873, c. 131, § 20, 17 Stat. 427.

The deposit of gold coin and bullion, and the issuance of gold certificates therefor, was authorized by R. S. § 254, post, § 6564. See, also, Act July 12, 1882, c. 290, § 12, and Act March 14, 1900, c. 41, § 6, as amended, post, §§ 6566, 6567.

§ 6466. (R. S. § 3520.) Silver bullion may be received for forming into bars.

Any owner of silver bullion may deposit the same at any mint, to be formed into bars, [or into dollars of the weight of four hundred and twenty grains troy, designated in this Title as trade-dollars,] and no deposit of silver for other coinage shall be received. Silver bullion contained in gold deposits, and separated therefrom, may, however, be paid for in silver coin, at such valuation as may be, from time to time, established by the Director of the Mint.

Act Feb. 12, 1873, c. 131, § 21, 17 Stat. 427.

The words of this section, "or into dollars of the weight of four hundred and twenty grains troy, designated in this Title as trade-dollars," inclosed in brackets, were superseded by the repeal of the laws authorizing the coinage and issue of trade-dollars by Act March 3, 1887, c. 396, § 3, 24 Stat. 635.

§ 6467. (R. S. § 3521.) Weighing bullion and ascertaining its value.

When bullion is deposited in any of the mints, it shall be weighed by the superintendent, and, when practicable, in the presence of the depositor, to whom a receipt shall be given, which shall state the description and weight of the bullion. When, however, the bullion is in such a state as to require melting, or the removal of base metals, before its value can be ascertained, the weight, after such operation, shall be considered as the true weight of the bullion deposited. The fitness of the bullion to be received shall be determined by the assayer, and the mode of melting by the melter and refiner.

Act Feb. 12, 1873, c. 131, § 22, 17 Stat. 428.

§ 6468. (R. S. § 3522.) Assay of bullion.

From every parcel of bullion deposited for coinage or bars, the superintendent shall deliver to the assayer a sufficient portion for the purpose of being assayed. The bullion remaining from the operations of the assay shall be returned to the superintendent by the assayer.

Act Feb. 12, 1873, c. 131, § 23, 17 Stat. 428.

§ 6469. (R. S. § 3523.) Assayer to report to superintendent quality of bullion assayed.

The assayer shall report to the superintendent the quality or fineness of the bullion assayed by him, and such information as will enable him to compute the amount of the charges hereinafter provided for, to be made to the depositor.

Act Feb. 12, 1873, c. 131, § 24, 17 Stat. 428.

§ 6470. (R. S. § 3524, as amended, Act Jan. 14, 1875, c. 15, § 2, and Act March 1, 1881, c. 95.) Charges for converting bullion, etc., into coin.

The charges [for converting standard silver into trade-dollars] for melting or refining bullion, for toughening when metals are contained in it which render it unfit for coinage, for copper used for alloy when the bullion is above standard, for separating the gold

and silver when these metals exist together in the bullion, and for the preparation of bars, shall be fixed, from time to time, by the Director, with the concurrence of the Secretary of the Treasury, so as to equal but not exceed, in their judgment, the actual average cost to each mint and assay-office of the material, labor, wastage, and use of machinery employed in each of the cases aforementioned.

Act Feb. 12, 1873, c. 131, § 25, 17 Stat. 428. Act Jan. 14, 1875, c. 15, § 2, 18 Stat. 296. Act March 1, 1881, c. 95, 21 Stat. 374.

A provision at the beginning of this section, as enacted in the Revised Statutes, that "The charge for converting standard gold bullion into coin shall be one-fifth of one per centum," was repealed by Act Jan. 14, 1875, c. 15, § 2, post, § 6471.

The words in the next following provision of the section, as enacted in the Revised Statutes, "for melting and refining when bullion is below standard," were stricken out, and the words "for melting or refining bullion" were inserted in lieu thereof, as set forth here, by amendment by Act March 1, 1881, c. 95, last cited above.

The preceding words of the section, "for converting standard silver into trade-dollars," inclosed in brackets, were superseded by the repeal of the laws authorizing the coinage of trade-dollars, by Act March 3, 1887, c. 396, § 3, 24 Stat. 635.

The moneys arising from charges collected from depositors for the refining and parting of bullion might be used to defray the expenses of the refining and parting, including labor, materials, wastage, etc., by Act June 19, 1878, c. 329, § 1, and Act July 7, 1898, c. 571, § 1, post, §§ 6513, 6517.

§ 6471. (Act Jan. 14, 1875, c. 15, § 2.) Repeal of provision for charge for converting bullion into coin.

So much of section three thousand five hundred and twenty-four of the Revised Statutes of the United States as provides for a charge of one-fifth of one per centum for converting standard gold bullion into coin is hereby repealed, and hereafter no charge shall be made for that service. (18 Stat. 296.)

This section was part of an act to provide for the resumption of specie payments, cited above.

Other sections of the act are set forth post, §§ 6542, 6543.

§ 6472. (R. S. § 3525.) Assayer to verify calculations of the value of deposits and countersign certificate.

The assayer shall verify all calculations made by the superintendent of the value of deposits, and, if satisfied of the correctness thereof, shall countersign the certificate required to be given by the superintendent to the depositor.

Act Feb. 12, 1873, c. 131, § 26, 17 Stat. 428.

§ 6473. (R. S. § 3526.) Purchase of bullion for silver coinage; the silver-profit fund.

In order to procure bullion for the silver coinage authorized by this Title, the superintendents, with the approval of the Director of the Mint, as to price, terms, and quantity, shall purchase such bullion with the bullion-fund. The gain arising from the coinage of such silver bullion into coin of a nominal value exceeding the cost thereof shall be credited to a special fund denominated the silver-profit fund. This fund shall be charged with the wastage incurred in the silver coinage, and with the expense of distributing such silver coins as hereinafter provided. The balance to the credit of this fund shall be from time to time, and at least twice a year, paid into the Treasury of the United States.

Act Feb. 12, 1873, c. 131, § 27, 17 Stat. 428.

The coinage of silver dollars of the weight of 412½ grains Troy of standard fineness was authorized by Act Feb. 28, 1878, c. 20, § 1, ante, § 6453. Said act also authorized and directed the Secretary of the Treasury to purchase, at the market price, not less than two nor more than four million dollars worth of silver bullion per month, and to coin said bullion into said dollars as fast as purchased. This provision was repealed by Act July 14, 1890, c. 708, § 5, 26 Stat. 289.

Provisions for the purchase of silver bullion, the payment therefor in Treasury notes, the redemption, legal-tender quality, reissue, and cancellation of

the Treasury notes, and the coinage of the bullion purchased into silver dollars were made by Act July 14, 1890, c. 708, Act Nov. 1, 1893, c. 8, Act June 13, 1898, c. 448, § 34, and Act March 14, 1900, c. 41, post, §§ 6474–6486. The redemption of United States notes was also provided for by said Act March 14, 1900, c. 41, § 2, post, § 6481.

The purchase of silver bullion for the coinage of subsidiary silver coins for the redemption of legal-tender notes and fractional currency was authorized by Res. July 22, 1876, No. 17, § 3, post, § 6546.

Provisions for the redemption of legal-tender notes were made by Act Jan. 14, 1875, c. 15, § 3, as amended by Act March 3, 1887, c. 378, § 3, and Res. July 22, 1876, No. 17, post, §§ 6543, 6545–6547.

The coinage and issue of silver coins of the denominations of ten, twenty-five, and fifty cents in redemption of an equal number and amount of fractional currency of similar denominations was authorized by Act Jan. 14, 1875, c. 15, § 1, post, § 6542. A similar provision was made by Act April 17, 1876, c. 63, § 2, post, § 6544, except that it authorized the coinage of twenty-cent pieces to be used for that purpose. The Secretary of the Treasury was authorized to issue the silver coin at any time in the Treasury, to an amount not exceeding $10,000,000, in exchange for an equal amount of legal-tender notes, and the notes so received were to be kept as a special fund, to be reissued only upon the retirement and destruction of an equal amount of fractional currency received at the Treasury in payment of dues to the United States, by Res. July 22, 1876, No. 17, § 1, post, § 6545. Section 3 of said resolution, post, § 6546, authorized, in addition to the amount authorized for the redemption of the fractional currency, the manufacture of subsidiary coins to an amount not to exceed, in the aggregate, at any time, including the amount of subsidiary silver coin and of fractional currency, $50,000,000. Section 4 of said resolution, post, § 6547, authorized the purchase of silver bullion for the coinage of said coins.

Fractional currency presented for redemption was to be redeemed in any moneys in the Treasury not otherwise appropriated, by Act June 21, 1879, c. 34, § 3, post, § 6548.

Cited without definite application,
U. S. v. Whitridge (1905) 25 Sup. Ct. 406, 409, 197 U. S. 135, 49 L. Ed. 696.

§ 6474. (Act July 14, 1890, c. 708, § 1.) Purchase of silver bullion, and issue of Treasury notes in payment thereof.

The Secretary of the Treasury is hereby directed to purchase, from time to time, silver bullion to the aggregate amount of four million five hundred thousand ounces, or so much thereof as may be offered in each month, at the market price thereof, not exceeding one dollar for three hundred and seventy-one and twenty-five hundredths grains of pure silver, and to issue in payment for such purchases of silver bullion Treasury notes of the United States to be prepared by the Secretary of the Treasury, in such form and of such denominations, not less than one dollar nor more than one thousand dollars, as he may prescribe, and a sum sufficient to carry into effect the provisions of this act is hereby appropriated out of any money in the Treasury not otherwise appropriated. (26 Stat. 289.)

This was the first section of the Sherman Purchase of Silver Act, entitled "An act directing the purchase of silver bullion and the issue of Treasury notes thereon, and for other purposes."

Sections 2–4 of the act are set forth post, §§ 6475–6477.

Section 5 of the act repealed so much of Act Feb. 28, 1878, c. 20, ante, § 6453, as required the monthly purchase and coinage into standard silver dollars of not less than $2,000,000 nor more than $4,000,000 worth of silver bullion.

Section 6 of the act required that all balances standing in the Treasury to the credits of national banks for deposits made to redeem the circulating notes of such banks and such deposits subsequently received should be covered into the Treasury and that the Treasury should redeem said notes, and is set forth post, § 9754.

Section 7 of the act provided that the act should take effect thirty days from and after its passage.

So much of this act as directed the purchase of silver bullion, and the payment therefor in Treasury notes, was repealed by Act Nov. 1, 1893, c. 8, post, § 6478.

Notes of Decisions

Treasury notes—issuance.—Treasury notes, of the character authorized by Act July 14, 1890 (26 Stat. 289), directing the purchase of silver bul-

lion and the issue of Treasury notes thereon to the amount necessary for such purchase, may not be issued on the gain or seigniorage arising from the coinage provided for in that act and paid into the Treasury. (1891) 20 Op. Atty. Gen. 124.

—— **Exchange for currency certificates.**—The Treasury notes authorized to be issued in payment for silver bullion by Act July 14, 1890 (26 Stat. 289), are not United States notes within the meaning of Act June 8, 1872 (17 Stat. 336), and consequently are not receivable on deposit in exchange for the currency certificates authorized by that act. (1892) 20 Op. Atty. Gen. 317.

§ 6475. (Act July 14, 1890, c. 708, § 2.) Redemption of Treasury notes; limitation on amount outstanding; legal tender; national bank reserve fund; parity of metals.

The Treasury notes issued in accordance with the provisions of this act shall be redeemable on demand, in coin, at the Treasury of the United States, or at the office of any assistant treasurer of the United States, and when so redeemed may be reissued; but no greater or less amount of such notes shall be outstanding at any time than the cost of the silver bullion and the standard silver dollars coined therefrom, then held in the Treasury purchased by such notes; and such Treasury notes shall be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated in the contract, and shall be receivable for customs, taxes, and all public dues, and when so received may be reissued; and such notes, when held by any national banking association, may be counted as a part of its lawful reserve. That upon demand of the holder of any of the Treasury notes herein provided for the Secretary of the Treasury shall, under such regulations as he may prescribe, redeem such notes in gold or silver coin, at his discretion, it being the established policy of the United States to maintain the two metals on a parity with each other upon the present legal ratio, or such ratio as may be provided by law. (26 Stat. 289.)

Further provisions for the redemption of the Treasury notes issued under the provisions of this act were made by Act March 14, 1900, c. 41, § 2, post, § 6481.

Notes of Decisions

Power to issue.—The power of the national government to issue treasury notes is not open to question. Lick v. Faulkner (1864) 25 Cal. 404; Thayer v. Hedges (1864) 23 Ind. 141; Maynard v. Newman (1865) 1 Nev. 271.

Reissuance.—Under Act March 3, 1843, c. 81, authorizing the reissue of Treasury notes, and for other purposes, whenever outstanding Treasury notes, issued in pursuance of Act Aug. 31, 1842, c. 289, or any previous act of Congress, shall be redeemed before July 1, 1844, other notes may be issued in the place of those redeemed; but the notes outstanding of an earlier issue than 1840 are governed by the law then in force, except so far as the act of 1843 authorizes their reissue if redeemed. (1843) 4 Op. Atty. Gen. 172.

Legal tender.—Act Feb. 25, 1862, authorizing the issue of United States treasury notes, and declaring that they shall be a "legal tender in payment of all debts, public and private," is a valid enactment. Knox v. Lee (1870) 79 U. S. (12 Wall.) 457, 20 L. Ed. 287; Troy v. Bland (1877) 58 Ala. 197; Belloc v. Davis (1869) 38 Cal. 242; Jones v. Harker (1867) 37 Ga. 503; Black v. Lusk (1873) 69 Ill. 70; Hintrager v. Bates (1864) 18 Iowa, 174; Wilson v. Triblecock (1867) 23 Iowa, 331; George v. Concord (1864) 45 N. H. 434; Metropolitan Bank v. Van Dyck (1863) 27 N. Y. 400; Shollenberger v. Brinton (1866) 52 Pa. St. (2 P. F. Smith) 9; Johnson v. Ivey (1867) 44 Tenn. (4 Cold.) 608, 94 Am. Dec. 206; Breitenbach v. Turner (1864) 18 Wis. 140. CONTRA, Hepburn v. Griswold (1869) 75 U. S. (8 Wall.) 603, 19 L. Ed. 513; Griswold v. Hepburn (1865) 63 Ky. (2 Duv.) 20; Martin v. Martin (1870) 20 N. J. Eq. (5 C. E. Green) 421.

The legislation of Congress making treasury notes a legal tender in the payment of debts is authorized by the federal constitution. Lick v. Faulkner (1864) 25 Cal. 404; Thayer v. Hedges (1864) 23 Ind. 141; Brown v. Welch (1866) 26 Ind. 116.

Treasury notes issued under Act 1814, cc. 77, 699, being receivable in payment of duties, taxes, and land debts due the United States, are a good tender in payment of such debts. Thorndike v. U. S. (C. C. 1819) Fed. Cas. No. 13,987.

The act of congress making treasury notes a legal tender is constitutional and valid, and the banks of Indiana, by redeeming their paper in treasury notes, do not expose their franchise to for-

feiture. Reynolds v. Bank of State of Indiana (1862) 18 Ind. 467.

The power to declare paper a legal tender is not incidental to any power delegated by the constitution. Thayer v. Hedges (1864) 22 Ind. 282.

These notes, by being made a legal tender in the payment of debts, were made the equivalent of coin, as a means of payment, in all but the cases excepted by law. Brown v. Welch (1866) 26 Ind. 116.

Congress has the power to authorize the issue of treasury notes to circulate as money, also to make the same lawful money and a legal tender in payment of public and private debts. Hague v. Powers (N. Y. 1863) 39 Barb. 427, 25 How. Prac. 17.

Treasury notes issued under the various acts of Congress enacted prior to Act Feb. 25, 1862, c. 33, are not a legal tender. (1862) 10 Op. Atty. Gen. 196.

Interest.—The interest on such notes continues to run until their payment. Thorndike v. U. S. (C. C. 1819) Fed. Cas. No. 13,987.

§ 6476. (Act July 14, 1890, c. 708, § 3.) Coinage of silver dollars; seigniorage.

The Secretary of the Treasury shall each month coin two million ounces of the silver bullion purchased under the provisions of this act into standard silver dollars until the first day of July eighteen hundred and ninety-one, and after that time he shall coin of the silver bullion purchased under the provisions of this act as much as may be necessary to provide for the redemption of the Treasury notes herein provided for, and any gain or seigniorage arising from such coinage shall be accounted for and paid into the Treasury. (26 Stat. 289.)

The coinage into standard silver dollars of the bullion purchased under the provisions of this act, at the rate of not less than one and one-half million dollars per month, was authorized by Act June 13, 1898, c. 448, § 34, post, § 6479.

The Secretary of the Treasury was required, as fast as standard silver dollars should be coined under the provisions of this act, and said Act June 13, 1898, c. 448, § 34, post, § 6479, to retire an equal amount of Treasury notes whenever received into the Treasury, and to issue silver certificates against the silver dollars so coined, by Act March 14, 1900, c. 41, § 5, post, § 6483.

Notes of Decisions

Issuance of silver certificates.—The Secretary of the Treasury has authority under section 3 of act July 14, 1890 (26 Stat. 289), and section 3 of Act Feb. 28, 1878 (20 Stat. 25), to issue silver certificates in exchange for all standard silver dollars which have been properly coined and put into circulation and are offered at the Treasury for exchange in sums not less than $10, and whether such silver represents profit or seigniorage is immaterial. (1891) 20 Op. Atty. Gen. 124.

§ 6477. (Act July 14, 1890, c. 708, § 4.) Determination of quality of bullion; charges and deductions.

The silver bullion purchased under the provisions of this act shall be subject to the requirements of existing law and the regulations of the mint service governing the methods of determining the amount of pure silver contained, and the amount of charges or deductions, if any, to be made. (26 Stat. 289.)

§ 6478. (Act Nov. 1, 1893, c. 8.) Repeal of provisions for purchase of silver bullion; gold and silver as standard money; parity.

So much of the act approved July fourteenth, eighteen hundred and ninety, entitled "An act directing the purchase of silver bullion and issue of Treasury notes thereon, and for other purposes," as directs the Secretary of the Treasury to purchase from time to time silver bullion to the aggregate amount of four million five hundred thousand ounces, or so much thereof as may be offered in each month at the market price thereof, not exceeding one dollar for three hundred and seventy-one and twenty-five one-hundredths grains of pure silver, and to issue in payment for such purchases Treasury notes of the United States, be, and the same is hereby, repealed. And it is hereby declared to be the policy of the United States to continue the use of both gold and silver as standard money, and to coin both gold

and silver into money of equal intrinsic and exchangeable value, such equality to be secured through international agreement, or by such safeguards of legislation as will insure the maintenance of the parity in value of the coins of the two metals, and the equal power of every dollar at all times in the markets and in the payment of debts. And it is hereby further declared that the efforts of the Government should be steadily directed to the establishment of such a safe system of bimetallism as will maintain at all times the equal power of every dollar coined or issued by the United States, in the markets and in the payment of debts. (28 Stat. 4.)

This was an act entitled "An act to repeal a part of" Act July 14, 1890, c. 708, ante, §§ 6474–6477.

§ 6479. (Act June 13, 1898, c. 448, § 34.) Coinage of silver bullion purchased under Act July 14, 1890, c. 708.

The Secretary of the Treasury is hereby authorized and directed to coin into standard silver dollars as rapidly as the public interests may require, to an amount, however, of not less than one and one-half millions of dollars in each month, all of the silver bullion now in the Treasury purchased in accordance with the provisions of the Act approved July fourteenth, eighteen hundred and ninety, entitled "An Act directing the purchase of silver bullion and the issue of Treasury notes thereon, and for other purposes," and said dollars, when so coined, shall be used and applied in the manner and for the purposes named in said Act. (30 Stat. 467.)

This section was a part of the War Revenue Act of 1898, cited above.

The provisions of the Sherman Act of July 14, 1890, c. 708, mentioned in this section, are set forth ante, §§ 6474–6477.

§ 6480. (Act March 14, 1900, c. 41, § 1.) Standard unit of value.

The dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine, as established by section thirty-five hundred and eleven of the Revised Statutes of the United States, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity. (31 Stat. 45.)

This was the first section of the Parity Act of 1900, entitled "An act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt and for other purposes."

Sections 2, 3, 5, 7–9, and 14 of the act are set forth post, §§ 6481–6487.

Section 4 of the act established a Division of Issue and a Division of Redemption in the Treasury Department, in the office of the Treasurer. It is set forth ante, § 477.

Section 6 of the act authorized and directed the Secretary of the Treasury to receive deposits of gold coin, and to issue gold certificates therefor, provided for the disposition of the coin deposited, provided that the certificates should be receivable for customs, taxes, and all public dues and might be reissued when so received, provided that national banking associations might count such certificates as a part of their lawful reserve, provided when and how the issue of the certificates should be suspended, fixed the denominations of the certificates, and repealed R. S. § 5193. It is set forth, as amended, post, § 6567. See, also, Act July 12, 1882, c. 290, § 12, post, § 6566.

Section 10 of the act amended R. S. § 5138, relating to the capital of national banks and is incorporated therein as set forth post, § 9675.

Section 11 of the act authorized the refunding of certain United States bonds by the issue in lieu thereof of bonds bearing two per cent. interest, and is set forth post, § 6825.

Section 12 of the act related to the issuance to national banks of circulating bank notes, and is set forth post, § 9713.

Section 13 of the act imposed a tax on circulating national bank notes secured by bonds issued under the act, in lieu of the existing tax imposed by R. S. § 5214, post, § 9779. It was superseded by the amendment of said R. S. § 5214, by the Aldrich-Vreeland Act of May 30, 1908, c. 229, § 9, 35 Stat. 550. But said section 5214 of the Revised Statutes was re-enacted to read as

it read prior to May 30, 1908, by the Federal Reserve Act of Dec. 23, 1913, c. 6, § 27, 38 Stat. 274. See notes to R. S. § 5214, post, § 9779.

R. S. § 3511, mentioned in this section, is set forth ante, § 6448.

The Federal Reserve Act of Dec. 23, 1913, c. 6, post, under Title LXII, "The National Banks," c. 2, was not to be construed as repealing the parity provisions contained in this act, by section 26 thereof, post, § 9803, and it was further provided by said section that the Secretary of the Treasury may, for the purpose of maintaining such parity, and to strengthen the gold reserve, borrow gold on the security of United States bonds authorized by section 2 of this act, post, § 6481, or one-year gold notes bearing interest at a rate of not to exceed three per centum per annum, or he may sell such bonds or notes if necessary to obtain gold, and he may also, when the funds of the Treasury on hand justify, purchase and retire such outstanding bonds and notes, by further provisions in said section.

§ 6481. (Act March 14, 1900, c. 41, § 2.) Redemption of United States notes and Treasury notes; redemption fund, maintenance; reissue of redeemed United States notes.

United States notes, and Treasury notes issued under the Act of July fourteenth, eighteen hundred and ninety, when presented to the Treasury for redemption, shall be redeemed in gold coin of the standard fixed in the first section of this Act, and in order to secure the prompt and certain redemption of such notes as herein provided it shall be the duty of the Secretary of the Treasury to set apart in the Treasury a reserve fund of one hundred and fifty million dollars in gold coin and bullion, which fund shall be used for such redemption purposes only, and whenever and as often as any of said notes shall be redeemed from said fund it shall be the duty of the Secretary of the Treasury to use said notes so redeemed to restore and maintain such reserve fund in the manner following, to wit: First, by exchanging the notes so redeemed for any gold coin in the general fund of the Treasury; second, by accepting deposits of gold coin at the Treasury or at any subtreasury in exchange for the United States notes so redeemed; third, by procuring gold coin by the use of said notes, in accordance with the provisions of section thirty-seven hundred of the Revised Statutes of the United States. If the Secretary of the Treasury is unable to restore and maintain the gold coin in the reserve fund by the foregoing methods, and the amount of such gold coin and bullion in said fund shall at any time fall below one hundred million dollars, then it shall be his duty to restore the same to the maximum sum of one hundred and fifty million dollars by borrowing money on the credit of the United States, and for the debt thus incurred to issue and sell coupon or registered bonds of the United States, in such form as he may prescribe, in denominations of fifty dollars or any multiple thereof, bearing interest at the rate of not exceeding three per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after one year from the date of their issue, and to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; and the gold coin received from the sale of said bonds shall first be covered into the general fund of the Treasury and then exchanged, in the manner hereinbefore provided, for an equal amount of the notes redeemed and held for exchange, and the Secretary of the Treasury may, in his discretion, use said notes in exchange for gold, or to purchase or redeem any bonds of the United States, or for any other lawful purpose the public interests may require, except that they shall not be used to meet deficiencies in the current revenues. That United States notes when redeemed in accordance with the provisions of this section shall be reissued, but shall be held in the reserve fund until exchanged for gold, as herein provided; and the gold coin and bullion in the reserve fund, together with the redeemed

notes held for use as provided in this section, shall at no time exceed the maximum sum of one hundred and fifty million dollars. (31 Stat. 45.)

See notes to section 1 of this act, ante, § 6480.

Act July 14, 1890, c. 708, mentioned in this section, which also provided for redemption of Treasury notes issued under it, is set forth ante, §§ 6474–6477.

The reissue of United States notes was provided for by Rev. St. § 3579, post, § 6557.

Provisions forbidding the cancellation of United States legal-tender notes, and requiring them to be issued, were made by Act May 31, 1878, c. 146, post, § 6562.

§ 6482. (Act March 14, 1900, c. 41, § 3.) Legal-tender quality of silver dollar or other money not affected by act.

Nothing contained in this Act shall be construed to affect the legal-tender quality as now provided by law of the silver dollar, or of any other money coined or issued by the United States. (31 Stat. 46.)

Subsequent provisions for issuance of United States notes of small denominations and the retirement of an equal amount of higher denominations when outstanding silver certificates, issued under section 7 of this act, post, § 6484, should be insufficient to meet the public demand, were made by Act March 4, 1907, c. 2913, § 2, post, § 6489.

See notes to section 1 of this act, ante, § 6480.

Other provisions relating to the legal-tender quality of the moneys of the United States are under Title XXXIX, "Legal Tender."

§ 6483. (Act March 14, 1900, c. 41, § 5.) Cancellation of Treasury notes upon coinage of silver dollars and issue of silver certificates.

It shall be the duty of the Secretary of the Treasury, as fast as standard silver dollars are coined under the provisions of the Acts of July fourteenth, eighteen hundred and ninety, and June thirteenth, eighteen hundred and ninety-eight, from bullion purchased under the Act of July fourteenth, eighteen hundred and ninety, to retire and cancel an equal amount of Treasury notes whenever received into the Treasury, either by exchange in accordance with the provisions of this Act or in the ordinary course of business, and upon the cancellation of Treasury notes silver certificates shall be issued against the silver dollars so coined. (31 Stat. 47.)

See notes to section 1 of this act, ante, § 6480.

Act July 14, 1890, c. 708, and Act June 13, 1898, c. 448, § 34, mentioned in this section, are set forth ante, §§ 6474–6479.

§ 6484. (Act March 14, 1900, c. 41, § 7.) Denominations of silver certificates.

Hereafter silver certificates shall be issued only of denominations of ten dollars and under, except that not exceeding in the aggregate ten per centum of the total volume of said certificates, in the discretion of the Secretary of the Treasury, may be issued in denominations of twenty dollars, fifty dollars, and one hundred dollars; and silver certificates of higher denomination than ten dollars, except as herein provided, shall, whenever received at the Treasury or redeemed, be retired and canceled, and certificates of denominations of ten dollars or less shall be substituted therefor, and after such substitution, in whole or in part, a like volume of United States notes of less denomination than ten dollars shall from time to time be retired and canceled, and notes of denominations of ten dollars and upward shall be reissued in substitution therefor, with like qualities and restrictions as those retired and canceled. (31 Stat. 47.)

The issue of silver certificates in sums of not less than ten dollars was authorized by Act Feb. 28, 1878, c. 20, § 3, ante, § 6482.

The issue of one, two, and five dollar silver certificates and the exchange thereof for silver certificates of larger denominations, were authorized by Act March 3, 1887, c. 362, § 1, ante, § 6456.

See notes to section 1 of this act, ante, § 6480.

Whenever the outstanding silver certificates of denominations of one, two, and five dollars, issued under this section, are insufficient to meet the public demand therefor, the issue of United States notes of such denominations, and the retirement of an equal amount of United States notes of higher denominations were authorized by Act March 4, 1907, c. 2913, § 2, post, § 6489.

§ 6485. (Act March 14, 1900, c. 41, § 8.) Coinage of silver bullion into subsidiary coins.

The Secretary of the Treasury is hereby authorized to use, at his discretion, any silver bullion in the Treasury of the United States purchased under the Act of July fourteenth, eighteen hundred and ninety, for coinage into such denominations of subsidiary silver coin as may be necessary to meet the public requirements for such coin: Provided, That the amount of subsidiary silver coin outstanding shall not at any time exceed in the aggregate one hundred millions of dollars. Whenever any silver bullion purchased under the Act of July fourteenth, eighteen hundred and ninety, shall be used in the coinage of subsidiary silver coin, an amount of Treasury notes issued under said Act equal to the cost of the bullion contained in such coin shall be canceled and not reissued. (31 Stat. 47.)

See notes to section 1 of this act, ante, § 6480.

Act July 14, 1890, c. 708, mentioned in this section, is set forth ante, §§ 6474–6477.

The authority given by this section to coin subsidiary silver coins might be exercised without limitation as to the amount of such subsidiary coin outstanding, by a provision of Act March 3, 1903, c. 1007, § 1, post, § 6488.

§ 6486. (Act March 14, 1900, c. 41, § 9.) Recoinage of uncurrent subsidiary silver coins.

The Secretary of the Treasury is hereby authorized and directed to cause all worn and uncurrent subsidiary silver coin of the United States now in the Treasury, and hereafter received, to be recoined, and to reimburse the Treasurer of the United States for the difference between the nominal or face value of such coin and the amount the same will produce in new coin from any moneys in the Treasury not otherwise appropriated. (31 Stat. 48.)

See notes to section 1 of this act, ante, § 6480.

§ 6487. (Act March 14, 1900, c. 41, § 14.) International bi-metallism not to be precluded by act.

The provisions of this Act are not intended to preclude the accomplishment of international bimetallism whenever conditions shall make it expedient and practicable to secure the same by concurrent action of the leading commercial nations of the world and at a ratio which shall insure permanence of relative value between gold and silver. (31 Stat. 49.)

See notes to section 1 of this act, ante, § 6480.

§ 6488. (Act March 3, 1903, c. 1007, § 1.) Limitation of amount of subsidiary silver coins removed.

The authority given to the Secretary of the Treasury to coin subsidiary silver coin by the eighth section of an Act entitled "An Act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes," approved March fourteenth, nineteen hundred, may hereafter be exercised without limitation as to the amount of such subsidiary coin outstanding. (32 Stat. 1109.)

This was a provision following an appropriation for transportation of silver coin, in the sundry civil appropriation act for the fiscal year 1904, cited above.

Act March 14, 1900, c. 41, mentioned in this section, is set forth ante, §§ 6480–6487.

Notes of Decisions

Subsidiary coinage.—The Director of the Mint is authorized, with the approval of the Secretary of the Treasury, to purchase bullion for subsidiary coinage, and this authority, under Act March 3, 1903 (32 Stat. 1109), is without limitation, express or implied. (1904) 25 Op. Atty. Gen. 170.

§ 6489. (Act March 4, 1907, c. 2913, § 2.) United States notes of small denominations to be issued, and equal amount of higher denominations retired, when outstanding silver certificates insufficient.

Whenever and so long as the outstanding silver certificates of the denominations of one dollar, two dollars, and five dollars, issued under the provisions of section seven of an Act entitled "An Act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes," approved March fourteenth, nineteen hundred, shall be, in the opinion of the Secretary of the Treasury, insufficient to meet the public demand therefor, he is hereby authorized to issue United States notes of the denominations of one dollar, two dollars, and five dollars, and upon the issue of United States notes of such denominations an equal amount of United States notes of higher denominations shall be retired and canceled: Provided, however, That the aggregate amount of United States notes at any time outstanding shall remain as at present fixed by law: And provided further, That nothing in this Act shall be construed as affecting the right of any national bank to issue one-third in amount of its circulating notes of the denomination of five dollars, as now provided by law. (34 Stat. 1289.)

This section was part of an act to amend the national banking act, and for other purposes, cited above.

Other sections of the act are set forth or referred to post, under Title LXII, "National Banks," c. 2.

Act March 14, 1900, c. 41, § 7, mentioned in this section, is set forth ante, § 6484.

§ 6490. (R. S. § 3527.) Paying out silver coins for gold coins authorized.

Silver coins [other than the trade-dollar] shall be paid out at the several mints, and at the assay-office in New York City, in exchange for gold coins at par, in sums not less than one hundred dollars. It shall be lawful, also, to transmit parcels of the same, from time to time, to the assistant treasurers, depositaries, and other officers of the United States, under general regulations proposed by the Director of the Mint, and approved by the Secretary of the Treasury. Nothing herein contained shall, however, prevent the payment of silver coins, at their nominal value, for silver parted from gold, as provided in this Title, or for change less than one dollar in settlement for gold deposits.

Act Feb. 12, 1873, c. 131, § 28, 17 Stat. 428.

A further provision, at the end of this section as enacted in the Revised Statutes, that for two years after February 12, 1873, silver coins should be paid at the mint in Philadelphia and the assay-office in New York City for silver bullion purchased for coinage, is omitted as temporary merely, and executed.

The words of this section, "other than the trade-dollar," inclosed in brackets, were superseded by the repeal of the laws authorizing the coinage and issue of trade-dollars by Act March 3, 1887, c. 396, § 3, 24 Stat. 635.

The holder of any silver coins of smaller denominations than one dollar was entitled, on presentation of the same in sums of $20, or any multiple thereof, at the office of the Treasurer or any assistant treasurer, to receive therefor lawful money of the United States, by Act June 9, 1879, c. 12, § 1, post, § 6491; and by section 2 of said act post, § 6492, the Treasurer or any assistant treasurer was required, upon receiving any of the coins as provided for by section 1, to exchange the same, in sums of $20, or any multiple thereof, for lawful money of the United States.

Cited without definite application,
U. S. v. Lissner (C. C. 1882) 12 Fed. 840, 841.

§ 6491. (Act June 9, 1879, c. 12, § 1.) Exchange of subsidiary silver coin for lawful money.

The holder of any of the silver coins of the United States of smaller denominations than one dollar, may, on presentation of the same in

sums of twenty dollars, or any multiple thereof, at the office of the Treasurer or any assistant treasurer of the United States, receive therefor lawful money of the United States. (21 Stat. 7.)

This section and the section next following were part of an act entitled "An act to provide for the exchange of subsidiary coins for lawful money of the United States under certain circumstances and to make such coins a legal tender in all sums not exceeding ten dollars, and for other purposes."

Section 3 of the act provided that the subsidiary silver coins of the United States should be a legal tender in all sums not exceeding $10 in full payment of all dues public and private. It is set forth post, § 6573.

Section 4 of the act repealed all laws in conflict therewith.

§ 6492. (Act June 9, 1879, c. 12, § 2.) Exchange of lawful money for subsidiary silver coin.

The Treasurer or any assistant treasurer of the United States who may receive any coins under the provision of this act shall exchange the same in sums of twenty dollars, or any multiple thereof, for lawful money of the United States, on demand of any holder thereof. (21 Stat. 8.)

§ 6493. (Act Aug. 7, 1882, c. 433, § 1.) Free transportation of silver coin.

That the Secretary of the Treasury be, and he is hereby, authorized and directed to transport free of charge silver coin when requested to do so: Provided, That an equal amount in coin or currency shall have been deposited in the Treasury by the applicant or applicants. (22 Stat. 312.)

This was a provision of the sundry civil appropriation act for the fiscal year 1883, cited above. It may be regarded as permanent in its nature, notwithstanding it was followed by a clause making an appropriation of $10,000 or so much thereof as might be necessary for the purpose of defraying the expenses of transportation.

A provision in the same language as that of this section, except that the appropriation was $20,000, was contained in the sundry civil appropriation act for the fiscal year 1882, Act March 3, 1881, c. 133, § 1, 21 Stat. 447.

Subsequent appropriations for transportation of silver coin, in later years, "for transportation of fractional silver coin, by registered mail or otherwise," with directions that such coin be transported "from the Treasury or subtreasuries, free of charge," were made in the annual sundry civil appropriation acts down to the fiscal year 1910, provision for which was made by Act March 4, 1909, c. 299, § 1, 35 Stat. 966, and by the deficiency appropriation act, Act June 25, 1910, c. 385, 36 Stat. 777. All these appropriations were accompanied by similar appropriations for transportation of minor coin. No appropriations for these purposes were made thereafter.

Contracts for the transportation of moneys, bullion, coin, notes, bonds, and other securities of the United States, and paper, were to be let to the lowest responsible bidder, by Act July 7, 1884, c. 332, § 1, post, § 6841.

§ 6494. (R. S. § 3528, as amended, Act April 24, 1906, c. 1861.) Purchase of metal for minor coinage; the minor coinage profit fund.

For the purchase of metal for the minor coinage authorized by this Act a sum not exceeding two hundred thousand dollars in lawful money of the United States shall, upon the recommendation of the Director of the Mint, and in such sums as he may designate, with the approval of the Secretary of the Treasury, be transferred to the credit of the Superintendents of the mints at Philadelphia, San Francisco, Denver, and New Orleans, at which establishments, until otherwise provided by law, such coinage shall be carried on. The superintendents, with the approval of the Director of the Mint as to price, terms, and quantity, shall purchase the metal required for such coinage by public advertisement, and the lowest and best bid shall be accepted, the fineness of the metals to be determined on the mint assay. The gain arising from the coinage of such metals into coin of a nominal value, exceeding the cost thereof, shall be credited to the special fund denominated the minor-coinage profit fund; and this fund shall be charged with the wastage incurred in such coinage, and with the cost of dis-

tributing said coins, as hereinafter provided. The balance remaining to the credit of this fund, and any balance of the profits accrued from minor coinage under former Acts, shall be, from time to time, and at least twice a year, covered into the Treasury of the United States.

Act Feb. 12, 1873, c. 131, § 29, 17 Stat. 429. Act April 24, 1906, c. 1861, 34 Stat. 132.

The amendment of this section by Act April 24, 1906, c. 1861, cited above, consisted chiefly in the increase of the amount to be transferred for the purchase of metal from $50,000 to $200,000, and in including other mints with the mint at Philadelphia for carrying on such coinage.

§ 6495. (R. S. § 3529, as amended, Act April 24, 1906, c. 1861.) Delivery of minor coins; redemption.

The minor coins authorized by this Act may, at the discretion of the Director of the Mint, be delivered in any of the principal cities and the towns of the United States, at the cost of the mints, for transportation, and shall be exchangeable at par at the mints named, at the discretion of the superintendents, for any other coins of copper, bronze, or copper-nickel heretofore authorized, and it shall be lawful for the Treasurer and the several assistant treasurers and depositaries of the United States to redeem, in lawful money, under such rules as may be prescribed by the Secretary of the Treasury, all copper, bronze, and copper-nickel coins authorized by law when presented in sums of not less than twenty dollars; and whenever, under this authority, these coins are presented for redemption in such quantity as to show the amount outstanding to be redundant, the Secretary of the Treasury is authorized and required to direct that such coinage shall cease until otherwise authorized by him.

Act Feb. 12, 1873, c. 131, § 30, 17 Stat. 429. Act April 24, 1906, c. 1861, 34 Stat. 132.

The amendment of this section by Act April 24, 1906, c. 1861, cited above, consisted of such changes merely as were required to conform to the provisions for coinage of minor coins at other mints as well as the mint at Philadelphia, by R. S. § 3528, as amended by this act, ante, § 6494.

Appropriations for transportation of minor coin, free of charge, when requested, on deposit of an equal amount in coin or currency in the Treasury or subtreasuries, were made by the sundry civil appropriation acts for subsequent years, down to the fiscal year 1910, the provision for which was made by Act March 4, 1909, c. 298, § 1, 35 Stat. 909, and by the deficiency appropriation act, Act June 25, 1910, c. 385, 36 Stat. 777.

Appropriations for recoinage of worn and uncurrent minor coin are made in recent sundry civil appropriation acts. The provision for the fiscal year 1917, was by Act July 1, 1916, c. 209, § 1, 39 Stat.

The cleaning, reissue, and recoinage of the minor coins were authorized by Act June 4, 1897, c. 2, § 1, post, § 6496.

§ 6496. (Act June 4, 1897, c. 2, § 1.) Cleaning, reissue, and recoinage of minor coins.

The Secretary of the Treasury is authorized to transfer to the United States mint at Philadelphia, for cleaning and reissue, any minor coins now in, or which may be hereafter received at, the subtreasury offices, in excess of the requirement for the current business of said offices. (30 Stat. 27.)

This was a provision of the sundry civil appropriation act for the fiscal year 1898, cited above.

A further provision, immediately following, authorizing the Secretary of the Treasury to recoin any and all the uncurrent minor coins then in the Treasury. This provision is omitted as temporary.

Similar provisions were contained in previous appropriation acts.

§ 6497. (R. S. § 3530.) Transfer of bullion for formation into ingots.

Parcels of bullion shall be, from time to time, transferred by the superintendent to the melter and refiner. A careful record of these transfers, noting the weight and character of the bullion, shall be kept, and vouchers shall be taken for the delivery of the same, duly receipted by the melter and refiner. The bullion thus placed in the

hands of the melter and refiner shall be subjected to the several processes which may be necessary to form it into ingots of the legal standard, and of a quality suitable for coinage.

Act Feb. 12, 1873, c. 131, § 31, 17 Stat. 429.

The positions of coiner and melter and refiner of all mints, and the melter and refiner in the assay-office at New York, were abolished, and their duties cast upon the superintendent, by Act Aug. 23, 1912, c. 350, § 1, ante, § 6432.

§ 6498. (R. S. § 3531.) Ingots to be assayed, and receipted for.

The ingots so prepared shall be assayed. If they prove to be within the limits allowed for deviation from the standard, the assayer shall certify the fact to the superintendent, who shall thereupon receipt for the same, and transfer them to the coiner.

Act Feb. 12, 1873, c. 131, § 32, 17 Stat. 429.

§ 6499. (R. S. § 3532.) Delivery of ingots to coiner for coinage.

The superintendent shall, from time to time, deliver to the coiner ingots for the purpose of coinage. A careful record of these transfers, noting the weight and character of the bullion, shall be kept, and vouchers shall be taken for the delivery of the same, duly receipted by the coiner. The ingots thus placed in the hands of the coiner shall be subjected to the several processes necessary to make from them coins in all respects conformable to law.

Act Feb. 12, 1873, c. 131, § 35, 17 Stat. 429.

§ 6500. (R. S. § 3533.) Standard of ingots used for coinage.

No ingots shall be used for coinage which differ from the legal standard more than the following proportions, namely: In gold ingots, one-thousandth; in silver ingots, three-thousandths; in minor-coinage alloys, twenty-five thousandths, in the proportion of nickel.

Act Feb. 12, 1873, c. 131, § 33, 17 Stat. 429.

§ 6501. (R. S. § 3534.) Preparation and stamping of bars for payment of deposits.

The melter and refiner shall prepare all bars required for the payment of deposits; but the fineness thereof shall be ascertained and stamped thereon by the assayer. The melter and refiner shall deliver such bars to the superintendent, who shall receipt for the same.

Act Feb. 12, 1873, c. 131, § 34, 17 Stat. 429.

The positions of coiner and melter and refiner of all mints, and the melter and refiner in the assay-office at New York, were abolished, and their duties cast upon the superintendent, by Act Aug. 23, 1912, c. 350, ante, § 6432.

§ 6502. (R. S. § 3535.) Deviations allowed in adjusting weights of gold coins.

In adjusting the weights of the gold coins, the following deviations shall not be exceeded in any single piece: In the double-eagle and the eagle, one-half of a grain; in the half-eagle, [the three-dollar piece,] the quarter-eagle, [and the one-dollar piece,] one-fourth of a grain. And in weighing a number of pieces together, when delivered by the coiner to the superintendent, and by the superintendent to the depositor, the deviation from the standard weight shall not exceed one hundredth of an ounce in five thousand dollars in double-eagles, eagles, half-eagles, or quarter-eagles, in one thousand three-dollar pieces, and in one thousand one-dollar pieces.

Act Feb. 12, 1873, c. 131, § 36, 17 Stat. 430.

The words of this section, "the three-dollar piece," and "and the one-dollar piece," inclosed in brackets, were superseded by the repeal of the laws authorizing the coinage of three-dollar and one-dollar gold pieces, by Act Sept. 26, 1890, c. 945, ante, §§ 6449, 6450.

§ 6503. (R. S. § 3536, as amended, Act Feb. 27, 1877, c. 69, § 1, and Act March 4, 1911, c. 267.) Deviations allowed in adjusting weight of silver coins.

In adjusting the weight of the silver coins the following deviations

his order, by the superintendent; and the payments shall be made, if demanded, in the order in which the bullion shall have been brought to the mint. In cases, however, where there is delay in manipulating a refractory deposit, or for any other unavoidable cause, the payment of subsequent deposits, the value of which is known, shall not be delayed thereby. In the denominations of coin delivered, the superintendent shall comply with the wishes of the depositor, except when impracticable or inconvenient to do so.

Act Feb. 12, 1873, c. 131, § 45, 17 Stat. 431.

§ 6512. (R. S. § 3545.) Payment in money to depositors when value ascertained.

For the purpose of enabling the mints and the assay-office in New York to make returns to depositors with as little delay as possible, it shall be the duty of the Secretary of the Treasury to keep in such mints and assay-office, when the state of the Treasury will admit thereof, such an amount of public money, or bullion procured for the purpose, as he shall judge convenient and necessary, out of which those who bring bullion to the said mints and assay-office may be paid the value thereof, in coin or bars, as soon as practicable after the value has been ascertained. On payment thereof being made, the bullion so deposited shall become the property of the United States. The Secretary of the Treasury may, however, at any time withdraw the fund, or any portion thereof.

Act Feb. 12, 1873, c. 131, § 47, 17 Stat. 431.

The provisions of this section were made applicable to the several mints and assay-offices by provisions of Act June 19, 1878, c. 329, § 1, post, § 6513.

§ 6513. (Act June 19, 1878, c. 329, § 1.) Payment for bullion in coin certificates; charges to depositors, how expended.

For the purpose of enabling the several mints and assay-offices of the United States to make returns to depositors with as little delay as possible, the provisions of section thirty-five hundred and forty-five of the Revised Statutes of the United States shall hereafter apply to the several mints and assay-offices of the United States; and the Secretary of the Treasury is hereby authorized to use, as far as he may deem it proper and expedient, for payment to depositors of bullion at the several mints and assay-offices, coin certificates, representing coin in the Treasury, and issued under the provisions of section two hundred and fifty-four of the Revised Statutes of the United States; all of said acts and duties to be performed under such rules and regulations as shall be prescribed by the Secretary of the Treasury. And it shall be lawful to apply the moneys arising from charges collected from depositors at the several mints and assay-offices pursuant to law, to defraying the expenses thereof, including labor, material, wastage, and use of machinery. (20 Stat. 191.)

These were provisions of the legislative, executive, and judicial appropriation act for the fiscal year 1879, cited above.

So much of this provision as authorized the payment for bullion in coin certificates at assay-offices other than the one in New York was repealed by Act March 3, 1879, c. 182, § 1, post, § 6514.

The provisions relating to the expenditure of charges collected are repeated in another paragraph of this act, post, § 6516. See, also, note to said paragraph.

Charges to depositors were provided for by R. S. § 3524, ante, § 6470.

§ 6514. (Act March 3, 1879, c. 182, § 1.) Repeal of provision for payment for bullion in coin certificates at assay-offices other than the one in New York.

So much of the act "making appropriations for the legislative, executive, and judicial expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes," approved June nineteenth, eighteen hundred and sev-

enty-eight, as authorizes the Secretary of the Treasury to issue coin certificates in exchange for bullion deposited for coinage at mints and assay-offices other than those mentioned in section thirty-five hundred and forty-five of the Revised Statutes, be, and the same is hereby, repealed; said repeal to take effect at the end of the present fiscal year. (20 Stat. 383.)

This was a provision of the sundry civil appropriation act for the fiscal year 1880, cited above.

It repealed part of the provisions of Act June 19, 1878, c. 329, § 1, ante, § 6513.

§ 6515. (R. S. § 3546.) Exchange of unparted bullion for fine bars.

Unparted bullion may be exchanged at any of the mints for fine bars, on such terms and conditions as may be prescribed by the Director of the Mint, with the approval of the Secretary of the Treasury. The fineness, weight, and value of the bullion received and given in exchange shall in all cases be determined by the mint assay. The charge to the depositor for refining or parting shall not exceed that allowed and deducted for the same operation in the exchange of unrefined for refined bullion.

Act Feb. 12, 1873, c. 131, § 46, 17 Stat. 431.

When the bullion received was not in such proportion of gold and silver as to admit of economical parting, or the necessary supplies of acids could not be procured at reasonable rates, unparted bullion might be exchanged for fine bars, as provided by this section, by Act June 19, 1878, c. 329, § 1, post, § 6516.

§ 6516. (Act June 19, 1878, c. 329, § 1.) Refining and parting of bullion at mints and New York assay-office; expenses, how defrayed; exchange of unparted bullion for fine bars.

Refining and parting of bullion shall be carried on at the mints of the United States and at the assay-office at New York. And it shall be lawful to apply the moneys arising from charges collected from depositors for these operations pursuant to law so far as may be necessary to the defraying in full of the expenses thereof, including labor, materials, and wastage; but no part of the moneys otherwise appropriated for the support of the mints and the assay-office at New York shall be used to defray the expenses of refining and parting bullion; but when the bullion received shall not, in the aggregate, be in such proportion of gold and silver as to admit of economical parting, or the necessary supplies of acids cannot be procured at reasonable rates, unparted bullion may be exchanged for fine bars, as provided in section thirty-five hundred and forty-six of the Revised Statutes of the United States. (20 Stat. 191.)

This was a provision of the legislative, executive, and judicial appropriation act for the fiscal year 1879, cited above.

A similar provision was made by Act July 7, 1898, c. 571, § 1, post, § 6517.

So much of the provision of this act and of other laws and parts of laws, as made a permanent indefinite appropriation for the expenses of parting and refining bullion, was repealed by a provision of Act March 4, 1911, c. 240, post, § 6691.

The provision relating to the application of moneys arising from charges collected from depositors, and the appropriations for the support of the mints and assay-offices, was repeated in Act June 15, 1880, c. 225, § 1, 21 Stat. 223, and Act March 3, 1881, c. 130, § 1, 21 Stat. 398. It was again repeated in another paragraph of this act, ante, § 6513, and again, with enlargements, in Act July 7, 1898, c. 571, § 1, post, § 6517.

The charges for converting standard bullion into coin, and melting, refining, and parting bullion, were fixed by R. S. § 3524, ante, § 6470.

§ 6517. (Act July 7, 1898, c. 571, § 1.) Refining and parting of bullion at mints and New York assay-office; expenses, how defrayed.

Refining and parting of bullion shall be carried on at the coinage mints of the United States and at the assay office at New York, and it shall be lawful to apply the moneys arising from char-

ges collected from depositors for these operations, and also the proceeds of sale of by-products (spent acids arising from any surplus bullion recovered in parting and refining processes), pursuant to law, so far as may be necessary, to defraying in full the expenses thereof, including labor, material, wastage, and loss on sale of sweeps. But no part of the moneys appropriated for the support of the coinage mints and assay office at New York shall be used to defray the expenses of parting and refining bullion. (30 Stat. 661.)

This was a provision of the deficiency appropriation act for the fiscal year 1898, cited above.

Similar provisions were made by Act June 19, 1878, c. 329, § 1, ante, § 6516. See, also, note to said provisions.

§ 6518. (R. S. § 3547.) Appointment and meeting of assay-commissioners.

To secure a due conformity in the gold and silver coins to their respective standards of fineness and weight, the judge of the district court for the eastern district of Pennsylvania, the Comptroller of the Currency, the assayer of the assay-office at New York, and such other persons as the President shall, from time to time, designate, shall meet as assay-commissioners, at the Mint in Philadelphia, to examine and test, in the presence of the Director of the Mint, the fineness and weight of the coins reserved by the several mints for this purpose, on the second Wednesday in February, annually, and may continue their meetings by adjournment, if necessary. If a majority of the commissioners fail to attend at any time appointed for their meeting, the Director of the Mint shall call a meeting of the commissioners at such other time as he may deem convenient. If it appears by such examination and test that these coins do not differ from the standard fineness and weight by a greater quantity than is allowed by law, the trial shall be considered and reported as satisfactory. If, however, any greater deviation from the legal standard or weight appears, this fact shall be certified to the President; and if, on a view of the circumstances of the case, he shall so decide, the officers implicated in the error shall be thenceforward disqualified from holding their respective offices.

Act Feb. 12, 1873, c. 131, § 48, 17 Stat. 432.

§ 6519. (R. S. § 3548, as amended, Act March 4, 1911, c. 268, § 1.) Standard troy pound of Bureau of Standards to be standard for regulation of coinage.

For the purpose of securing a due conformity in weight of the coins of the United States to the provisions of the laws relating to coinage, the standard troy pound of the Bureau of Standards of the United States shall be the standard troy pound of the Mint of the United States, conformably to which the coinage thereof shall be regulated.

Act Feb. 12, 1873, c. 131, § 49, 17 Stat. 432. Act March 4, 1911, c. 268, § 1, 36 Stat. 1354.

This section, as enacted in the Revised Statutes, made the brass troy pound weight, procured at London, and in the custody of the mint at Philadelphia, the standard troy pound of the mint, and R. S. § 3549, provided for procuring for each mint and assay-office a series of standard weights corresponding to said standard troy pound.

Both sections were amended by substituting for said standard troy pound and weights corresponding thereto the standard troy pound of the Bureau of Standards and weights corresponding to it, making the sections read as set forth here, by Act March 4, 1911, c. 268, § 1, cited above.

§ 6520. (R. S. § 3549, as amended, Act March 4, 1911, c. 268, § 2.) Standard weights for mints and assay-offices.

It shall be the duty of the Director of the Mint to procure for each mint and assay office, to be kept safely thereat, a series of standard weights corresponding to the standard troy pound of

the Bureau of Standards of the United States, consisting of a one-pound weight and the requisite subdivisions and multiples thereof, from the hundredths part of a grain to twenty-five pounds. The troy weight ordinarily employed in the transactions of such mints and assay offices shall be regulated according to the above standards at least once in every year, under the inspection of the superintendent and assayer; and the accuracy of those used at the Mint at Philadelphia shall be tested annually, in the presence of the assay commissioners, at the time of the annual examination and test of coins.

Act Feb. 12, 1873, c. 131, § 50, 17 Stat. 432. Act March 4, 1911, c. 268, § 2, 36 Stat. 1354.

See note to R. S. § 3549, ante, § 6519.

§ 6521. (R. S. § 3550.) Yearly destruction of obverse working-dies.

The obverse working-dies at each mint shall, at the end of each calendar year, be defaced and destroyed by the coiner in the presence of the superintendent and assayer.

Act Feb. 12, 1873, c. 131, § 51, 17 Stat. 432.

The positions of coiner and melter and refiner of all mints, and the melter and refiner in the assay office at New York, were abolished, and their duties cast upon the superintendent, by Act Aug. 23, 1912, c. 350, § 1, ante, § 6432.

§ 6522. (R. S. § 3551.) National and other medals may be struck at Mint at Philadelphia.

Dies of a national character may be executed by the engraver, and national and other medals struck by the coiner of the Mint at Philadelphia, under such regulations as the superintendent, with the approval of the Director of the Mint, may prescribe. Such work shall not, however, interfere with the regular coinage operations, and no private medal dies shall be prepared at any mint, or the machinery or apparatus thereof be used for that purpose.

Act Feb. 12, 1873, c. 131, § 52, 17 Stat. 432.

See note to R. S. § 3550, ante, § 6521.

§ 6523. (R. S. § 3552.) Money arising from charges and deductions to be covered into Treasury.

The moneys arising from all charges and deductions on and from gold and silver bullion and the manufacture of medals, and from all other sources, except as provided by this Title, shall, from time to time, be covered into the Treasury, and no part of such deductions or medal charges, or profit on silver or minor coinage, shall be expended in salaries or wages. All expenditures of the mints and assay-offices, not herein otherwise provided for, shall be paid from appropriations made by law on estimates furnished by the Secretary of the Treasury.

Act Feb. 12, 1873, c. 131, § 53, 17 Stat. 432.

§ 6524. (R. S. § 3553.) Business of assay-office at New York.

The business of the United States assay-office at New York shall be in all respects similar to that of the mints, except that bars only and not coin, shall be manufactured therein; and no metals shall be purchased for minor coinage. All bullion intended by the depositor to be converted into coins, of the United States, and silver bullion purchased for coinage, when assayed, parted, and refined, and its net value certified, shall be transferred to the Mint at Philadelphia, under such directions as shall be made by the Secretary of the Treasury, at the expense of the contingent fund of the Mint, and shall be there coined, and the proceeds returned to the assay-office. And the Secretary of the Treasury is hereby authorized to make the necessary arrangements for the adjustment of the accounts upon such transfers between the respective offices.

Act Feb. 12, 1873, c. 131, § 54, 17 Stat. 433.

§ 6525. (Act June 22, 1874, c. 419.) Transfer of gold mint bars from New York assay-office to assistant treasurer's office; redemption of coin certificates or exchange for gold coins.

The Secretary of the Treasury may, from time to time, transfer to the office of the Assistant Treasurer at New York from the bullion fund of the assay office at New York, refined gold bars bearing the United States stamp of fineness, weight and value, or bars from any melt of foreign gold coin or bullion of standard equal to or above that of the United States and may apply the same to the redemption of coin certificates or in exchange for gold coins at not less than par and not less than the market value subject to such regulations as he may prescribe. (18 Stat. 202.)

This was an act entitled "An act authorizing the transfer of gold mint bars from the bullion fund of the assay-office New York to the Assistant Treasurer at New York."

§ 6526. (R. S. § 3554.) Appointment of officers at New York.

The officers of the assay-office at New York shall be a superintendent, an assayer, and a melter and refiner; each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

Act Feb. 12, 1873, c. 131, § 54, 17 Stat. 433.

The positions of coiner and melter and refiner of all mints, and the melter and refiner in the assay-office at New York, were abolished, and their duties cast on the superintendent, by Act Aug. 23, 1912, c. 350, § 1, ante, § 6432.

§ 6527. (R. S. § 3555.) Duties, etc., of officers at New York.

The duties of the superintendent, the assayer, and the melter and refiner of the assay-office at New York shall correspond to those of superintendents, assayers, and melters and refiners of mints; and all the provisions of this Title relating to mints and their officers, the duties and responsibilities of such officers, and others employed therein, the oaths to be taken, and the bonds and sureties to be given by them, shall extend, as far as the same may be applicable, to the assay-office at New York, and to its officers, clerks and employés.

Act Feb. 12, 1873, c. 131, § 55, 17 Stat. 433.

See note to R. S. § 3554, ante, § 6526.

§ 6528. (R. S. § 3556.) Salaries of officers at New York.

The officers of the assay-office at New York shall be entitled to the following salaries:

First. The superintendent, to four thousand five hundred dollars a year.

Second. The assayer, to three thousand dollars a year.

Third. The melter and refiner, to three thousand dollars.

Act Feb. 12, 1873, c. 131, § 56, 17 Stat. 433.

See note to R. S. § 3554, ante, § 6526.

§ 6529. (R. S. § 3557.) Appointment and salaries of assistants and employés at New York.

The appointment and compensation of assistants, clerks, and workmen in the assay-office at New York shall be regulated in the same manner as is prescribed in regard to mints.

Act Feb. 12, 1873, c. 131, § 56, 17 Stat. 433.

All assistants and employés of the mints and assay-offices were to be appointed by the Secretary of the Treasury, by Act Aug. 23, 1912, c. 350, § 1, ante, § 6432.

§ 6530. (R. S. § 3558.) Business of mint at Denver and of assay-offices at Boise City and Charlotte.

The business of the mint of the United States at Denver, while conducted as an assay-office, that of the United States assay-office at Boise City, and that of any other assay-offices hereafter established, shall be confined to the receipt of gold and silver bullion, for melt-

ing and assaying, to be returned to depositors of the same, in bars, with the weight and fineness stamped thereon.

Act Feb. 12, 1873, c. 131, § 57, 17 Stat. 433.

So much of this section and of R. S. §§ 3559–3561, post, §§ 6531–6533, as related to the mint at Denver, was repealed by Act Feb. 20, 1895, c. 105, § 2, ante, § 6421. See, also, notes to R. S. § 3495, ante, § 6416.

§ 6531. (R. S. § 3559.) Appointment of officers at Denver, Boise City, and Charlotte.

The officers of the assay-offices embraced by the preceding section shall be, when their respective services are required, an assayer and a melter; each of whom shall be appointed by the President, by and with the advice and consent of the Senate. Their salaries shall not exceed two thousand five hundred dollars a year each.

Act Feb. 12, 1873, c. 131, § 57, 17 Stat. 433.

The preceding section of the Revised Statutes, R. S. § 5558, mentioned in this section, is set forth ante, § 6530.

See note to said section, ante, § 6530, as to repeal of so much of this section as related to the mint at Denver.

Appropriations for the assay-offices are made in the annual legislative, executive, and judicial appropriation acts. The provisions for the fiscal year 1917, which omit the appropriation made by previous acts for the assay-office at Charlotte, N. C., were by Act May 10, 1916, c. 117, § 1, 39 Stat.

§ 6532. (R. S. § 3560.) Powers and duties of assayers at assay-offices; compensation of employés.

The assayer at each of the assay-offices embraced by section thirty-five hundred and fifty-eight, shall have general charge of the office; and may employ, under the direction of the Director of the Mint, such, clerks, workmen, and laborers as may be authorized therefor by law; and shall discharge the duties of disbursing agent for the expenses of the office under his charge. The salaries paid to clerks shall not exceed one thousand eight hundred dollars a year each. Workmen and laborers shall receive such wages as are customary according to their respective stations and occupations.

Act Feb. 12, 1873, c. 131, §§ 57, 58, 17 Stat. 433.

R. S. § 3558, mentioned in this section, is set forth ante, § 6530.

See note to said section, ante, § 6530, as to repeal of so much of this section as related to the mint at Denver.

§ 6533. (R. S. § 3561, as amended, Act Feb. 18, 1875, c. 80, § 1, and Act Feb. 27, 1877, c. 69, § 1.) Bond and oath of officers and clerks.

Each officer and clerk appointed at either of the assay-offices embraced by section thirty-five hundred and fifty-eight shall, before entering upon the duties of his office, take an oath pursuant to the provisions of Title XIX, "Provisions applicable to several classes of officers," and shall give a bond to the United States, with one or more sureties, satisfactory to the Director of the Mint or to one of the judges of the supreme court of the State or Territory in which the office to which he is appointed is located, conditioned for the faithful performance of his duties.

Act Feb. 12, 1873, c. 131, § 58, 17 Stat. 433. Act Feb. 18, 1875, c. 80, § 1, 18 Stat. 319. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 249.

This section was amended, by the correction of errors therein, to read as set forth here, by Act Feb. 18, 1875, c. 80, § 1, and Act Feb. 27, 1877, c. 69, § 1, cited above.

See note to R. S. § 3558, ante, § 6530, as to repeal of so much of this section as related to the mint at Denver.

The oaths and bonds of officers and clerks of the mints were prescribed by R. S. §§ 3500, 3501, ante, §§ 6437, 6438.

Notes of Decisions

Form of bond.—See (1885) 18 Op. Atty. Gen. 274, holding that where the form of the bond is not prescribed by statute, its form may be determined by the officer whose duty it is to approve the same.

Cited without definite application, Bronson v. Rodes (1868) 7 Wall. 229, 247, 19 L. Ed. 141.

§ 6534. (R. S. § 3562.) Laws relating to mints extended to assay-offices.

All provisions of law for the regulation of mints, the government of officers and persons employed therein, and for the punishment of all offenses connected with mints or coinage, shall extend to all assay-offices, as far as applicable.

Act Feb. 12, 1873, c. 131, § 60, 17 Stat. 434.

§ 6535. (R. S. § 3563.) Decimal system established.

The money of account of the United States shall be expressed in dollars or units, dimes or tenths, cents, or hundredths, and mills or thousandths, a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, a mill the thousandth part of a dollar; and all accounts in the public offices and all proceedings in the courts shall be kept and had in conformity to this regulation.

Act April 2, 1792, c. 16, § 20, 1 Stat. 250.

(R. S. § 3564. Superseded.)

This section provided that the value of foreign coin as expressed in the money of account of the United States should be that of the pure metal of such coins of standard value, and that the values of such standard coins in circulation should be estimated and proclaimed annually. It was superseded by Act Oct. 1, 1890, c. 1244, § 52, 26 Stat. 624, which contained similar provisions, but required the estimation and proclamation of values to be made quarterly; and these provisions were superseded by those of Act Aug. 27, 1894, c. 349, § 25, post, § 6536, which were identical in language, with additional provisions that the values so proclaimed should be followed in estimating the value of foreign merchandise subject to duty.

§ 6536. (Act Aug. 27, 1894, c. 349, § 25.) Value of foreign coins, how ascertained.

The value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this Act and thereafter quarterly on the first day of January, April, July, and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: Provided, That the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred. (28 Stat. 552.)

This section was part of the Wilson Tariff Act of 1894, cited above.

Its provisions for estimating and proclaiming the values of foreign coins superseded those of the McKinley Tariff Act of 1890, Act Oct. 1, 1890, c. 1244, § 52, 26 Stat. 624, relating to the same subject, which superseded R. S. § 3564.

Notes of Decisions

Estimation of value.—Under this section the value of all foreign coins must be estimated in money of the United States by the director of the mint and proclaimed by the secretary of the treasury on the 1st of January of each year; the object being to get at the real actual value of the foreign coin in the money of the United States. Detrick v. Balfour (C. C. 1881) 8 Fed. 468, 471.

Under this section small masses of silver, not always uniform in size or regular in shape, like that of a hat turned upside down or of a Chinese shoe marked by an officer selected by the consensus of Chinese bankers with characters indicating the fineness and the number of taels or the weight of the silver therein, and circulated in China as the only money of account, are coins of China, and the value of a tael of the

same is a proper subject of annual estimation by the direction of the mint and a proclamation on the first day of January by the secretary of the treasury. Gordon v. Magone (C. C. 1889) 40 Fed. 747, 750.

If the value of foreign coin be estimated by the director of the mint upon the basis used by him in estimating the values of other foreign coins of the same metal, proclaimed by the secretary of the treasury on the 1st day of January of any year, and be proclaimed by the secretary of the treasury during a subsequent month of the same year, the director, in the absence of any proof to the contrary, will be presumed to have performed his entire duty and to have made such estimation of the value of such foreign coin at the time required by this section and the proclamation during such subsequent month by the secretary of the treasury of its value so estimated is a compliance by him with the requirements of this section. Id.

—— **Conclusiveness.**—The provision in section 1 of Act March 3, 1873, that the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value means that the value of foreign coin in United States money shall be measured by the amount of pure metal contained therein when of standard value; that is, when of the weight and fineness required by the laws and regulations of the country where they are produced. This value, having been duly ascertained and published by the superintendent of the mint and Secretary of the Treasury, becomes the rule in the cases and for the purposes to which according to the fair meaning of the act it is to be applied. Arthur v. Richards (1874) 23 Wall. 246, 257, 23 L. Ed. 95.

It is to be applied in all cases where the estimation of the value of foreign moneys of account is required by law; and its principal and perhaps most important purpose is the estimation of invoice values on imported goods chargeable with ad valorem duties. Id.; Cramer v. Arthur (1880) 102 U. S. 612, 26 L. Ed. 259.

The valuation of foreign standard coins is as binding on collectors of customs and importers as if declared by statute, and evidence is not receivable to show that it is inaccurate. Hadden v. Merritt (1885) 5 Sup. Ct. 1169, 115 U. S. 25, 29 L. Ed. 333.

The provisions of this section and Act June 10, 1890, c. 407, § 2, being substantially re-enactments of former laws, must be interpreted in the light of the decisions construing those former laws, and the estimate of the director of the mint as proclaimed by the Secretary of the Treasury must be held conclusive both upon the government and the importer as under the former statutes. U. S. v. Klingenberg (1894) 14 Sup. Ct. 790, 792, 153 U. S. 93, 38 L. Ed. 647.

The values of foreign coins, as annually estimated and proclaimed by the Secretary of the Treasury constitute the only lawful basis for computing the invoiced value of importations, and duties on the latter are necessarily required to be collected on the values of foreign coins so estimated and proclaimed. (1885) 18 Op. Atty. Gen. 322.

—— **Dates.**—This section does not require the secretary of the treasury to take the valuation of such foreign coin as established by proclamation at the date of the entry rather than at the date of the exportation in the estimate of the values of imported merchandise. Wood v. U. S. (1896) 72 Fed. 254, 18 C. C. A. 553.

In estimating the value of foreign merchandise exported to the United States, according to the value of the currency of the country of exportation, as proclaimed quarterly by the Secretary of the Treasury, under this section, the date of the consular certification of the invoice is conclusive evidence of the date of exportation for the purpose of determining the quarter the proclamation for which is applicable. U. S. v. Lawrence, Son & Gerrish (1905) 137 Fed. 466, 69 C. C. A. 614, reversing judgment Lawrence, Son & Gerrish v. U. S. (C. C. 1903) 127 Fed. 750.

The Secretary of the Treasury is authorized to direct the computations of the values of foreign coins at the custom houses, when such values are to be expressed in the money of account of the United States, to be made according to the values officially estimated and proclaimed agreeably to the 1st section of Act March 3, 1873, c. 268, excepting only the sovereign or pound sterling of Great Britain, the value whereof must be computed as the same is fixed by the second section of that act. (1874) 14 Op. Atty. Gen. 353, 357, note.

The designation of the "first day of January," in the 1st section of Act March 3, 1873, c. 268, as the time for the performance of the duty thereby devolved upon the Secretary of the Treasury of making proclamation of the values of foreign coins annually estimated by the Director of the Mint, is not to be regarded as directory merely, but as a limitation upon the authority of the Secretary. He is authorized and required to make such proclamation at the time designated, and at no other. (1874) 14 Op. Atty. Gen. 382.

Review of collector's action.—Where, assuming to act under this section, the secretary directs a collector of customs to reliquidate on the basis of the exchange or commercial value of a certain foreign coin, and not of the metallic value, held, that he goes beyond his authority, and that the action of the collector pursuant to such direction

may be reviewed by the board of general appraisers and the courts, under sections 14 and 15, Customs Administrative Act June 10, 1890, c. 407, 26 Stat. 137, 138. Stone v. Whitridge, White & Co. (1904) 129 Fed. 33, 64 C. C. A. 47, decree reversed U. S. v. Whitridge (1905) 25 Sup. Ct. 406, 197 U. S. 135, 49 L. Ed. 696.

Impairment of rights.—The importer's right to have a proper liquidation by the collector in the first instance, which right was fixed by the protest, held not affected by subsequent action of the secretary. U. S. v. Beebe (1901) 106 Fed. 75, 45 C. C. A. 230, affirming judgment (C. C. 1900) 103 Fed. 785, and writ of certiorari denied U. S. v. Lucius Beebe & Sons (1901) 21 Sup. Ct. 922, 180 U. S. 640, 45 L. Ed. 711.

Rights of the Secretary, conferred by this section, held not impaired by his previous acquiescence in the importer's protest. Gulbenkian v. Stranahan (C. C. 1907) 158 Fed. 836.

Reliquidation.—The reliquidation by the Secretary of the Treasury of the entry of imported gunnies at the exchange value of the invoice rupee, which is also its value as a fraction of a pound, where that value differs by more than 10 per cent. from the value of the pure metal therein, as proclaimed by him at the beginning of the quarter year, is authorized by the proviso to this section. U. S. v. Whitridge (1905) 25 Sup. Ct. 406, 407, 197 U. S. 135, 49 L. Ed. 696, reversing decree Stone v. Whitridge, White & Co. (1904) 129 Fed. 33, 64 C. C. A. 47.

The reason for the proviso to this section is to be found in the numerous violent fluctuations in the market value of silver which had taken place during the preceding two years; and the word "money," as used therein, must be construed to mean "coin," upon the bullion value of which the quarterly proclamations provided for by the preceding part of the section are based, and the proviso does not authorize the Secretary to order the reliquidation of an entry because the currency or legal-tender value of the Indian rupee, in which the invoice value was expressed, is more or less, by more than 10 per centum, than the bullion value as fixed by the proclamation, based on the market value of the silver coins, which constitute the only money of account in India expressed in rupees. U. S. v. Lucius Beebe & Sons (1903) 122 Fed. 762, 58 C. C. A. 562, affirming judgment Same v. Beebe (C. C. 1902) 117 Fed. 670.

The fluctuation to which proviso has reference is that of the metallic value, and not of the exchange or commercial value. Stone v. Whitridge, White & Co. (1904) 129 Fed. 33, 64 C. C. A. 47, decree reversed U. S. v. Whitridge (1905) 25 Sup. Ct. 406, 197 U. S. 135, 49 L. Ed. 696.

The statement of the values of foreign coins, contained in a proclamation by the secretary of the treasury, is conclusive upon the customs officials in reducing to United States currency a valuation of imported merchandise. U. S. v. Knauth (C. C. 1896) 77 Fed. 599.

A proclamation of the secretary of the treasury stated the value of the florin of Austria-Hungary to be $.482, according to the gold standard, $.32 according to the silver standard, with silver the nominal standard, paper the actual standard, its depreciation measured by the gold standard. Held, that a valuation of imported merchandise in florins must be reduced to United States currency on the basis of the gold standard. Id.

In reducing foreign standard coins to United States currency for the assessment of duties, the basis in all cases is the value of the pure metal in such coins, and not their exchange value. This long-established rule was not changed by this proviso, where it appeared that the value of the foreign money specified in an invoice had varied at the time of the invoice more than 10 per cent. from that proclaimed by the secretary of the treasury for that quarter; and a collector is not authorized, because the consular certificate accompanying an invoice shows the current exchange value of the money of the invoice to be more than 10 per cent. greater or less than the proclaimed value for the quarter, to depart from such proclaimed value, and adopt, for the purpose of assessing the duty, the exchange value shown by the certificate. U. S. v. J. Allston Newhall & Co. (C. C. 1899) 91 Fed. 525.

The approval by the secretary of the treasury of the liquidation of an entry for customs duties by the collector of the port upon the basis of the exchange value of the foreign coin specified in the invoice, as declared in the consular certificate, does not amount to a reliquidation of the entry, under this section. U. S. v. Beebe (C. C. 1900) 103 Fed. 785, judgment affirmed (1901) 106 Fed. 75, 45 C. C. A. 230, and writ of certiorari denied U. S. v. Lucius Beebe & Sons (1901) 21 S. Ct. 922, 180 U. S. 640, 45 L. Ed. 711.

Under this section the secretary of the treasury has no authority to direct the liquidation of an entry for customs duties on the basis of the exchange value of the foreign coin as declared by the consular certificate. Id.

In reducing foreign standard coins to United States currency for the assessment of duties, the basis in all cases is the value of the pure metal in such coins, and not their exchange value. U. S. v. Beebe (C. C. 1902) 117 Fed. 670, judgment affirmed Same v. Lucius Beebe & Sons (1903) 122 Fed. 762, 58 C. C. A. 562.

An order for reliquidation of an entry, made by the secretary of the

treasury under this section, upon evidence satisfactory to him, based on the required difference between the pure-metal value of the foreign money specified in the invoice and the proclaimed value, is conclusive, and the action of the collector thereunder is not reviewable by the board of general appraisers or the courts; but where the secretary acts under an erroneous construction of the statute, and beyond the scope of the authority conferred on him by the proviso, by adopting as the basis of the reliquidation the exchange value of the foreign coin, instead of the pure-metal value, whereby the duties are increased, the question arising upon such reliquidation is one of law, and not of fact, and upon seasonable protest by the importer the action of the collector is reviewable by the board of general appraisers and the courts, under sections 14 and 15 of the customs administrative act of 1890. Id.

A collector of customs is not responsible for the action of the Secretary of the Treasury in ordering reliquidation under this section; and he is not liable to importers where he follows instructions issued by the Secretary under said section. Gulbenkian v. Stranahan (C. C. 1907) 158 Fed. 836.

Prior acts fixing values.—The act March 2, 1799, § 61, fixing the value of foreign coins, does not apply to contracts between private parties, as in the case of an insurance of a cargo invoiced in rupees. Phillips v. Insurance Co. of Pennsylvania (C. C. 1821) Fed. Cas. No. 11,102.

Under the act March 3, 1843, the value of the Brementhaler of 72 grotes, at the custom house, is fixed at 71 cents. Roosevelt v. Maxwell (C. C. 1856) Fed. Cas. No. 12,034.

Act March 3, 1843, fixing the value of the "mark," does not apply to its value for commercial purposes. The Blohm (D. C. 1867) Fed. Cas. No. 1,556.

Repeal of statute.—Act 1792, § 9, and Act 1793, regulating coinage and declaring what foreign coin shall pass current as money, are in part repealed by Act 1806, directing at what rate foreign coin shall pass current and directing the Secretary of the Treasury to cause assays of foreign coin to enable Congress to make such alteration in the coin made current as may become necessary. U. S. v. Gardner (1836) 10 Pet. 618, 621, 9 L. Ed. 556.

Cited without definite application, Taney v. Penn Nat. Bank of Reading (1914) 34 Sup. Ct. 288, 289, 232 U. S. 174, 58 L. Ed. 558.

§ 6537. (R. S. § 3565.) Value of the sovereign or pound sterling.

In all payments by or to the Treasury, whether made here or in foreign countries, where it becomes necessary to compute the value of the sovereign or pound sterling, it shall be deemed equal to four dollars eighty-six cents and six and one-half mills, and the same rule shall be applied in appraising merchandise imported where the value, is, by the invoice, in sovereigns or pounds sterling, and in the construction of contracts payable in sovereigns or pounds sterling; and this valuation shall be the par of exchange between Great Britain and the United States; and all contracts made after the first day of January, eighteen hundred and seventy-four, based on an assumed par of exchange with Great Britain of fifty-four pence to the dollar, or four dollars forty-four and four-ninths cents to the sovereign or pound sterling, shall be null and void.

Act March 3, 1873, c. 268, § 2, 17 Stat. 603.

Notes of Decisions

Effect of provision.—Act May 22, 1846, enacting that, "in all computations at the custom-house, the franc of France * * * shall be estimated at eighteen cents and six mills," is repealed by Act March 3, 1873, "to establish the custom-house value of the sovereign or pound sterling of Great Britain, and to fix the par of exchange." Collector v. Richards (1874) 90 U. S. (23 Wall.) 246, 23 L. Ed. 95.

Where it becomes necessary, in executing a contract made in the United States, to ascertain the equivalent in United States currency of a sum of money expressed in British currency, the true and only mode, where none is expressed in the contract, is to count the pound sterling as equivalent to $4.8665, as fixed by this section. The so-called "current rate of exchange" between New York and London does not govern. Murphy v. Kastner (1892) 24 Atl. 564, 50 N. J. Eq. 214.

Pleading and proof.—Under this section, in an action on a note payable in pounds sterling, it is not necessary to aver or prove the value of such pound in money of the United States, but the court will give judgment for the value of the contents of the note in money of the United States according to the ratio prescribed by the statute. King v. Hamilton (C. C. 1882) 12 Fed. 478, 480.

Cited without definite application, Arthur v. Richards (1874) 23 Wall. 246, 258, 23 L. Ed. 95.

§ 6538. (R. S. § 3566.) Recoinage of foreign coins.

All foreign gold and silver coins received in payment for moneys due to the United States shall, before being issued in circulation, be coined anew.

Act Feb. 9, 1793, c. 5, § 8, 1 Stat. 301. Act Feb. 21, 1857, c. 56, § 2, 11 Stat. 163.

§ 6539. (R. S. § 3567.) Spanish and Mexican coins.

The pieces commonly known as the quarter, eighth, and sixteenth of the Spanish pillar-dollar, and of the Mexican dollar, shall be receivable at the Treasury of the United States, and its several offices, and at the several post-offices and land-offices, at the rates of valuation following: the fourth of a dollar, or piece of two reals, at twenty cents; the eighth of a dollar, or piece of one real, at ten cents; and the sixteenth of a dollar, or half-real, at five cents.

Act Feb. 21, 1857, c. 56, § 1, 11 Stat. 163.

This section and R. S. § 3568, next following it, post, § 6540, have become practically inoperative, by reason of the inequality in value between the coins mentioned and the United States silver coins of like denominations.

Debts due the United States were payable in gold or silver coins of the United States, by R. S. § 3474, ante, § 6380.

Treasury notes were payable to creditors of the United States, by R. S. § 3476, ante, § 6382.

Hawaiian silver coins were receivable in payment of all dues to the government of the Territory of Hawaii and of the United States, by Act Jan. 14, 1903, c. 186, § 1, ante, § 3740.

The Mexican silver dollar in use in the Philippine Islands and the silver coins issued by the Spanish government for use in said Islands were receivable for public dues for a limited time, by Act March 2, 1903, c. 980, § 7, ante, § 3898.

§ 6540. (R. S. § 3568, as amended, Act Feb. 27, 1877, c. 69, § 1.) Their transmission for recoinage.

The Director of the Mint, with the approval of the Secretary of the Treasury, may prescribe such regulations as are necessary and proper, to secure the transmission of the coins mentioned in the preceding section to the Mint for recoinage, and the return or distribution of the proceeds thereof, when deemed expedient, and may prescribe such forms of account as are appropriate and applicable to the circumstances. The expenses incident to such transmission or distribution, and of recoinage, shall be charged against the account of silver profit and loss, and the net profits, if any, shall be paid, from time to time, into the Treasury.

Act Feb. 21, 1857, c. 56, § 2, 11 Stat. 163. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 249.

This section was amended by Act Feb. 27, 1877, c. 69, § 1, cited above, by striking out, after the words, "in the preceding section to the Mint for recoinage, and the," the word "turn," and inserting in lieu thereof the word "return," as set forth here.

The preceding section of the Revised Statutes, R. S. § 3567, mentioned in this section, is set forth ante, § 6539.

See notes to said section, ante, § 6539, as to both sections having become practically inoperative.

Recoinage of Hawaiian silver coins into United States subsidiary silver coins was provided for by Act Jan. 14, 1903, c. 186, § 2, ante, § 3741.

Recoinage of the silver coins in or received by the Treasury of the government of the Philippine Islands into the coins provided for use in said Islands was authorized by Act March 2, 1903, c. 980, § 5, ante, § 3896.

(R. S. §§ 3569, 3570. Transferred.)

These two sections authorized the use of the metric system of weights and measures and prescribed tables of equivalents of the weights and measures used in the United States expressed in terms of the metric system. They are placed, with subsequent legislation relating to weights and measures, post, under Title LVI H, "Weights and Measures." See, also, note at the beginning of this title.

[END OF VOLUME 6]

Stanford Law Library
3 6105 063 033 539